

Central Administrative Tribunal, Principal Bench
New Delhi

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O.A. No. 2439/2001 with OA No. 2006/2001

New Delhi this the 26th day of April 2002

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Kuldip Singh, Member (J)

OA No. 2439/2001

Shri H.L. Jussal
S/o Late Tulsi K Ram Jussal
R/o 41-A, Pocket-C,
Mayur Vihar (Phase-II)
Delhi-110 091.

- Applicant

(By Advocate : Shri Kumar Parimal)

VERSUS

1. Union of India
Through the Secretary
Department of Personnel and Training
North Block,
New Delhi.
2. Secretary,
Department of Scientific and Industrial Research
Anusandhan Bhawan,
C.S.I.R. building
Rafi Marg,
New Delhi-1.
3. Sh. Jagdish Singh
Scientist 'G'
Department of Scientific and Industrial Research
Technology Bhawan,
New Mehrauli Road,
New Delhi-110016.

... Respondents

(By Advocate : Shri N.S. Mehta)

OA No. 2006/2001

Sh. Jagdish Chander S/o Sh. Hari Ram
R/o 313, Vigyan Sadan,
Sector-10, R.K. Puram,
New Delhi-110022.

- Applicant

(By Advocate : Shri Kumar Parimal)

Versus

1. Union of India through
Through the Secretary
Department of Personnel
And Training, North Block,
New Delhi.
2. Secretary
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.

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3. Dr. R. Brakaspathy
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.
4. Dr. Parveer Asthana
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.
5. Shri R.K. Tayal
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.
6. Shri K.R.S. Krishnan
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.
7. Dr. P.K. Malhotra
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.
8. Shri Anil Rella
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.
9. Smt. Sashi Ahuja
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.
10. Dr. B.P. Singh
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.
11. Shri G. Padmanabhan
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.
12. Shri Neeraj Sharma
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.
13. Shri Chander Mohan
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.
14. Dr. B.K. Shukla
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.



15. Shri Sujit Banerjee
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.
16. Smt. S.N. Khan
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.
17. Shri. T.K. Mandal
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi-110016.

- Respondents

(By Advocate : Shri N.S. Mehta, Counsel for respondent No.2.

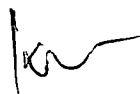
None for respondents No.1, 3 to 17)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

By this common order we shall decide two OAs filed by the applicants wherein the applicants have challenged the constitutional and legal validity of Flexible Complementing Scheme Rules, 1998 (FCS).

2. The applicants have alleged that the respondents have not applied the said FCS of 2001 inspite of the fact that the said rules have come into force with effect from 9.11.1998 and about 15 candidates who were working as Principal Scientific Officers (PSO's)/Scientist 'D' were screened and assessed and given promotion to the post of Scientist 'F' under the old rules. The applicant has thus prayed for declaring the said FCS Rules, 1998 as unconstitutional and have prayed for quashing of the same.



3. Applicants further pray that they should be screened and assessed under the old rules dated 13.12.88. They have also prayed that all the promotions made and given to respondent Nos.3 to 17 be also quashed as being without authority of law.

4. The main ground attacking these modified FCS which has also been framed under proviso to Article 309 is stated to be that modified FCS is unreasonable and grossly unjust and it cannot survive the test of Articles 14 and 16 of the Constitution of India.

5. The applicants further allege that the criteria that a candidate must have 85% marks based on residency at the time of screening and it is only thereafter that he is to be called for interview and his performance in the interview will be graded similarly on a 10-point scale and the eligibility for promotion on the same norms is totally unjust. The system of ACR grading and the percentage calculation is totally faulty.

6. The next ground taken by the applicants is that the allocation of high percentage of marks as 85% fixed for screening on the basis of residency period is unreasonable and renders the selection process arbitrary.

7. It is also pleaded that the interview marks should also not be so high as to give an authority unchecked scope to manipulate or act in an arbitrary manner while making selection.

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8. In nutshell the applicants have pleaded that the modified FCS is violative of Articles 14 and 16 of the Constitution of India.

9. The respondents are contesting the OA. The respondents submitted that this FCS is a unique scheme and is different from the usual vacancy based promotion scheme. The scheme requires a minimum residency period required for promotion from one scale to the higher scale which ranges from 3-5 years. Higher vacant post is not required for being promoted to the next higher scale and it is a merit based in situ personal upgradation in which a scientist, if approved by the duly constituted Assessment Board, carries his own initial post upwards along with himself. The concepts of minimum bench mark, inter se seniority or juniority are absent in the scheme and there is no element of, inter se, competition between various scientists.

