

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

**ORIGINAL APPLICATION NO.210/00414/2017**

Dated this Thursday, the 23<sup>rd</sup> day of January, 2020

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

1. Smt.Lata Gupta, Age : 41 yrs.,  
(w/o. Dr.D.S. Gupta),  
Scientist 'C', Central Water and  
Power Research Station,  
Pune – 411 024.  
(R/at: D-29, C.W.P.R.S. Staff Colony,  
Kirkitwadi, Khadakwasla,  
Pune – 411 024).
2. Manoj Kumar Verma, Age : 46 yrs.,  
(S/o. Rajkumar Verma),  
Scientist 'C', Central Water and  
Power Research Station,  
Pune – 411 024.  
(R/at: Row House, 1-5/3 Rajyog Township,  
Vadgaon Khurd, Sinhagad Rd.,  
Pune – 411 068).
3. M.S. Hanumanthappa, Age : 45 yrs.,  
(S/o. Shivappa Magalada),  
Scientist 'C', Central Water and  
Power Research Station,  
Pune – 411 024.  
(R/at: 204, Ganesh Nakshatram,  
S.No.127/1, Off. D.S.K. Vishwa Rd.,  
Dhajari, Pune – 411 068).
4. Mandar Mohan Vaidya, Age : 44 yrs.,  
(S/o. Mohan Vaidya),  
Scientist 'C', Central Water and  
Power Research Station,  
Pune – 411 024.  
(R/at: B-6/9, Sarita Vihar,  
Sinhagad Rd., Pune – 411 030).
5. Machiraja Phani Kumar, Age : 50 yrs.,  
(S/o. Machiraja Rama Rao),  
Scientist 'C', Central Water and  
Power Research Station,  
Pune – 411 024.

(R/at: Qtr.No.D-26, C.W.P.R.S. Staff Colony, Kirkewadi, P.O., Khadakwasla, Pune – 411 024).

6. Mahinder Singh Bist, Age : 42 yrs.,  
(S/o. Pan Singh Bist),  
Scientist 'C', Central Water and  
Power Research Station,  
Pune – 411 024.  
(R/at: Flat No.301, Wing - 'M',  
Meghmanthan Society, D.S.K. Vishwa,  
Dhayari, Pune – 411 041).

7. Banotu Raghuram Singh, Age : 48 yrs.,  
(S/o. Sitharam Singh),  
Scientist 'C', Central Water and  
Power Research Station,  
Pune – 411 024.  
(R/at: D-8, C.W.P.R.S. Staff Colony,  
Khadakwasla, Pune – 411 024).

8. Shimpi Jitendra Ambadas, Age : 46 yrs.,  
(S/o. Ambadas Dunju Shimpi),  
Scientist 'C', Central Water and  
Power Research Station,  
Pune – 411 024.  
(R/at: E4/103, Shivsagar Residency,  
Society Road, Off. Sinhagad Road,  
Anand Nagar, Pune – 411 051).

9. Chikine Srishailam, Age : 48 yrs.,  
(S/o. C. Chinnaiah),  
Scientist 'C', Central Water and  
Power Research Station,  
Pune – 411 024.  
(R/at: Flat No.K-305, Madhuosh Apartment,  
Wadgaon Khurd, Sinhagad Rd.,  
Pune – 411 041).

10. P. Vijayagopal, Age : 56 yrs.,  
(S/o. C. Velukutty Navi),  
Scientist 'C', Central Water and  
Power Research Station,  
Pune – 411 024.  
(R/at: D-17/2, Sunder Garden,  
Manik Baug, Sinhagad Road,  
Pune – 411 051).

11. Prasad S. Kunjeer, Age : 42 yrs.,  
(S/o. Suresh Kunjeer),

Scientist 'C', Central Water and Power Research Station,  
Pune – 411 024.  
(R/at: Swapnashilpa Bungalow,  
S. No.1, Dhayari, Pune – 411 041).

12. Dr.Krishnaswamy Kumar, Age : 50 yrs.,  
(S/o. M. Krishnaswamy),  
Scientist 'C', Central Water and Power Research Station,  
Pune – 411 024.  
(R/at: D-03, C.W.P.R.S. Colony,  
Khadakwasla, Pune – 411 024).

13. Tarun Kumar Swain, Age : 46 yrs.,  
(S/o. P.C. Swain),  
Scientist 'C', Central Water and Power Research Station,  
Pune – 411 024.  
(R/at: D-16, C.W.P.R.S. Colony,  
Khadakwasla, Pune – 411 024).

14. Bhushan Rajendra Tayade, Age : 40 yrs.,  
(w/o. Rajendra Tayade),  
Scientist 'C', Central Water and Power Research Station,  
Pune – 411 024.  
(R/at: C-502, Saipuram,  
S.No.13/10+11, Near Kailash Jeewan Factory,  
Dhayari, Pune – 411 041).

15. Golak Chandra Sahoo, Age : 46 yrs.,  
(S/o. Late Kunduri Charan Sahoo),  
Scientist 'C', Central Water and Power Research Station,  
Pune – 411 024.  
(R/at: D-16, C.W.P.R.S. Colony,  
Khadakwasla, Sinhagad Road,  
Pune – 411 024).

