
(2022) 11 TEL CK 0031
In the Telangana High Court
Case No : Writ Petition No. 5683 Of 2009

Dr. D.R.K. Rao

APPELLANT

Vs

Union Of India, 3 Others

RESPONDENT

Date of Decision : 07-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226

Citation : (2022) 11 TEL CK 0031

Hon'ble Judges : Ujjal Bhuyan, CJ;C.V.Bhaskar Reddy, J

Bench : Division Bench

Advocate : P S Rajasekhar

Final Decision : Dismissed

Judgement

1. Heard Mr. P.S. Rajasekhar, learned counsel for the writ petitioner and Mr. B. Mukherjee, learned counsel for respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, petitioner has prayed for the following reliefs:

(a) Calling for the records relating to and connected with the order dated 12.09.2008 in O.A. No.702/2006 and quash or set aside the same by holding it to be contrary to the directions passed by the Hon'ble Central Administrative Tribunal in O.A. No.1658 of 2001;

(b) declare the S.R.O. 11-E Rules dated 10.08.1990 insofar as they are not made applicable to be petitioner's case as illegal and violative of Articles 14 and 16 of the Constitution of India;

(c) direct the respondent to consider the period between 01.08.1983 and 30.06.1985 for the purpose of residency period in DMRL and on that basis ante date the promotions ordered earlier in favour of the petitioner by assigning notional dates of promotions in the grades of Scientist 'D', 'E' and 'F' as 01.08.1983 in Scientist 'D', 1.7.1988 as Scientist 'E' and 01.02.1995 in Scientist

'F' in place of the existing dates of promotion, and grant all consequential benefits, including review of promotion to Scientist 'G' level, with modified residency in Scientist 'F' starting with five years residency in Scientist 'F' in the year 2000, and also in the subsequent years if necessary, to notionally promote the applicant with appropriate period of residency in Scientist 'F'; and

(d) direct the respondents to pay all the consequential benefits including arrears of salary and fixation of pension and arrears of pension upon such grant of notional promotion and pass such other and further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

3. Petitioner was serving as a scientific officer in Baba Atomic Research Centre (BARC), Mumbai i.e., respondent No.4. In 1983, Defence Research and Development Organisation (DRDO) i.e., respondent No.2, which is the corporate headquarters for the Defence Metallurgical Research Laboratory i.e., respondent No.3 requested respondent No.4 to send the petitioner to respondent No.3 to work on deputation basis. After completion of the formalities, petitioner joined respondent No.3 with effect from 01.10.1984. In respondent No.3, petitioner was appointed to the post of Scientist 'D'. Ultimately, petitioner was permanently absorbed in respondent No.3 by order dated 02.08.1988 with effect from 10.10.1984.

4. It is stated that petitioner was assured by the authorities in respondent No.3 that his services in respondent No.4 as scientific officer which is equivalent in rank to the post of Scientist 'D' in respondent No.3 would be considered for the purpose of calculating the residency period for promotion to the next higher grade i.e., Scientist 'E' in respondent No.3.

5. Petitioner made several representations to the authorities in respondent No.3 to consider his past service in respondent No.4 and to calculate the residency period in Scientist 'D' grade from 01.08.1983 (on which date he got promotion to the equivalent grade in respondent No.4).

6. In the meanwhile, Union of India amended the service rules and introduced SRO 11-E dated 10.08.1990 incorporating the following provisions:

In case of permanent absorption of a Scientist on deputation in the same grade in Defence Research and Development Service from other Scientific Departments where flexible complementing scheme is applicable, the entire service of that scientist in the same grade including in the parent department shall be counted towards residency period. If an officer comes on deputation on a higher grade into the service and later permanently absorbed in the same grade in the service, the period spent on deputation shall be counted for residency period for consideration for promotion to the next higher grade.

6.1. In spite of such provision, prayer of the petitioner for promotion was rejected vide the order dated 28.09.2000 on the ground that SRO 11-E dated 10.08.1990 could be applied only prospectively. Benefit of SRO 11-E would be

available only to those who came on deputation subsequent to 10.08.1990 and not to those who came on deputation and were absorbed in respondent No.3 prior thereto.

