

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/01246/2014

HYDERABAD, this the 21st day of October, 2020



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Dr. D. P. Reddy S/o D. Narsimha Reddy
Aged about 56 years, Occ : Scientist -C
Central Ground Water Board, Southern Region,
Opp. GSI Gate-2, Bandlaguda, Hyderabad.

...Applicant

(By Advocate : Mr. K. Phani Raju)

Vs.

- 1.The Union of India rep by the Secretary,
Ministry of Water Resources, Shrama Shakti Bhavan,
Rafi Marg, New Delhi-110 001.
2. The Union Public Service Commission rep by its Secretary,
Dholpur House, Shajahan Road, New Delhi-110001.
3. The Chairman, Central Ground Water Board,
Ministry of Water Resources, Bhujal Bhavan,
NH-IV, New CGO Complex, Faridabad-122001.
- 4.The Director (Admn), Central Water Board,
Bhujal Bhavan, NH-IV, Faridabad.
5. The Regional Director, Central Ground Water Board,
Southern Region, Opp GSI Complex, Bandlaguda,
Hyderabad 500068.

....Respondents

(By Advocate : Mrs.K.Rajitha, Sr. CGSC)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

Through Video Conferencing:



2. The O.A. has been filed by the applicant in regard to antedating his promotion granted in Scientist `Bø & Scientist -Cø

3. The brief facts of the case are that the applicant was appointed as Hydro Geologist in the respondentø organization on 25.11.1985. Thereafter he was promoted as Scientist `Bø on 31.10.1997. The promotion from Scientist -Bø to Scientist -Cø was granted on 7.10.2009. The respondents have come up with a scheme by name -Flexibility Complementary Schemeø (FCS) in the year 1983 based on the recommendation of the 3rd CPC. The objective of the scheme is to prevent stagnation in any post and encourage merit. The promotions are given after rendering 3/4/5 years service in the respective grade. Initially this Scheme was extended to Group `Aø cadre but later it was extended to Scientist post with scale of Rs.650-1200/- vide Memo dated 28.5.1986. The respondents thereafter came up with Central Ground Water Board (Group-A) Recruitment Rules, 1987 wherein they have excluded the posts of Assistant Chemists/ Assistant Hydrologists which come under Group-B category, from the purview of FCS. This exclusion is contrary to the Recruitment Rules framed by the respondents in 1986. The aggrieved employees challenged the exclusion of said cadre from FCS in O.A. No.1032/1996, which was allowed on 19.4.1999. The respondents challenged the order of the Tribunal before the Honøble High Court in Writ Petition No.22349/1999



which was dismissed on 10.9.2008. The judgement was implemented by the respondents and promotions to the cadre of Scientist -B&-C were given to nearly 200 officers. An order bearing No.379/2010 dated 4.5.2010 was issued promoting eligible employees as Scientists -B wherein the name of the applicant also figured since he has completed three years of service in Assistant Hydrologist post. The eligibility for promotion was shown as Scientist -B w.e.f. 1.1.1989. Later, an order was issued on 18.2.2013 wherein the promotion of the applicant to the post of Scientist -B was shown as 1.1.1994 and to the post of Scientist -C as 1.1.1999. The applicant claims that his promotion should have been shown as 1.1.1989 in Scientist -B cadre and 1.1.1994 in Scientist -C cadre. By modifying the order on 18.2.2013 by the respondents, juniors to the applicant have become senior to him. Several representations made have not yielded any response. Hence the OA.

4. The contentions of the applicant are that postponing of the promotion of the applicant in Scientist -B & -C cadres by five years is illegal. The FCS Scheme does not require any vacancies to promote eligible employees. In view of the implementation of the judgment in O.A. No.1032/1996, the juniors to the applicant got promoted as Scientists -B & Scientists -C and they were shown as senior to him. While postponing his promotions as indicated, the respondents have not issued any notice. The applicant contends that the order issued by the respondents on 4.5.2010 was correctly issued. There was no need to change it. The respondents have chosen a pick and choose method in promoting employees. The applicant also states that the Court's judgment is in his favour.

5. The respondents in their reply statement confirm that the applicant was appointed as Assistant Hydrologist on 25.11.1985 and also his promotions to the posts of Scientist -Bø & Scientist -Cø. The Honøble High Court vide its order dated 10.9.2008 upheld the order of this Tribunal in O.A. No.1032/1996. The issue about bringing in the posts of Assistant Chemists/ Assistant Hydrologists was also taken up with the Honøble Supreme Court and there too, the respondents could not succeed. Therefore, a special Board was constituted by the Ministry to consider similarly placed officials (Group-B Scientific Officers) for ad hoc *in situ* promotion to the grade of Scientist -Bø due to non-availability of Recruitment Rules under Flexibility Complementary Scheme from Group -Bø to Scientist -Bø who were inducted into Govt. service between 28.5.1986 to 9.11.1998. The applicantø's case was also considered along with others and he was promoted as Scientist -Bø on ad hoc basis vide order bearing No.379/2010 dated 4.5.2010. He was granted ad hoc in situ promotion to the grade of Scientist -Bø w.e.f. 1.1.1989 for having completed 3 years residency period in the post of Assistant Hydrologist. Due to non-availability of Recruitment Rules under FCS, ad hoc in situ promotions as Scientist -Bø given retrospectively w.e.f. 1.1.1989 followed by a regular Board of assessment conducted by the UPSC for regularization of the ad hoc services and orders were issued on 13.2.2013. The Special Board of Assessment constituted for the purpose found the applicant unfit for antedating his in situ promotion to the grade of Scientist -Bø for the vacancy years 1989, 1990, 1991, 1992 & 1993. He was found fit for the vacancy year 1994. Therefore, his promotion to the post of Scientist -Bø was regularized w.e.f. 1.1.1994 based on the assessment conducted by the



