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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 429 of 2004.
Cuttack, this the 21st day of March, 2006.

Dr. Rabindra Nath Pradhan Applicant.

VERSUS

Union of India & Ors. Respondents.

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters or not?

2. Whether it be circulated to all the Benches of CAT or not?


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

21/03/06

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8th day of

SUMMARY

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Mr. T.Rath

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4. State Coordinator, NIC (Orissa State Unit),
National Informatics Centre, A-Block,
CGO Complex, Lodhi Road, New Delhi-110003.
5. State Informatics Officer,
National Informatics Centre,
Orissa State Unit,
Unit IV, Sachivalaya Marg,
Bhubaneswar-751001(Orissa)
6. Dr.(Mrs.) M.Routray, Scientist-D,
District Coordinator Cum Reporting Officer,
National Informatics Centre,
Orissa State Unit,
Unit IV, Sachivalaya Marg,
Bhubaneswar-751001 (Orissa)

..... RESPONDENTS.

By legal practitioner:- Mr. S.B.Jena, Additional Standing Counsel
(Central).

ORDER

MR.M.R.MOHANTY, MEMBER(JUDICIAL):-

Applicant, Dr.Rabindra Nath Pradhan, joined as District Informatics Officer (Scientific Officer/Engineer-SB) on 08.09.1988 under National Informatics Centre in the pay scale of Rs.2000-3500/-. As per letter No.20(2)/91-P&V, dated 15.5.1992 of the Headquarters of the National Informatics Centre the Applicant was called upon (by the National Informatics Centre (Eastern Region), Bhubaneswar) to attend the review meeting (scheduled to be held at 10.00 A.M. of 15.06.1992 at the Regional Centre, Bhubaneswar) for promotion to the next higher grade, i.e.,

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Scientist/Engineer-SC (District Informatics Officer-SC/Systems Analyst) in the pay scale of Rs.2200-4000/-. It is his case that though he did fairly well in the review meeting, he was not granted promotion; whereas eight persons of the grade (including two of his juniors) were promoted to the next higher grade, vide order under Annexure-7 dated 15.7.1992 (Annexure-7). Being aggrieved, he made a representation to the Additional Secretary-cum-D.G. of National Informatics Centre at New Delhi, in which he mentioned about (a) his performances and achievements as District Informatics Officer of Mayurbhanj, and (b) the appraisals recorded by the Chairman of the N.I.C.District Co-ordination Committee, i.e., the District Magistrate and Collector, Mayurbhanj, who was supposed to assess the applicant's performances and achievements as per the policy guidelines issued by the National Informatics Centre. He also stated in the said representation that his performances at the review meeting, which were remarkably well, were not properly assessed by the Review Board. He, therefore, requested for reconsideration of his case for promotion to the said higher grade. The applicant had stated that he was communicated (with an office memorandum under Annexure-9 dated 25.9.1992) that his representation was rejected by the authority concluding that there was no justification to review the recommendation of the Review Board/committee. The applicant once again made a

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representation dated 19.10.1992 to the Director General of N.I.C. at New Delhi in consideration of which, a notification dated 21.05.1993 came to be issued by the National Informatics Centre promoting the Applicant to the grade of Scientist/Engineer-SC (DIO-SC/Systems Analyst) in the pay scale of Rs.2200-4000/- with effect from 01.01.1993. The Applicant has proceeded to state that, though eligible, he was not called to appear before the Review Promotion Board in 1996 for promotion to the next higher grade, i.e., Scientist/Engineer-SD and that he was only called to appear before the Review Promotion Board in 1997. According to the applicant, though he fared better than all other candidates, he was not granted promotion; whereas persons junior to him were promoted vide notification issued under Annexure-12 dated 01.01.1997 and however, he was granted promotion to the grade of Scientist/Engineer-SD in the pay scale of Rs.10,000-15,200/- only with effect from 01.01.1998 as is seen under Annexure 13.

