

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **09.08.2016**

CORAM:

**THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN**

**W.P.Nos.35386 to 35391 of 2012
and W.P.Nos.904 to 906 of 2013
and M.P.Nos.1/12 (5 Nos) and M.P.No.1/13 (3 Nos)**

W.P.No.35386 of 2012

1. Union of India
Rep. by the Secretary
Government of India,
Department of Atomic Energy,
CSM MARG, Mumbai - 400 001.
2. The Chief Administrative Officer
Indira Gandhi Centre for Atomic Research
Department of Atomic Energy,
Kalpakkam - 603 102. Petitioners

Vs.

1. C.Rajappan
2. The Registrar
Central Administrative Tribunal
Madras Bench, High Court Campus,
Chennai - 600 104. ...Respondents

Prayer in W.P.No.35386 of 2012 : Writ Petition filed under Article 226 of the Constitution of India, seeking an order to issue a writ of certiorarified mandamus, calling for the records relating to the common order passed by the second respondent in O.A.Nos.551/2008, dated 30.10.2009 and quash the same and

direct the first respondent to accept the petitioner's office Memorandum No. CAT/98-Admn/R-806 (N)/272, dated 15.03.1999.

For Petitioners : Mr.G.Rajagopalan
Addl. Solicitor General
Assisted by
Mr.K.Gunasekar, SCGSC in all the WPs

For Respondents : Mr.Senthilnathan for R1 in all the WPs
R2 - Tribunal

COMMON ORDER

(Order of the Court was made by **P.KALAIYARASAN, J**)

These writ petitions have been filed, seeking direction to issue orders in the nature of a writ of certiorarified mandamus to quash the common order, dated 30.10.2009 in O.A.No.51 of 2008 and connected 8 other Original Applications passed by the Central Administrative Tribunal of Madras Bench and direct the first respondent to accept the petitioner's Office Memorandum, dated 15.03.1999.

2. The facts leading to these writ petitions in nutshell are as follows :

[a] These writ petitions have been filed by the Union of India and Atomic Research Department against the employees. The

applicants / employees before the Central Administrative Tribunal joined the Department as Tradesman B,C,D,E. Upon acquiring Diploma in Technical side they were promoted to the Grade of Scientific Assistant Grade-A in the scale of pay of Rs.5000-150-8000 varying from 1994 to 2002.

[b] The averments of the writ petitioner :

The promotion to the Grade of Scientific Assistant -'A' was based on the performance in the interview. The Department of Atomic Energy being a Scientific Department as from its inception followed unique policy in promotion of officers in Scientific and Technical Grade based on the need to develop a cadre of competent Scientists and Technologists. Merit promotion scheme policy is being followed. As per the promotion norms for Scientific and Technical personnel amended in 1991, the applicants were promoted to the grade of Scientific Assistant-'A' by the Selection Committee depending upon the performance in the Interview. Norms for promotion of Scientific and Technical Assistant were again revised in 2003. There was no change in the norms till January 2003 and the promotion norms of acquiring higher qualification were revised in February 2003 and therefore, the applicants are not entitled to be promoted as Scientific Assistant-'B' as per the clarification issued in

letter, dated 31.08.2001. The Department has not abolished Scientific Assistant-'A' post consequent upon the implementation of IV Pay Commission and the letter, dated 31.08.2001 cannot have any retrospective effect.

[c] The averments of the respondents/employees made in the counter in the writ petitions :

On introduction of IV Pay commission, the post of Scientific Assistant-'A' was abolished from 01.02.1992. The Government of India in clarification letter, dated 31.08.2001, has clarified that candidates who acquire additional qualification with 60% or higher marks while in service are eligible for promotion to the post of Scientific Assistant-'B'. Therefore, suitable candidates must be posted as Scientific Assistant-'B'. The Central Administrative Tribunal (Madras Bench), has rightly held that those who have acquired higher qualification are entitled to be promoted as Scientific Assistant-'B' from the date of the clarification letter, dated 31.08.2001 with all consequential benefits.

3. Against the common order passed by the Central Administrative Tribunal, Madras Bench, the authority already filed writ petitions in W.P.No.5546 of 2010 etc., and those writ petitions

were dismissed by a Division Bench of this Court, for not producing the impugned document, dated 22.07.2008. However, the Division bench granted liberty to the Department to file comprehensive writ petitions. Hence, the Department has come forward with the present writ petitions.

4. The learned Additional Solicitor General strenuously contended that the post of Scientific Assistant-'A' has not been abolished and only the direct recruitment for that post has been abolished and the letter, dated 31.08.2001 cannot over ride the promotion scheme. It is further contended that the letter cannot have retrospective effect.

5. The learned counsel appearing for the respondents/employees per contra contends that even as per the promotional norms, the post of Scientific Assistant-'A' has been removed and the gradation by the Committee was also removed by fixing 60% and above marks for Diploma holders to get the promotion. Non-existence of Scientific Assistant-'A' and the norms for promotion have been clarified by the Government in its letter, dated 31.08.2001 and therefore, it is not contrary to the promotional norms.

