

CENTRAL ADMINISTRATIVE TRIBUNA;
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1715/95

New Delhi this the 14th day of October 1999

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VC (J)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

1. Shri Hasan Abdullah,
S/o Shri A.W.B. Qadri,
R/o 44-A, Okhla,
New Delhi-25.

2. Shri Aabi Binju,
S/o G.P. Binju,
R/o 22, Vivek Nagar,
Station Road, Jaipur,
Rajasthan.

At Present:

C/o Shri A.W.B. Qadri,
R/o 44-A, Okhla,
New Delhi-25.

(By Advocate: Shri G.D. Gupta)

Versus

1. Union of India through
the Secretary to Government of India,
Ministry of Water Resources,
Shram Shakti Bhavan,
New Delhi.

2. The Director,
Central Soil & Materials
Research Station,
Ministry of Water Resources,
Olof Palme Marg,
Hauz Khas,
New Delhi-16.

(By Advocate: Shri A.K. Bhardwaj)

ORDER (Oral)

By Reddy, J.-

The applicants were initially appointed as Research Officers (Engineering) in the office of the Central Soil and Materials Research Station, New Delhi during 1985. The next post in the hierarchy is the post of Senior Research Officer (Engineering). The recruitment to the post of Research Officer and the Senior Research Officer is governed by the Central Soil and Materials Research Station, New Delhi (Group A) posts Recruitment Rules, 1983 (for short the

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(5)

Recruitment Rules), under the proviso to Article 309 of the Constitution of India. The promotion to the post of Senior Research Officer is required to be filled up by promotion/transfer/transfer on deputation/direct recruitment. The Research Officer with 5 years' regular service in the grade is eligible for promotion. Under Rule 5(2) of the Recruitment Rules, the system called Flexible Complementing in-Situ Promotion should be followed in the matter of the promotion of departmental officers in the grades of Research Officer, Senior Research Officer and Chief Research Officer to the respective grades, namely, Senior Research Officer, Chief Research Officer and Joint Director. Under sub rule-4 the departmental officers who have rendered regular service of not less than 5 years, are entitled to be recommended by the Board of Assessment for promotion to the next higher grade on the basis of the assessment of the record of service and also an interview. The schedule to the rule makes it clear that the promotion to the post of Senior Research Officer is by way of Selection.

2. In 1983, certain guidelines have been issued ~~for the~~ purpose of promotion order the Flexible Complementing Scheme in Scientific Department. It is clear from the perusal of the guidelines that the flexible complementing scheme, as recommended by the Third Pay Commission was introduced to ensure that promotion of an officer in scientific grade from one grade to next higher grade takes place after a prescribed period of service on the basis of merit and ability irrespective of the occurrence of vacancy in

the higher grade. It was also made clear that the promotions under the scheme will be in-situ and personal to the officer concerned and would not result in specific vacancy in the lower grade on that account.

3. It is the case of the applicants that they had completed 5 years of service in the grade of Research Officer by 28.6.90 and thus they were eligible for consideration for in-situ promotion on the basis of the above Flexible Complementing Scheme to the post of Senior Research Officer. The sole grievance of the applicants is that the respondents have not considered ^{they} ~~his~~ names for assessment and promotion in 1990 but they ~~were~~ only considered on 10.1.94 and promoted from that date. The OA is filed seeking a direction to the respondents to promote the applicants w.e.f. 28.6.90 to the post of Senior Research Officer, when they became eligible for promotion after the completion of 5 years of service in the grade of Research Officer.

4. The respondents filed the counter and contested the case. It was not disputed that after completion of 5 years of service in the grade of Research Officer, the applicant was entitled for consideration by the Board of Assessment. It was averred that after completion of 5 years of service the proposal regarding promotion of Research Officers (Engg.) who were eligible during the year 1990 was taken up with UPSC during the same year. As the same remained under correspondence between Ministry of Water Resources and UPSC and in the meantime proposals in respect of officers who became eligible during 1991

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were also mooted, revised proposal in respect of the ROs who were eligible during the years 1990 and 1991 was taken up with UPSC on 28.5.92. The UPSC fixed the date for the meeting of the Assessment Board to the grade of SRO on 13th April, 1993. Due to Administrative reasons it was decided by the Ministry to request UPSC to postpone the interviews. The fresh date for the meeting of the Assessment Board was fixed by UPSC as 2nd December, 93. Based on the recommendations of the Board of Assessment, MOWR promoted 10 Research Officers including the applicants vide their letter No. 4/2/90-E-II dated 10.1.94 and all the 10 Research Officers assumed charge of Senior Research Officers w.e.f. the same date.

