

Central Administrative Tribunal, Principal Bench

O.A. No. 604 of 2004

CA

New Delhi this the 12th day of August, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

Shri V.P.S. Tomar
S/o Shri R.S. Tomar
R/o K-35, Niti Nagar, Advocates Colony,
Ghaziabad (UP)

...Applicant

By Advocate: Shri H.K. Shekar, Counsel.

Versus

Union of India through
Secretary, Department of
Science and Technology,
Technology Bhawan,
New Mehrauli Road,
New Delhi and 118 others

...Respondents

By Advocate: Shri N.S. Mehta.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant is seeking following relief in this OA:-

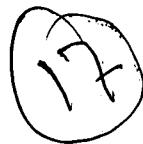
- (i) To promote the applicant from Senior Scientific Officer-I to Principal Scientific Officer due from 23rd February, 1999 and subsequently from Principal Scientific Officer to Director due from 23rd February, 2004 under Old Scheme of in situ promotion and to fix seniority in scale of director.
- (ii) To set aside the OM No.2/41/97-PUC dated 9.11.1998 and to quash the illegal order of promotion given to respondent No.3 to 72 and 80 to 119 under new arbitrary guidelines of promotion policy enforced during the period 1999 to February, 2004.
- (iii) To call the (a) Research records of respondent No.3 to 118 under the old in situ promotion scheme during 1988 to 9.11.1998 and (b) records of field experience in implementation of Research and Development projects (c) Record of calculation to convert OGPA (of ACRs) into percentage of marks (d) records of calculation to convert single grade into percentage of marks of respondent No.3 to 72 and 80 to 119 under new arbitrary guidelines of promotion (OM 2/41/97-PIC dated 9.11.1998).
- (iv) To call amended and gazette notified recruitment rules for Group-A Scientific Officer as required under OM No. 2/41/97-PIC dated 9.11.1998.
- (v) To provide all consequential benefits of promotion since 23rd February, 1999 for Principal Scientific Officer and consequential benefits of promotion of director from 23rd February, 2004.
- (vi) To issue an interim ex-parte injunction restraining the respondent No.1 from conducting interview under the new arbitrary guidelines of in situ promotions (ii) and to restrain the respondent No.1 from causing criminal misapplication

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of consolidated funds of GOI through illegal promotions till the Tribunal's decision is arrived.

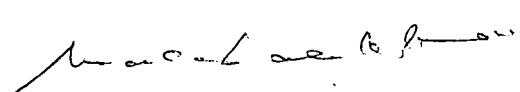
(vii) Cost of application be awarded in favour of applicant and any other relief as the Tribunal may deem fit and proper in the circumstances of this particular case.

2. Briefly stated the facts are that the applicant was appointed as Senior Scientific Officer-I in the pay scale of Rs.3000-4500 (pre-revised) on 12.7.1993 to work National Co-ordination of Testing and Calibration Facilities (NCICF) in the Engineering and Technology Division of the Department of Science and Technology. He was eligible for in situ promotion in accordance with the Flexible Complementing Scheme (FCS) existing in the department for Grade-A officers of the Science and Technology. The modified FCS of in situ promotion was circulated by the Department of Personnel and Training vide OM dated 9.11.1998 (Annexure-I) to promote the officers of the same class from lower scale to the next higher scale. The respondent No.1 had willfully not considered the applicant for promotion under FCS in situ promotion. On the other hand, respondents No.3 to 34 have been promoted from Senior Scientific Officer Grade-II to Senior Scientific Officer Grade-I and thereafter from Scientist 'C' to the post of Scientist 'D' under new arbitrary scheme which is in violation of the prescribed norms. Similarly the respondent No.1 had also illegally promoted respondents No.35 to 72 from the post of Senior Scientific Officer Grade-I to Principal Scientific Officer in contravention of the mandatory requirements and thereafter promoted them from Scientist 'D' to Scientist 'F' in the arbitrary manner again in contravention of the requirement. As a consequence, the applicant has become 9 years junior to respondents No.35 to 72 whereas he was 4 years junior to them on 23.2.1991. Furthermore, the respondent No.1 has illegally promoted respondents No.108 and 109 Junior Analyst Group 'B' to Senior Scientific Officer Grade-II, Group-A and from Senior Scientific Officer-II to Senior Scientific Officer-I and thereafter to Principal Scientific Officer in contravention of the mandatory requirements of proven merit, research record, post graduate degree in Science etc. According to the applicant the new formulated FCS of in situ promotion has no rational and failed to provide any criteria for evaluating performance of the research and development project implemented by the secretarial scientific officers and subsequent acceptance of the same. Besides the recruitment rules have also not been amended to regulate the in situ promotion so it is violative of Article 14, 16(i) and 309 of the constitution of India. The