16. Badugu Suresh Kumar, Age : 45 yrs.,  
(S/o. Badugu Yadagiri),  
Scientist 'C', Central Water and Power Research Station,  
Pune – 411 024.  
(R/at: Flat No.B-411, Monya Sparsh,  
Kolhewadi, Pune-Sinhagad Road,  
Khadakwasla, Pune – 411 024).  
.. Applicants.

(By Advocate Ms.Annie Nadar).

**Versus**

1. The Union of India, through  
The Secretary, Ministry of Water  
Resources, River Development and  
Ganga Rejuvenation,  
Shram Shakti Bhawan, Rafi Marg,  
New Delhi – 110 001.
  
2. The Director,  
Central Water and Power Research Station,  
Khadakwasla, Pune – 24.
  
3. The Secretary,  
Union Public Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi – 110 069. .. Respondents.

(By Advocates Shri R.R. Shetty and Shri V.B. Joshi).

**Order reserved on 18.09.2019**

**Order pronounced on 23.01.2020**

**ORDER**

**Per: Dr. Bhagwan Sahai, Member (A)**

Smt. Lata Gupta and 15 other applicants have filed this OA on 28.06.2017, seeking directions to the respondents to promote them as Scientists C Grade on being found fit from the dates on which each of them completed five years of residency period as Scientist B under flexible complementing scheme as interpreted by Tribunals/High Courts/Supreme Court and to modify the impugned order dated 23.01.2017 (Annex A-2) by issuing fresh order and refixing their pay along with grant of annual increments and other consequential benefits. They also seek cost of this application from the respondents.

**2. Summarized facts:**

**2(a).** The applicants have stated that they are Group A employees working with respondent No.2 i.e. Central Water and Power Research Station, Khadakwasla, Pune. Their details enclosed as Annex A-3 mention their educational qualifications as M.E./M.Tech/Ph.D in different engineering disciplines and promotion as Research Officers (Scientist B) from different dates in 2006 and 2007.

**2(b).** The Central Water and Power Research Station, Pune (Engineering and Scientists Group A posts) Recruitment Rules, 1982 were amended in 1988 by notification dated 11.08.1988 (Annex A-4). DOPT vide OM dated 10.09.2010 (Annex A-5), introduced modified flexible complementing scheme for Scientists based on recommendation of VI Central Pay Commission. The applicants claim that they are Scientists and FCS is applicable to them, entitling them for promotion from Scientists B to Scientists C.

**2(c).** Based on further clarifications vide another DOPT OM dated 21.09.2012 (Annex A-6), for extending benefit to them under the FCS, they are to be assessed by a Competent Assessment Board to be constituted every year on 01<sup>st</sup> January and 01<sup>st</sup> July, if they have completed five years of residency period on those dates. The Assessment Board then prepares a panel for promotion to the next grade of Scientist C.

**2(d).** By order dated 30.12.2016 (Annex A-1) they, along with one more person, were promoted to the grade of Scientists C (Pay band Rs.15,600-39,100/- plus Grade Pay Rs.6600) from that date (10

of them for panel year for 2012, 1 for panel year 2013 and 6 for panel year 2014). The applicants claim that by the above order, the respondents have denied them promotion to the grade of Scientists C from the dates when they had completed five years of residency period as Scientists B.

2(e). As per DOPT OM dated 21.09.2012, the Flexible Complementing Scheme (FCS) provides for in-situ promotion to the Scientists in higher grade, irrespective of availability of vacancies. Since many of the Research Officers working with the respondents had been denied their timely promotions under the FCS by promoting them later due to non-convening of meeting of the Assessment Board, different Scientists working as Chief Research Officers, Senior Research Officers and Research Officers have filed several OAs before various Benches of the Tribunal.

2(f). This Bench of the Tribunal in OA No.907/1998 and other five OAs in its order dated 29.08.2002 (Annex A-7) observed that Scientists working under the FCS are to get regular promotions on completion of five years of residency period without waiting for vacancies to occur and not from subsequent dates if the Assessment Board meeting is held late. That order was challenged by the respondents before the Bombay High Court but their Writ Petition was dismissed.

2(g). Another Scientist had also filed OA No.1715 of 1995 before Principal Bench of the Tribunal, which was allowed on 01.10.1999, directing the respondents to promote him retrospectively

on completion of five years of residency period, with consequential benefits. That order of the Principal Bench was also challenged by the respondents in Writ Petition No.2456 of 2000 in Delhi High Court which was dismissed on 19.07.2000. Challenge to that High Court order in an SLP filed by the respondents before the Supreme Court was also dismissed. Consequently the respondents have promoted all those Scientists who have approached the different benches of the Tribunal and got orders in their favour. However, it is claimed that they have not granted promotion to the present applicants as Scientists Grade C as per those decisions of the Tribunals/Courts.

**2(h).** It is further stated that the respondents have not replied to the applicants' representations on this subject and in spite of their representations dated 05.02.2013, some of the applicants who had completed five years of residency period as Scientist B in 2012 were not called for the Assessment Board Meeting held on 13.02.2013, thereby arbitrarily depriving them of their assessment in the year 2013.