6. The fact remains that the applicants joined the Department in the cadre of Tradesman and they were promoted as Scientific Assistant-'A' varying from 1994 to 2002. In the revised Recruitment norms issued by the authority, dated 03.11.1992, Scientific Assistant-'A' is not shown and the other posts namely Scientific Assistant-'B', Scientific Assistant-'C', Scientific Assistant-'D' / SO(SB), Scientific Assistant-'E'/SO(SC), Scientific Assistant-'F' / SO (SD), SO(SE) alone are shown.

7. The learned Additional Solicitor General submitted that the above Recruitment norms is with respect to the direct recruitment alone and not in respect to promotion and therefore, non-indication of Scientific Assistant-'A' in the above norms does not mean that the post, namely Scientific Assistant-'A' itself has been abolished.

8. The revised norms for promotion for Scientific and Technical Grades up to and including Grade SO/SE issued by the authority in its order, dated 22.11.1991, came into effect for Technical grade from February 1992. In this norms, Table III relates to promotion norms for Licentiates / Diploma Holders Engineering /

BSc (Technical Stream). The guidelines for promotions is given thus:

<i>From Grade</i>	<i>To Grade</i>	<i>Minimum Eligibility period of Years and or Gradings</i>					
		3	4	5	6	7	
SA(A)	SA(B)	A1	A2	A3	B+		

Note : Those with gradings less than the lowest mentioned should not normally be considered eligible for promotion to the higher grade. Hence no guidelines are proposed for those with less than the grading indicated in the Table.

Therefore, in the promotional norms, dated 22.11.1991, promotion from SA(A) to SA(B) was provided on the basis of the Grades obtained by the individuals.

9. The same authority issued a letter, dated 31.08.2001, which reads as follows :

"Subject : Promotion on the basis of acquisition of Addl. Qualification - Dip. in Engg. / B.Sc., acquired while in service.

Reference is invited to your note No. NFC/PAR.II/02/41/19, dated March 14, 2001 on the above subject. The same has been examined in consultation with Chairman, Norms Committee and the position is clarified

as follows :

Candidates who acquire additional qualification of B.Sc. / Diploma in Engg. with 60% or higher marks, while in service are eligible to be put up for being considered for promotion to grade SA/B. If the Selection Committee does not find the candidate suitable the candidate is not promoted. The question of option for Selection Committee to award grade SA/A is not operative any more. In other words, such candidates will be promoted to grade SA/B, if they are found suitable by the Selection Committee, otherwise they will not be promoted at all based on acquiring additional qualification."

This was issued by the Norms Committee after examining the issue in consultation with Chairman as clarification to the earlier promotional norms.

10. On 03.02.2003, the revised promotion norms was issued by the authority, which came into effect from February 2003 in respect of Scientific Grades. In the norms, Clause 10.3 is as follows :

"Following will be the criteria for considering cases for promotion on acquiring additional qualification while in service.

	<i>Additional Qualification</i>	<i>Min. marks to be obtained in the final exam of additional qualification</i>	<i>To be considered for promotion to Grade</i>
(i)	B.Sc.,	60%	SA 'B'
(ii)	Diploma in Engg.	60%	SA 'B'
...	...	...	...
...	...	...	...

For cases at (i) & (ii) above, Selection Committees can promote the candidates to grade SA 'B' only. The candidate should not be promoted to Grade SA 'A' under any circumstances."

11. Thus in the revised promotion norms issued on 03.02.2003, there is provision for direct promotion to the Grade Scientific Assistant-'B' only and the promotion to the Grade Scientific Assistant-'A' is taken away. But there was no such specific clause in the revised norms issued on 22.11.1991. In that revised norms, Committee is empowered to award Grade and promote from Scientific Assistant-'A' to Scientific Assistant-'B' but the authority took a decision and communicated by way of clarification on 31.08.2001, giving up awarding grade and directed the candidates who acquired additional qualification of B.Sc., / Diploma in Engineering with 60% or higher marks while in service as eligible for promotion to Scientific Assistant-'B'.

12. In February 2003, the Trombay Council for Revision adopted the said clarification and provided for promotion directly to Scientific Assistant-'B' eliminating promotion to Scientific Assistant-'A'.

13. Thus from the clarificatory communication of the authority, dated 31.08.2001 and as per the subsequent revised promotion norms issued by the authority on 03.02.2003, the applicants are entitled to the promotion for the post of Scientific Assistant-'B'. As rightly pointed out by the learned Additional Solicitor General, the post of Scientific Assistant-'A' was not abolished in the revised norms for promotion issued in 1991 but by way of clarificatory communication and also subsequent revised norms for promotion issued by the authority, direct promotion to the cadre of Scientific Assistant-'B' on the basis of acquiring Diploma with minimum 60% of marks has been provided. Therefore, the order of the Tribunal is perfectly correct. We do not see any reason to interfere with the orders of the Tribunal and accordingly, the writ petitions are liable to be dismissed.

In fine, all these writ petitions are dismissed. No costs.
Consequently, connected miscellaneous petitions are also dismissed.

(A.S., J.) (P.K., J.)
09.08.2016

Index : Yes

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To

The Registrar
Central Administrative Tribunal
Madras Bench, High Court Campus,
Chennai - 600 104.

A.SELVAM, J.
AND
P.KALAIYARASAN, J.
tsvn

Common
order in
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35391 of 2012
and W.P.Nos.904
to 906 of 2013

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