Scheme has also failed to provide deficiencyless and comprehensive conversion formulae to convert the overall grade point average obtained for ACRS (Annual Confidential Reports) into percentage of marks which is mandatory requirement of promotion. It has also failed to explain as to how overall grade point average 10 obtained for ACRS during the prescribed residency period of promotion is equal to 90% of marks. Conversion of overall grade point such as 9.808, 8.088, 7.999, 6.305 etc. into percentage of marks as promotion policy is based on relative grading which requires the conversion of overall grade point average of grade (such as outstanding (10 points), very good (8 points) good (6 points), average (4 points) and poor (zero points)) obtained for annual confidential reports during the prescribed residency period could not be established. It has also failed to provide minimum and maximum value for grades such as 'very good', 'good', 'average' and 'poor' except 'outstanding'. Though the scheme required the grading of interviewing Scientific Officer on 10 point scale which will be a single grade and will not be constituted overall grade point average which means that it would be practicably impossible to convert the single grade into percentage of marks so it is violative of Article 14, 16(1) and 21 of the Constitution. This scheme has also failed to provide means and ways to depute secretarial scientific officers to acquire field experience in implementation of research and development project so it has violated Article 309 and 335 of the Constitution.

3. It has further failed to provide mechanism to make comparison between equal scientific background scientific officers for awarding grades in annual confidential reports by assigning identical assignments of R&D project implementation and also failed to prevent the reporting officer and reviewing officer to grade an officer as Outstanding without evaluation of Research and Development project and without completion of residency period. It has also created class within class without any intelligible differentia. It has created inconsistency in standard of promotion for class 'A' since the promotional requirement decreases on increasing the duration of promotion. It has also failed for implementation beyond 8 years. It has also alleged that lowering of promotional qualification for general category candidates and providing undue benefit of 4 years seniority to PSO as on 9.11.1998 without rendering any useful service is also violative of Article 309 and 335 of the Constitution. The introduction of new scale 'E'



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between Scientist 'D' and Scientist 'F' requiring applicant to serve and a special leave of scale 'E' to PSO by letter dated 30.7.1999 is also violative of Article 14 and 16 of the Constitution, as such the scheme which came into force w.e.f. 9.11.1998 is unsustainable in law. The representations of the applicant have not borne any fruit, hence this OA.

4. The respondents contested the OA. It is stated that the applicant was appointed as SSO-I (now Scientist 'C') in the department of Science and Technology on 23.2.1994. He became eligible for consideration for promotion under FCS as on 1.1.1999 along with other eligible scientists. He was also considered as per the revised FCS guide-lines issued on 9.11.1998 (Annexure R-2) but was not recommended. He was again considered for in situ promotion under the new FCS guidelines as on 1.1.2000 but still not recommended by the Assessment Board. The applicant cannot be considered under the old guide-lines after the implementation of the 5th Pay Commission report and revision of FCS which came into force on 9.11.1998. The new FCS for in situ promotion of Scientist was formulated to remove disparity in the operation of the Scheme in various Scientific and Technical Departments in the matter of designation of posts, the number of posts and residency period. The Department of Personnel and Training in consultation with Department of Science and Technology modified the criteria of marks at the time of first opportunity for promotion to the higher grade on the basis of the ACRs etc. vide letter dated 31.7.1999. It was reduced from 90% to 85% which was applicable in all cases and this step was neither discriminatory nor meant to do any undue favour to any aspirant for promotion under FCS. FCS provided that all officers will be first screened on the basis of the grading in the ACRs which would be assessed on 10 point scale giving 10 marks for 'Outstanding', 8 marks for 'Very Good', 6 marks for 'Good', 4 marks for 'Average' and zero for 'Poor' and only those officers who satisfy the minimum residency period linked to their performance as indicated in the table below be screened:-

