

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.174 OF 2015

Dated this Monday, the 13th day of January, 2020

**CORAM : DR. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)**

1. Jitendra Kumar Singh, Aged : 51 yrs.,
Son of Late Sachchidanand Singh,
working as Scientific – 'B', in the Office of Central
Water and Power Research Station,
Khadakwasla, Pune 411 023.
 2. V. Chandrashekhar, Aged 51 yrs.,
Son of Shri V. Laxmi Rajan,
working as Scientist 'B' Officer, in the office of
Central Water and Power Research Station,
Khadakwasla, Pune 411 023.
(R/at: Flat No.7, Bldg. D-2, Rajyog Township,
Dhayari, Pune 411 041).
 3. Miss. Savitri K. Hansada, Age 49 yrs.,
Daughter of Shri Sushil Kumar Hansada,
presently working as Scientist – 'B', in the office of
Central Water and Power Research Station,
Khadakwasla, Pune 411 023.
(R/at: Qtr No.D-29, C.W.P.R. Staff Colony,
Khadakwasla, Pune 411 024)
- Applicants**

(By Advocate Ms. Sujatha Krishnan)

VERSUS

1. Union of India, through the Secretary,
Ministry of Water Resources, River Development and
Ganga Rejuvenation, Shram Shakti Bhawan,
Rafi Marg, New Delhi 110 011.
 2. Director, Central Water and Power Research Station
Khadakwasla, Pune 411 023.
 3. Secretary, Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi 110 069.
- Respondents**

(By Advocate Shri R.R.Shetty)

Order reserved on 20.09.2019

Order pronounced on 13.01.2020

ORDER

Per : Dr. Bhagwan Sahai, Member (A)

In this OA filed on 18.02.2015, Shri Jitendra Kumar Singh, Shri V.Chandrashekhar and Ms. Savitri K. Hansda seek quashing and setting aside of orders of respondents dated 19.06.2013 and 24.12.2014, declaration that in view of their empanelment by DPC for in situ promotion to posts of Senior Research Officers against vacancies in 2010 and 2011 under 25% quota reserved for promotion of Asstt. Research Officers, they are entitled to promotion in the year 2010-2011, and directions to the respondents for ante-dating dates of their promotions as per the panel year of 2010-2011. They also seek cost of this application from the respondents.

2. Summarized facts:

2(a). The applicants have stated that at the time of filing of this OA, they were working as Research Officers (Scientists B) with Central Water and Power Research Station (CWPRS), Khadakwasla, Pune. The applicant No.1 was appointed as Research Assistant on 22.06.1992, then promoted as Assistant Research Officer from 13.10.1995 and finally as Scientists B from 19.06.2013. Applicant No.2 was appointed as Research Assistant from 01.11.1989, then promoted as Assistant Research Officer from 11.01.1996 and as Scientist B from

19.06.2013. Applicant No.3 was appointed as Research Assistant from 17.05.1993 and promoted as Assistant Research Officer from 31.07.1998 and then as Scientist B from 19.06.2013.

2(b). The Central Water and Power Research Station, Pune (Engineering and Scientific Group A Posts) Recruitment Rules, 1982 were amended from 13.04.1987, then in 1988 and in 2014 (copies at Annex A-3, A-4, A-5 and A-6). All the applicants were promoted through DPC as Assistant Research Officers and then as Scientists B. In the DPC meeting held on 28.05.2013, they were enlisted for promotion as Research Officers/Scientists B against vacancies in the panel year 2010-2011. As per the Recruitment Rules of 1988, the posts of Research Officers are filled up by direct recruitment and promotion of Assistant Research Officers in the ratio of 75% (direct recruits) and 25% (promotees).

2(c). As the applicants were empanelled for promotion as Scientists B against the vacancies in the year 2010-2011, it is claimed that they should have been promoted in the same year. Direct recruits were also selected and appointed on the vacancies during 2010-2011 under their quota. But promotion orders of the promotees were not published in 2010-2011 because meeting of the DPC for preparing the select panel for 2010-2011 was not held till 2013 and only after its meeting in

2013, by order of 19.06.2013, the applicants were promoted as Research Officers/Scientists B from the dates of assumption of charge of the posts and not from the year 2010-2011. The delayed conveying of the DPC meeting in 2013 has resulted in harm to them.

