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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1157/2004

New Delhi, this the 11th day of April, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)**

1. Sh. Y.B. Kaushik,
S/o Shri M.N.Kaushik
Aged 44 years,
Central Ground Water Board
Kasturba Gandhi Marg
New Delhi.
2. Dr. A.Dey,
S/o Shri P.B.Dey
Aged 46 years,
Central Ground Water Board
A-2, W3, Curzon Road Baracks
Kasturba Gandhi Marg
New Delhi.
3. S.N.Battacharya
S/o Sh. B.C.Bhattacharya
Aged 45 years,
Central Ground Water Board
A-2, W3, Curzon Road Baracks
Kasturba Gandhi Marg
New Delhi.
4. Shri Sunil Kumar
Central Ground Water Board
A-2, W3, Curzon Road Baracks
Kasturba Gandhi Marg
New Delhi.
5. Dr. Uma Kapoor
Central Ground Water Board
Kasturba Gandhi Marg, Jam Nagar. ... Applicants

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

Versus

Union of India through

1. The Secretary
Ministry of Water Resources
Sharam Shakti Bhawan
New Delhi.

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2. The Director
Central Ground Water Board
NH-IV, Faridabad.

3. The Secretary
Ministry of Finance
North Block
New Delhi.

... Respondents

(By Advocate: Smt. P.K.Gupta)

ORDER

By Mr. Justice V.S.Aggarwal:

Applicants seek for quashing of the orders of 30.12.2003 and 5.2.2004 and to direct the respondents to fix their pay in the grade of Scientist 'D' with effect from 1.1.1998.

2. The relevant facts are that under the Flexible Complimenting Scheme (for short 'FCS') introduced by the Government for Scientists and Scientific and Technological Departments, the applicants became eligible for in situ promotion to the next higher grade of Scientist 'D' from 1.1.1998. This was in accordance with the Recruitment Rules for the post.

3. The respondents did not submit the case of the applicants to the Assessment Board in 1998. The Assessment Board met early in the year 1999 and made its recommendations for promotion of the applicants in February, 1999. These recommendations were required to be given effect to from 1.1.1998. However, during the pendency of an Original Application No.429/1998 before the Central Administrative Tribunal, Jaipur Bench, it had passed the interim order directing the respondents to keep the results of the Assessment Board in a

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sealed cover. In that OA, the applicants had claimed that they were also eligible to be considered for promotion to the post of Scientist 'D'. On 06.01.2003, the said OA was decided and the respondents were directed to place the case of the applicants in that OA before the Assessment Board.

4. After the decision of the Jaipur Bench of this Tribunal, the order dated 22.10.2003 was issued promoting the applicants as Scientist 'D' from 1.1.1998.

5. It is alleged that suddenly, vide the impugned order, the benefit has been withdrawn and instead of 1.1.1998, it has been made effective from the date of actually taking over of the charge as Scientist 'D', i.e., 22.10.2003.

6. The applicants assail the orders of 30.12.2003 and 05.02.2004, which read as under:

"Dated 30 DEC 2003

.....
Sub: Pay fixation and payment of arrears to the officers promoted from Scientist 'C' to Scientist 'D' regarding.

Sir,

In continuation to this office letter of even number dated 4.11.2003, on the cited subject and to say that the clarification was obtained from the Ministry for fixation of pay and drawal of arrears. It has been clarified that the promotions are made effective from a prospective date after the Competent Authority has approved the same. This is the general principle followed in promotions and this principle is applicable in the case of in-situ promotion under FCS as well.

In view of above, the pay fixation and drawal of arrears to the officers promoted from

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Scientist 'C' to Scientist 'D' vide Board's letter No.14-2/2003-Sci.Estt. dated 22.10.2003 may be made effective from the date of actual taking over the charge as Scientist 'D'. i.e., 22/10/2003 or later."

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.....

Sub: Antedating of promotion order to the post of Scientist-D from the date of eligibility, i.e., 1.1.98.

Sir,

With reference to your representation dated 5th January, 2004 on the subject mentioned above and to say that promotions are made effective from a prospective date after the competent authority has approved the same. This is the general principle followed in promotions and this principle is applicable in the case of In-situ promotions under FCS as well. The matter regarding the effective date of promotion to the grade of Scientist-D ordered vide Ministry's Office Order No.7/10/2003-GW.I dated 22.10.2003 was taken up with the DOP&T. They have reiterated that as per the General policy of government no retrospective promotions can normally be allowed and this principle is applicable in the case of In-situ promotions under FCS as well. Hence your request for retrospective promotion with effect from 1.1.98 cannot be accepted. Letter of this office of even number dated 30th December, 2003 may also be referred to."

7. The application is being contested

8. According to the respondents, the case of the applicants had been submitted to the Assessment Board. The Ministry sent a proposal to the Union Public Service Commission for consideration of the Board of Assessment in June 1998 itself. The Board of Assessment was convened in January and February 1999, but

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because of the interim order passed by the Jaipur Bench of this Tribunal, the result was not declared. After the decision of that OA, directions were issued to re-convene the Board of Assessment. It is thereafter that orders were issued because promotions could not be made retrospectively.

9. The learned counsel for the applicants, in the first instance, urged that earlier the order was passed giving the benefit from 1.1.1998 and the same has been withdrawn even without a notice to show cause. It was further contended that in any case, the applicants were not parties to the OA decided by the Jaipur Bench. Therefore, for any such order, the applicants cannot be made to suffer.

10. As at present, we need not dwell into other controversies. This is for the reason that admittedly, before withdrawing the benefit, which had been accorded from 1.1.1998, no show cause notice has been served on the applicants.

11. It is well-recognized principle that when the order is passed which has civil consequences, ordinarily a notice to show cause must be served before withdrawing the said benefit.

12. In the present case, when such a notice to show cause actually has not been served, in our considered opinion, on this short ground, the impugned orders cannot be sustained.


13. For these reasons, we allow the present application and quash the impugned orders. However, nothing said herein should


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be taken as any expression of opinion on the other controversies raised at the Bar.


(S.K.Naik)
Member (A)


(V.S.Aggarwal)
Chairman

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