1.1 As per the recommendation of the Fifth Central Pay Commission, a Flexible Complementing Scheme for Scientists, in various scientific departments, was introduced under Annexure 14 series. Under the Scheme, the Scientific and Technical Group 'A' posts in the National Informatics Centre were re-designated and

residency period to be put in by an incumbent in a grade, for promotion to the next higher grade, was provided as under:-

Original Designation for	Re-designation	Residency period promotion to next grade
(a) Scientist/Engineer-SC	Scientist-B	3 years
(b) Scientist/Engineer-SD	Scientist-C	4 years
(c) Scientist/Engineer-SE	Scientist-D	4 years
(d) Scientist/Engineer-SF	Scientist-E	5 years
(e) Scientist/Engineer-SG	Scientist-F	5 years
(g) Scientist/Engineer-SH	Scientist-G	

Thus, the Applicant was re-designated as Scientist-C from the earlier designation Scientist/Engineer-SD to which grade he was promoted with effect from 1.1.1998.

1.2 The applicant has stated that, in response to the call letter dated 10.12.2001, he had attended the interview on 22.12.2001, (through video conferencing at the Bhubaneswar office of N.I.C.) for promotion to the next higher grade, i.e., Scientist-D, but he was illegally denied promotion despite the fact that (a) his performances were satisfactorily at the interview and (b) "outstanding" remarks were there to his credit as recorded by the respective Collectors and District Magistrates under Annexures 15 series. Being aggrieved by his non-promotion, the Applicant made a representation under Annexure-17 dated 23.4.2003; which was rejected. Such rejection of his representation was communicated to

him by memorandum issued under Annexure-18 dated 07.05.2003. After rejection of his representation dated 23.04.2003, the Applicant once again made a representation on 09.06.2003.

1.3 The Applicant was thereafter called upon to appear at an interview (through video conferencing at NIC, Orissa State Unit, Bhubaneswar) on 20.11.2003 for his assessment (for promotion to the grade of Scientist-D) and this time also he was unsuccessful. The Applicant has alleged that he was not properly assessed by the Board and that he was superseded by his rank juniors. The notification dated 29.12.2003 publishing the panel of officers (promoted as Scientist-D) as a consequence of the interview dated 20.11.2003 is at Annexure-23.

1.4 The Applicant has submitted that his performances were not properly assessed by different Interview Boards and that he was illegally denied promotion when his juniors were given such promotion to the levels of Scientist-B and Scientist-C in 1992 and 1997 respectively and that he was given delayed promotion to the grade of Scientist-B with effect from 01.01.1993 and to the grade of Scientist-C with effect from 01.01.1998. His representations (against the denial of promotions, when his juniors were promoted) were illegally and arbitrarily rejected by the

authorities. He has submitted that he should be promoted to the said grades with effect from 1.1.1992 and 1.1.1995 respectively and that, accordingly, he was entitled to get promotion to the grades of Scientist-D with effect from 1999 and Scientist-E with effect from 2003.

1.5 In the backdrop of the above facts and submissions, the Applicant has approached this Tribunal (in the present Original Application) with the following prayers:-

“It is, therefore, prayed that this Hon’ble Tribunal may graciously be pleased to pass an order, directing the respondents to give promotion to the applicant to the grade of Scientist-D with effect from 01.01.1999 and to the grade of Scientist-E with effect from 01.01.2003 respectively and allow the applicant to continue as DIO (Scientist-E) at NIC, Balasore”

2. The Respondents, in their counter, without disputing the facts that the Applicant was initially appointed as Scientific Officer/Engineer-SB with effect from 08.09.1988 and was then promoted to the grade of Scientist/Engineer-SC with effect from 01.01.1993 and to the grade of Scientific Officer/Engineer-SD with effect from 01.01.1998, have strongly denied the allegations of non-consideration of the appraisals recorded by the concerned authorities and improper assessment by the respective Selection

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Committees when the applicant faced the interviews on 15.6.1992 for promotion to the grade of Scientist/Engineer-SC and, in 1997, for promotion to the grade of Scientist/Engineer-SD, in which he was declared unsuccessful. They have emphasized that the concept of seniority does not exist in the Scientific & Technical Promotion Policy; because it is performance/merit oriented and that the promotions can be effected even if no vacancy exists in the higher grades. They have, therefore, denied the allegation that in 1992 and 1997 the juniors of the Applicant were promoted to the grades of Scientist/Engineer-SC and Scientist/Engineer-SD respectively. They have stated that the Applicant was duly screened and called to the personal interview (scheduled on 22.12.2001) for promotion to the grade of Scientist-D and that he was found not suitable for promotion to the said grade. Refuting the claim of the Applicant for granting him promotion to the grade of Scientist/Engineer-SC (Scientist-B) w.e.f. 01.01.1992, Scientist/Engineer-SD (Scientist-C) w.e.f. 01.01.1995, Scientist-D w.e.f. 01.01.1999 and Scientist-E w.e.f. 1.1.2003, the Respondents have submitted that there has been inordinate delay in approaching this Tribunal for redressal of his grievance about his non-promotion to the grade of Scientist/Engineer-SC (Scientist-B) with effect from 01.01.1992 (instead of 1.1.1993) and to the grade of Scientist/Engineer-SD (Scientist C) with effect from 01.01.1995 (instead of