	Number of years in the grade					
	3	4	5	6	7	8
	Minimum percentage for eligibility					
Scientist 'B' to Scientist 'C'	90%	80%	70%	65%	60%	--

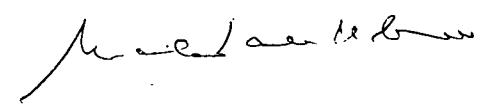
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Scientist 'C' to Scientist 'D'	--	90%	80%	75%	70%	60%
Scientist 'D' to Scientist 'E'	--	90%	80%	75%	70%	60%
Scientist 'E' to Scientist 'F'	--	--	90%	80%	75%	70%
Scientist 'F' to Scientist 'G'	--	--	90%	80%	75%	70%

5. The criteria of marks at the time of first opportunity for promotion to the higher grade on the basis of ACRs etc. was reduced from 90% to 85% vide letter dated 31.7.1999. The minimum percentage of marks has to be obtained to get in situ promotion, i.e., 60% in case of Scientist 'B' after seven years, 60% in case of Scientist 'C' and 'D' after 8 years and 70% in case of Scientist 'E' and 'F' after 8 years. Exceptionally meritorious candidates with all outstanding grading may be granted relaxation in the residency period for not more than one year on a single occasion and such relaxation would be limited to two in the entire career. The guide-lines are fully efficient, scientific and objective and have proved to be efficient and blameless tool for promotion. The scientists in the government sector are engaged in a number of activities, i.e., research management of scientific projects, production and other related matters as per requirement of their job and that of their organisation, so the nature of work may slightly differ from one scientist to another scientist. It may also differ in different positions in his career. The FCS was a tool of promotion for scientists of all categories and was thus not violative of Article 14 and 21 of the Constitution.

6. It is further stated that the scientists listed by the applicant in the OA were treated uniformly at par with him and were provided promotion and the respondents No.3 to 119 were given promotion strictly as per the guide-lines of FCS which was operating w.e.f. 9.11.1998 taking into account their merit, field experience etc. It was denied that existing FCS guide-lines were arbitrary, ambiguous or discriminatory. The applicant was screened in and interviewed on 11.8.1999 and 10.6.2000 of January, 1999 and January, 2000 batches respectively. He did not challenge the rationale and validity of the new Scheme until he himself was not recommended by the Assessment Board. If the Scheme



was grossly unjust, as alleged by him, he should have challenged it earlier. Other allegations made by the applicant have also been controverted.

7. The applicant in his rejoinder has reiterated his own case and controverted the allegations of the respondents. It is further stated that new in situ promotion policy is based on relating grading (norm-reference) or grading on curve was arbitrary as the percentage of Scientific Officers (respondents No.3 to 119) receiving different grades is preconceived and that the award of grade to an individual was not determined by his/her performance alone, still it was decided by the performance of the group. The relative grading has also failed to reward improved knowledge and learning because of preconceived number of cases to be placed in each grade. It is, therefore, submitted that the new FCS guide-lines based on relative grading possess group performance, creates competition among group and based on minimum bench mark decided by a cut-off marks so not rational and unjust. Other allegations have also been similarly refuted.

8. We have heard the learned counsel for the applicant and also the applicant, who has argued in person and have also heard the learned counsel for the respondents. We have perused the relevant record.

9. The applicant has challenged the rationale, legality and validity of the new FCS guide-lines which became operational from 9.11.1998. The Scheme is unique and different from the usual vacancy based promotion scheme. Under FCS, there is a minimum residency period required for promotion from one scale to the next higher scale which ranges from 3-5 years. A higher vacant post is not required for promotion to the next higher scale. This is a merit based *in situ* personal upgradation scheme in which a scientist was approved by a duly constituted Assessment Board for promotion to the next higher scale, carries his own initial post upwards along with himself. The concepts of minimum bench mark, inter-se seniority or juniority are absent in this Scheme. Each scientist is evaluated on the basis of his own achievements during the residency period under evaluation which are demonstrable to his credit or higher level of technical merit. As such this is a performance linked promotion scheme. The element of inter-se competition between various scientists being screened and/or assessed in the same batch is absent since each scientist is evaluated on the basis of his individual merit and achievements separately. The screening is done by regularly constituted screening

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committee preceded the assessment and is done on the basis of ACRs etc. during the residency period spent by the scientist in the relevant grade, twice a year on 1st January and 1st July every year. The assessment is done on the basis of research accomplished, peer review wherever applicable and performance in an interview conducted by an assessment committee consisting of eminent experts in the relevant discipline. The emphasis is on building excellence in research work. The whole object, scope and purview has been elaborately and succinctly stated by the respondents in their counter-affidavit.