**2(i).** As per DOPT OM dated 21.09.2012, the Assessment Board is expected to meet every six months but the respondents have not been convening its meetings on time. Aggrieved of such treatment by the respondents, this OA has been jointly filed by all the sixteen applicants. By order dated 21.07.2017, the Tribunal directed the respondent No.2 to include names of present applicants (except those at Serial Nos.9, 10 and 16) in the list of candidates to be called

for assessment in the meeting of the Assessment Board on 27.07.2017 but that meeting was not held.

**3. Contentions of the parties:**

In their OA, arguments on 18.09.2019 and written submissions and summary of judgments submitted by their counsel on 19.12.2019, the applicants have contended that-

**3(a).** the Assessment Board is required to be convened by the respondents every year in January and July to consider the eligible Scientists for promotion under the FCS but the respondents have not been convening meetings of the Assessment Board regularly on time. The Assessment Board meeting for promotion of Scientists B to Scientists C was held on 13.02.2013 but the list of candidates did not include nine of the present applicants who had become eligible for promotion in the year 2012 and had made a representation to the respondent No.3 on 05.02.2013. Thereafter the meeting of the Assessment Board was not arranged by the respondent No.4 till 2016 resulting in delayed promotion of the applicants by order dated 30.12.2016 and the respondent No.2 is compelling every Scientist working with the Central Water and Power Research Station, Pune to approach this Tribunal for getting ante-dated his/her promotion;

**3(b).** since the meeting of the Assessment Board is required to be convened after every six months, three of the applicants (at serial Nos.9, 10 and 11 i.e. Shri Chikine Srishailam, Shri P.Vijaygopal and Shri Prasad S. Kunjeer) became eligible even for promotion to Scientists D Grade in 2017 after completion of four years of

residency period as Scientists C, hence they should be considered for promotion by the Assessment Board in its meeting in January/February, 2018 by allowing this OA;

**3(c).** on the subject of ante-dating of promotions of Scientists on direction of CAT/High Courts, the respondents have relied on DOPT OM dated 03.01.2018 stipulating that the issue in relation to promotion of Scientists under the Ministry of Electronics and Information Technology (MEITY) was examined by the Ministry in consultation with Solicitor General of India in connection with case filed by Shri Vinay Kumar, Scientist E for ante-dating of his promotion which got delayed in considering the review promotion.

However, after considering the DOPT OM dated 03.01.2018, in consultation with DOPT, the Ministry of Electronics and Information Technology has issued order on 12.02.2019 ante-dating promotions of all concerned Scientists from the dates on which they had completed the eligibility period. Therefore, the present applicants cannot be discriminated against by not granting them ante-dated promotions to the posts of Scientists C with all consequential benefits from the dates when they had completed the required residency period in the posts of Scientists B;

**3(d).** as per the Apex Court decision in cases of **Dr. S.K.Murti Vs. Union of India dated 02.05.2011**, upholding the order of the High Court which had set aside the order of the Tribunal, thus directing that Shri Murti be promoted from the date when he became eligible for promotion under the Flexible Complementing Scheme;

3(e). in support of their contentions, the applicants have relied on the following six case laws:

(i). Decision of Mumbai Bench of the Tribunal dated 11.07.1997 in OA No.992/1993 (**R.S.Wadhwa & Ors. Vs. Union of India and others**) allowing the OA, by setting aside the impugned order to the extent of effective date of promotion of the applicants and directing the respondents to grant them promotions with consequential benefits after completion of five years of service, subject to assessment of fitness irrespective of date of issue of orders. That order of the Tribunal was upheld by the Bombay High Court in Writ Petition No.6483/1997.

(ii). Decision of Principal Bench of the Tribunal dated 14.10.1999 in OA No.1715/1995 (**Hasan Abdullah and Another Vs. Union of India and Another**) directing the respondents to promote the applicants with consequential benefits retrospectively from the dates when they had completed five years of regular service as Research Officers. That order of the Principal Bench was upheld by the Delhi High Court decision in Writ Petition No.2456 of 2000. The Apex Court also dismissed Civil Appeals No.4973 and 4974 of 2001 (**Union of India and Another Vs. Hasan Abdullah and Another**) against the decision of the High Court.

(iii). Decision of Mumbai Bench of the Tribunal dated 29.08.2002 in OA Nos.970/1998, 932-934 of 1998, 88-89 of 1999 (**M.M.Kale and others Vs. Union of India and Another**) holding that the objective of Flexible Complementing Scheme of Scientists is that

they get promoted at regular intervals on completion of five years of service without waiting for vacancies to occur and not from the prospective dates when the Assessment Board met. Accordingly the Tribunal directed the respondents to promote the applicants therein retrospectively on completion of five years of service during 1998 and 1999.

(iv). Decision of Mumbai Bench of the Tribunal dated 18.12.2002 in OA No.268/1999 (**S.D.Ranade Vs. Union of India and others**) allowing the OA subject to observations made in the batch of OAs (**M.M.Kale and others**). That decision was confirmed by the Bombay High Court in Writ Petition No.9813 of 2003 relying on the Apex Court decision in case of **Union of India Vs. Hasan Abdullah**.

