

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 329/12**

*Wednesday* this the *30<sup>th</sup>* day of September, 2015

**CORAM:**

**Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member**  
**Hon'ble Mrs.P. Gopinath, Administrative Member**

Kumari Thara Bai Thankachi  
Wife of K.Krishnakumar  
District Informatics Officer (SSA)  
National Informatics Centre  
District Centre  
Thiruvananthapuram  
Kerala residing at T.C 11/2494,  
Krishna Vihar, Nalanchira  
Thiruvananthapuram - 15

..... **Applicant**

**(By Advocate – Mrs.A.K.Preetha)**

**V e r s u s**

1. Union of India  
Represented by Secretary  
Ministry of Communications and 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 (Personal)  
Ministry of Communications and Information Technology  
Department of Information Technology  
National Informatics Centre  
New Delhi

..... **Respondents**

**(By Advocate – Mr.Thomas Mathew Nellimoottil (R1-3))**



This Original Application having been heard on 08.09.2015, the Tribunal on the 30.9.2015 delivered the following:

**ORDER**

**Hon'ble Ms.P.Gopinath, Administrative Member -**

The applicant is working as the District Informatics Officer, Thiruvananthapuram at the National Informatics Centre. Applicant had commenced her service as Scientific Officer/Engineer "SB" on 30.09.1988. Thereafter she was promoted as Scientist B on 01.01.1992 and was further promoted as Scientist C on 01.01.1997 and is continuing as Scientist C. The next promotion post to which the applicant can aspire is to the post of Scientist D. The applicant had been stagnating in the post of Scientist C for the past 11 years. Aggrieved thereby, the applicant had represented to the 2<sup>nd</sup> respondents and thereupon Applicant was served with Annexure A-2 reply stating that she was denied promotion as she could not obtain the minimum prescribed marks in the interview of the Screening Committee. Aggrieved thereby, the applicant had preferred O.A 620/2008 before this Honourable Tribunal. Vide Annexure A-5 judgment, the said O.A was disposed of inter alia with a direction to the respondents that if the overall grading is 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.

Thereupon, the Applicants issued Annexure A-6 Office memorandum and the applicant has submitted Annexure A-7 reply to the same. As no action was been taken on the same, the applicant approached this Honourable Tribunal in O.A 180/2011 inter alia seeking a direction to the respondents to consider and pass orders on Annexure A-7 representation. By judgment dated 07.03.2011, the Honourable Tribunal disposed of the Original Application with a direction to



the 2<sup>nd</sup> respondent to consider and pass orders on Annexure A-8 and communicate the decision within a period of 3 months from the date of receipt of a copy of the judgment, thereon. Pursuant to Annexure A-9 order of this Honourable, the 2<sup>nd</sup> respondent passed an order (Annexure A-10) upholding the overall grading awarded to the applicant and refusing to expunge the remarks in the Confidential Records of the applicant. Aggrieved by Annexure A-10, this Original Application is preferred.

2 Respondents submit in their reply statement that Kumari Tharabai Thankachi was initially appointed as Scientific Officer/Engineer-SB w.e.f 30<sup>th</sup> September 1988. They state that the concept of seniority etc. does not exist in the Flexible Complementing Scheme because it is performance/merit oriented promotion and can be effected without vacancy in the higher grades. The applicant was promoted to the post of Scientist C w.e.f 01.01.1998 and not on 01.01.1997 as stated by the applicant. It is also pointed out that officials in the grade of Scientist-C, having rendered minimum 4 years regular service as on 1<sup>st</sup> January of the year shall become eligible only for consideration subject to recommendation of the Screening Committee. The applicant became eligible for consideration for the post of Scientist-D in the pay scale of Rs.12000-375-16500 (pre-revised) on 01.01.2002. The particulars of the applicant were placed before the duly constituted Screening Committee. The performance of the applicant in the present grade as reflected in her Annual Confidential Reports were evaluated by the duly constituted Screening Committee for promotion to the next higher grade for the years 2002, 2003, 2004, 2005, 2006, 2007 and 2008. However, the applicant could not meet the minimum prescribed criteria fixed for calling the officer for the personal interview i.e. 85%, 80%, 75% and 70% for the years 2002, 2003, 2004 and 2005 respectively. In the remaining years i.e., 2006, 2007 and 2008 on the basis of the recommendations of the duly constituted Screening Committee, the applicant was called for interview.