7. Petitioner challenged the rejection order dated 28.09.2000 before the Central Administrative Tribunal, Hyderabad Bench at Hyderabad (CAT) by filing OA No.1658 of 2001 which was allowed vide the order dated 05.06.2003 with the following directions:

(i) Impugned order dated 28.09.2000 issued by the 4th respondent is hereby set aside holding that the same is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India. It is also declared that the benefit of SRO 11-E dated 10.8.1990 is to be extended to the applicant and the action of the respondents in not extending the benefit of the amended rules is illegal and violative of Articles 14 and 16 of the Constitution of India.

(ii) Respondents are directed to consider the period between 1.8.1983 and 30.6.1985 for the purpose of residency period in DMRL and on that basis, to review the promotions ordered earlier by assigning the notional dates of promotions to applicant in the grade of Scientist-D, Scientist-E and Scientist-F and grant all consequential benefits upon such review.

(iii) Respondents are further directed to consider the case of the applicant for promotion to the grade of Scientist-G along with others when the Peer Committee next meets for the said purpose.

(iv) Respondents are directed to comply with this order within a period of 3 (three) months from the date of receipt of a copy of this order.

8. Petitioner had to file a contempt case before CAT alleging non-compliance to the order dated 05.06.2003. CAT disposed of the contempt case on the basis of submissions made by learned counsel for the respondents by modifying the direction No.2 given in the order dated 05.06.2003 as under:

According to the orders passed by this Tribunal, physical presence of the applicant is not required for review of the promotions ordered earlier in the grades of Scientist-D, E and F. Only in respect of Grade-G Scientist, the respondents are entitled to follow the rules for consideration of the case of the applicant for promotion. For the other grades of Scientist D, E and F, the residency period from 1.8.1983 to 30.6.1985 is to be added to the residency period for grant of notional promotion as directed by this Tribunal in the orders passed. Hence, the respondents are directed to comply with the orders passed in the light of the above clarification issued, before the end of May, 2004.

9. Respondents filed W.P.No.9611 of 2004 before this Court challenging the aforesaid order of the CAT contending that in contempt CAT did not have the jurisdiction to modify the earlier order. However, by the order dated 07.07.2004, this Court dismissed the writ petition granting six weeks time to the respondents to implement the order of CAT.

10. Thereafter, case of promotion of the petitioner from Scientist 'D' to Scientist 'E' for the years 1988 and 1989 was reviewed by the duly constituted Review Assessment Board after counting his residency period in Scientist 'D' with effect from 01.08.1983 vis-a-vis comparative merit of other promotee scientists. However, the Assessment Board found the petitioner not yet fit for promotion during both the years. Petitioner was assessed in 1990 whereafter he was promoted to the post of Scientist 'E'.

11. Petitioner filed a contempt case before this Court contending that action of the respondents was in violation of the High Court's order. It was contended that if the period from 01.08.1983 to 30.06.1985 in respondent No.3 is considered the residency period he was entitled for notional promotion. Respondents contested the contempt case by asserting that petitioner's case was considered in accordance with law. This Court dismissed the contempt case vide the order dated 30.08.2005 holding that there was no wilful disobedience to the order of the Court. However, liberty was granted to the petitioner to approach the appropriate forum in case he was aggrieved by rejection of his prayer for promotion to Scientist 'E' in the years 1988 and 1989.

12. Thereafter, petitioner filed O.A.No.702 of 2006 before CAT.

13. Respondents contested the original application and filed counter. It was stated that Review Assessment Board had considered the case of the petitioner which did not recommend the petitioner for promotion to Scientist 'E' for the years 1988 and 1989. Promotion from Scientist 'D' to Scientist 'E' is not automatic. It is subject to being found fit assessed on merit which should be above the minimum benchmark. Regular promotion from Scientist 'D' to Scientist 'E' had already taken place during the years 1988 and 1989 based on the standard test. The same yardstick had to be applied for review cases, such as the case of the petitioner. Review Assessment Board considered the claim of the petitioner after counting his service in respondent No.4. However, Review Assessment Board did not recommend the petitioner for promotion to Scientist 'E' for the years 1988 and 1989. Petitioner had only a right to consideration for promotion which is subject to being found fit assessed on merit which had to be above the minimum benchmark set for promotion for those years. As the petitioner fell short of the minimum benchmark for the years 1988 and 1989, Review Assessment Board found the petitioner not yet fit for promotion for the said years.

