

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. 196/2004

New Delhi this the 18th day of January, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mr. S.K. Naik, Member (A)

Shri Servejeet Singh,
S/o Shri Babu Ram, GC/ASD,
Dehradun, Uttaranchal-248005.

.... Applicant.

(By Advocate Shri A.K. Mishra)

Versus

1. The Director General,
CSIR,
Rafi Marg,
New Delhi.
2. The Director,
Indian Institute of Petroleum,
Mohkan Pur Dehradun,
Uttaranchal.

... Respondents.

(By Advocates Shri Manoj Chatterjee and Ms. K. Iyer)

ORDER (ORAL)

Hon'ble Mrs. Meera Chhibber, Member (J).

By this O.A., applicant has sought the following reliefs:

- “(i) direct the respondent to promote the applicant along with his batch-mate on higher group – III (4);
- (ii) quash the impugned order dated 5.12.2003;
- (iii) direct the respondent to consider the promotion of the applicant;
- (iv) direct the respondent to pay all other benefits including increment in salary w.e.f. 1997 to till date;
- (v) pass any other relief which this Hon'ble Tribunal deems appropriate and necessary in the facts of the case; and
- (vi) grant of the cost of this application to the applicant.



2. The grievance of applicant in this case is that he has not been given the benefit of circular dated 6.11.1990 even though he had acquired higher qualification of M.Sc in August, 1984 i.e. after he joined the respondents in May, 1984 as Technical Assistant Group-VIII.

3. It is submitted by applicant that respondents issued a circular on 6.11.1990. The subject was 'Incentives for acquiring higher qualifications'. By this circular, a decision, taken by the governing body, in its meeting held on 25.9.1990 was conveyed to all Directors/Heads of all National Labs./Instts. to the following effect:

"No. 17 (65/P.42)/90-PPS (Pt.II)

6th November, 1990.

From: Joint Secretary (Admn.)
C.S.I.R.

To

The Directors/Heads of all
National Labs./Instts.

SUB: Incentives for acquiring higher qualifications.

Sir,

I am directed to state that the Governing Body at its meeting held on 25.9.1990 has approved as under:-

"Those employees who were in position on 31.12.1981 and have acquired/will acquire entry level qualifications of next group may be assessed once to the next higher grade in the same group two years earlier than the normal period of assessment prescribed in NRAS/MANAS provided they attain the prescribed threshold".

2. The condition of first class M.Sc./B.E. as laid down for entry in Group-IV will not apply in such assessments.

3. Other conditions prescribed in MANAS will continue to apply except that such employees will be assessed only once in the grade under this provision.

4. The above decision will come into force w.e.f. 25.9.1990. However, scientific and technical employees due for assessments from earlier dates will be allowed notional benefit from the date of assessment with/actual monetary benefit w.e.f. 25.9.1990.

Yours faithfully,

Sd/-

(S.K. Verma)
Sr. Deputy Secretary".



The cut off date as laid down in circular dated 6.11.1990 was subsequently removed by the circular dated 24.5.1996 (page 20).

4. It is submitted by the applicant that at the time when he joined the respondents in May, 1984, he was having the qualification of B.Sc and for promotion to the next grade, requirement was M.Sc or B.E. The said qualification was acquired by the applicant in August, 1984. Therefore, he applied for consideration for higher promotion two years earlier than the normal period of assessment pursuant to the letter dated 1.11.1999 as issued by the respondents themselves (page 24) whereby the TOAs were requested to submit their work report for the period mentioned therein, latest by 29.11.1999 and applicant's name was shown at Serial No. 2. However, applicant was not recommended and he gave a detailed appeal, on 6.2.2000 (page 27) by submitting that his case has not been considered because ^{it has been} ~~he had~~ stated that he appeared in the examination for M.Sc before joining IIP/CSIR while persons junior to him who acquired the same higher qualification after him have been given the benefit of circular dated 6.11.1990. He, therefore, submitted that the above decision/policy of CSIR is against the natural justice as he is being deprived of the benefit, on the ground which has no rational to the objects sought to be achieved. His appeal was duly forwarded vide letter dated 16.3.2000, wherein Controller of Administration wrote to the Joint Secretary (Administration) that since these persons are using the higher qualification for the benefit of organization and as per the policy of CSIR, some of the technical staff, who were otherwise junior to these persons but acquired higher qualification after joining the service will become senior to them by virtue of the two years earlier assessment. Therefore, the position may be clarified. It was followed by reminder dated 11.01.2002 (page 37) but the respondents rejected the claim of applicant vide Office Memorandum dated 22.4.2002 by stating therein that the incentive of two years earlier assessment than the normal period of assessment on acquiring higher qualification of next group is admissible only to those employees who acquire the entry level qualification of next higher group by undergoing the full process of