(v). Decision of Mumbai Bench of the Tribunal dated 03.11.2014 in OA No.83/2013 (**Prabhat Chandra Vs. Union of India and others**) and OA No.84/2013 (**Dr. M.R.Bhajantri Vs. Union of India and others**) in which the applicants sought ante-dating of their promotions to the posts of Chief Research Officers on completion of five years of service in the feeder cadre. After considering various decisions of the Tribunals, High Courts and Apex Court, the OA was allowed directing the respondents to promote the applicants with consequential benefits from the date of occurrence of vacancies i.e. 01.06.2008 and 06.07.2009, respectively. And

(vi). Principal Bench decision dated 14.01.2004 in OA No.826/2003 (**S.K.Murti Vs. Union of India and others**) dismissing the OA holding that the applicant was not entitled for retrospective

promotion. However, the Delhi High Court allowed Writ Petition No.14263 of 2004 directing the respondents to grant Shri S.K.Murthy deemed promotion from 01.01.1999. Challenge to that High Court decision dated 05.10.2010 in SLP No.6864 of 2011 was dismissed by the Apex Court on 02.05.2011 holding that there was no error in the High Court order. The Apex Court also held that similar order shall be passed for all similarly situated persons despite the fact that they may not have approached the High Court questioning the order of the Tribunal.

In view of the above facts and case laws, the OA should be allowed.

In the reply of respondents Nos.1 and 2 and during the arguments/submissions of their counsel on 18.09.2019 and 19.12.2019, they have contended that -

3(f). the present application filed by the applicants for promotion from retrospective dates to Scientists C grade on completion of five years of residency period as Scientists B is hopelessly time-barred and is not as per the provisions of the Recruitment Rules and other guidelines issued by the Government. It is a totally misconceived application and not at all tenable. There is absolutely no cause of action for the applicants to file this OA and therefore, it should be dismissed with costs;

3(g). following the Bombay High Court orders and the Apex Court orders in cases of some other Scientists, several other representations were also received for grant of promotions from retrospective dates

with consequential benefits but under the FCS, Scientists can be considered for in-situ promotion to the next grade only after completing requisite regular residency period of service in that grade.

The present applicants would be completing four years of regular service as Scientists C only on 29.12.2020 and therefore, before that date they cannot be granted in-situ promotions to Scientist D grade;

**3(h).** as per the Recruitment Rules of the respondent No.2 (Central Water and Power Research Station), Pune, 1988, as amended from time to time, the Assessment Board has to meet once in a year to consider eligibility of Scientists for promotion as on 01<sup>st</sup> January of every year. Although the applicants were empanelled against different panel years, they actually assumed charge of the posts of Scientist C only from 30.12.2016. While taking over that charge, neither any of them raised any grievance nor refused to accept the promotions from that date. Therefore, the contentions of the applicants that they have been denied promotions after completing five years of residency period of Scientists B is not correct,

**3(i).** the decision of this Tribunal in six OAs dated 29.08.2002 filed by some Scientists in 1988, 1998 and 1999, were challenged by the respondents in a writ petition before Bombay High Court but on its dismissal, that order of the Tribunal remained restricted only to the applicants in those OAs, and it was not a decision to be applied to others;

**3(j).** since the Scientists are considered for promotions by two levels of assessment (Internal Assessment and by the Assessment

Board), and if they are not found fit for promotions, granting of promotions to them under FCS just because of completion of five years of residency period would not arise. Therefore, the contentions of the applicants for granting them ante-dated promotions as Scientists C and subsequent promotion to Scientists D on completion of four years of residency period cannot be accepted;

3(k). after considering the matter carefully in consultation with DOPT, the applicants have been informed by letter of 01.11.2017 that promotions have to be made effective from prospective dates after the Competent Authority has approved them, as per DOPT OM dated 21.09.2012. Hence no ante-dated promotion can be granted. The applicants could not be assessed earlier for promotions because of non-completion of probation by some of them and other pending litigation. Therefore, only after completion of the probation period, the proposal was sent to the UPSC in April 2014 and June 2015. Thereafter, depending upon availability of external experts and other members, the Assessment Board meeting could be held only on 13<sup>th</sup> and 14<sup>th</sup> August, 2015;

3(l). during that period Shri Malik and six others approached this Tribunal to consider them for promotion to Scientists C Grade and based on directions of the Tribunal, the proposed meeting of the Assessment Board had to be postponed. Thus the respondents have taken necessary steps to hold meetings of the Assessment Board but due to certain reasons beyond their control, the meetings got delayed;

3(m). as per the FCS and Recruitment Rules, 1982/1983, the number

of posts in the grade of Joint Director (Scientist E) and Chief Research Officer (Scientist D) cannot exceed 30% of the total posts of RO, SRO, CRO and Joint Director put together. This means that promotions to all grades from SRO upwards i.e. SRO to CRO and CRO to JD are vacancy based. The only exception to this rule is for promotions from Research Officer to Senior Research Officer which are not vacancy based. As per the modified FCS vide OM dated **18.06.2014**, FCS is adopted for all these posts. For promotion of Scientist C to Scientist D, the minimum required residency period is of four years and since the applicants would be completing four years as Scientists C only by 31.12.2020, they cannot be considered earlier for promotion as Scientists D;