14. CAT rejected the contention of the petitioner and dismissed O.A.No.702 of 2006 vide the order dated 12.09.2008. CAT held as under:

It is not disputed that as per rules relating to promotion from Scientist Grade-D to Scientist Grade-E, only those who completed residency period of 5 years will be considered by a duly constituted Assessment Board and that mere completion of residency period of five years by itself is not sufficient for promotion from Scientist-D to Scientist-E. In other words, the promotion is not automatic and it

shall be earned on the performance on merit. The applicant himself in para number 4 (h) of the application averred as follows:

“(h) It is respectfully submitted that promotion from one level of Scientist to another is determined by the following factors/criterion:

(i) A certain duration of residency period which has to be completed by a Scientist in the existing level &

(ii) Marks obtained in the interview conducted by the Assessment Committee.”

So, it is clear that unless a duly constituted assessment committee finds that the particular scientist earned the required marks viz., Benchmark prescribed for promotion, the scientist though completed 5 years residency period is not entitled for promotion. Besides completion of the residency period, one must get through in the merit test. The applicant's service in R-4 organization was not originally taken into consideration for the purpose of calculating minimum residency period and hence he was not called for the interview in the year 1988. However, he was considered by the Assessment Board during the year 1989 but he was not selected. Aggrieved by non-counting of his service in R-4 organization, from 1.8.2003 on which date he was promoted in R-4 organization to the equivalent cadre of Scientist-D he had approached this Tribunal and this Tribunal directed the respondents to treat the period from 1.8.2003 to 1.10.2004 as service to Scientist-D grade in R-3 organization for the purpose of calculating the residency period required for consideration for promotion. Accordingly, the respondents have calculated the service of the applicant from 1.8.2003 to 1.10.2004 as service in the cadre of Scientist-D and as the applicant thereby became entitled to be considered for promotion from Scientist-D to Scientist-E, the Review Assessment Board has been constituted to consider the applicant for promotion from Scientist-D to Scientist-E not only for the year 1988 but also for reconsideration in respect of the year 1989. During the course of hearing on 15.7.2008 as the learned counsel for the applicant submitted that in spite of directions given by this Tribunal in O.A. No.1651/2001 which was clarified in CP 35/2004, the respondents have not made any effort to implement the directions of this Tribunal for the purpose of assessing the merit of the applicant for promotion or the years 1988 and 1989, we directed the respondents' counsel to produce evidence in support of the averment made in the reply to the effect that the performance of the applicant was assessed for the year 1988 and 1989 subsequent to the passing of the orders by this Tribunal in O.A. No.1651/2001 and found the applicant unfit. We have directed the counsel for the respondents to produce the entire file to show that the applicant's eligibility or otherwise was assessed for the years 1988 and 1989. We have also directed to produce the reports of the Work Output Committee for the years 1988 and 1989. After taking time, the learned counsel ultimately produced the entire file as directed by this Tribunal on 15.7.2008 and 5.8.2008 in a sealed cover. We have carefully perused the file and found that in order to implement the judgment passed by this Tribunal in O.A.No.1651/2001 dated 14.11.2003, an Assessment Board was

constituted in accordance with the DRDO's rules then in force to consider the case of the applicant herein for his promotion from Scientist-D to Scientist-E for the years 1988 and 1989 considering the residency period from 1.8.1983 to 30.6.1985 also without physical presence of the applicant for notional promotion. The meeting of the Review Assessment Board was held on 17.8.2004 at RAC, Delhi. The Assessment Committee consists of the following:

"Chairman : Dr. K.V. Raghavan

External Experts : (a) Prof (Dr) AL Vyas, IIT Delhi

(b) Shri NR Iyer, SC 'G' (Retd), DRDO

Departmental Experts : (a) Shri AK Mani, SC 'G', LASTEC

(b) Dr AM Sriramamurthy, Director DMRL"