acquiring the relevant study after joining CSIR service. Being aggrieved, applicant gave representation to DG, CSIR, on 5.9.2002 stating therein that he and Shri Ajay Gupta had joined on 18.5.1984 against the same advertisement for the post of JTA [Group-III (1)] when he was also studying in M.Sc [Group-iv (1) Qualification] yet he was benefited with two years earlier assessment w.e.f. 18.5.1997 while applicant was not given the chance for the same. In the process, the said Shri Ajay Gupta has become senior to applicant. He quoted another example of Shri C.D. Sharma, who joined as JTA [Group III(1)] on 27.4.1994. Before joining IIP, he was studying in M.Sc [Group-iv(1) Qualification], on the basis of which he was permitted by IIP to complete M.Sc and he was also given two years earlier assessment benefit w.e.f. 27.4.1997. Similarly, Manoj Kumar and B.R Nautiyal, who were juniors during academic studies as well as in joining the institute, have also become senior to the applicant, as they have also been given the benefit of two years ^{earlier} assessment. He, therefore, requested that he should also be given the benefit of two years earlier assessment w.e.f. 19⁸⁷ in order to protect his seniority but once again the benefit of two years earlier assessment has not been granted in favour of applicant. Thus, he had no other option but to file the present O.A.

5. Respondents, on the other hand, submitted that all the employees, irrespective of status, are considered for assessment promotions in a fixed period as laid down in the rules. In the year 1990, the respondents, with a view to encourage the employees, implemented a Scheme that such of the employees, who enhanced their qualifications after entering the service, will be given benefit and accordingly issued the circular dated 6.11.1990. Subsequently, the said provision was incorporated in revised MANAS as rule 2.3.4. The cut off date 31.12.1981 was removed keeping in mind that such restriction would be discouraging to the employees from improving their qualifications and such an incentive to those who joined after 31.12.1981 would provide encouragement and motivation to acquire higher qualifications and promote the spirit of bearing and creativity to the S&T staff. Furthermore, such S&T staff would be at par with

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those employees who had improved their qualification while working in lower group in the service of CSIR. They have thus submitted that the benefit of circular dated 6.11.1990 is available only to those who have undergone the course of higher studies after joining CSIR service with due permission of the appointing authority. Respondents relied on letter dated 27.4.2004 in which reference was made to the letters dated 9.8.1996 and 17.11.2000 wherein it was clarified that the benefit of two years assessment is admissible only to those employees who acquire the entry level qualification of next higher group by undergoing the full process of acquiring the relevant higher qualification after joining CSIR service i.e. by taking admission in the course of study after their joining with due permission of the competent authority (page 13 of the counter affidavit).

6. As far as the cases of Dr. Ajay Gupta and Shri C.D. Sharma are concerned, they submitted that Dr. Ajay Gupta fulfilled the conditions laid down vide the Rule 2.3.4 as he got himself enrolled for acquiring his Ph.D after joining the institute. They further submitted that Shri C.D. Sharma was granted the benefit of two years earlier assessment wrongly but the same has been withdrawn vide O.M. dated 30.7.2004. Similarly, Shri B.R. Nautiyal and Shri Manoj Kumar also acquired qualification of higher group with due permission from the respondents. Thus, it cannot be said that the applicant has been discriminated. They have submitted that the applicant is not entitled to get the benefit of the circular dated 6.11.1990. They have thus prayed that the O.A. may be dismissed.

7. We have heard both the counsel and perused the pleadings as well.

8. The benefit of two years earlier assessment emanates from the contents of the circular dated 6.11.1990 quoted above. Admittedly, the cut off date 31.12.1981 was removed by the subsequent letter dated 24.5.1996. Now if the contents of this circular dated 6.11.1990 are seen, it is clear that the intention of the respondents was to grant benefit of two years earlier assessment to such of the employees who have acquired/will acquire entry level qualifications of next group. This circular nowhere states that the higher qualification should be acquired after joining the service and after taking due permission from the



authorities, as is being clarified by the respondents now. In the letter dated 27.4.2004, respondents have referred to some letters of CSIR dated 9.8.1996 and 17.11.2000 but the said letters have not been produced on record by the respondents. Therefore, we do not know what were the contents of those letters. In any case, a letter cannot supersede the decision taken by the governing body and approved and circulated by way of a circular. Therefore, it is not understood what is the basis of clarification given by the respondents.