**3(n).** the meeting of the Assessment Board for considering Scientists B for promotion to Scientists C was held on 13.02.2013 with reference to date of eligibility as on 01.01.2011 and 01.01.2012. But the applicants had not completed five years of residency period by those dates, hence they were not considered in that meeting;

**3(o).** responsibilities of Scientist D are much higher than those of Scientists C and are supervisory in nature. Therefore, the present applicants having not completed the actual residency period of Scientists C do not qualify for consideration for promotion to Scientists D;

**3(p).** Central Water and Power Research Station, Khadaskwasla, Pune has been recognized as Scientific and Technology Department / Organization by OM of Department of Science and Technology, New

Delhi dated 28.12.1983. Therefore, the applicants are covered under the Flexible Complementing Scheme for their promotions;

3(q). the relief sought by the applicants for promotion as Scientists C from the dates when they had completed residency period in the grade of Scientists B is hopelessly time barred and *de hors* the Recruitment Rules. The present applicants were not party to the earlier OAs in which retrospective promotions had been given by the respondents based on Apex Court decisions. As the present applicants took charge as Scientists C only from 30.12.2016, they would be completing four years of regular service as Scientists C on 29.12.2020 and therefore, there is no question of granting them *in situ* promotion as Scientists D before completion of their required period as Scientists C;

3(r). the duties of the Scientists D are quite different from the duties of Scientists C. The only relevant issue in the present O.A. is promotion sought by the applicants as Scientists C on completion of five years residency period as Scientists B under the FCS as per interpretation of that scheme by the Tribunal/High Courts/ Supreme Court by modifying their promotional order dated 23.01.2017. Meeting of the Assessment Board for promotion of Scientists B to Scientists C was held on 13.02.2013 on the eligibility date 01.01.2011 but the present applicants had not completed the required residency period of the qualifying service of four years to become eligible for promotion as Scientist C, so they had not become eligible on 01.01.2012 and therefore, their names were not considered. The

proposals could be submitted to the Assessment Board and thereafter in consultation with UPSC after meeting of the Assessment Board on 13.02.2013, their promotion orders could be approved only after concurrence of UPSC and approval of the Competent Authority. Thereafter their promotion orders were issued on 23.01.2017;

3(s). as per DOPT OM dated 03.01.2018 regarding ante-dating of promotions of Scientists on directions of CAT/High Courts, it has been clearly advised to defend the Court cases in view of the policy in DOPT OM, advice of Solicitor General of India and stand taken by the Ministry of Electronics and Information Technology in the three SLPs. It has been further mentioned in the DOPT OM dated 03.01.2018 that as per the decision of the Principal Bench of CAT dated 29.05.2014 in OA No.1926 of 2013 filed by Dr. A. Duraiswamy holding that the Apex Court decision in case of Dr. S.K.Murti was in *personem* in respect of ten similarly situated co-applicants and it cannot mean to be extended in *rem* to Scientists of all the Scientific Ministries/Departments and as per the DOPT OM dated 10.09.2010 and 21.09.2012, the Competent Authorities are required to ensure that no promotions under FCS /MFCS are granted with retrospective effect;

3(t). the Ministry of Electronics and Information Technology (MEITY) has filed three SLPs before the Apex Court challenging the High Court orders in case of **Union of India Vs. Vinay Kumar and others, Union of India Vs. Santosh Kumar and others, Union of India and others Vs. Iqbal Hasan** and the Apex Court in its order

dated 08.07.2016 has directed in SLP No.4155 (**Union of India Vs. Vinay Kumar**) that the impugned judgment is to remain suspended during pendency of the appeals. In view of this, the DOPT has directed all Scientific Ministries/Departments/Organizations to defend the Court cases on the subject matter as per the laid down policy of DOPT and advice of Solicitor General of India, and stand taken in the SLPs filed by the Ministry of Electronics and Information Technology and till final decision of the Apex Court on the issue of antedating of promotion of Scientists becomes eligible, not to issue promotion orders from retrospective effect;

**3(u).** as per Section 6 (iv) of New Recruitment Rules of 2014, the effective date of promotions of those officers found fit under the FCS shall be the date of approval of their promotions by the Approving Authority and retrospective promotions shall not be admissible in any case.

**3(v).** out of the sixteen applicants, only ten had completed the period of probation as Scientists B during year 2008 and thereby became eligible for assessment in 2011 for promotion as Scientists C and could have been considered with reference to the crucial date as 01.01.2012; three of them who completed their probation in 2009, became eligible for assessment for promotion as Scientists C in 2012 and could have been considered with reference to the crucial date as 01.01.2013; and rest three of them who completed their probation in 2010 and became eligible for assessment for promotion only in 2012, could have been considered with reference to the crucial date as on

01.01.2014. Therefore, the applicants' contentions that 10 of them should have been promoted for the panel years of 2012, and one should have been promoted for the panel year of 2014 is not correct.

