

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A. NO.620/2008

Dated this the 7th day of April, 2010

C O R A M

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Kumari Thara Bai Thankachi w/o K. Krishnakumar
District Informatics Officer (SSA)
National Informatics Centre
District Centre, Thiruvananthapuram
residing at TC 11/2494, Krishna Vihar,
Nalanchira Thiruvananthapuram-15

..Applicant

By Advocate Ms A.K Preetha

Vs

- 1 Union of India represented by the Secretary
Ministry of Communications & Information Technology
Department of Information Technology
National Informatics Centre
New Delhi.
- 2 The Director General
Ministry of Communications and Information Technology
Department of Information Technology
National Informatics Centre
New Delhi.
- 3 The Deputy Director(Personnel)
Ministry of Communications and Information Technology
Department of Information Technology
National Informatics Centre
New Delhi.

Respondents

By Advocate Mr. P.A. Aziz, ACGSC.

The Application having been heard on 10.3.2010 the Tribunal delivered the following:

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is presently working as the District Informatic Officer, the National Informatics Centre, Thiruvananthapuram. She commenced service as a Scientific Officer/Engineer-SB on 30.9.1988, promoted as Scientist -B on 1.1.92, Scientist-C on 1.1.1997 and continuing in the same post for the last 11 years as such. The next promotion post to which she can aspire is Scientist-D. The grievance of the applicant is that though she was promoted to Scientist-C as early as on 1.1.1997, even after 2001 she was not called for review. She submitted a representation (A-1) without any response. From 11.9.96, she was working directly under the State Informatics Officer. She was shifted from one group to another, on 3.4.2001 she was under one Shri Peter Francis, who was in the same grade as that of the applicant when they started their career. While working in different groups, the applicant had been assigned to various projects, she carried out her duties without any room for complaint. But from 1997 to 2005, she was not granted promotion, not even called for review, even though she was called for review from 2005 onwards, she was not granted promotion whereas a few of her juniors were promoted. Aggrieved, she filed this O.A seeking to quash A-3 and A-6, for a direction to promote her to Scientist-D forthwith, to consider A-2 and A-5 representations in accordance with law and pass appropriate orders on the grounds of which she should have been promoted to Scientist-D as early as in 2000, but was not called for review even., she has commendable service record



to her credit, has executed many prestigious assignments successfully, she has been attending interview regularly from 2005, many juniors were promoted, was required to get a minimum of 60% in the interview, having 11 years in the cadre without any adverse remarks and that no reason has been given in Annexure A-3 for not promoting her.

2 The respondents filed reply statement opposing the the O.A. They submitted that the promotion of the S&T officers is governed by the Flexible Complementing Scheme (FCS) which is merit oriented. The assessment will consist of two stages (i) screening on the basis of performance reflected in the ACRs and (ii) interview. They submitted that the minimum length of service in a grade confers only eligibility for being considered for calling for personal interview and it does not confer any right for promotion. The concept of seniority etc. does not exist in the S&T promotion policy under FCS but they admitted that promotion can be effected even if no vacancy exists in the higher grades. The performance of the applicant in the present grade was evaluated by a duly constituted Screening Committee based on the grading given in her ACRs, for promotion to the next higher grade for the years 2002, 2003, 2004, 2005, 2006, 2007 and 2008. However, she could not meet the minimum prescribed criteria for calling her for the interview. In the years 2006, 2007 and 2008 she was called for interview, however she could not secure the minimum 60% in the interview.

3 Heard learned counsel for the parties and perused the records produced before us.



4 The learned counsel for the applicant argued that the applicant has 11 years meritorious service in the grade to her credit, she has executed many prestigious assignments successfully, from 2006 onwards she is regularly attending interview, from 2005 onwards she is regularly called for interview, that she does not have any adverse remarks in her ACRs. However, she is not promoted to the next Grade of Scientist-D. The learned counsel for the applicant argued that Flexible Complementing Scheme is being modified on the basis of the judgment of the Orissa High Court in WP(C) No. 7080/2005 Dr (Mrs) Manjurai Routray Vs. Union of India and Ors. and and requested to call for the draft scheme as available with the respondents.