2(d). After completion of three years regular service as Scientists B, the applicants will get promoted as Senior Research Officers i.e. Scientists C. Therefore, if they had been promoted in the year 2010-2011, they would have become eligible for promotion as Scientists C in the year 2014-2015. But their delayed promotion order issued in June 2013 would make them eligible for that promotion only for the vacancies in year 2017-2018. This action of the respondents is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution. Hence, they are entitled for antedating their promotions from 2010-2011, when the vacancies were filled up by the direct recruits.

2(e). They had submitted representations on their grievance but they were not forwarded to the respondent No.1 and the Chief Administrative Officer with the respondent No.2 suo motu refused to forward their representations vide order dated 06.08.2014. Therefore, applicants filed OA No.609/2014 before this Tribunal which was disposed of at admission stage by order dated 13.10.2014 directing the applicants to submit

their separate representations to the respondent No.2, who was directed to forward those representations to respondent No.1 for consideration and passing appropriate orders (Annex A-7). After considering their representations, the respondent No.1 has passed the impugned order dated 24.12.2014 stating that practice of giving retrospective effect to promotions has been discarded and discontinued in terms of DOPT OM dated 24.04.1989. Therefore, this OA.

3. Contentions of the parties:

In the OA, rejoinder and during arguments on 20.09.2019, the applicants contend that -

3(a). the posts of Research Officers with CWPRS, Pune are filled up by promotion of Assistant Research Officers as per the Recruitment Rules, as amended from time to time, in the ratio of 3 direct recruits : 1 promotee. Since they were eligible for promotion as Research Officers in 2010-2011, they had a right to be considered for promotion under their quota in that year. As the respondents did not convene meeting of the DPC every year, no select panel for promotion as Research Officers could be made during the years 2010-2011, 2011-2012 and 2012-2013. Therefore, the promotion quota in those years was not filled up;

3(b). for in situ promotion of Scientists B to Scientists C, three years regular service in that grade is required apart from

educational qualification to be considered by the Assessment Board as per the Flexible Complementing Scheme;

3(c). as per the orders / judgments of Tribunals, High Courts and Supreme Court (Annex A-9 to A-12), it has been held that if an officer is found suitable by the Assessment Board for promotion, then he is to be promoted from the date when he completes the prescribed period of service in the feeder grade. Because of the delayed promotion orders issued in 2013, the applicants' service as Scientist B would be counted only from 2013 and not from 2010-2011, because of which they would not be considered for in situ promotion against under the FCS vacancies of Scientists C during the years 2013-2014, 2014-2015 and 2015-2016;

3(d). for promotion from Scientist B upwards, existence of vacancies is not necessary and only completion of prescribed period of service as Scientist B is required. Till filing of this OA, meeting of the Assessment Board was not convened for consideration of Scientists B for in situ promotion to Scientists C for the year 2014-2015 but it was likely to be convened shortly. Because of this, seniority of the direct recruits will get decided without the promotees getting interpolated on year to year basis;

3(e). for the next in-situ promotions to Scientists C, the eligibility criteria prescribed under the Rules dated 18.06.2014

mandate that Scientists B with three years of regular service in that grade and possessing Master's Degree in Natural Sciences or Bachelor Degree in Engineering or Technology from a recognized University or equivalent are to be considered by the Assessment Board;

3(f). these in-situ promotions from Scientists B to Scientists C are regulated by the Flexible Complementing Scheme. As per the FCS, it is not necessary that a vacant post must exist. Only on completion of three years of service as Scientists B, one becomes eligible for assessment and if found fit, he is given in-situ promotion from the date he becomes eligible. When the applicants were empanelled for promotion by DPC, as per the Recruitment Rules dated 18.06.2014, they had become eligible for promotion as Scientist B from 2010-2011 but the respondents are likely to reckon their regular service as Scientists B from 19.06.2013. As per the seniority list of Scientists B dated 01.01.2014, the respondents have not filled up the posts year-wise in the prescribed ratio of 3:1 (direct recruits-promotees). Therefore, more direct recruits are in the seniority list without interpolation of promotees on year to year basis. The office order dated 19.06.2013 was issued by the respondents after nearly three years for the panel of 2010-2011 making it operative from the date of assumption of charge, which is arbitrary and in violation of rules. If the

applicants are granted promotion from 2010-11, then the amended rules dated 17.06.2014 may be applicable to them only for their next promotion as Scientists C but here the applicants are concerned only about their date of promotions as Scientists B for which they were empaneled by the DPC against vacancies in year 2010-11. The normal life of a select panel as per the rules is only one year but it is not clear as to how the promotion order of the applicants as Scientists B were issued in 2013 for the year 2010-2011. Therefore, the OA should be allowed.

