

**Central Administrative Tribunal
Principal Bench, New Delhi**



**O.A. No. 1652/2020
M.A. No. 2234/2020**

Today, this the 25th day of January, 2021

Through video conferencing

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Prof (Dr.) J. Sundaresan Pillai, Head (Retired)
Research and Business Development Division
CSIR-NISCAIR, New Delhi-110012.Applicant

(By Advocate: Sh. Romy Chacko with Sh. Mukund P. Unny)

Versus

1. Union of India through
Secretary, Department of Scientific and
Industrial Research (DSIR), Anusandhan Bhavan
Rafi Marg, New Delhi-110001
Email- dgcsir@csir.res.in.
2. The Director General
Council of Scientific and Industrial Research
Anusandhan Bhavan, Rafi Marg
New Delhi-110001
Email- dgcsir@csir.res.in.
3. Director
CSIR-NISCAIR, Dr. K. S. Krishnan Marg
Pusa Campus, New Delhi-110012
Email- director@niscair.res.in.Respondents

(By advocate: Sh. S.N. Verma)

ORDER (ORAL)



Justice L. Narasimha Reddy, Chairman:

The applicant joined the service of Council of Scientific and Industrial Research (CSIR) in 1992 as Scientist. He was promoted to the post of Senior Scientist in 2012. The CSIR framed the CSIR Scientists Recruitment & Assessment Promotion Rules, 2001 (for short the Rules) providing for promotion of Scientist at various levels, under Flexible Complementing Scheme (FCS). The applicant became entitled to be considered for promotion to the post of Chief Scientist in June, 2016. His case was considered in accordance with the rules, and through a communication dated 09.06.2020, he was informed that the Peer Committee has expresses its view that he is not yet fit for promotion. Feeling aggrieved by the said communication, the applicant filed OA No.1015/2020. That was disposed of on 11.08.2020 with a direction to the respondents to pass reasoned order on the representation submitted by the applicant. In compliance with the same, the respondents passed a detailed order dated 24.09.2020 rejecting the representation of the applicant. This OA is filed challenging the order dated 24.09.2020.



2. The applicant contends that his ACRs for the period between 2011 to 2017 were rated as Outstanding, and his working was also of high caliber for the relevant period. He further contends that the Peer Committee came to be constituted in compliance with the directions issued by the Bangalore Bench of this Tribunal and there was an improper assessment of his performance. He further mentions that a group of experts have recommended his case for extension of service beyond the date of his superannuation, i.e., 31.01.2019 and, that itself shows the merit to his credit.

3. Though the respondents were given number of opportunities, they did not file the reply.

4. Today we heard the arguments of Shri Romy Chako, learned counsel for Shri Mukund P. Unny, learned counsel for the applicant and Shri S. N. Verma, learned counsel for the respondents.

5. The basic facts are not in dispute. The applicant joined the service of CSIR in 1992, and was promoted to the post of Senior Scientist, in 2012. The rules provide for further promotion to the post of Chief Scientist under the FCS, on completion of four years of service. In the



case of the applicant, the consideration for promotion to the post of Chief Scientist took place in August, 2016. The selection is in two stages.

6. At the first stage, the Recruitment and Assessment Board processed the file and assigned marks to different features, as provided under the rules. It is only when a Senior Scientist secures the marks in terms of Rule 7 (4) of the Rules, that he is listed for being considered at the 2nd stage, by the Peer Committee. The applicant was successful at the first stage. However, the Peer Committee which dealt with the case of the applicant found him not yet fit for promotion. Here again, there are certain parameters.

7. For example, if the candidate under consideration gets one mark below the threshold set for that purpose, he would be considered in the next year. It is only when the difference is more than two marks, that the candidate is declared as not fit for promotion. In the instant case, the applicant has been awarded marks, which are more than two below the threshold marks.

8. It is no doubt true that the applicant raised several contentions in his representation. However, it is fairly



well settled that the judicial review into the matters of this nature is not only very restricted but also, in certain cases, completely ruled out. An expert body, such as Peer Committee is conceded full freedom and liberty to make its own assessment. It is only when an aggrieved candidate attributes motives or *mala fides* to any members of the committee and makes him a party to the proceeding before a Court, that an occasion may arises for examining that issue.

9. In the instant case, the applicant did not attribute motive to any members of the Peer Committee. The applicant may have his own view about the nature of his work or the merit thereof. Ultimately what counts, is the satisfaction of the Peer Committee. The order dated 09.06.2020 discloses that four Senior Scientists were considered for promotion to the post of Chief Scientist, and none of them were found fit for promotion. That only shows the level of standards that are applied for evaluation of the performance and work. The applicant is not singled out in that process. Therefore, it cannot be said that there was any legal or factual error or flaw in the assessment and evaluation made by the Peer

Committee. We do not find any basis to interfere with the impugned order.



10. Before parting with the case, we intend to make an observation about Rule 8.2 of the Rules. The same reads as under:-

“Those of Scientists, who leave the service of CSIR on their own volition including voluntary retirement shall not be entitled for any assessment over and above the assessment (s) if any, already availed even if it may relate to the period when they were in CSIR service. However, those scientists who superannuate or pass away while in service shall be considered for assessment from the due date of eligibility. The cases of the deceased shall be decided by the Assessment Board on the basis of their Annual Confidential Appraisal Reports.”

11. It enables the conferment of the benefits of promotion not only to a retired Scientist, but also a deceased Scientist. It does not appear that the attention of the rule making authority was invited to the judgment of Hon'ble Supreme Court in ***Union of India and Ors. Vs. K. K. Vadera and Ors.***

1989 SCC Suppl.(2) 625.

The Hon'ble Supreme Court held that the question of a retired person being promoted does not arise. The only exception recognized in that behalf is, where a junior to the retired officer was promoted to the next higher post,



with effect from a date anterior to the one, on which the senior retired. The relevant para of the judgment reads as under:-

“There is no statutory provision that the promotion to the post of Scientist 'B' should take effect from 1st July of the year in which the promotion is granted. It may be that, rightly or wrongly, for some reason or other, the promotions were granted from 1st July, but we do not find any justifying reason for the direction given by the Tribunal that the promotions of the respondents to the posts of Scientists 'B' should be with effect from the date of the creation of these promotional posts. We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”

12. We are aware of the fact that the upward movement under the rules is personal to the Scientist and not based upon any seniority. At the same time, it must not be



ignored that the conferment of a higher position on being assessed after thorough assessment is not an empty formality. The person so conferred the benefit, must be able to discharge his functions in that office which, in turn, would help the organization. If the promotions are accorded even to a deceased person, it would not be a proper honour to those who are conferred with such benefit. This, however, is a matter to be examined by the CSIR.

13. We do not find any merit in the OA. It is accordingly dismissed.

Pending MA No.2234/2020 shall stand disposed of.

There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

pj/sunil/rk/ns