5 The learned counsel for the respondents on the other hand, argued that promotion in the NIC is merit oriented and governed by guidelines of the DOPT, and that those who get the minimum percentage of marks in the ACRS will be called for interview and those who get 60% in the interview alone is granted promotion. The counsel further submitted that the applicant cannot herself judge that she has performed well in the interview.

6 The rules and regulations regarding promotion under Flexible Complementing Scheme applicable to Scientific and Technical Group-A posts in the Department of Science and Technology etc. are issued by DOPT Department of Personnel & Training in its notification dated 9th November, 1998. The Ministry of Information Technology notified the scheme of DOPT for in situ promotion under Flexible Complementing Scheme Rules, 1998 vide OM dated 6.8.2001. The assessment norms for promotion under the Scheme should be rigorous with due emphasis on



evaluation of scientific and technical knowledge, so that only the Scientists who have to their credit demonstrable achievements or high level of technical merit are recommended. The minimum residency period linked to performance for in situ promotion to the next higher grade and the uniform designations of the scientific and technical posts covered under the scheme are as given in the table below:

Designation	Scale of pay	Minimum residency period linked to performance
Scientist-B	Rs. 8000- 275-13500	3 years
Scientist-C	Rs. 10000-325-15200	4 years
Scientist-D	Rs. 12000-375-16500	4 years
Scientist-E	Rs. 14300-400-18300	5 years
Scientist-F	Rs. 16400-450-20000	5 years
Scientist-G	Rs. 18400-500-22400	-

7 The revised assessment procedure prescribed by DOPT is as follows:

(a) All the officers will be first screened on the basis of gradings in the Annual Confidential Reports for consideration for promotion, the ACRs shall be assessed on a 10 point scale giving 10 marks for "outstanding", 8 marks for "very good" 6 marks for "good" 4 marks for "average" and 0 for "poor" and only those officers who satisfy the minimum residency period linked to their performance as indicated in the table below be screened in:



Number of years in the grade
(residency period)

	3	4	5	6	7	8
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Maximum per centage for eligibility

<i>Scientist- B to C</i>	85.00%	80.00%	70.00%	65.00%	60.00%	-
Scientist <i>C to D</i>	-	85.00%	80.00%	75.00%	70.00%	60.00%
<i>Scientist D to E</i>	-	85.00%	80.00%	75.00%	70.00%	60.00%
Scientist <i>E to F</i>	-	-	85.00%	80.00%	75.00%	70.00%
Scientist <i>F to G</i>	-	-	85.00%	80.00%	75.00%	70.00%

Exceptionally meritorious candidates with all outstanding gradings may be granted relaxation in the residency period, the relaxation being not more than one year on any single occasion. Such a relaxation will be limited to a maximum of two occasions in their entire career.

(b) As the procedure adopted for assessment of CRs in various Scientific Departments differ at present, it has been decided that an external member, from Departments of Atomic Energy, Space or DRDO who have developed over the years a fine tuned system of screening in meritorious Scientists may be co-opted in the selection process, till such time a system gets established in other Scientific Departments. The position will, however, be reviewed after 5 years from the date of issue of this Office Memorandum.

© All Officers who are screened in will be called for an interview. The performance in the interview will also be graded similarly on a 10 point scale and the eligibility for promotion will be based on the same norms as in the above table.

(d) Field experience in research and development and/or experience in implementation of such scientific

projects is compulsory for promotion of scientists recruited to the posts in the Secretariat of the Scientific Ministries / Departments to higher grades under FCS. Field experience of at least 2 years and 5 years respectively will be essential for promotion to Scientist F and Scientist G grades respectively. However, during transitional period, Committee may relax this requirement in case of meritorious candidate.

The Ministry of Information Technology further clarified that vide OM dated 6.8.2001 the minimum standard of 60% or 70% cannot be further relaxed even if a Scientist has put in more than 7/8 years of residency period.