9. Even otherwise we find that the intention of respondents was to encourage the employees, who acquired higher qualification. Whether it is acquired after the service or the course is pursued by the employee, before his appointment, should not make any difference to the respondents so long as the employee acquires higher qualification. In this case, admittedly applicant got his results ~~in~~ M.Sc in August, 1984 which is evident from the appeal filed by the applicant to the Director General on 6.2.2000 (page 27). Now if the results of M.Sc were declared in the month of August, 1984, definitely it cannot be said that the applicant had already acquired the higher qualification of M.Sc before joining the service as he had joined the service in May, 1984. Since his results were declared after he joined the service with respondents, naturally the applicant would be in the category of having acquired the higher qualification of next group after joining the service because in the circular dated 19.11.1990, it is nowhere mentioned that the employees should have acquired the higher qualification by pursuing the studies after joining the service nor the said condition can be said to have any rational to the objects sought to be achieved. Therefore, the condition/clarification, as is being given by the respondents now cannot be sustained in law. The clarification as is being sought to be given by the respondents would create a very anomalous position inasmuch as even though a person is having higher qualification for the next group, he would not be considered along with his own juniors for the next promotion, simply on the ground that they acquired the said higher qualification after joining the service with due permission from the authorities. After all, what is relevant is that the



employees should acquire higher qualification. How and in what manner or at what time they acquired the qualification cannot be made so material so as to deprive a person with higher qualification of his right to be considered for next promotion along with his own juniors.

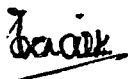
10. In the instant case, admittedly Shri Ajay Kumar Gupta was junior to the applicant yet he has been considered for grant of two years earlier assessment because he got himself enrolled for acquiring his Ph.D after joining the institute. We have applied our mind and are not able to uphold the reasoning given by the respondents as we feel it will amount to depriving consideration to the persons with higher qualification only on the ground that one pursues the study before joining the service while other pursues it after joining the service. To our mind, this would hardly make any difference. It would amount to carving out sub class out of one class. In the case of D.S. Nakara and Ors. Vs. Union of India (1983 (1) SCC 305), it was held by the Hon'ble Supreme Court that the division which classified pensioners into two classes is artificial and arbitrary and is not based on any rational principle and whatever principle, if there be any, has not only no nexus to the objects sought to be achieved by liberalizing the pension rules, but is counter-productive and runs counter to the whole gamut of the pension scheme. Further, there is not a single acceptable or persuasive reason for this division. Therefore, the classification does not stand the test of Article 14. If the present case in hand is seen, in the backdrop of law laid down by the Hon'ble Supreme Court, we find that there is no rational in the reasoning as advanced by respondents and the same has no nexus to the object sought to be achieved by treating those persons differently, who had acquired higher qualification by pursuing their studies before joining the respondents from those who acquire it after joining the service nor respondents were able to give us any other persuasive reasons for taking the view which has been taken by them. Therefore, we hold the classification as tried to be made by the respondents does not stand the test of Article 14. After all, if applicant is given the benefit of circular dated 6.11.1990 for having acquired the higher qualification, all that he gets is a right of



consideration and not promotion itself because that would be dependent on assessment of his work. Therefore, this right of consideration along with his juniors cannot be taken away, on a ground which has no nexus to the object sought to be achieved. The fact that applicant has acquired higher qualification for the next promotional post is not disputed by the respondents. What they have stated is that since applicant acquired it by pursuing the studies before joining the service, therefore, he is not entitled to the benefit of circular dated 6.11.1990. The stand taken by the respondents according to us cannot be sustainable in law..

11. In view of the above discussion, the Office Memorandum dated 5.12.2003 is quashed and set aside. Respondents are directed to consider the claim of applicant for next promotion w.e.f. 1997 when his junior was considered by giving him the benefit of 2 years earlier assessment as per circular dated 6.11.1990 and pass appropriate orders as per the recommendations made by the Assessment Committee. In case the case of the applicant is recommended by the Assessment Committee, he shall be granted proforma promotion to the next grade with effect from the same date when his junior was so promoted. He would, however, get only notional benefits as far as fixation of his salary is concerned. This exercise shall be completed within 3 months from the date of receipt of copy of this order.

12. With the above directions, this O.A. is disposed off. No order as to costs.


(S.K. NAIK)
MEMBER (A)


(MRS. MEERA CHHIBBER)
MEMBER (J)

'SRD'