5. It is, therefore, vehemently contended by the learned counsel for respondents that the applicants were duly considered for promotion by the Assessment Board vide order dated 10.1.94 and promoted. It is also contended that the applicants are not entitled for retrospective in-situ promotion as the retrospective promotion is not permissible under the rules or the guidelines.

6. Learned counsel for the respondents also raised a preliminary objection that the OA is barred by limitation.

7. We have carefully considered the rival arguments and the pleadings in the case.



8. Taking the objection of as to limitations: The case of the applicants is that they were entitled to be considered for promotion on their completion of 5 years of service which they did complete on 28.6.90. It is evident from the counter affidavit that the respondents having decided to consider the case of the employees who completed 5 years in 1990-91, have sent the papers to the UPSC but due to the correspondence with the UPSC and due to the intervening circumstances, the officers who became eligible in 1990 and in 1991 were considered by the Assessment Board only in 1993 and the applicant was promoted in 1994. It was never the case of the respondents that the case of the applicants was negatived for consideration for promotion in 1990. No order has been passed against the applicant in the year 1990 or thereafter till the promotion order passed on 10.11.94. The applicants were hoping that their case would be considered favourably for promotion after they became eligible in 1990 in accordance with the rules and regulations of the flexible complement^{ing}_A scheme and in-situ promotion. In the present case, therefore, the adverse order was passed on 10.1.94 promoting the applicants dr w.e.f. Since the applicants are aggrieved by the aforesaid order in not giving retrospective promotion w.e.f. 1990 they made representation to the respondents which was not even replied. The OA is thereafter filed in 1995 within the period of limitation under Section 21 of the AT Act. The Mumbai Bench of the Tribunal in OA No. 991/93 in its order, where a question of limitation was raised on similar facts, has also taken the view that the cause of action would arise only

after the final order was passed. Same view was taken by the Chandigarh bench of the Tribunal in OA-985/94 in its order dated 11.7.95. The applicant therein also challenged the action of the respondents in not promoting him with retrospective effect w.e.f. 1988. They were promoted w.e.f. 25.2.92. It was held that the applicant's case was under consideration during the 5 years with effect from the date of their actual promotion and it was on that date they came to know that they have ^{been} given promotion from the date they assume the charge and not from the date they became eligible for the said post, the fresh cause of the action arose only after the representation was rejected by the respondents. In view of the above discussion, we hold that the OA is not barred by limitation.

9. Now on merits: It is not in dispute that the applicants were eligible to be considered for promotion in June 1990. The method of promotion was based upon the Flexible Complementing Scheme and in situ promotion which was introduced in 1983 in the Scientific Department. Under the Recruitment Rules, as stated supra departmental officers were entertained for in-situ promotion to the post of Senior Research Officer. Sub-rule 4 of Rule 5 has already been discussed above, by which officers who have 5 years of service in the grade are entitled to be recommended by the Board of Assessment to the next higher grade on the basis of service record. The Flexible Complementing Scheme was applied for promotion of an officer in Scientific Departments from one grade to the next higher grade irrespective of the occurrence of vacancy



20

in the higher grade and that the promotions under the Scheme will be in-situ and personal to the officer concerned. It is also not in dispute that the applicants were entitled to be considered for promotion on the basis of the above Scheme for in-situ promotion to the post of Senior Research Officer. In fact, it is the case of the applicant that he has been considered alongwith others of 1990 officers and the papers were sent to the UPSC during the same year. In view of the contents of the file with the UPSC and other persons having been found eligible in 1991 and their case having been taken up in 1992 the applicant's case could not be considered for promotion and the Assessment Board could not be met till 17.12.93. The only question, therefore, that has to be resolved in this case is whether applicants are not entitled for restrospective promotion w.e.f. June 1990 when they become eligible for in-situ promotion. Since the above Scheme was introduced only to ensure in-situ promotion on the basis of merit of the candidates it is but necessary to consider their cases as and when they were found eligible and give them promotion, if they are found fit for promotion. Assessment Board met during 1993 and the applicants were found fit for promotion on the basis of the record of service. The applicants are now given promotion w.e.f. 1994 only on the ground that the Assessment Board could not meet and consider them for promotion in 1990 due to administrative reasons. It is true there may be valid administrative reasons, particularly in view of the UPSC consultation in the case of promotions of the respondents. It cannot, therefore, be found fault for not holding the