In view of these submissions, the OA should be dismissed;

**3(w).** in reply, respondent No.3 (UPSC) has submitted that the Union Public Service Commission is an advisory body set up under Article 315 of the Constitution and is under obligation to ensure that all selections made for regular appointments to services and posts under the Union of India are made strictly in accordance with relevant rules i.e. relevant statutory rules and instructions issued by the Government of India from time to time. As per the Central Water and Power Research Station Recruitment Rules, 1982 and 1988, Research Officers (now designated as Scientist B) must have five years of regular service for promotion as Senior Research Officer (Scientist C);

**3(x).** for the meeting of Assessment Board held on 13.02.2013 for the panel years of 2010 and 2011 for in-situ promotion of Scientists B working with the Central Water and Power Research Station, Pune, the proposal was received by the Commission (UPSC) only on 27.09.2012 and after processing it, the meeting was held on 12.02.2013 and five officers were recommended for the panel year 2011. Since none of the applicants in the OA had completed five years in the feeder grade as on 01.01.2010 and 01.01.2011, and their names were not included in the proposal of the Ministry of Water Resources, River Development and Ganga Rejuvenation, hence there

was no question of considering them for promotions in that meeting; **3(y).** for the panel years 2012, 2013 and 2014, based on the proposal of the Ministry dated 21.10.2016, the meeting of Assessment Board was held on 23.12.2016 and the applicants were promoted with effect from 30.12.2016. Subsequently another proposal received from that Ministry was examined and a meeting of the Assessment Board for the years 2015 and 2016 was scheduled on 27.07.2017. However, since this Tribunal vide interim order dated 21.07.2017 directed to include names of applicants Nos.9, 10 and 16 in the present OA for consideration and to keep result of applicants Nos.1 to 8 and 11 to 15 in a sealed cover till disposal of the present OA, that meeting of the Board of Assessment had to be postponed;

**3(z).** the Commission can hold meetings of DPC and Assessment Board in accordance with the guidelines and instructions of Government of India (DOPT) issued from time to time only after receipt of specific proposals of concerned Ministries and Departments complete in all respects, strictly in accordance with the Recruitment Rules/guidelines/instructions of the DOPT, and submission of various essential inputs by the concerned Ministry/Department such as seniority list, eligibility list, ACRs and certificates of integrity, vigilance clearance, etc of the feeder cadre officers. With reference to the relief sought by the applicants, the necessary action is required to be taken by the respondents Nos.1 and 2 and not by respondent No.3.

#### 4. Analysis and conclusions:-

**4(a).** We have carefully considered the contents of the OA and its annexes, written submissions and case laws submitted by the applicant's counsel on 18.09.2019 and 19.12.2019 as well as arguments on 18.09.2019, reply submitted by the respondents Nos.1 and 2 on 22.01.2018 and additional affidavit filed on 23.01.2018, reply filed by respondent No.3 on 27.09.2017 and arguments of respondents' counsels on 18.09.2019 and 19.12.2019. We have also perused the case law filed by the respondents and DOPT OM dated 17.07.2002, 10.09.2010, 21.09.2012 and 03.01.2018. On such consideration, the issues involved in the present OA are analyzed as follows:

**4(b).** The main issue involved in the present OA is whether the applicants' promotions as Scientists C can be ante-dated from the dates on which they completed five years of service as Scientists B, instead of from 30.12.2016 i.e. date of the impugned order and whether some of them have become eligible for promotion as Scientists D.

**4(c).** The undisputed facts in the case are that the applicants' promotions as Scientists C are covered under the Flexible Complementing Scheme. Although the applicants are seeking ante-dating of their promotions, they have not mentioned any specific dates for such ante-dating. They have also not made any averments regarding the specific stipulations under the Recruitment Rules of 2014 and DOPT OM, that prohibit ante-dating of promotions under

the Flexible Complementing Scheme. As per the Ministry of Water Resources, the Central Water and Power Research Station, Pune, Group A posts Recruitment Rules, 2014, (Rule 5) criteria for considering in-situ promotions and procedure for selection or review under the Flexible Complementing Scheme have been prescribed.

**4(d).** As per Rule 5(1), there shall be two levels of assessment, the first level shall be at internal level for screening purposes and next level shall be external assessment for selection purpose. For this purpose, consideration for promotion under the FCS shall be done once in a year before 01<sup>st</sup> January every year and those officers who have completed or shall complete the required period in a particular post during the period of six months upto 31<sup>st</sup> December of the year preceding the year in which the assessment is to be done and upto 30<sup>th</sup> of June in the year in which the said assessment is to be done, shall be considered for promotion to the next higher grade and the crucial date for determining the requisite qualifying period shall be the 01<sup>st</sup> January of the year in which the assessment is to be done.

**4(e).** As per Rule 6(iv), the effective date of promotion of those officers found eligible for promotion under the Flexible Complementing Scheme shall be the date of approval of their promotions by the Approving Authority and retrospective promotions shall not be admissible in any case.

**4(f).** As per the DOPT OM dated 10.09.2010, based on recommendations of VI Central Pay Commission, the existing Flexible Complementing Scheme has been continued with necessary

modifications for Research & Development professionals in all Science and Technology Organizations. The revised FCS was circulated directing all Ministries/Departments to initiate action for review of provisions of the FCS and amendment to relevant Recruitment Rules to bring the scheme in conformity with the decision/guidelines conveyed by that OM.

