

**Central Administrative Tribunal
Ernakulam Bench**

OA No.55/2010

Ernakulam, this the 26th day of August 2011

CORAM

Hon'ble Mr.Justice P.R.Raman, Judicial Member

Hon'ble Mr.K.George Joseph, Administrative Member

Anitha Shyam

"C" Grade Scientist, Regional Office

Central Ground Water Board

Kesavadasapuram

Thiruvananthapuram.

Applicant

(By Advocate: Sh.T.P.Deyananthan)

Versus

1. Union of India rep. by
Secretary to the Govt. of India
Ministry of Water Resources
New Delhi.
2. The Chairman
Central Ground Water Board
NH IV, Faridabad-121001
Haryana.
3. The Director of Administration
Central Ground Water Board
NH IV, Faridabad-121001
Haryana.
4. The Regional Director
Central Ground Water Board
Kerala Region
Kesavadasapuram
Thiruvananthapuram.

Respondents

(By Advocate: Sh. George Joseph, ACGSC)

The Original Application having been heard on 12.08.2011. this
Tribunal on 26/08/2011 delivered the following :

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ORDER

By Hon'ble Mr.K.George Joseph, Member (A)

The applicant in this OA is working as C-Grade Hydrogeologist in the Central Ground Water Board under the Ministry of Water Resources in the pay scale of Rs.10,000-15200/- since 05.03.08. As per the existing norms in the Central Ground Water Board, she was eligible for in-situ promotion under the Flexible Complementing Scheme to C-Grade Hydrogeologist on 01.01.2001 and to D-Grade Hydrogeologist on 01.01.2006, the residency period in B & C Grades being 5 years. Though the selection process was over in 2003, the in-situ promotion to Scientist C-Grade was effected for the applicant w.e.f. 04.03.2008 only. Hence this OA has been filed for the following reliefs:-

- (i) Direct the 2nd respondent to modify Annexure A5 order in compliance with Annexure A4 order of the 1st respondent with back arrears to the applicant for her in situ promotion since 01.01.01 and to take steps to grant D grade promotion from 2006 assessment year due from 1.1.06.
- (ii) Declare that the applicant is entitled to C grade and D grade scientist promotions in accordance with the regulations of the in situ promotions under the FC scheme with effect from the approved assessment year 2001 with all benefits attendant thereto.
- (iii) Award costs of and incidental to this application;
and
- (iv) grant such other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. The applicant submitted that she was entitled to be granted in-situ promotion to C-Grade as Hydrogeologist in the scale of Rs.10,000-15,000/- w.e.f. 01.01.2001. After the residency period of 5 years, she was further entitled to be promoted to in-situ as D-Grade Scientist in the pay scale of Rs.12,000-16,500/- w.e.f. 01.01.2006. She is denied promotions in the C-Grade for 5 years and in D-Grade for 3 years. In-situ promotion under the Flexible Complementing Scheme was denied to the applicant without any reason. The right to promotion can be withheld or kept in abeyance only in terms of valid rules as held by the Hon'ble Supreme Court in Coal India Ltd Vs. Saroj Kumar Mishra, reported in AIR 2007 SC 1706 Para 11. The promotion of the applicant was kept in abeyance from 2001 to 2008 without the backing

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of any rules and contrary to the rules of in-situ promotion under the Flexible Complementing Scheme. 128 persons have been granted in-situ and ad-hoc promotions to the grade of Scientist-B with retrospective effect from 1986 onwards as per office order No.379 of 2010 dated 04.05.2010 (Annexure-11) of the 3rd respondent. In the above facts and circumstances, the applicant claims that she is entitled to in-situ promotion under the Flexible Complementing Scheme due from 01.01.2001 as C-Grade Scientist and from 01.01.2006 as D-Grade Scientist.

3. The sum & substance of the contentions of the respondents in the reply statement is that the promotion of the applicant to the grade of Scientist-C could not be ante-dated because of the instructions issued by DoPT vide O.M.No.AB-14017/32/2002-Estt.(RR) dated 17.07.2002, in which it is clearly stated that even in in-situ promotions under the Flexible Complementing Scheme, promotions are made effective from a prospective date after the competent authority has approved the same and, therefore, in-situ promotions cannot be ante-dated. It was further submitted that 12 officers were granted promotions as Scientist-B with retrospective effect only on the basis of the decision of the Hon'ble High Court as well as Hon'ble Supreme Court. The proposal of the Central Ground Water Board for ante-dating the promotion under Flexible Complementing Scheme from the date of eligibility for such promotion with all consequential benefits was turned down by the Ministry vide their letter dated 17.07.2002.

4. We have heard Sh.T.P.Deyanathan, learned counsel for the applicant and Sh.George Joseph, learned ACGSC appearing for the respondents and perused the record.

5. The fact that the applicant is eligible for in-situ promotion to "C-Grade" w.e.f. 01.01.2001 under the Flexible Complementing Scheme is not disputed. It is the office memo No.AB-14017/32/2002-Estt.(RR) dated 17.07.2002 that has denied the claim of the applicant for in-situ

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promotion to Scientist C-Grade as on the date of eligibility. The said letter is extracted as under:-

“No.AB-14017/32/2002-Est(RR)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

New Delhi-110001
July 17, 2002

OFFICE MEMORANDUM

Subject:- Flexible Complementing Scheme for scientists in Scientific and Technological Departments-Date of effect of promotions.