However, the applicant could not secure the minimum prescribed marks i.e. 60% in the interview. Therefore, the Committee did not find her fit for promotion to the post of Scientist-D. The promotion is merit and performance oriented and the performance of the officer in the lower grade during the residency period will alone count for promotion. The applicant cannot herself judge that she has done her best in the interview. There is a duly constituted review committee which interviews all the officers who are recommended by the screening committee. The applicant was replied with facts as to why she was not promoted to the grade of Scientist-D as per Annexure A3 Office Memorandum No.20(14)/2007-Pers. Dated 11.02.2008. The applicant in para IV (8), (9) and (10) of the earlier O.A No.620/2008 filed by her, has already mentioned the procedure of Flexible Complementing Scheme which govern the promotion of S&T. This reveals that the applicant was already aware of Flexible Complementing Scheme which governs her promotion. Regarding Grounds V (B) and © of the Original Application, respondent submits that the Reviewing Officer has given justification for downgrading the grade, for the period 1998 to 2009. The applicant had two Reviewing Officer, namely Shri.K.Santhana Raman and Shri.V.S.Raghunathan. Shri.K.Santhana Raman was Reviewing Officer of applicant for the years 1998 to March 2003 and Shri.V.S.Raghunathan was the Reviewing Officer for the years 2003 to 2008. Rule 6(3) of the All India Service (Confidential Rolls) rules, 1970 provides that "It shall not be competent for the Reviewing Authority, or the accepting authority, as the case may be, to review any such confidential report unless it has seen the performance of the member of the service for at least three months during the period for which the report has been written, and in every such case, entry to that effect shall be made in the confidential report. " Therefore, both the reviewing officers have made the relevant entries in the confidential report after seeing the performance of the applicant at least for a period of three months. Regarding Ground V (D) of the O.A it is submitted that as per the direction of this Hon'ble Court in Annexure A-9 order dated



07.03.2011 in O.A No.180/2011, the representations dated 23.06.2010 of the applicant regarding expunge of adverse remarks in the ACRs was examined carefully by the competent authority and was disposed of as per Office Memorandum No.18(08)/2011-Pers. Dated 16.06.2011.

It is submitted by respondents that based on the direction of the Hon'ble Supreme Court of India in the matter of *Dev Dutt v. Union of India* (SLP No.7631 of 2002), the Department of Personnel & Training has issued guidelines vide Office Memorandum No.21011/1/2005-Estt. (A) (Pt.II) dated 14<sup>th</sup> May 2009. Since, the judgement was delivered on 12<sup>th</sup> May 2008 it may not be appropriate for the applicant to expect the respondents to communicate the grading as done in the ACR based on her performance. Prior to this order there was no provision to communicate the grading below bench mark to the applicant. The applicant was considered for promotion to the post of Scientist -D as per the procedures and guidelines of Flexible Complementing Scheme (FCS) issued by Department of Personnel and Training.

3. Heard the counsel for applicant and respondents, considered the written submissions made and perused the original files of review promotion of Scientist C to Scientist D 19(a)/2007 – Pers and 19(1)/2009- Pers Part I.

4. The Ministry of Information and Technology had circulated the Flexible Complementing Scheme (FCS) for Group A S&T Officers guidelines issued by DoP&T vide O.M 1(1)/2000-Pers III dated 06.08.2001. The scheme was applicable only to Scientists and Technologists holding scientific post in scientific and technological departments. The assessment norms for promotion under the FCS laid due emphasis on evaluation of scientific and technical knowledge so that only the scientists who have to their credit demonstrable achievements or higher level of technical merit are recommended for promotion under the



Scheme. All the officers will be first screened on the basis of grading in the Annual Confidential Reports (ACRs) for consideration for promotion on a 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". Only those officials who satisfy the minimum residency period linked to their performance as indicated in table below were pre-screened in promotion from Scientist C to Scientist D.

<i>Years of service</i>	<i>3</i>	<i>4*</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>	
-		85.00%	80.00%	75.00%	70.00%	60.00%	60.00%	60.00%	60.00%

\* Eligibility in Scientist 'C' grade is after 4 years. The officers are first screened by a Selection Committee based on the confidential reports. Thereafter the screened in candidates are called for an interview. The performance in the interview will also be graded on a 10 point scale.

Percentage of marks obtained by Ms.K.Tharabai Thankachi G. from Screening Committee / Selection Committee for promotion to the post of Scientist -D in the following years are:

<i>Sl. No.</i>	<i>Review Year</i>	<i>Screening Committee</i>		<i>Recommendations of Screening Committee</i>	<i>Selection Committee</i>		<i>Recommendations of Selection Committee</i>
		<i>% of marks required</i>	<i>% of marks obtained</i>		<i>% of marks required</i>	<i>% of marks obtained</i>	
1	2002	85	60	Screened out	85	-	Not called for personal interview as she could not secure prescribed % of marks in the said years
2	2003	80	60	Screened out	80	-	
3	2004	75	65	Screened out	75	-	
4	2005	70	60	Screened out	70		Called for interview
5	2006	60	65	Screened out	60	50	Not found fit in interview
6	2007	60	70	Screened IN	60	56	Not found fit in interview

Sl. No.	Review Year	Screening Committee		Recommendations of Screening Committee	Selection Committee		Recommendations of Selection Committee
		% of marks required	% of marks obtained		% of marks required	% of marks obtained	
7	2008	60	75	Screened IN	60	50	Not found fit in interview
8	2009	60	70	Screened IN	60	68	FIT *

\* Promoted to the post of Scientist D w.e.f 4.3.2010 after approval of Competent Authority.