10. As regards the modified scheme is concerned, it is submitted that on the recommendation of 5th Central Pay Commission, the Government adopted strict evaluation norms for promotion and evolved a revised form of evaluation. It is also stated that the criteria of marks was reduced from 90% to 85% and the new norms have been allowed to all candidates without discretion. After the modified FCS, the applicants were screened for 2001 batch where they could not qualify and it is pertinent to mention that the applicants never challenged the rationale and validity of the new scheme until they were screened out and in case they felt that the same was unjust, they could have challenged it earlier.

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11. It is further stated by the respondents that similar objections were filed by the scientists of Ministry of Environment and Ministry of Non-Conventional Energy Sources who had also challenged the validity and rationale of this scheme by filing OA No. 1640/99, 214/2000 and 1929/99 which were dismissed by the Tribunal and the modified scheme was upheld. Similarly it is submitted that the applicants have no right to challenge the scheme and the judgments given by this Tribunal earlier are binding on this court also.

12. We have heard the learned counsel for the parties and gone through the records of the case.

13. The main objection of the learned counsel for the applicant is that prescribing of 85% marks as a minimum percentage for eligibility and then the same number of marks in the interview gives an unfettered and arbitrary discretion to the selection committee and such type of discretion has not been appreciated by the Apex Court and in this regard the learned counsel for the applicants has referred to various judgments of the Supreme Court reported in 1992(1) SCC 13 and 1993 (2) SCC 219 and on the strength of the same it is submitted that this discretion of giving 85% marks in interview is against the established norms. In our view this contention was considered by this Court in OA Nos. 214/2000 and 1640/99 and the Co-ordinate Bench of this Tribunal observed that taking into account the promotion of the officers that the same are not vacancy based,

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there is nothing wrong in laying down strict norms for promotion of officers and while dealing with this, the court has observed as under:-

9. We note that respondents themselves do not deny that the assessment norms are vigorous. They point out, and correctly in our opinion, that taking into account that the promotion of the officers are not vacancy based, there is nothing wrong in laying down strict norms for promotion of officers. They emphasise that the whole gamut of availability of promotions to scientists under FCS was studied in depth by the 5th Pay Commission. In taking a decision at the highest levels of administration based on the 5th Pay Commission's recommendations, Government have been liberal. It is emphasised that as promotions are not vacancy based, a demonstrable achievement of high level of merit is at the essence of the FCS and there is, therefore, a nexus between the objectives to be achieved and the requirements laid down in Notification dated 9.11.1998.

10. We have already noticed that impugned Notification dated 9.11.1998 has the protection of Article 309 of the Constitution".

14. The validity of this Notification was challenged in another OA 1929/90 entitled as Dr. I.P. Singh and Others Vs. U.O.I. and Others but the court again upheld the validity of the rules.

15. As regards the unfettered and arbitrary decision is concerned as alleged by the applicant we find that the scheme further states that all the officers who were screened in will be called for interview and the performance in interview will also be graded similarly on 10 point scale and eligibility for promotion will be according to the scheme as given in the table of the said scheme. Thus we find that the element of unfettered arbitrary discretion on the point of performance in the interview is missing. A criteria has been prescribed as to how a person in the interview is to be adjudged by the interview committee, so it is not a case of altogether arbitrary discretion. Thus we find that to challenge the

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FCS on the ground of being unreasonable, arbitrary and grossly unjust has no merits and there is no violation of Articles 14 and 16 of the Constitution of India.

16. The applicants have also alleged that some 15 scientists were assessed under the old scheme while applicant alone was assessed under the new norms. But this fact is not admitted by the respondents.

17. Respondents submitted that upto June 2001 candidates were screened under the old norms, but the applicant was screened in the batch of July 2000 - 2001 when new norms were applied to all candidates without any discrimination.

18. In our view though the new norms had come into force as on 9.11.1998, the department should have applied new norms immediately thereafter. However, in any event it is not the case of the applicant that when his batch was assessed by the Competent Assessment Board different norms were applied to different candidates. Applicants have not pointed out that if any candidate was considered under the old norms when his batch was considered. Thus we find there is no case of discrimination.


19. In OA 2439/2001 the applicant has also submitted that his ACRs has not been assessed as per rules and the ACRs of 4 years has been assessed in one go which is not proper. However, we find that in the OA the applicant has neither challenged the assessment of ACRs nor he has prayed for quashing of the said ACRs, so that additional ground in OA 2439/2001 is not available to the

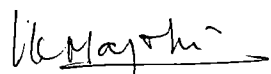
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applicants and in view of the judgments relied upon by the respondents given in OA Nos. 1640/99, 214/2000 and 1929/99 which were dismissed by the Tribunal, we find that the validity of FCS scheme has been upheld so we find no reasons to differ with the same.

20. In view of the above, nothing survives in both the OAs which are accordingly dismissed. No costs.

Let a copy of this order be placed in both the OA files.


(KULDIP SINGH)
MEMBER (JUDL)


(V.K. MAJOTRA)
MEMBER (A)

Rakesh