

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

12

O.A. No.1054 of 2004

New Delhi, this the 7<sup>th</sup> day of January, 2004

**HON'BLE SHRI SHANKER RAJU, MEMBER (J)**  
**HON'BLE SHRI S.A. SINGH, MEMBER (A)**

1. Shri Chander Bhan,  
S/o Shri Jage Ram,  
R/o 22, Adarsh Nagar,  
Sonapat (Haryana).
2. Harcharan Singh  
S/o Shri Khem Singh,  
R/o V & P.O. Danakaur,  
Distt. – Bulandshahar (UP).

....Applicants.

(By Advocate : Shri A.K. Behra)

Versus

1. Council of Scientific & Industrial Research  
through its Director General,  
Anusandhan Bhawan,  
Rafi Marg, New Delhi-110001.
2. Central Road Research Institute,  
Through its Director,  
PO : CRRI, Delhi-Mathura Road,  
New Delhi-110020.

....Respondents

(By Advocate : Shri V.K. Rao)

**O R D E R**

**SHRI SHANKER RAJU, MEMBER (J) :**

Applicants, who are two in number, impugn respondents' order dated 2.12.2003 denying the benefit of Faster Track Promotion to them.

2. Applicants were appointed to the post of Field Assistant Group II(2) with post graduate degree in Economics on 1.1.1979 and 19.6.1979 respectively. As they were in service with higher qualification as on 1.2.1981 under the Faster Track Scheme promotion was due, which was denied by the respondents.

3. The aforesaid led to filing of OA No.2576/1999 which was disposed of on 21.3.2001 with the following observations:- 13

"...Therefore, the project undertaken by CRRI in 1979 to which the applicants who formally appointed in 1980, has for all intents and purposes given the applicants regularisation of their assignments. They are, therefore, correctly entitled to the benefits flowing therefrom, one of which is the Faster Track Assessment for career advancement. It cannot be denied to them. The impugned order dated 23.7.1999 which seeks to do so has, therefore, to be set aside.

9. In the result, the application succeeds and is accordingly allowed. The impugned order is quashed and set aside and the respondents are directed to consider the case of the applicants for Faster Track Assessment for promotion and take decision thereon as per the criteria fixed. In the circumstances of the case, however, we are ordering no costs."

4. The respondents preferred CWP No.5807/2001 before the Hon'ble High Court of Delhi against the aforesaid orders of this Tribunal wherein by decision dated 27.11.2002 the orders passed by the Tribunal was upheld with the following observations:-

"The only ground on which the respondents have been denied the benefit of para 0.4.9 of the NRAS of 1981 relating to 'faster track promotion scheme' by the petitioners was that the respondents were not regular employees of the CRRI as on February 1, 1981. The reason does not appeal to us. According to the letter of the CSIR dated November 16, 1984 addressed to the Heads of all National Laboratories/Institutions, the faster track promotion scheme was admissible to "the staff in position as on 1.2.1981 who had acquired the qualifications prescribed for the entry level for the next higher group of grades upto 31.12.1981". The expressions "the staff in position" does not mean the staff employed on the regular basis by the CRRI. The condition also applies to any member of the staff in position as on February 1, 1981. Admittedly, the respondents were members and the staff of the CRRI as on February 1, 1981 and were working in the RUCS Project of the CRRI. It is also not denied that even at the time of initial appointment in the year 1979 the respondents were possessed of the requisite qualifications since each one of them was having a Masters Degree to his credit. Thus, we do not find any merit in the contention of the learned counsel for the petitioners. In the circumstances, therefore, we approve the view of the Tribunal in rejecting the reasoning of the petitioners in denying the benefit of the faster track promotion scheme to the respondents.

In view of the foregoing discussion, we hold that the Tribunal was entirely right in directing the petitioners to consider the case of the respondents for faster track assessment for promotion. Accordingly, the writ petition fails and is hereby dismissed." M

5. On implementation, on assessment the applicants had not been recommended for placement in Grade III (1) for the first chance. However, it was observed that the applicants would be eligible for assessment for the second chance as per the relevant rules and instruction on the subject.

