

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No. 16523 of 2016

and

W.P.No. 12295 of 2016

W.P. No. 16523 of 2016

J. Ramesh Babu Dqas (Retd.) ...Petitioner

Vs.

1. Union of India
Rep. By The Secretary to the Govt. of India
Department of Defence Production,
Ministry of Defence, South Block,
New Delhi 110 011
2. The Secretary to Government of India
Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pension,
North Block,
New Delhi 110 011.
3. The Director General Quality Assurance,
Directorate of General Quality Assurance (DCQA),
Department of Defence Production,
Ministry of Defence, South Block,
New Delhi 110 011.
4. The Registrar
Central Administrative Tribunal,
Chennai Bench, Chennai ...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 4th respondent in O.A.No.1295 of 2012 dated 04.01.2016, quash the same and consequently direct the Respondents to consider and grant the petitioner non-functional upgradation to SAG without any discrimination with all consequential benefits flowing there-from including arrears of pay and pension.

W.P. No. 12295 of 2016

C.B. Madana Manoharan JAG (NFSG) (Retd)

...Petitioner

Vs.

1. Union of India

Rep. By The Secretary to the Govt. of India
Department of Defence Production,
Ministry of Defence, South Block,
New Delhi 110 011

2. The Secretary to Government of India

Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pension,
North Block,
New Delhi 110 011.

3. The Director General Quality Assurance,

Directorate of General Quality Assurance (DCQA),
Department of Defence Production,
Ministry of Defence, South Block,
New Delhi 110 011.

4. The Registrar

Central Administrative Tribunal,
Chennai Bench, Chennai

...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 4th respondent in O.A. No. 456 of 2013 dated 04.01.2016, quash the same and consequently direct the Respondents to consider and grant the petitioner non-functional upgradation from 03.01.2006 in P.B. 4 with a Grade Pay of Rs.10,000/- with all consequential benefits flowing there-from including arrears of pay and pension.

For Petitioner
in both WPs : Mr. Menon Karthik

For Respondents
in both WPs : Mr. N. Rajan, Senior Counsel
Central Government for R1 to R3

COMMON ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The issue sought to be espoused in these writ petitions is with respect to the non-functional upgradation, which an employee working as Junior Administrative Grade becomes entitled to in terms of sub-clause (2) of Schedule I on the basis that he would otherwise be entitled to be considered for the promotional post of Senior Administrative Grade.

2. The petitioners, since retired, were Group 'A' employees originally. They had put in seventeen years' of service in Group 'A' posts out of which four years' were regular service in the category of Junior Administrative Grade.

3. A scheme provides for upgradation which is called 'Non-Functional Upgradation Scheme', to such officers who could not be promoted to the post of Senior Administrative Grade, though seniors to directly recruited persons from the Indian Administrative Service. The following is the Rule governing promotion:-

S.No.	Name of Post and scale of Pay	No of Posts	Method of recruitment	Grade from which promotion is permissible and the minimum eligibility period prescribed
1	Director Grade I (Senior Administrative Grade) (Rs. 18400 - 500 -22400)	2	By promotion on the basis of selection by merit	Officers of the Junior Administrative Grade (Principal Scientific Officer) with eight years' regular service in the grade including service, if any, in the Non Functional Selection Grade or with seventeen years' regular service in Group 'A' posts out of which at least four years' regular service should be in the Junior Administrative Grade.

4. The aforesaid provision makes it clear that promotion has to be given by merit. Therefore, we are not dealing with the case of seniority-cum-merit or merit-cum-seniority, as the case may be. Thus, the qualification has to be taken note of as the benchmark or the requisite one to be considered to the promotional post which is based on merit alone. We make it clear that we are not discussing anything about the promotion between a person who worked in Group 'A' for seventeen years' with four years' of service in Junior Administrative Grade as against an officer working in the Junior Administrative Grade for eight years' of regular service. We have also been informed by the counsel that this provision has undergone change in favour of those persons who have put in eight years' of regular service in the Junior Administrative Grade. Therefore, the issue is with respect to the entitlement of upgradation alone.

5. A perusal of the aforesaid provision, as discussed above, merely prescribes a qualification to the promotional post which is based upon merit. Though, a contention has been raised in the counter affidavit filed by the respondents 1 to 3, that only those who have completed eight years' of regular service are taken up for consideration to the promotional post of Senior Administrative Grade cadre, we are of the view that at least for the purpose of application of Scheme for upgradation the same cannot be the basis. We have already discussed the merit of the Rule at the relevant point of time. Once we interpret the provision to mean that what has been prescribed is only a qualification and promotion is purely by merit, then all those persons who are eligible either by the completion of eight years' of regular service in the Junior Administrative Grade or seventeen years' of regular service in Group 'A' post with four years' of service in the Junior Administrative Grade, have to be treated alike as one homogeneous group eligible to be considered for promotion on merit.