**4(g).** As per DOPT OM dated 17.07.2002, on date of effect of promotions under the Flexible Complementing Scheme, promotions are made effective from prospective date after the Competent Authority has approved them. This is the general principle followed in promotions and this principle is applicable in case of in-situ promotion under FCS as well. As provided in the rules for Scientific posts, the Assessment Board shall meet at least once in a year to consider the cases for in-situ promotions. The rules for Scientific posts also contain a provision for review of promotions by Selection Committee / Assessment Board twice a year i.e. before 01<sup>st</sup> January and 01<sup>st</sup> July every year and the Selection Committee / Assessment Board is required to make its recommendation on promotions in view of these crucial dates of 01<sup>st</sup> January and 01<sup>st</sup> July. The Competent Authority which has to take a final view based on these recommendations shall ensure that no promotion are granted with retrospective effect.

**4(h).** As per DOPT OM dated 21.09.2012, the instructions in earlier OM dated 17.07.2002 were reiterated and it also invited attention to the DOPT instructions in OM dated 16.09.2009 which prescribed

time schedule for preparation of confidential reports by Ministries/Departments. The competent authority shall ensure that no promotion is granted with retrospective effect. Para 4 of the DOPT OM dated 21.09.2012 states that under FCS promotion is not effected upon arising of a vacancy. Subject to being found suitable, the Scientists are entitled to be promoted in-situ. The guidelines, stipulate that assessment norms for promotion under the FCS should be rigorous with due emphasis on evaluation of Scientific and Technical Knowledge so that only the Scientists having to their credit demonstrable achievements or higher level of technical merit are recommended for promotion. It was further emphasized that giving the benefit of promotions from a retrospective date or from the date of completion of residency period without timely assessment as prescribed in the DOPT guidelines will dilute the spirit of FCS instructions on rigorous assessment and would be akin to granting of financial upgradation as in other such schemes.

4(i). A gist of the above stipulations in the Recruitment Rules of 2014 and DOPT OMs is that even under the FCS promotions can be granted only after rigorous assessment of merit of the concerned Scientists/Officers and with prior approval of the Competent Authority, the Assessment with reference to the crucial date of 1<sup>st</sup> January has to be done by the Assessment Board every year and retrospective promotions cannot be granted under the Flexible Complementing Scheme also.

4(j). In the present case, the applicants were promoted as Scientists C from Scientists B vide order dated 30.12.2016 for panel years 2012, 2013 and 2014 but they are seeking ante-dating of their promotions from the dates on which they completed five years of residency period as Scientists B. The respondents contend that the cases of applicants could not be placed before the Assessment Board in its meeting on 13.02.2013 for assessment with reference to the crucial dates of 01.01.2011 and 01.01.2012 because by that time they had not completed five years of regular service as Scientists B.

4(k). From the details brought on record by the respondents, however, it is seen that ten of the present applicants had completed their probation during the year 2008, had completed five years of service as Scientists B during the year 2011 and thus, they became eligible for consideration by the Assessment Board with reference to the crucial date of 01.01.2012. Three of the applicants completed their probation during the year 2009 and five years of service as Scientists B during the year 2012 and became eligible for consideration by the Assessment Board only with reference to the crucial date of 01.01.2013. However, the remaining three applicants completed their probation during the year 2010 and five years of service as Scientists B only during the year 2013, thus they became eligible for consideration for promotion only with reference date to the crucial date of 01.01.2014.

4(l). From these facts, it is clear that upto 31.12.2011, none of the applicants had become eligible to be considered for promotion. In

the meeting of the Assessment Board held on 13.02.2013, out of the present applicants only 13 would become eligible for consideration to assess them for promotions with reference to the crucial date of 01.01.2013, if the order of completion of their probation would have been issued before that date. But the remaining three applicants could have become eligible to be considered by the Assessment Board only with reference to the crucial date of 01.01.2014. Although the applicants were not responsible for this, the respondents issued the orders of completion of probation of all the applicants only on 06.01.2015. Thus there was delay in issuing those orders. Thereafter, the applicants were rightly considered by the Assessment Board in its meeting on 21.10.2016 when they were empanelled for promotions and were promoted vide order dated 31.12.2016 from that date when they assumed charge of the posts of Scientists C.

**4(m).** In the case laws cited by the applicants, the respondents were directed to promote the applicants therein on completion of five years of regular service as Scientists B subject to fitness in the assessment. The respondents have also cited a decision of the Principal Bench of the Tribunal dated 31.03.2017 dismissing OA No.1517 of 2014 (**S.L.Gupta Vs. Union of India and others**).

They have further contended that about antedating of promotions of Scientists on directions of CAT/High Courts, the DOPT OM dated 03.01.2018 has directed that the Ministry of Electronics and Information Technology had filed three SLPs in the

Apex Court challenging the High Court orders CC No.4155/2016 (**Union of India and others Vs. Vinay Kumar**), SLP CC No.7196/2016 (**Union of India and others Vs. Santosh Wadhwa, Scientist E and others**) and SLP CC No.26757/2016 (**Union of India and others Vs. Iqbal Hasan and others**). The Apex Court in its order dated 08.07.2016 has directed in SLP No.4155 of 2016 (**Union of India Vs. Vinay Kumar**) that the impugned judgment shall remain suspended during the pendency of the appeal.