of

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01.01.1998). They have stated that the representation of the Applicant (against his non-promotion during 1992) was rejected under Annexure-9 dated 24.09.1992 and that he remained silent, when he was selected in 1997. He also did not agitate the matter about the delay, if any, in granting him promotion to Scientist-C with effect from 01.01.1998; which was ordered vide notification dated 1.1.1998 (Annexure 13). The Respondents have thus submitted that the claim of the Applicant (as raised in this Original Application, filed on 28.05.2004) for giving effect to his promotion to the grades of Scientist B and C from 01.01.1992 and 01.01.1995 respectively is hopelessly barred by limitation and is, thus, untenable. So far the prayer of the Applicant (for a direction to the Respondents to give him promotion to the grades of Scientist-D with effect from 01.01.1999 and to the grade of Scientist-E with effect from 01.01.2003) the Respondents have submitted that the Applicant's said claim is baseless and does not merit consideration.

3. The applicant has filed a rejoinder to the above said counter and has reiterated the same averments as in the Original Application.

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4. We have heard Shri Ashok Mohanty, the learned counsel appearing for the applicant and Shri S.B.Jena, the learned Additional Standing Counsel appearing for the Respondents.

5. From the aforesaid admitted facts of the case and the contentions advanced by both the parties (the Applicant as well as the Respondent-Organization), the following points arise for our consideration:

- (1) Whether in this Original Application of the year 2004 the Applicant can agitate his grievance about his non-promotion of the years 1992 and 1997 (to the grades of Scientist/Engineer-SC and Scientist/Engineer SD (Scientist C) respectively) and about his delayed promotions (to the said grades) w.e.f. 1.1.1993 and 1.1.1998 respectively ?
- (2) Whether the Review Board/Selection Board, which met in 1992 and 1997, improperly and unfairly assessed the Applicant and acted illegally in not recommending him for promotion; while finding some of the persons/juniors to the applicant suitable for promotion to the aforesaid two grades ?
- (3) Whether the Screening Committee, which met on 20.11.2003, failed to fairly assess the performances of the Applicant for promotion to the grade of Scientist-

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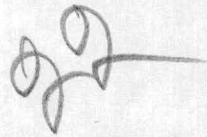
D and acted illegally in selecting persons junior to the Applicant for such promotion ? and

- (4) Whether the Applicant is entitled to get promotion to the grade of Scientist-D w.e.f. 01.01.1999 and to the grade of Scientist-E w.e.f. 01.01.2003 ?

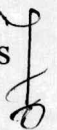
6. The basic objectives of the Flexible Complementing Scheme are to recognize the outstanding work done by the Scientific and Technical personnel of the Respondent-organization in the area of Information Technology, subject such work to objective evaluation by experts in the area, and to provide for reasonable opportunity for professional advancement to such Scientific and Technical personnel in the organization who merit recognition on a competitive basis without creating any additional posts, by the existing persons on the basis of critical assessment, to the next higher level and the position would be held by such incumbents as personal to them, no resulting vacancy is required to be filled and no new posts are required to be created.

7. It is the admitted case of the Applicant that during 1992 and 1997 he had appeared for interview before the Review Board for promotion to the grades of Scientist/Engineer SC (Scientist B) and Scientist/Engineer-SD (Scientist C), but he was not selected and persons junior to him were selected and promoted