6. Having arrived at such a conclusion, we are of the view that the Tribunal was wrong in rejecting the relief. Merely because the respondents 1 to 3 are following a particular procedure, the entitlement for the benefit under the Scheme cannot be rejected on that ground. Perhaps, the procedure may be sustained for considering the merit which we are not inclined to say much for the purpose of deciding this case. In this connection, we may quote profitably Clause 3 of the Scheme which reads thus:-

"3. All the prescribed eligibility criteria and promotional norms including 'benchmark' for up-

gradation to a particular grade pay would have to be met at the time of screening for grant of higher pay-scale under these orders."

7. This scheme makes the position very clear. Therefore, in our considered view the order of the Tribunal cannot be sustained in the eye of law and so is the submission made by the learned counsel appearing for the respondents 1 to 3.

8. In such view of the matter, the orders of the Tribunal stand set aside and consequently the original applications stands allowed. The respondents 1 to 3 are hereby directed to consider the case of the petitioners in the light of the observations made above, particularly with respect to the provisions mentioned in Schedule I and the Scheme and thereafter pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of the order granting non-functional upgradation to the petitioners. We make it clear that there is no disability for considering the petitioners, as they come within the second limb of the provision in Schedule I.

These writ petitions stand allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to the Govt. of India
Union of India
Department of Defence Production,
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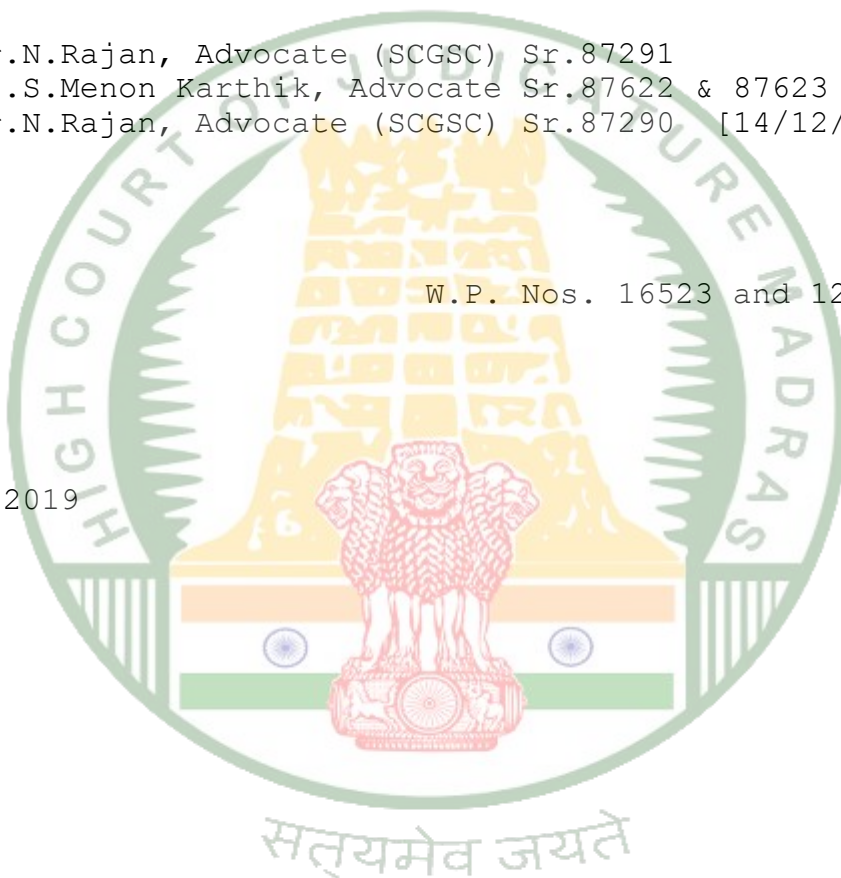
+1cc to Mr.N.Rajan, Advocate (SCGSC) Sr.87291

+2cc to M/.S.Menon Karthik, Advocate Sr.87622 & 87623

+1cc to Mr.N.Rajan, Advocate (SCGSC) Sr.87290 [14/12/2019]

W.P. Nos. 16523 and 12295 of 2016

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srg 11/01/2019



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