UPSC. Later, for having completed residency period of 5 years for Scientist `Bø, the applicant was granted promotion as Scientist -Cø from 1.1.1999. The promotions referred to were granted as per Recruitment Rules framed by the respondent's organization under FCS. Therefore, the respondents claim that the promotions had to be given to the applicant based on the recommendations of the Special Board of Assessment Committee, which has gone into the eligibility of the applicant and accordingly given promotion to the post of Scientist -Bø in 1994 and Scientist -Cø in 1999. There is no merit in the case and, therefore, prayed for dismissal of the O.A.



The applicant has filed a rejoinder wherein the applicant states that there is no clarity in the submissions of the respondents in the reply statement and the same are stated without any supporting material, establishing their stand. When the applicant was given promotion as Scientist -Bø by a Special Board of Assessment from 1989 on completion of the prescribed residency period, it is not explained as to on what basis the next Assessment Board has not considered regularization of the ad hoc period. The applicant claims that the Special Board of Assessment was convened by the UPSC in the year 2010 for considering his eligibility for the year 2010 only and not for the years 1989-1993. As per rules in force, the aspects that have to be looked into for in situ promotion are namely oral interview, bio data and ACRs for each year of the residency period completed. It is not clear that year-wise assessment and interviews are conducted by the Board separately. If so, on what basis the applicant was made unfit year-wise has not been indicated. The respondents while



considering the ACRs, have communicated only for the year 1985-86 but have not communicated for the remaining years best known to them. The law laid down in regard to communicating the remarks in ACRs has not been followed. The applicant was never communicated the remarks in ACRs except for the year 1985-86. Therefore, the contention of the respondents that the applicant is unfit for the years 1989-1993 is totally baseless and invalid. The respondents themselves have upgraded the ACRs of several Group 'A' officers while considering their in situ promotion and also ante dated their promotions to the grade of Scientist 'C' & 'D'. The same needs to be extended to the applicant as well.

6. Heard Sri K. Phani Raju, learned counsel for the applicant and Smt. K. Rajitha, learned Senior Standing Counsel appearing for the respondents, and perused the pleadings on record.

7. The core aspect of the dispute is the respondents postponing the promotions of the applicant from 1989 to 1994 to the cadre of Scientist 'B' and consequently to the cadre of Scientist 'C' from 1994 to 1999. The respondents stated in their reply statement that the applicant was given ad hoc in situ promotion in Scientist 'B' post w.e.f. 1.1.1989 vide their Order No.379/2010 dated 4.5.2010. The promotion was given in pursuance of the directions of the Tribunal in OA No.1032/1996 which was allowed. The respondents challenged the order of the Tribunal in the Hon'ble High Court & the Hon'ble Supreme Court but failed to get the order of the Tribunal modified. However, the respondents state that while granting the ad hoc in situ promotions, there were no recruitment rules framed. Hence, it was given on an ad hoc basis. Later, after framing of the recruitment rules

under FCS, a Special Board of Assessment was constituted by the UPSC. The Special Board found the applicant unfit for the vacancy years 1989 to 1993 to the Grade of Scientist -B. However, they found him to be fit for the vacancy year 1994 and accordingly, his promotion was postponed to the year 1994 to the cadre of Scientist -B and consequently to the cadre of Scientist -C to the year 1999. The applicant stated that he was not communicated of the reasons as to why his promotions have been postponed. Moreover, while ordering ad hoc in situ promotion to the post of Scientist -B, conduct of an interview, perusal of the ACR, etc. have to be followed. The respondents have not clarified in the reply statement as to what was the basis for conducting a Special Board of Assessment by the UPSC and if so, whether the rules and regulations under the Recruitment Rules relating to FCS have been followed. Another point raised by the applicant is that the adverse remarks in his ACR for the year 1985-86 were only communicated and not for the other years. Any adverse remarks not communicated are invalid as per the judgement of the Honorable Supreme Court in **Dev Dutt** case. Hence, the applicant states that the respondents have not clarified their position in the reply statement nor did they follow the rules in postponing his promotions.



After hearing both the sides, we are of the view that since the UPSC has conducted the Special Board in deciding the regularization of applicant's promotion to the post of Scientist -B, we are under the impression that the rules and regulations could have been looked into properly. Nevertheless, the applicant has made a submission in the rejoinder that the UPSC has convened a Special Board of Assessment to

consider his eligibility for promotion to the post of Scientist -B for the vacancy year 2010 only and not for the years 1989 to 1993. Keeping the above in view, we direct the respondents to respond to the contentions made by the applicant in the O.A. and issue a speaking and reasoned order, citing the documents on the basis of which his promotions were postponed from the original date in 1989 to the cadre Scientist -B and consequently to the cadre of Scientist -C, within a period of 8 weeks from the date of receipt of this order.



With the above direction, the O.A. is disposed of. There shall be no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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