Applicants are first screened by selection committee based on the confidential reports. Thereafter they are cleared for personal interview for which they are marked separately as per seventh column above. A perusal of the above table shows applicant did not qualify in the period prior to 2009. Applicant's marks for 2009 are shown wherein she was considered under reduced qualifying percentage of marks i.e; 60% for residency period and 68% in interview and was found fit. In the Selection Committee Meeting Minutes for 2007 applicant name appear at serial 3 of NIC Kerala. As per qualifying marks of 60% applicant obtained 50%. This procedure has been uniformly followed for all officials by the respondents under Flexible Complementing Scheme.

5. As seen from the above table the applicant has got 60%, 60%, 65% and 60% against the requirement of 85%, 80%, 75% and 70% in 2002 to 2005 marks for being screened in for interview. In the fifth, sixth and seventh year on a further reduced percentage of 60% for CR assessment the applicant obtained 65%, 70% and 75% in 2006 to 2008 and was screened in for interview. However, the applicant obtained 50%, 56% and 50% for interview in the said years against requirement of 60% and therefore was found not fit in interview. In 2009 applicant got 70% marks in CR assessment and 68% marks in interview against 60% required in each and was promoted. In the Screening Committee (comprising 4 members and chairman) minutes dated 22.12.2007 the

applicant's name appears at serial no.1 of NIC Kerala. The criteria followed by NIC was the uniform guidelines circulated by DoP&T vide O.M dated 09.11.1998 and 15.11.2000 for the Flexible Complementing Scheme and applicant was listed in the same manner as per other service colleagues and no discrimination or prejudice was shown to the applicant.

6. The applicant had approached this Tribunal in O.A 620/2008 and was already given the relief of "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". The below benchmark gradings were communicated vide NIC letter 18(15)/2008 -Pers dated 26.05.2010 against which she preferred an appeal dated 23.06.2010. Aggrieved thereby, the applicant approached the Honourable Tribunal in O.A 180/2011 interalia seeking a direction to the respondents to consider and pass orders on Annexure A-7 representation. By judgment dated 07.03.2011, the Honourable Tribunal disposed of the Original Application with a direction to the 2<sup>nd</sup> respondent to consider and pass orders on Annexure A-8 and communicate the decision within a period of 3 months from the date of receipt of a copy of the judgment. She had also preferred a request for her ACR under RTI Act and the same was supplied on 17.12.2009 (1998-2005).

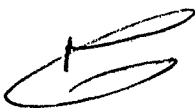
7. The applicant is an educated technical officer of NIC who was aware of the FCS scheme and the terms and conditions of its operation to the beneficiaries. The dual criteria of CR assessment and interview has been followed for all the officers of NIC covered by the Flexible Complementing Scheme, with the identical criteria of downward gradation applied for non-qualification, with the passage of years. The Supreme Court in SLP civil No.7100/2009 in *Union of India v. Manujurani Routray and Another* has specifically permitted the NIC to



continue the promotion process and if any promotion is made that will be subject to the final outcome of the SLP filed. Hence, the apex court has also upheld the present process of FCS till a judgment is delivered on merit. The rules of FCS cannot be diluted or by passed . The applicant has been considered for FCS from 2002 to 2008 and not found fit. Only in 2009 the applicant has the required percentage of marks qualifying for promotion from Scientist C to Scientist D. The FCS Scheme clearly states that the promotion under the scheme is on evaluation of the scientific and technical knowledge and only scientists who have to their credit demonstrable achievements or higher level of technical merit are recommended for promotion under the scheme.

8. It is not the function of the Tribunal to hear appeals of the decisions of the Selection Committee. The fitness of a candidate for a particular post has to be decided by a duly constituted Selection Committee which has expertise in the subject. The decision of the Selection Committee can be interfered with only on grounds of illegality or patent material irregularity in following the procedure laid down for selection or proved malafides affecting the promotion or violation of statutory rules. The two stage process of FCS selection has been followed in the applicant's case and there appears no reason to interfere in this matter.

9. The Original Application is accordingly dismissed. No costs.

  
**(P.GOPINATH)**  
**ADMINISTRATIVE MEMBER**

  
**(N.K. BALAKRISHNAN)**  
**JUDICIAL MEMBER**

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