In their reply and sur-rejoinder as well as arguments of their counsel on 20.09.2019, the respondents Nos.1 and 2 have contended that -

3(g). the applicants were promoted as Scientists B vide order dated 19.06.2013 and they are seeking benefit of promotion in the pay band of Rs.15,600-39,100/- with Grade Pay of Rs.5,400/- from the year 2010-2011. However, the issue of retrospective promotion and financial upgradation is barred by limitation and cannot be agitated at this belated stage by upsetting the settled position of promotions to the grade of Research Officers/ Scientists B and also future promotions as well;

3(h). the relief sought by the applicants is in contravention of DOPT OM's dated 24.04.1989 and 21.09.2012 (copy at Annex

R-1 and R-2) by which the practice of giving retrospective promotions was discarded and discontinued. Promotions can never be granted retrospectively, they are only prospective in nature as held in a number of Apex Court judgments. Since the promotion order dated 19.06.2013 clearly mentioned that the promotion would take effect from the date of actual taking of charge of the post, the issue is not open for litigation at a belated stage and therefore, the OA should be dismissed;

3(i). the relief sought by the applicants is also beyond the Recruitment Rules and policy of the Government. It is a settled law that the policy decision of the Government cannot be challenged unless it is contrary to the Service Rules. In the above OMs, the Government of India has directed that wherever promotions involve assumption of posts in higher scale with higher responsibility, such promotions can take effect prospectively, when the promotion orders are issued after obtaining approval of the Competent Authority;

3(j). Central Water and Power Research Station (Engineering and Scientific Group A posts) Recruitment Rules, 1982, as amended time to time, particularly notes 2 and 3 under column 12 of the Schedule attached to those Rules make it clear that the selection proceeding shall be subject to approval of UPSC and the date from which recommendations of the Assessment Board are to be made effective shall be decided in consultation

with the UPSC. Since the selection for promotion on every occasion is made only in consultation with the UPSC, mere selection by the Assessment Board is not the final factor determining the promotion and it can be operated only in consultation with and concurrence of the UPSC and approval of the Competent Authority;

3(k). the promotions cannot take effect without a formal order of promotions issued in favour of the concerned persons and assumption of charge of the higher posts by the concerned officers. The other judgments of the Tribunal and Writ Petitions cited by the applicants in respect of Shri R.P.Gupta and Shri S.D.Ranade were judgments in *personam* and not in *rem*, and the rulings in the above orders of the High Court cannot be extended to the applicants;

3(l). the applicants accepted the promotions by order dated 19.06.2013 without any protest and have been enjoying the benefits of promotion since then and therefore, they are estopped under the law to claim further benefits;

3(m). the respondents have relied on the following eleven case laws in support of their contentions that the present OA is barred by limitation :

“(i). P.S.Sadasivawswamy V/s S/o Tamil AIR 1974 SC 2271.

1994-96.

(iii). Ram Chandra Samanta V/s UOI 1994 (26) ATC 228.

(iv). S.S.Rathore Vs/ S/o MP 1989 (2) ATC 521.

(v). Bhoop Singh V/s UOI IR 1992 SC 1414.

(vi). Secretary to Govt. of India V/s Shivaram M. Gaikwad
(1995) 30 ATC 635 = 1995 (6) SLR (SC) 812.

(vii). Ex. Capt. Harish Uppal V/s UOI 1994 (2) SLJ 177.

(viii). L.Chandra Kumar V/s UOI 1997 (2) SLR (SC) 1.

(ix). AIR 1999 SC 564 Dattaram V/s Union of India.