6. The few, in brief, factual matrix is relevant to be highlighted. According to which, as per the implementation of various Committees recommendations, Council of Scientific & Industrial Research (CSIR) had introduced New Recruitment and Assessment Scheme (hereinafter referred to as 'NRAS'). As per this NRAS the normal assessment to various grades, the departmental committee has to be constituted, which on their devised method, to consider the incumbents for further advancement.

7. As per para 0.4.9 of NRAS, the faster track promotion is available to the incumbents, who are in possession of prescribed entry level qualification to next higher group grade and it would apply to the appointments made between 1.2.1981 till the date of issue of the orders of 1983.

8. In the above backdrop, it is stated by Shri Behra, learned counsel for the applicants, once the Tribunal arrived at a finding that the applicants were regularly appointed as on 1.2.1981 and the faster track promotion had come in their way and the only requirement is that the incumbent should be in regular strength of CSIR and possessing higher entry level education qualification h subjecting to the incumbent to the assessment is not envisaged in

NRAS. As such rejection of the cases of the applicants for faster track promotion is illegal. 15

9. Learned counsel of the applicants further states that the impugned order passed does not show that the applicants were to be assessed. On the other hand, it is stated that in the Tribunal, the only objection raised by the respondents is with regard to regular status of the applicants. Having failed to take the aforesaid plea either before the Tribunal or before the Hon'ble High Court of Delhi or any order passed, which is impugned, the respondents are to be stopped from raising the aforesaid plea to just defeat the claim of the applicants and are also acquiesced to the issue.

10. Shri Behra, learned counsel of the applicants by referring to the decision of the Hon'ble High Court of Delhi dated 27.11.2002 in CWP No.5807/2001 wherein CSIR's letter dated 16.11.1984 was reproduced contends that there is a categorical finding with regard to eligibility for faster track promotion and acquirement of entry level qualification prescribed for next higher group of grades upto 31.12.1981.

11. As the Hon'ble High Court of Delhi has ruled that the applicants were in possession of such qualification, the assessment should have been made from 1.2.1981 and the assessment now conducted in compliance of the directions of the Hon'ble High Court of Delhi is illogical, as the date 1.1.1984 has no reasonable nexus. As such the same is in contempt of the directions of the Hon'ble High Court of Delhi.

12. Shri Behra, in nut shell, contends that once a person has acquired higher qualification for next higher group of grades promotion under faster track promotion *suo moto* without h subjecting to the applicants to any further assessment, as the

finding of the Hon'ble High Court of Delhi has no more *res integra* and is binding. 16

13. On the other hand, respondents' learned counsel Shri V.K. Rao vehemently opposed the contentions of the applicants' learned counsel and stated that for promotion whatsoever be the nomenclature, one has only a right of consideration. It is also stated that though the applicants were not in position as on 1.2.1981, in compliance of the orders of the Hon'ble High Court of Delhi, applicants were considered for faster track promotion w.e.f. 1.4.1984. Accordingly, the criteria was adopted as laid down under the guidelines in NRAS, they were called for interview before the Assessment Committee and on the basis of the assessment, they were not found fit. It is adverted that having participated in the interview without any objection and having failed, the applicants are to be stopped from challenging the same.

14. We have carefully considered the rival contentions of the parties and perused the material available on record.

15. Apart from normal assessment to various grades in NRAS, faster trace promotion has been provided in para 0.4.9, which reads as under:-

"A faster track promotion is available to the present incumbents who have got the prescribed entry level qualifications for the next higher Group. It would also apply to appointments made between 1.2.1981 and the date of issue of these orders."

16. CSIR's letter dated 16.11.1984 laying down eligibility criteria for assessment promotion, which reads as under:-

"Subject : Assessment promotion under the New Recruitment & Assessment Scheme – Eligibility for Faster Track Promotion."

