

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Reserved on 27.05.2015.

Pronounced on 6/7/2015.

Original Application No.165/2010

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Dr. Renu Rastogi, aged about 54 years, daughter of Late Shri N.L. Rastogi, resident of B-10/120, Shreenathji Vihar, Sitapur Road, Lucknow (presently posted as Assistant Chemist, Central Ground Water Board, Lucknow Region, Bhujal Bhawan, Sector 'B', Sitapur Road Yojna, Lucknow).

-Applicant.

By Advocate: Sri P.K. Singh.

Versus.

1. Union of India, through the Secretary, Ministry of Water Resources, New Delhi-110001.
2. Central Ground Water, Government of India, Ministry of Water Resources, Bhujal Bhawan, NH-IV, Faridabad (Haryana), through its Chairman.
3. The Special Board of Assessment, Central Ground Water Board, Head Office, Jamnagar House, New Delhi-110011.
4. Regional Director, Central Ground Water Board, Northern Region, Bhujal Bhawan, Sector 'B', Sitapur Road Yojna, Lucknow.

-Respondents.

By Advocate: Sri R.B. Verma.

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ORDER

By Ms. Jayati Chandra, Member (A)

By means of this OA filed under Section 19 of Administrative Tribunals Act, 1985 the applicant has prayed for the following relief (s):-

- (a). *issuing/passing of an order or direction declaring the action of the respondents in not calling the applicant for interview/personal talk before the Board of Assessment for promotion to the grade of Scientist 'B' under Flexible Complementing Scheme as illegal and arbitrary and the respondents be directed to permit the applicant to appear in the interview for promotion to the grade of Scientist 'B' with effect from due date under the Flexible Complementing Scheme alongwith other candidates notified in letter No.10-6/2010-Sci.Estt., Dated 13.04.2010 (contained in Annexure No.A-8 the original application) and consequently promote the applicant to the grade of Scientist 'B' with all consequential benefits.*
- (b). *issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (c). *allowing this Original Application with cost."*

2. The facts of the case are that the applicant was initially appointed as Senior Technical Assistant (Chemical) w.e.f. 10.06.1986. She was promoted to the post of Assistant Chemist (Group B) in the scale of Rs.6,500/--10,000/-, which was subsequently revised to the scale of Rs.7,500-12,000/- in the officiating capacity by order dated 26.12.2000 (Annexure-2). She assumed the charge as Assistant Chemist w.e.f. 05.01.2001 and the same was notified to all concerned vide letter dated 10.01.2001 (Annexure A-3). The seniority list of Assistant Chemists (Group B) Gazetted as on 01.01.2003 includes her name at Sl.No.14. By order dated 28.05.1986 the Ministry of Science and Technology had decided to extend the benefit of Flexible Complementing Scheme

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(FCS) to those Scientists working in the scale of 650-1200/- and upto those in the scale of Rs.2500-3000/-. A minimum residency of 5 years in each grade will be required for promotion under flexible complementing scheme. However, despite the introduction of FCS Scheme, the Central Ground Water Board (Scientific Group A posts) Recruitment Rules, 1987 were not amended to extend the benefit under FCS to Assistant Chemists and Assistant Hydrogeologists. In view of this anomaly some Assistant Hydrogeologists filed OA No.673/1994 before this Tribunal challenging the exclusion of the posts of Assistant Hydrogeologists from the category of scientific posts and thus denying the benefits of FCS. Further, some Assistant Chemists and Assistant Hydrogeologists had filed O.A.No.1032/1996 before the Hyderabad Bench of this Tribunal challenging the exclusion of the post of Assistant Chemists and Assistant Hydrogeologists from the category of scientific posts and denying the benefits of FCS. Vide order dated 04.09.1997 passed in O.A.No.673/1994 a direction was issued to the department to undertake a job analysis in respect of the posts of Assistants Hydrogeologists by an expert body and decide whether the post of Assistant Hydrogeologists should be categorized as Scientific post. The order further provided that if the decision was in the affirmative the Flexible Complementing Scheme should be extended to them. The respondents were granted six months time to complete the exercise. Due to failure on the part of the respondents to comply with the same, the applicants were filed C.C.P.No.14/1998 in which the Hon'ble Court granted 4 months further time to the respondents to comply with the order. In the meanwhile, the O.A.No.1032/1996 was decided by the Hyderabad

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Bench of this Tribunal by its order dated 19.04.1999 by which the OA was allowed. During the pendency of the OA.No.1032/1996 the Department of Personnel & Training issued OM dated 09.11.1998 whereby recommendations were to be made by the administrative Ministry of Scientific institutions for extending the benefits of FCS after satisfying that such institutions are scientific and technical institutions and the officers are scientists holding scientific posts (Annexure A-6). It was also provided in OM dated 09.11.1998 that the minimum residency period linked to performance for in situ promotion to the grade of Scientist 'B' is 3 years and as such the applicants are entitled to the same promotion under FCS in 2000. The judgment dated 19.04.1999, passed by the Hyderabad Bench of the Tribunal was challenged before the Hon'ble High Court of Andhra Pradesh by filing the Writ Petition No.22349 of 1999. The Hon'ble High Court of Andhra Pradesh had affirmed the order of the Tribunal and held that the department is under obligation to implement the OM dated 28.05.1986, as modified vide DOPT OM dated 09.11.1998 and take further action to implement the FCS in respect of the respondents there in. This order of the Hon'ble High Court of Andhra Pradesh was challenged by the respondents by filing a S.L.P., which was dismissed vide order dated 31.08.2009. The order dated 09.10.2001 passed in C.C.P.No.14/1998, was challenged before the Hon'ble Supreme Court challenging the judgment and order dated 09.10.2001 passed in C.C.P.No.14/1998. Though, Civil Appeal No.6486/2002 which was dismissed by the Hon'ble Supreme Court vide judgment and order dated 10.12.2009 with cost of Rs.25,000/- to the respondents and with a direction to the department to