(x). 1996 LLJ 1127 (SC) UOI V/s Bhagnoar Singh (1999) 8
SCC 304 Ramesh Chanda Sharma V/s Udham Singh
Kamal & Ors.

(xi). 2002 (5) SLR (SC) E.Parmasivan & Ors. Vs. UOI &
Ors. AT Act, 1985- Article 222- Writ Petition Delay and
latches – Maintainability of writ petition- Limitation-
Application before Tribunal in 1995, by MES officers
Retired between 31-01-1974 to 31-05-1985, for fixation of
pay in terms of OM dated 12-1-1976. Tribunal was right in
dismissing applications on grounds of limitation.”

3(n). this Tribunal had only partially allowed the OA in order
dated 18.12.2002 and the prayer for promotion of the
applicants therein as Senior Research Officers from 1991 and
1996 was rejected because of limitation and they were given
benefit of promotions only in terms of Mumbai High Court

orders dated 30.03.2009 and 03.04.2009. Therefore, the question of extending similar benefits to the non-applicants in those cases/judgments does not arise. Nothing prevented the applicants in approaching the Tribunal after the order of their promotion dated 19.06.2013. Since they failed to approach the Tribunal in time, filing the O.A. after four years has no justification;

3(o). the applicants have not been discriminated by not antedating their promotions from the year 2009. Benefit of Court order or judgment in case of similarly situated some employees cannot be made automatically applicable to others;

3(p). as per the Tribunal's order dated 13.10.2014 in OA No.609/2014, the respondents considered all the relevant record in consultation with the Administrative Ministry i.e. the respondent No.1, Ministry of Water Resources and Ganga Rejuvenation and the applicants' representation dated 10.11.2014 were considered with reference to the facts, rules and guidelines, and were disposed of by passing appropriate orders on 24.12.2014; and

3(q). the DPC considered year-wise vacancies for the year 2010-2011, 2011-2012 and 2012-2013 but that does not mean the applicants have legitimate claim for promotion from retrospective dates. The promotional quota for the year 2010-2011 was filled up as per rules and not arbitrarily as alleged by

the applicants. The promotion orders have been issued as per the Recruitment Rules dated 18.06.2014 and as per the guidelines of VI CPC with approval of the Competent Authority. As per the promotion order dated 19.06.2013, the applicants were on probation during the year 2014-2015 and therefore, they are not eligible for in-situ promotion to Scientist C. Therefore, the OA has no merit and it should be dismissed.

4. Analysis and conclusions:

4(a). We have carefully considered the contents of the OA, contentions of the applicants in it and in the rejoinder filed by them on 07.11.2016 as well as in the arguments of their counsels on 20.09.2019, reply and sur-rejoinder of the respondents filed on 15.12.2015 and 10.04.2017, and contentions during arguments by their counsel on 20.09.2019. On such consideration and perusal of the relevant DOPT OM's on the subject and case laws cited by the respective parties, the issue involved in the present OA is analysed as under:

4(b). The main issue to be decided in the present OA is whether the applicants can be promoted as Research Officers/ Scientists B from year 2010-2011 against vacancies of that year instead of from 19.06.2013 as per the impugned order. The undisputed position is that the applicants have been

promoted as Research Officers/ Scientists B under 25% promotional quota based on selection by DPC.

4(c). The applicants were promoted by the impugned order dated 19.06.2013, on recommendation of DPC held by UPSC, from the posts of Assistant Research Officers Group B Gazetted to the posts of Research Officers Group A Gazetted in Pay Band Rs.15,600-39,100/- plus Grade Pay of Rs.5,400/- against the panel for the year 2010-2011.

4(d). The applicants in the title sheet of the OA, para 4.1 and verification on page 11 have mentioned themselves employed as Scientists B with the Central Water and Power Research Station, Khadakwasla, Pune but under para 8(c) of the OA, they have wrongly mentioned that the DPC empanelled them for in-situ promotion to the post of Senior Research Officers against vacancies of 2010-2011 under 25% quota reserved for promotions for Assistant Research Officer.

4(e). The main thrust in contention of the applicants is that they were recommended by the DPC for promotion as Scientists B against the panel year 2010-2011 but their promotion orders were issued almost three years later and they should be promoted as Scientists B from the year 2010-2011 itself. The applicants' further contention that if their promotion orders had been issued in the year 2010-2011, they would have become eligible for promotion as Scientists C

from 2014-2015 is hypothetical at this stage and therefore, we need not dwell on it.