Sir,

I am directed to state that in accordance with the provision contained in para 0.4.9 of the New

Recruitment and Assessment Scheme, a Faster Track Promotion was available to the present incumbents who had got the prescribed entry level qualifications for the next higher group. It was also stipulated that this provision will also apply to the appointments made between 1.2.1981 and the date of issue of those orders (i.e. 2.11.1981). The orders mentioned above were circulated vide CSIR letter No.17(65)/81-E.II dated 2<sup>nd</sup> November, 1981. The Governing Body of the SCIRT approved of certain modifications to the New Recruitment and Assessment Scheme on the recommendations of the Committee headed by Dr. Thyagarajan. These decisions were conveyed to all the Laboratories of the CSIR vide SCIR letter No.17(65)/82-CTE.PPS.Vol.II dated 24<sup>th</sup> November, 1982. In sub-para (iv) appearing on page 3 of the letter dated 24.11.1982, it was stipulated that the persons possessing M.Sc./B.E. or equivalent qualifications if appointed in this Group will not be eligible for consideration for assessment to posts in Group-IV which was meant for scientific staff. The orders contained in CSIR letter dated 24.11.1982 were made effective from 1.2.1981.

Attention is also invited to the clarification issued vide para 5 of CSI letter No.17(65)/83-CTE/83-CTE.PPS.Vol.IV dated 26.2.1983 which reads as under:-

"The Scientific and Technical Staff as on 2.11.1981 who hold M.Sc. or B.E. or equivalent degree will move to Group-IV on promotion to the grade of Rs.700-1300 irrespective of the fact whether they are holding scientific or technical posts. The staff appointed to various entry level posts now introduced in Group-III on or after 24.11.1982 will remain in Group-III even if they hold M.Sc./B.E. Degree and shall be eligible for assessment promotion grade by grade in Group-III."

In this connection attention is also invited to the decision conveyed vide CSIR letter No.17(65)/83-E.II.PPS dated 5<sup>th</sup> March, 1983 conveying the decision of the Governing Body that the benefit of Faster Track Promotion would also be admissible to such of the scientific and technical staff as were appointed to entry and non-entry level posts qualifications for the next higher Group of grades subject to the conditions laid down in the New Recruitment & Assessment Scheme and the instructions issued thereunder from time to time.

The benefit of Faster Track was also extended to the staff who had been selected upto 31.12.1981 but who could not join their respective posts for want of completion of certain essential formalities, e.g., verification of character and antecedents,

examination by competent medical authority by the above stipulated date. 18

Further it has been decided by CSIR with the concurrence of F.A. To CSIR vide CSIR letter of even number dated 17<sup>th</sup> Aug, 1984 that the staff who were in position as on 1.2.1981 and had acquired the qualifications prescribed for the next higher group of grades upto 31.12.1981 will also be eligible for benefit of Faster Track Promotion.

Keeping in view the latest decisions on the subject the benefit of faster track promotion is, therefore, admissible in respect of the following:-

- 1) The staff in position as on 1.2.1981 who had acquired the qualifications prescribed for the entry level for the next higher group of grades upto 31.12.1981;
- 2) The staff appointed to the various scientific/technical posts possessing the entry level qualifications prescribed for next higher group of grades upto 31.12.1981; and
- 3) The staff who had been selected by the Selection Committee upto 31.12.1981 but could not join their appointments by the above stipulated date for want of completion of essential formalities regarding verification of character and antecedents and examination by the competent medical authority.

Attention is also invited to the provision contained in para 4.11.1 of the Brochure circulated vide CSIR letter dated 2.11.1981 which, inter alia, provide that the Scientist A/A1 who did not possess the minimum prescribed qualifications shall be entitled for assessment to the grade of Rs.700-1300 in Group-III grades and that for further avenues of promotion they should obtain academic qualifications prescribed for promotion to the appropriate level of Group-IV grades. With reference to the provision of this para it is hereby clarified that only those Scientists A/AI in position as on 1.2.1981 who acquired the prescribed qualifications of M.Sd/B.E. Upto 31.12.1981 will only be eligible for assessment promotion to Group-IV grades and that this provision will not be applicable to those who obtain higher qualifications subsequent to this date.