10. Formulation of a policy for promotion of the Government servant falls within the domain of State Policy and the Tribunal in exercise of its power of judicial review can interfere with it only if the Policy is found in contravention of any statutory provisions or rules or violative of any constitutional provision.

11. In the instant case the applicant is aggrieved that stricter norms for assessing the merit of a scientist for promotion to the next grade have been provided in the FCS, which came into operation from 9.11.1998 as compared to the norms which obtained in the previous Scheme. The applicant became eligible for consideration for promotion in 1999. He, obviously, will be covered by the new Scheme and not the old Scheme. One-time dispensation to the scientists working in the departments where the grade of Scientist 'E' did not exist prior to existence of FCS on 9.11.1998, was granted by the government vide letter dated 31.7.1999 (Annexure R-3) and of Principal Scientific Officers, now Scientists 'E' who were in position before 9.1.1998 and were earlier considered for promotion to pre-revised scale of Rs.5100-6300 from pre-revised Rs.3700-5000 would continue to be considered for promotion to the grade of Rs.16,400-20,000 after completing the eligibility service as prescribed in the rules that existed prior to the amendment. The criteria of marks was reduced from 90% to 85% vide letter dated 31.7.1999. Those eligible scientists were to be screened and/or evaluated by old norms. This relaxed criteria was applied to all the candidates without discrimination. It is not understood as to how the applicant could be aggrieved by this. The relaxation was granted to a well defined class and was uniformly applicable without any discrimination.

12. The applicant during the course of arguments tried to demonstrate that the formula for relative grading and grading on curve provided in the new scheme was not



only arbitrary but also not practicable. In the rejoinder he has also mentioned about it. But we failed to appreciate as to how it could cause any prejudice to the applicant. The formula adopted was the best possible to assess the merit of the Scientist and could not work discriminatory or prejudicial to the case of the applicant alone. All the private respondents who have been impleaded by the respondents, were assessed by adopting the same norms and formula by a duly constituted screening committee. It may be pertinent to remember that the FCS promotion scheme does not have any element of inter-se competition between the scientists who were screened or assessed in the same batch. Each scientist is evaluated on the basis of the individual merit and achievement etc. individually and separately. If same yardstick and norms are applied to all the scientists, how can it work as injustice to the applicant. The contention of the applicant that his assessment should be based on the norms and yardstick laid down in the old FCS guidelines which were in operation w.e.f. 9.11.1998, to our view, has no merit and has to be rejected.

13. It is now well settled that the government servant under Recruitment Rules has only right of consideration for promotion. He does not have the indefeasible right of promotion even if the order of the authorities is arbitrary. In this case the applicant has been considered twice by a duly constituted screening committee but has not been recommended. It will not be fair for him to condemn the whole administrative set up of the country for it as he has done during the course of his arguments.

14. We have carefully examined the FCS for in situ promotion which became operational since 9.11.1998. The applicant has challenged its validity. But scrutiny of the Scheme does not show that it is impracticable to implement or it is in contravention of any statutory provision or it violates the principle of equality enshrined in Article 14 and 16 of the Constitution. It is also not unfair, unjust, biased or mala fide. The applicants who subjected himself to the evaluation/assessment for promotion to higher scales under FCS 1998 cannot turn around and challenge its very validity when failed to get selected for promotion.

15. The respondents No.3 to 118 have been selected by a duly constituted screening committee. This Tribunal under its power of judicial review may review only the



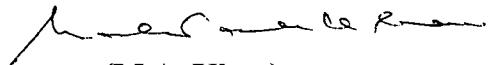
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procedure by which the decision is arrived at not the decision itself. It cannot sit over the decision of an expert/specialist body in the present proceedings.

16. We for all the reasons stated above do not find that the applicant can be granted any of the relief prayed for.

17. Having regard to the above discussion, we do not find any merit in the OA which is accordingly dismissed but without costs.


(S.K. Malhotra)
Member (A)


(M.A. Khan)
Vice Chairman (J)

Rakesh