to the said grades. He had made representation to the appropriate authority against his non-selection for promotion to the grade of Scientist /Engineer-SC (Scientist B) and supersession by his juniors and that his representation was rejected by Annexure 8 dated 24.9.1992. After rejection of his representation (by Annexure-8 dated 24.9.1992), the Applicant did not agitate the matter any further nor approached any court of law within the prescribed period. As regards his non-selection for promotion to the grade of Scientist/Engineer-SC (Scientist C) during 1997, his representation was duly considered and he was given promotion to the said grade with effect from 1.1.1998. Here also he did not ventilate his grievance in any Court of law. It is only in this O.A. (filed in the year 2004) the Applicant has tried to agitate the said matter while claiming promotion to the next higher grades of Scientist-D and Scientist-E. The Applicant cannot, therefore, be allowed to agitate the said matter at this belated stage, as rightly pointed out by the Respondents. In view of this, the claim of the Applicant for promotion to the grades of Scientist B and Scientist C hopelessly barred by limitation, the question as to whether the Review/Selection Board improperly and unfairly assessed his performance cannot be gone into in the present O.A. That apart, the Applicant has failed to place any material before us to show bias (of the members/experts in the said Board) against him. In this



view of the matter, we are not inclined to entertain any sort of grievance of the Applicant with respect to his non-selection for promotion and/or delayed promotion to the grades of Scientist B and Scientist C. We also do not find any irregularity in the orders granting him promotion to the grades of Scientist B and C with effect from 01.01.1993 and 01.01.1998 respectively.

8. The Applicant was promoted to the grade of Scientist-C with effect from 01.01.1998. As per the Flexible Complementing Scheme he was required to remain in that grade for four years to be eligible to be considered for promotion to the grade of Scientist D. He became eligible to be considered for promotion to the grade of Scientist D in December 2001. He has stated that he was called to attend the interview for promotion on 22.12.2001 through video conferencing at the NIC of Orissa State Unit at Bhubaneswar; but he was not selected. Being aggrieved, he made representations on 23.04.2003 (Annexure-17) and on 09.06.2003 (Annexure 19) which were turned down by the departmental authorities vide memo dated 07.05.2003 (Annexure 18) and dated 25.06.2003 (Annexure 20). The Applicant was once again called vide call letter dated 07.11.2003 (Annexure 22) to attend interview held on 20.11.2003 for consideration for promotion to the said grade of Scientist-D. The said interview was also conducted through video conferencing. The Applicant was also found not suitable for

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promotion to the said grade; while, according to him, persons junior to him were promoted to the said higher grade. In the representations against his non-promotion to the grade of Scientist D, the Applicant had alleged that the interview of 100 candidates was hastily conducted through video conferencing which took only four hours, that his outstanding activities as reflected in the Self Appraisal Reports were not considered by the Selection Committee, and that more than 15% marks were allocated to viva voice.

9. We have perused the records. Except making the bald statement that 100 candidates were interviewed only in four hours, the Applicant has failed to establish as to how he has been thereby prejudiced in the matter of assessment of his performance in the interview. The experts on the Selection Board have assessed the Annual Confidential Reports and the performances of the Applicant recorded therein and the performance in the interview. It is not for the Court/Tribunal to sit in appeal over the assessment made by the Selection Board consisting experts, nor is there any scope for it to interfere with such assessment; unless the assessment made by the Selection Board is prima facie found to have been tainted with mala fide and bias and some records have been left out of consideration, which is not the case of the applicant in the instant O.A. As discussed earlier, the concept of

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seniority does not exist in the Scientific & Technical Promotion Policy under Flexible Complementing Scheme; because it is performance/merit oriented and the promotions can be effected even if no vacancy exists in the higher grades.

10. So far as the applicant's allegation that more than 15% marks have been allocated in respect of interview is concerned, we find that the Scientific & Technical personnel are required to perform very well in their Personal Interview also and have to secure minimum percentage of marks in the interview as prescribed in the guidelines of Department of Personnel & Training (Annexure R/4). In view of this, the contention of the applicant regarding allocation of more than 15% marks for interview holds no water.

11. As regards the applicant's claim to get promotion to the grade of Scientist E, we find that a person is required to put in the prescribed residency period of four years in the grade of Scientist D in order to become eligible for consideration for promotion to the grade of Scientist E. The applicant having not yet been promoted to the grade of Scientist D, his aspiration to be promoted as Scientist E with effect from 1.1.2003 is a hope against hope.

12. In consideration of all the above, we hold that the applicant has not been able to make out a case for his promotion to the grade of Scientist D with effect from 1.1.1999 and Scientist E

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with effect from 1.1.2003. In the circumstances, the O.A. fails and
is rejected. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER(JUDICIAL)

21/03/06