The receipt of this letter may kindly be acknowledged."

17. Provision for Assessment Committee is provided under para 2.10 of NRAS, which is reproduced as under:-

"There will be one Assessment Committee for all the grades in the Group. This Committee will have a Chairman, two members (of which one should be external) and the Director of the Laboratory or his nominee constituting the Core. Besides, the Core members, the Assessment Committee will have experts in different broad disciplines as per the prevailing guidelines of the CSIR to assess the candidates objectively. The Core Assessment Committee will decide who are the persons that are to be finally promoted based upon relative ranking and the appropriate percentage limit of promotion."

18. Para 2.11.1 of NRAS prescribes promotion in Group-II Grades is as under:-

"In Group-II grades, there may be at present – (i) staff members without the prescribed qualifications' (ii) staff members having the prescribed minimum qualifications; and (iii) staff members having higher qualifications such as M.Sc., B.E., B.Sc./3 years Diploma in Engineering. According to the New Scheme of Assessment, staff members covered under categories (i) and (ii) will normally be assessed for promotion upto the grade of Rs.550-900 (Grade-II(5)) only. However, as an exception, such of those incumbents who are in service on 1.3.1981 and are in the grade of Rs.425-700, will be considered for assessment for promotion alongwith those in Group-III(1) on the same conditions. Category (iii) staff members can aspire for assessment promotion upto the level of Rs.1100-1600 in Group-III grades and beyond depending of their qualifications."

19. Para 0.4.5 of NRAS provides assessment promotion, which reads as under:-

"On assessment promotion to the next higher grade in Group-I, II & III, the pay of the incumbent will be fixed in accordance with the provision of FR 22 (C) with reference to the pay drawn in the lower post on the date the required length of service is completed, provided the person is found fit for promotion. If not found fit, the promotion will take effect from the date of eligibility for second/subsequent chance of assessment promotion, if found fit by the Assessment Committee. (CSIR letter No.17(65)/81-E.II dated 26<sup>th</sup> May, 1982.) In Group-IV grades the pay of the incumbent will be fixed under FR 22 (a) (I). However, in respect of promotions made on or after 5.10.81 to grades with minimum starting pay upto 1500/- per month, the pay will be fixed under FR 22(C). The



assessment Committee in especially meritorious cases may recommend grant of advance increments over and above the normal fixation of pay. The Director of the Laboratory/Institute is empowered to sanction advance increments upto 3 increments where he is the appointing authority. Beyond 3 increments, the matter should be referred to CSIR. Since relative assessment of the incumbents now proposed calls for quantification by way of marks combined based on performance at the interview/test confidential reports and record of work, such increments in salary could be related to the marks obtained in the assessment. Guidelines on the method of quantification will follow."

20. As per CSIR letter No.17(65)/83-PPS (SERC, Madras) dated 10.6.1985, the following decision has been taken by the Governing Body:-

"A point was raised regarding the Group in which the post will become available on its vacation by a member of the scientific/ technical staff who has moved on assessment promotion from one Group of grades to the other Group of grades. In the New Assessment Promotion Scheme, the assessment promotion is made from one grade to another till the person reaches the highest grade in the Group. However, the scheme provided for faster track promotion to the next higher Group of grades on faster track which takes a person on assessment promotion to the relevant Group for which he holds the qualifications. It was, therefore, clarified that in cases where a person on assessment promotion moves from one Group to the other Group of grade, the post will revert to the Group from which the person has moved to the next higher Group on assessment promotion. Therefore, where an S.S.A. (Group-III) had moved to Group-IV, the vacancy on his/her vacating the post will revert to Group-III from which he has moved to Group-IV."

21. Cumulative grading of the above clearly establishes that even faster track promotion <sup>is</sup> preceded by assessment by the <sup>internal</sup> Assessment Committee.