The committee after considering the work output of the applicant during the relevant period assigned him 33 marks out of 50 marks for the year 1988 and the said marks include seniority marks, work output/ACR marks and special duty marks and the Assessment Board assessed the performance of the applicant in absentia and awarded 40 marks out of 50 marks for the year 1988 and thus the applicant secured 73 marks out of 100. But, the cut-off marks prescribed during the year 1988 was 77 out of 100. Therefore, the Assessment Board found the applicant 'not yet fit' for promotion for the year 1988. On the same day, the same Assessment Board considered the applicant for promotion from Scientist-D to Scientist-E for the year 1989 considering the residency period from 1.8.1983 to 30.6.1985 also for notional promotion in accordance with rules and the policy then in force. The Assessment Board considered work output of the applicant during the relevant period and assigned 37 marks out of 50 for the year 1989. The committee after taking into consideration the work of the applicant as mentioned in ACRs of the applicant for the years 1983 onwards assessed his performance in absentia and awarded 38 marks out of 50 marks for the year 1989 and thus the applicant secured 75 marks out of 100, but the cut-off marks for promotion from Scientist-D to Scientist-E in the year 1989 was 76 out of 100. Therefore, the Board declared that the applicant is not yet fit for promotion for the year 1989 also. Hence, we do not find any force in the contention of the learned counsel for the applicant that the respondents have not made any efforts to consider the promotion of the applicant from Scientist-D to Scientist-E for the years 1988 and 1989. The learned counsel further contended that when the applicant was found fit in the year 1990 on the basis of the performance during the preceding 5 years, it cannot be said that he was found unfit for the year 1988 and 1989. We are unable to agree with this contention of the learned counsel. We have perused the assessment made during the year 1990 also and found that he could get just required benchmark on account of his getting one more mark or for seniority in addition to the marks obtained during 1989 assessment year. However, this Tribunal has got no power to sit over the judgment of the duly constituted assessment committee. As seen from the

constitution of the assessment committee, it consists of more than 3 outsiders, only one expert is from DRDO and he is also retired now. All others are outsiders. Therefore, no mala fides can be attributed to them to find the applicant 'not yet fit' for promotion for the years 1988 and 1989. In fact, we have also gone through the ACRs of the applicant from the year 1983 onwards. We do not find any bias on the part of the assessment committee to find the applicant not yet fit for promotion for the years 1988 and 1989. As the applicant did not attain the bench mark prescribed for those years, the Review Assessment Board have rightly found the applicant not yet fit for promotion during the years 1988 and 1989. Therefore, even if the service of the applicant from 1.8.1983 to 30.6.1985 in R-4 Organization is taken into consideration as service in Scientist-D grade in R-3 organisation, the applicant is not entitled or promotion during the years 1988 and 1989. Hence, we do not find any irregularity or illegality in the impugned orders dated 26.8.2004 confirmed on 20.4.2005. There is no need for any direction to be given to the respondents to give notional promotions from 1988 onwards as claimed by the applicant.

15. From the above, we find that CAT had meticulously scrutinised the proceedings of the Review Assessment Board and thereafter found that in both the years, petitioner fell short of the minimum benchmark. In 1988 petitioner had secured 73 out of 100, whereas the benchmark was 77. Therefore, the Review Assessment Board assessed the petitioner as not yet fit for promotion for the year 1988. In 1989 also, it was found that petitioner had secured 75 marks out of 100 whereas the benchmark was 76. Here also the Review Assessment Board found the petitioner not yet fit for promotion in the year 1989. CAT found that for both the years, Review Assessment Board has considered the period from 01.08.1983 to 30.06.1985 as the notional period of the petitioner in respondent No.3. Noting that when the petitioner was found fit in the year 1990, he was accordingly promoted.

16. Concurring with the assessment of the Review Assessment Board, CAT held that it had no power to sit over the recommendations of the Review Assessment Board like an appellate authority. In so far constitution of the Review Assessment Board was considered, it was found that out of five members, three were from outside respondent No.3. Therefore, no mala fides could be attributed to the Review Assessment Board in taking the view that the petitioner was not yet fit for promotion for the years 1988 and 1989. That apart CAT also considered the annual confidence reports of the petitioner from the year 1983 onwards and thereafter agreed with the view of the respondents that petitioner was not fit for promotion to Scientist 'E' for the years 1988 and 1989.

17. We do not find any error or infirmity in the view taken by CAT. In so far, relief (a) is concerned, no case for interference is made out. As regards relief (b), the same was already allowed by CAT vide the order dated 05.06.2003 in OA No. 1658 of 2011. First part of relief (c) was granted vide the above order of CAT dated 05.06.2003. Second part of relief (c) is consequential. That apart, in the

absence of factual details the same cannot be gone into. Therefore, no order in terms of relief (d) can be granted. We are therefore of the view that there is no merit in the writ petition and the same is accordingly dismissed. However, there shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.