

Union of India and Others

Vs

K. K. Vadera and Others

Civil Appeal No. 4494 of 1989

(S. Natarajan, M. M. Dutt JJ)

26.10.1989

JUDGMENT

DUTT, J. –

1. Special leave is granted. Heard learned counsel for both parties.
2. The respondents were holding the posts of Junior Scientific Officers (Group 'B' posts) in the Defence Research & Development Service. They were promoted to the posts of Scientists 'B' with effect from October 16, 1985 or from the date they would actually assume charge of the posts. The respondents filed an application before the Central Administrative Tribunal, Allahabad, claiming that they should have been promoted to the posts of scientists 'B' with effect July 1, 1984. The Tribunal rejected the prayer of the respondents that their promotions should have been made with effect from July 1, 1984. The Tribunal, however, directed that their promotions should be with effect from the date on which the promotional posts were created. The short question involved in this appeal is whether the Tribunal was justified in directing that the respondents promotion should be with effect from the date the promotional posts were created.
3. Under Rule 8(1)(a) of the Defence Research & Development Service Rules, 1970, hereinafter referred to as 'the Rules', all those who have been recruited before the promulgation of the Rules as Junior Scientific Officers in the Defence Research & Development Organisation on regular basis and possess the educational qualifications and experience as laid down for direct recruits, shall be eligible, till they are wasted out, for promotion to the posts of Scientist 'B' up to 50 percent of the vacancies in the grade. Under the first proviso to Rule 8(1)(a), the total number of posts filled in that grade shall at no time exceed 50 percent of the total sanctioned strength for the grade on the date of promulgation of the Rules, and that this concession also be admissible to those persons who are appointed or promoted as Junior Scientific Officers on regular basis on or after the promulgation of the Rules.
4. There were a total number of 512 posts available in the grade of Scientist 'B' in 1979. In view of Rule 8(1)(a) of the Rules, the Junior Scientific Officers were entitled to be promoted to the 50 per cent of these posts, that is to say, to 256 posts. These 256 posts were filled up by promotion of the Junior Scientific Officers between the period 1979 and 1983. According to the respondents, the posts of Scientists 'B' to which they have been promoted with effect from October 16, 1985, were created between 1984 and 1985 and that, accordingly, the respondents should have been promoted to these posts with effect from July 1, 1984. It was the contention of the respondents that on previous occasions up to the year 1983, promotions were given effect from July 1 of the year in which the promotions were granted. It has been already noticed that the Tribunal has overruled the

said contention of the respondents and has directed that their promotions should be with effect from the date the said promotional posts of Scientist 'B' were created. At the same time, it has been found by the Tribunal that the flexible complementing scheme or SITU promotions, as provided in Rule 3(2)(f) of the Rules, were not available to the Junior Scientific Officers. It is not disputed that the promotions of the Junior Scientific Officers to the posts of Scientist 'B' are vacancy based and such promotions are granted after the assessment by the Assessment Board as provided in the Rules. It has been observed by the Tribunal that normally the promotions will take effect from the date of the order granting such promotions. The only ground on which the Tribunal has directed that the promotions of the respondents should take effect from the date of posts of Scientist 'B' were created, is that up to 1983 such promotions were given effect from July 1 of the year in which the promotions were granted.

5. There is no statutory provision that the promotion to the posts of Scientist 'B' should take effect from July 1 of the year in which the promotion is granted. It may be that, rightly or wrongly, for some reason or other, the promotions were granted from July 1, but we do not find any justifying reason for the direction given by the Tribunal that the promotions of the respondents to the posts of Scientist 'B' should be with effect from the date of the creation of these promotional posts. We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to the post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions, are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.

6. For the reasons aforesaid, we set aside the judgment of the Tribunal directing that the promotions of the respondents should be not from the date of the orders of promotions, but from the date the posts were created. The orders of the appellants promoting the respondents with effect from October 16, 1985 will stand.

7. The appeal is allowed. There will, however, be no order as to costs.

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