22. As it is trite law that promotion cannot be claimed as a right but consideration thereof is a right. The assessment by <sup>internal</sup> Assessment Committee is one of the devised <sup>method</sup> to judge the merit of a person for advancement to higher group of grades. Letter dated 10.6.1985 clearly provides that even in the Scheme for faster

track promotion to the next higher group of grades is the assessment promotion and word 'assessment' connotes determination of merit of a person for his fitness to the higher group of grades.

23. The contention of the applicants that the Hon'ble High Court of Delhi having affirmed the decision and laid down that the only qualification and extension of benefit of faster track promotion shall be to the staff in position as on 1.2.1981, who have acquired the qualification, was in the context of observations made by the Tribunal.

24. As per letter dated 16.11.1984, it has been clearly laid down that the eligibility criteria for consideration for the advancement to higher group of grades is regular status and acquirement of entry level qualification for next higher group of grades, but it is also subjected to the condition laid down in NRAS instructions issued from time to time. Hon'ble High Court of Delhi in CWP No.5807/2001 after meticulously going into the letter dated 16.11.1984 observed as under:-

"Thus from the above it is clear that the benefit of the 'faster track promotion' was inter alia admissible to staff in position as on February 1, 1981 who had acquired the qualification prescribed for the entry level for the next higher group of grades upto December 31, 1981."

25. If one has regard to the above, what was the issue before the Hon'ble High Court of Delhi, which has been decided by the Tribunal, is the eligibility of the applicants for consideration of assessment promotion for faster track promotion which has been upheld. However, the directions of the Tribunal, <sup>which</sup> ~~with~~ was only to consider the cases of the applicants for faster track assessment for promotion, is clear to the effect that the promotion would not be *suo moto* or automatic, but one has to be subjected to the

conditions laid down in NRAS by which letter dated 10.6.1985 clearly stipulates that one has to be assessed for promotion and this was also reiterated in letter dated 16.11.1984.

26. The contention raised by Shri Behra, learned counsel of the applicants that in case of those who were selected by the Selection Committee upto 13.11.1981 but could not join appointment for want of complete essential formalities, they were not subjected to any assessment and were granted faster track promotion is invidious discrimination and also establishes that the norms for faster track promotion is automatic, if one has regular status and has requisite qualification for higher group of grades.

27. The aforesaid submission of the learned counsel of the applicants is not well founded. The equality before law can be assailed only if person contending the same is equally placed in all respects. Unequal cannot be treated equally. Those who have been selected for appointment before 31.12.1981, there is no question of their assessment because they had not earlier worked in CSIR and the fact that they have already undergone a process of selection, which, inter alia, included their fitness for the post. There is intelligible differentia and the object sought to be achieved, which would not attract the mandate of Article 14 of the Constitution of India.

28. By reading of the decision of the Hon'ble High Court of Delhi, the import and tenor of the direction does not suggest that the promotion would be automatic to the person who is eligible for promotion for faster track promotion as the same is subjected to the condition laid down by NRAS, assessment is obligatory pre-requisite.


29. It is trite law that person who is not found fit has <sup>no</sup> right to be promoted.


30. No malafide had been alleged to show that the assessment by the Committee is biased on any malafide action on the part of the respondents.

31. One who has without objection participated in the assessment by appearing in the interview is estopped from challenging the same after having failed to secure the promotion.

32. However, we find that though the applicants were in position as on 1.2.1981, respondents have without any *basis* or *justifiable* reason considered the applicants' case for faster track promotion w.e.f. 1.4.1984, this could have been done keeping in view the cut off date either from 1.2.1981 or 31.12.1981. However, this would not mitigate the action of the respondents, as *on* assessment of the cases of the applicants have not been found fit. However, they would be entitled for assessment for second chance for faster track *promotion* as per order dated 2.12.2003.

33. Having found no infirmity in the order of the respondents, OA is bereft of merit and the same is accordingly dismissed. No costs.

  
(S.A. SINGH)  
MEMBER (A)

  
(SHANKER RAJU)  
MEMBER (J)

/ravi/