The recommendations made by the Fifth Central Pay Commission for modifying the Flexible Complementing Scheme (FCS) in operation in scientific and technological departments for in situ promotion of scientific/technical personnel with a view to removing the shortcomings/inadequacies in the scheme had been examined some time back and this Department in O.M. No.2/41/97-PIC dated 9.11.1998 had issued detailed guidelines modifying the then existing FCS. From a number of references received in this Department, it appears that an element of confusion exists in some scientific departments on the date from which in situ promotions under FCS are to be given effect. 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.

2. As a matter of fact, no occasion requiring application of promotion with retrospective effect should arise in FCS cases, as it is provided in the rules for scientific posts that the Assessment Boards shall meet at least once a year to consider cases of in situ promotions. Rules notified for scientific posts also contain a provision for review of promotion by the Selection Committee/Assessment Board twice a year – before 1st January and 1st July of every year – and the Selection Committee/Assessment Board is required to make its recommendation on promotions keeping in view these crucial dates of 1st January and 1st July. The competent authority, which has to take a final view bases on these recommendations, shall ensure that no promotion is granted with retrospective effect.

Hindi version will follow.

(ALOK SAXENA)
Deputy Secretary to the Government of India”

6. It is made clear that the general principle of prospective effect of promotion is applicable in cases of in-situ promotions under the Flexible Complimentary Scheme. It also makes a reference to the rule which contained a provision for review of promotion by the Selection Committee/Assessment Board twice a year - before 1st January and 1st July every year and the Selection Committee/Assessment Board is required to make its recommendations on promotions keeping in view the crucial dates of 1st January and 1st July. In the instant case, the issue of promotion order was delayed owing to court cases. In the proposal made by the Central Ground Water Board dated 15th Sept. 2009, it was pointed out that as a matter of fact, no occasion requiring application

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of promotion with retrospective effect should arise in Flexible Complimentary Scheme cases as it is provided in the rules for Scientific posts that the Assessment Boards shall meet at least once a year to consider cases of in-situ promotions. A co-ordinate Bench of this Tribunal at Cuttack in its order dated 2nd Sept. 2008 observed that "the guidelines laid down by the DoPT as mentioned above can be held valid only in ideal situations where all the parameters contained in the circular have been adhered to. In an ideal situation, the contingency which has arisen now would not have arisen. The hiatus between ideal and real needs to be appreciated by the authorities tasked with the implementation of policy/procedures". It was further stated by the Central Ground Water Board that it had been the uniform practice of the Ministry of Water Resources and the DoPT that the candidates found eligible for the in-situ promotions under the Flexible Complimentary Scheme are promoted to the next higher grade from the date on which they became eligible. The orders issued by the Ministry of Water Resources in respect of similarly situated Scientists of Central Ground Water Board and in respect of Ministry of Science & Technology, in similar cases even in the year 2003 clearly show that the promotions are always made effective from the date they became eligible for the in-situ promotion under the Flexible Complimentary Scheme and not from the date on which the orders are issued for such promotion. If the recommendations of the Assessment Board of UPSC had been acted upon at the relevant time and orders issued accordingly, the applicant would have been promoted with effect from the date of her eligibility. The promotion being in situ, i.e. on as is basis, against the very same post which the applicant was holding on a personal upgradation basis, there was absolutely no question of it being effective from the date of assumption of charge of the higher post. However, this was not agreed to by the DoPT with the remark that "the proposal for giving retrospective promotion is against the general policy of the Government. If the logic brought out by the Ministry is accepted, bulk of the promotions will have to be given

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retrospective effect. Acceptance of the same would result in a chain effect giving the retrospective benefit in every subsequent cases of promotion under FCS."

7. While that part of the rules which insists on timely promotion under FCS is not adhered to, executive instructions are issued violating the rules, which grant in situ promotions, on completion of the residency period in the feeder cadre, other conditions being fulfilled. As held by the Apex Court in **Coal India Ltd vs. Saroj Kumar Mishra (supra)**, the right to promotion can be withheld or kept in abeyance only in terms of valid rules. In the instant case, the executive instructions are not in conformity with the regulations of in situ promotion under the Flexible Complementing Scheme at Annexure-2 and the residency period as at Annexure-2(a). As observed by Hon'ble Supreme Court in (2009) 12 SCC 49 Para 8, executive instructions cannot override the rules. In the light of the above, Annexure-4 and Annexure-5 orders are not tenable in the eyes of law as they are not in consonance with the Flexible Complementing Scheme. Therefore, in our considered opinion, they have to be modified and the OA is liable to succeed.

8. Accordingly it is ordered as under:-

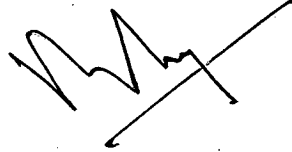
It is declared that the applicant is entitled to promotion as C-Grade Scientist in accordance with the regulations of the in situ promotion under the Flexible Complementing Scheme with effect from the approved assessment year 2001 with all attendant benefits. The respondents are directed to modify Annexure-4 & Annexure-5 orders granting the applicant in situ promotion to C-Grade with effect from 01.01.2001 with arrears of pay and allowances and to consider granting her D-Grade promotion with effect from 01.01.2006 as per the rules and regulations within a period of two months from the date of receipt of a copy of this order.



9. The Original Application is disposed of as above with no order as to costs.



(K. George Joseph)
Administrative Member



(Justice P.R. Raman)
Judicial Member

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