**4(n).** In that OM the decision of the Principal Bench of the Tribunal dated 29.05.2014 in OA No.1926 of 2013 filed by **Dr. A. Duraiswamy** has also been mentioned which held that the direction of the Apex Court was in *personem* in respect of ten similarly situated co-applicants of **Dr. S.K.Murti** in OA No.826 of 2003 and cannot be meant to be extended in *rem* to the Scientists of all the Scientific Ministries/ Departments. In light of these facts, DOPT has advised all Scientific Ministries/Departments/Organizations to defend the Court cases on the subject matter of antedating of promotions of Scientists on the direction of CAT/High Courts in view of the policy laid down by the DOPT in its OMs dated 10.09.2010 and 21.09.2012 and as per advice of Solicitor General of India (enclosed with the OM dated 03.01.2018) and the stand taken in the SLPs filed by the Ministry of Electronics and Information Technology till the final decision of the Apex Court in this case on the issue of antedating of promotions of Scientists.

4(o). The applicants' counsel has mentioned that the Ministry of Electronics and Information Technology (MEITY) have issued order dated 12.02.2019 ante-dating promotions of concerned Scientists on completion of eligibility period. However, full facts related to those cases such as applicable Recruitment Rules, eligibility period, etc has not been brought on record. Therefore, it is not clear whether they were identical with the present applicants.

4(p). We note that in DOPT OM dated 10.09.2010, minimum residency periods have been prescribed for assessment of performance of the Scientists by the Assessment Board – this is of five years for Scientists B for promotion to Scientists C. But this period is for assessment, it does not mean promotion can take effect on completion of that exact period. Becoming eligible is also not the same as promoted. After becoming eligible for consideration, the assessment process has to be taken up and if found fit in it, promotions can be effected only after approval by the Competent Authority.

4(q). From the above discussion, the emerging clear position in this case is that on completion of exactly five years of service as Scientists B, the applicants could not have been promoted as Scientists C. At the earliest some of them could have become eligible for consideration with reference to the crucial date of 01.01.2013 and others as on 01.01.2014, if orders on completion of their probation had been issued before that time, as mentioned in above paragraphs 4(k) above. However, because of issuing of the

order on completion of their probation on 06.01.2015, the respondents have placed their applicant's cases before the Assessment Board for assessment only in the meeting on 21.10.2016. Of course, there was delay by the respondents in issuing the orders of completion of probation and they should have issued that order earlier.

**4(r).** However, in view of the above explained unambiguous provisions in the Ministry of Water Resources, the Central Water & Power Research Station, Pune Group A posts Recruitment Rules of 2014, DOPT OM of 10.09.2010 and 21.09.2012 which have neither been challenged by the applicants nor they have been set aside by any court, and directions in DOPT OM dated 03.01.2018, we find it difficult to accept the contention of the applicants that the Apex Court decision in case of **S.K.Murti Vs. Union of India** still holds the ground and the benefit of promotion cannot be denied to the applicants based on various DOPT OM.

**4(s).** In the context of subject matter of the present OA i.e. antedating of promotions under the Flexible Complementing Scheme, the various case laws relied upon by the applicants have to be understood only in the perspective of stipulations under the Central Water and Power Research Station, Pune (Engineering and Scientists Group A posts) Recruitment Rules, 2014 and Policy decisions of the Government of India on the Flexible Complementing Scheme. In view of the fact that the order of completion of their probation was issued by the respondents only on 06.01.2015 and as per the

Recruitment Rules, 2014 applicable to the applicants and policy guidelines issued by the Nodal Ministry i.e. DOPT OMs dated 10.09.2010 and 21.09.2012 retrospective promotions cannot be given even under the Flexible Complementing Scheme.

**4(t).** At the time of decisions in OA No.992 of 1993 dated 11.07.1997 (**R.S.Wadhwa and Another**), OA No.1715 of 1995 dated 14.10.1999 (**Hasan Abdullah and Another**), OA Nos.970 of 1998 and others dated 29.08.2002 (**M.M.Kale and Others**) and in OA No.268/1999 dated 18.12.2002 (**S.D.Ranade**), the policy decisions of the DOPT on the Flexible Complementing Scheme in OM dated 17.07.2002, 10.09.2010 and 21.09.2012 were not available/not considered. At the time of Delhi High Court decision in the Writ Petition of **Union of India and Another Vs. S.K.Murti** dated 05.10.2010, the DOPT OM dated 10.09.2010 on modified Flexible Complementing Scheme based on recommendations of VI Central Pay Commission and DOPT OM dated 01.09.2012 regarding date of effect of promotions under Flexible Complementing Scheme and the Recruitment Rules of 2014 were also not available/considered.

**4(u).** As per the unambiguous stipulations under the Ministry of Central Water and Power Research Station, Pune (Engineering and Scientists Group A posts) Recruitment Rules, 2014 and DOPT OMs dated 10.09.2010 and 21.09.2012, retrospective promotions cannot be given even under the Flexible Complementing Scheme. For promotion as Scientists D also, the concerned applicants will be considered only after completing the requisite residency period as

Scientist C and assessment of their fitness thereafter. Therefore, we find no merit in this OA.

**5. Decision:**

The OA is dismissed. No costs.

**(Ravinder Kaur)**  
**Member (Judicial)**

**(Dr. Bhagwan Sahai)**  
**Member (Administrative)**

kmg/H.