Assessment Board meeting till December 1993. But once the Board met and considered the cases of the applicants who were found eligible during 1990 and if they were found fit for promotion as on that date there cannot be any good reason for not granting the promotion retrospectively from the said date. The valid or invalid administrative reasons or administrative lethargy should not jeopardise the valuable rights of the employees with regard to their promotion. Learned counsel for the respondents, however, contends that the grant of retrospective promotions are not permissible. Learned counsel relies upon the OM dated 10.3.87 of the DOPT where the procedure to be observed by the departmental promotion committees was mentioned. At para 2.4.4 it was stated that promotions will be made in the order of the consolidated select list, such promotion will have only prospective effect even in cases where the vacancies relate to earlier years. We are afraid this OM has no relation and does not apply to Flexible Complementing Scheme and in-situ promotions. They relate to the promotions and to the procedure to be observed by the departmental promotion committees in the ordinary promotions under the relevant rules, depending upon the occurrence of vacancies.

10. The judgment of the Bombay Bench dated 30.7.97 in OA-992/93 is squarely applicable to the question that is noted herein where it was held that:



"These rules envisage that the officers of the cadre are subject to scheme of flexible complementing and in situ promotion. These rules however make it clear that the whole scheme is based on fixity of over all number of posts and maintenance of inter-se ratios and so long as this ratio is maintained, it is not clear how the department can differ from the implication of the rule of "in situ promotion" by which the concerned officers are promoted in spite of there being no change in duties and responsibilities of the post subject to assessment.

The Department of Personnel, O.M. dated 24.4.89 quoted by us also implies that the concerned officers are entitled for promotion on completion of specified years of service subject to assessment and this is also the import of the CAG circular dated 7.5.92 quoted by us. Assuming that the UPSC has given the advice that promotions should be made from the date of issue of orders and not from the date of completion of 5 years, this advice is required to be tested against the touch stone of rules. UPSC, though a constitutional body, is not above law and cannot render ^{that} which is against the import of rules. In any case it is not the contention of the respondents that the

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(23)

UPSC has given advice regarding promotion being effective from a particular date. The contention of respondents is only related to the change of policy and as As pointed out by the counsel for applicant, change of policy has also not been publicised and the policy followed upto 1988 has to be treated as the policy which has received the sanctity of rules and which cannot be violated without following the due procedure of publicising and objections."

11. The Tribunal directed the respondents to grant promotion to the applicant's therein after completion of 5 years of service subject to the assessment irrespective of the date of the issue of order alongwith all consequential benefits. Learned counsel for respondents however, places reliance upon 1998 (3) SLJ 28 B.S.Wadhwa & another vs. State of Punjab and others. It was stated therein by the Supreme Court that granting of promotions at late stage could upset other matters and that the High Court should have dismissed the petition only on the ground of laches. We are of the view that the present case did not suffer from any laches immediately after the order was passed in 1994 the applicant made representation and thereafter filed the OA, it is also the case of the applicant that none of the persons have been appointed along with the applicant to the next higher post. We have already rejected the contention of the learned counsel for the respondents on the

(24)

aspect of limitation. The decision of the Supreme Court has therefore no application to our case. Another decision cited by the learned counsel for the respondents is 1998 (3) AI SLJ Dr. V.P.Malik vs. Union of India. This was a case where the case of the appellant therein was not considered even though there were vacancies in 1990 though he was eligible to be considered for promotion. This case obviously has no relation to in-situ promotion. The applicant herein is not pressing his case upon any existing vacancy in 1990. We have no hesitation to hold that this case also has no application in the facts of the case.

12. In the circumstances, the OA succeeds and the respondents are directed to promote the applicant retrospectively w.e.f. the date when applicant completed 5 years of regular service in the grade of Research Officer and became eligible for promotion and grant all consequential benefits. This exercise shall be completed by the respondents within a period of 4 months. No costs.

Shanta Shastri

(MRS. SHANTA SHASTRY)
Member (A)

V. Rajagopala Reddy

(V. RAJAGOPALA REDDY)
Vice Chairman (J)

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