From the above, it is clear that the Scientists who have got the minimum residency period and the minimum per centage fixed for eligibility can only be called for interview and granted promotion. Even if a Scientist has put in more than 7/8 years of residency period, the minimum standard cannot be further relaxed. Therefore, the applicant has to obtain the minimum prescribed percentage to make her eligible for personal interview or whenever she was called for interview she should obtain the minimum of 60% marks in the interview. According to the respondents, the applicant could not obtain the minimum prescribed marks in the interview by the Selection Committee. Therefore, she was not granted promotion. The promotion is awarded strictly following the scheme enunciated by the DOPT and that seniority in the lower grade is not a criterion for promotion.

8 The respondents have produced the Annual Confidential Report folder containing the ACRs of the applicant for the years 2006 to 2008 and assessment/tabulation made for the years 2005 and 2006. We



have gone thorough the documents produced.

9 A perusal of the noting in the file dealing with promotion of Scientist-C to Scientist-D, it is seen that the Screening Committee, evaluated the ACRs for the period from 2002 to 2005 and screened in 92 officers for personal interview. The Review Committee recommended 58 officers for promotion and took the approval of the Hon'ble Minister C & IT for the promotion effected in the year 2006. As far as Kerala State is concerned, only 3 Scientists qualified for personal interview including the applicant and only one Scientist with the longest residency period, more than the applicant, was selected. The applicant got 50% marks in the interview. In the following year in 2006, 40 Officers were screened in after evaluating ACRs for the years from 2003 to 2006 and 23 were recommended for promotion, which was accepted by the Hn'ble Minister. In respect of Kerala two officers were screened in and the one with higher per centage in both ACR evaluation and interview was selected. The applicant failed to get the minimum 60% in the interview.

We further notice that the applicant has not been consistently graded high and that, she has not been informed about the lower grading.

10 The applicant has relied on the judgment of the High Court of Orissa dated 26.9.2008 in WP(C)NO.7080/2005 Dr.(Mrs). Manjurani Routray Vs.Union of India and Others. In that case, the applicant therein who was working as Principal System Analyst (Scientist-D) under the same Department as the applicant in the present O.A.,



aspiring for promotion to Scientist-E, challenged her non-promotion on the ground that the promotion was considered solely on the basis of performance in the interview and the ACRs were not taken into consideration at all. In that case, the High Court declared that Rule 4 (b) of the Ministry of Information Technology (In situ Promotion under Flexible Complementing Scheme) Rules, 1998 to be invalid in law and fixation of the basis of per centage in interview to be excessive and beyond the limits prescribed by the Hon'ble Apex Court in the case of Ashok Kumar Yadav and Others Vs. State of Haryana and Others(1985 (3) SLR (SC) 2900). The High Court further directed the Union of India to carry out necessary amendments to make it in consonance with the dictum laid down by the Apex Court. The Union of India has taken up the matter before the Apex Court in its various pronouncements. by SLP © No. 7100of 2009 which is listed for hearing.

11 In this view of the matter, we are of the considered view that the judgment of the High Court of Orissa supra is applicable to the case of the applicant. We therefore follow the judgment of High Court of Orissa in Dr.(Mrs). Manjurani Routray Vs. Union of India and Others. and direct the Union of India to carry out necessary amendments in order to make it in consonance with the dictum laid down by the Apex Court in Ashok Kumar Yadav(supra). However, it is brought to our notice that the Union of India has taken up the matter before the Apex Court in SLP and the same is pending disposal. In that view of the matter, we dispose of the Application with the following directions:



(i) The overall grading if below Benchmark in her ACRs, along with adverse remarks, if any, shall be communicated to her and she will be given an opportunity to represent against the same, thereafter the respondents shall take a decision on her representation and communicate her the decision.

(ii) direct the respondents to review the case of the applicant within three months from the date of the judgment of the Apex Court in Union of India & Ors Vs. Manjurani Routray & Anr. (SLP 7100 of 2009).

Dated 7th April, 2010



K. NOORJEHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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