4(f). The applicants have relied to benefit from these decisions of Principal Bench of Tribunal in OA No.1715/1995 dated 14.10.1999 (**Hasan Abdullah and others Vs. Union of India**), decision of Delhi High Court dismissing Civil Writ Petition No.2456/2000 against the above order of the Principal Bench and Apex Court decision dated 14.11.2007 of dismissal of Civil Appeal No.4973-4974 of 2001 against the Delhi High Court decision; and decision of this Bench of the Tribunal in OA No.84/2013 dated 03.11.2014 (**Maruti Rajappa Bhajantri Vs. Union of India and others**). While the respondents have contend that these case laws are not applicable to the present applicants, a perusal of these case laws reveals that the applicants in those OAs had sought in-situ promotions under the Flexible Complementing Scheme. Since the promotions of the present applicants as Research Officers / Scientists B dated 19.06.2013 were under the DPC Rules, the case laws cited by them are not relevant to their promotions as Scientists B.

4(g). The respondents contention is that the present OA filed on 18.02.2015 is time barred as it has challenged the promotion order dated 19.06.2013. However, the applicants have explained that earlier they had filed OA No.609/2014

which was decided by the Tribunal on 13.10.2014 directing the applicants to submit separate representations to the respondent No.2, who was directed to forward them to the respondent No.1 for their consideration and passing of appropriate orders. Thereafter, the impugned order dated 24.12.2014 has been passed by the respondent no.1 which has also been challenged in the present OA. Therefore, this OA is not barred by limitation. In view of these facts, the respondents contention on this ground is rejected.

4(h). The respondents' further contention is that the present applicants have not challenged the Central Water and Power Research Station (Engineering and Scientific Group A Posts Recruitment Rules, 1982, as amended in 1987 and 1988 and the Ministry of Water Resources, the Central Water and Power Research Station, Pune, Group A posts Recruitment Rules 2014 and policy decisions / guidelines of the Government related to the promotion of the applicants. This contention is factually correct. They have further contended that the case laws cited by the applicants are not in *rem* and therefore, not applicable to them.

4(i). The DOPT OM dated 24.04.1989 has clarified that wherever promotions involve assumption of posts in higher scale involving higher responsibility, such promotions can only take effect prospectively. The procedure followed in such

cases is that the promotion is made effective from the date of assumption of higher post by the officer concerned on the basis of an order issued after obtaining approval of the Competent Authority.

In that OM, the DOPT further directed all Ministries/Departments to ensure that if promotions have to take effect from a particular date, the decision on the recommendation of DPC is to be taken by the Administrative Ministry/ Department at least two months before the date from which the promotion is to be effected and proposals for obtaining approval of ACC are sent immediately thereafter.

4(j). There cannot be a dispute that based on recommendation of DPC, the promotions can be effected only as per stipulations under the relevant Recruitment Rules. In the present case, the applicants could be promoted only after the DPC held by the UPSC recommended the select panel, based on which the promotion orders could be issued only after approval of the Competent Authority. In the present case, the respondents have explained that year-wise vacancies under the promotional quota of Scientists B were filled up from year to year at the relevant time. The applicants have not contested this averment of the respondents. The applicants have also not submitted any stipulations of the Recruitment Rule or policy guidelines to support their claim that they can be promoted

from the panel year of 2010-2011 based on their selection by the DPC in the year 2013.

4(j). The further contention of the respondents also has merit that the present OA suffers from non-joinder of necessary parties. The applicants have not impleaded any of the candidates who were promoted from 2010-2011 before the order of 19.06.2013, whose settled positions will get affected if the claim of the applicants in the OAs gets allowed. The applicants have neither averred nor made available any details showing that any Assistant Research Officer junior to them was promoted before them.

4(k). In view of the above analysis of facts and stipulations under the Recruitment Rules and views in the case laws, we find that the present OA is devoid of merit and it deserves dismissal.

5. Decision :

The OA is dismissed. No costs.

(Ravinder Kaur)
Member (Judicial)

kmg/H.

(Dr. Bhagwan Sahai)
Member (Administrative)