

Central Administrative Tribunal  
Principal Bench

New Delhi, dated this the 19<sup>th</sup> September, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

O.A. No. 214 of 2000

1. Dr. S. Kaul,  
S/o Shri S.L. Kaul,  
Additional Director,  
Ministry of Environment & Forest,  
Paryavaran Bhawan, CGO Complex,  
Lodi Road, New Delhi-110003.
2. Dr. M.A. Haque,  
S/o Shri M.M. Haque,
3. Dr. K.P.S. Chauhan
4. Dr. S. Bhowmick,  
S/o Shri H.P. Bhowmick
5. Dr. A.K. Tyagi  
S/o late Shri M.H. Tyagi
6. Dr. Nasim Ahmed,  
S/o Shri Shabuddin
7. Dr. M. Salahuddin  
S/o Shri Mohd. Aktar Hussain
8. Dr. M. Biswas,  
W/o Shri C.K. Jordhar
9. Dr. Mrs. M. Raina,  
D/o Shri L.K. Wig .. Applicants

(By Advocate: Shri K.B.S. Rajan)

Versus

Union of India through  
the Secretary,  
Ministry of Environment & Forests,  
Paryavaran Bhawan,  
C.G.O. Complex, Lodi Road,  
New Delhi-110003.

.. Respondent

(By Advocate: Shri V.S.R. Krishna)

O.A. No. 1640 of 1999

1. Scientists Association of the  
Ministry of Environment & Forests  
through the General Secretary  
Shri Eknath Vishnupant Muley,  
Paryavaran Bhawan, CGO Complex,  
Lodi Road,  
New Delhi-110003.

2. Dr. (Mrs.) R. Dalwani,  
W/o Shri Ashok Dalwani  
Scientist 'SE'  
Ministry of Environment & Forests,  
Paryavaran Bhawan, CGO Complex,  
Lodhi Road, New Delhi. .. Applicants

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(By Advocate: Mrs. Niranjana Singh)

Versus

1. Union of India through  
the Secretary,  
Ministry of Environment & Forests,  
New Delhi.
2. The Secretary,  
Ministry of Personnel,  
Public Grievances & Pensions,  
New Delhi.
3. The Secretary,  
Ministry of Science & Technology,  
Technology Bhawan,  
New Delhi. .. Respondents

(By Advocate: Shri V.S.R. Krishna)

ORDER

MR. S.R. ADIGE, VC (A)

As both O.As involve common questions of law and fact they are being disposed of by this common order. For this purpose the facts in O.A. No. 1640/99 Scientists Association & Others Vs. Union of India and others will be referred to.

2. Applicants impugn respondents' Notification dated 9.11.98 and seek a direction to respondents to call all Scientists eligible under the 1987 Rules for interview before the Departmental Review Committee for promotion.

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3. The 5th Pay Commission has recognised the Department of Environment & Forests, where applicants are presently employed, as a Scientific Ministry (Annexure R-2). The personnel policy for Scientists working in Scientific Ministry has been formulated in Department of Science & Technology O.M. dated 28.5.86. This O.M. contemplates a 'Flexible Complementing Scheme' which provides for in situ promotion to Scientists whose work has been proved satisfactory. This Flexible Complementing Scheme, which envisages the career advancement of Scientific personnel in Ministry of Environment and Forests, after review of 5 years was notified vide Department of Environment, Forests & Wildlife Scientific Group 'A' Posts Rules, 1987 on 23.9.87 (Annexure A-2).

4. The service conditions of all civilian Central Government servants including scientists in Ministry of Environment & Forests as also other Scientific Ministries/Departments of Government of India were gone into by the 5th Pay Commission. In Chapter 5 dealing with Scientific Services (Annexure R-2) the Commission strongly recommended adoption of stricter evaluation norms for promotion. In the light of the recommendations, Department of Personnel & Training issued Notification dated 9.11.98 (Annexure A-3) by which the Scientific & Technical Group A (Gazetted Posts in ..... Ministry of Environment, Forests & Wildlife .....). In situ promotion under Flexible Complementing Scheme Rules, 1998 were notified.

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5. It needs to be mentioned that the Notification dated 23.9.87 as well as the Notification dated 9.11.98 were issued under Article 309 of the Constitution.

6. DP&T also issued O.M. dated 9.11.98 containing instructions for implementing the Flexible Complementing Scheme. The new rules read with these directions provided for two tier system of evaluation for promotion of scientists from one grade to another such that

- (i) At the first stage the officers' service records would be evaluated by a committee and senior officers and the scientists would either be 'screened in' or 'screened out' on the basis of the bench mark contained in a table.
- (ii) Those who were 'screened in' on the basis of their service records, would be interviewed by a duly constituted Review Committee who would be evaluated on a numerical table, and those who cleared that stage would be promoted, while those who did not clear that stage, would be reconsidered for promotion after one year.

7. It is contended on behalf of applicants that the following conditions in respect of the Flexible Complementing Scheme for promotion from Scientist GB to H are arbitrary and irrational.

- a) Eligibility for being called for interview for promotion to the higher posts is that 85% should be the marks obtained on the basis of CRs for promotion under ~~fast~~ track which it is contended is too high.

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b) A like percentage has been stipulated for promotion after interview too, while also it is contended is very high.

8. We have considered these contentions which have also been made through written submissions, carefully.

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 9.11.98.

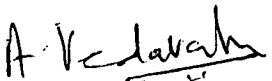
10. We have already noticed that impugned Notification dated 9.11.98 has the protection of Article 309 of the Constitution.

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11. Applicants contend that the bench mark of 85% is too high but they have not indicated what they consider ~~to~~ be a reasonable bench mark. What may be a reasonable bench mark for them may not be so for others who may <sup>argue</sup> ~~agree~~ that the bench mark should be further lowered to make it reasonable to them. There would thus be no end to the process which would negate the very rationale of FCS.

12. Under the circumstances, applicants have not been able to make out a case to warrant judicial interference in these two O.As, which along their connected M.A. are dismissed. No costs.

  
(Dr. A. Vedavalli)  
Member (J)

  
(S.R. Adige)  
Vice Chairman (A)

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