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comply with the directions within three months from the today i.e. 10.12.2009 and file its compliance report before this Tribunal. Another C.C.P.No.33/2010 filed before the Hyderabad Bench of this Tribunal for non-compliance of the judgment and order dated 19.04.1999, passed in O.A.No.1032/1996. After filing of the various CCPs the respondent no.2 has issued the letter dated 12.04.2010, notifying the constitution of Special Board of Assessment for effecting in situ promotion to the grade of Scientist 'B' in Pay Band 3 corresponding to pay scale Rs.15,600/- 39,100/- with Grade Pay of Rs.5400/- and the officers whose names appear in Annexure-I are to be called for interview/personal talk scheduled from 19.04.2010 to 22.04.2010. This Annexure-7 contained names of 109 officials excluding the applicant. By letter dated 13.04.2010 (Annexure A-8), the schedule for interview/personal talk before the Special Board of Assessment has been re-scheduled from 16.04.2010 to 20.04.2010 and the list of officers so called has been modified. The Annexure-I to the letter dated 13.04.2000 (impugned order) contains the names of 132 officials, but the name of the applicant is not included. The applicant thereafter submitted a representation dated 15.04.2010 (Annexure A-9) to the Chairman, CGWB requesting for considering her candidature for the promotion. It is relevant to mention here that some other Assistant Hydrogeologists and Assistant Chemists, who had not been called for interview / personal talk before the Special Board of Assessment filed O.A.No.370/2010 before the Hyderabad Bench and O.A.No.269/2010 filed before the Jabalpur Bench of this Tribunal. In both the OAs by means of interim orders dated 15.04.2010 and 16.04.2010, the applicants have been permitted to

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appear in the interview /personal talk. Similarly, by an order dated 19.04.2010 the applicant of the present OA was also permitted to appear before the Special Board of Assessment. She has now claimed for declaration of her result and consequential benefit as she is fully eligible and is entitled to the benefit of FCS Scheme as the post of Assistant Chemist is held to be a Scientific post and covered under the (FCS).

3. The respondents have contested the claim of the applicant by filing their Counter Affidavit stating therein that they have introduced the Flexible Complimenting Scheme (FCS) in respect of Group 'A' posts in the year 1983. By O.M. dated 28.05.1986 the FCS Scheme was extended to Group 'B' (Gazetted) scientific officers also. Accordingly, the decision was taken to include certain posts lying in Group 'B' cadre but the same was not extended to the Hydrology discipline. On the basis of judgment passed by Hyderabad Bench and Hon'ble High Court and the Hon'ble Supreme Court the Ministry of Water Resources vide letter dated 15.12.2003 (Annexure CA-12) accorded the approval for extension of the FCS Scheme to those officers who have completed three years regular service in the grade of Group-'B'(Gazetted) post as on 01.01.1998. This decision brought the posts of Hydrogeologists and Assistant Chemists within the purview of the FCS. Accordingly a proposal for considering 176 Group 'B' (Gazetted) Scientific Officers, in two phases i.e. vide letter dated 15.02.2010 and vide letter dated 11.03.2010 was prepared and submitted. However, later on it was decided that only those Group B Scientific (Gazetted) officers who were eligible during the period 1986 till the issue of

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modified guidelines of 09.11.1998 issued by DOP&T may be considered for in-situ promotion to the grade of Scientist 'B' in CGWB. Accordingly, a revised proposal for 132 Group 'B' (Gazetted) Scientific officers who have completed three years regular serviced on or before 01.01.1998, excluding the officers who have expired/terminated/ dismissed, were called for personal talk/interview by the Special Board of Assessment on 16th, 17th, 19th and 20th April 2010.

4. The applicant was promoted to the post of Assistant Chemist vide order dated 26.12.2000 and she joined her duties as Assistant w.e.f. 05.01.2001. Thus, she had not completed three years regular service in Group B Scientific (Gazetted) category as on 01.01.1998 therefore, she has not been found eligible to be considered for promotion to the post of Scientist 'B' (Group A) under FCS Scheme. However, as per the interim order dated 19.04.2010 passed by this Tribunal, the applicant was allowed to attend the interview on 21.04.2010 and her result has been kept in sealed-cover. It is further indicated that the two OAs, O.A.No.370/2010 and O.A.No.371/2010 filed before the Hyderabad Bench of this Tribunal in which by interim order certain applicants were allowed to appear before the Special Board of Assessment were dismissed vide judgment and order dated 30.08.2000 (Annexure CA-16). The applicants of these OAs have challenged the said order before the Hon'ble High Court of Andhra Pradesh by filing Writ Petition No.24452/2010 and Writ Petition No.24398/2010 respectively, which were decided ex-parte and the orders dated 30.11.2010 was passed (Annexure CA-17 and CA-18), in the following terms:-

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"In the circumstances, the Tribunal ought not to have directed the petitioners to revise 1995 Rules so as to include the benefit of FCS for the Group-B posts. However, having regard to the Presidential Order, which has statutory force, pursuant to which the Department of Science and Technology issued O.M. dated 02.05.1986 and the consequent O.M. dated 09.11.1998, we are of the considered view that the petitioner is under obligation to implement O.M. dated 02.05.1986, as modified by OM 09.11.1998 and take further action to implement the FCS in respect of respondents-applicants.

Subject to the aforesaid modification the writ petition is dismissed"

5. Meanwhile, the Government had also filed Transfer Petitions No.PT 265/2010 to 282/2010 to transfer all such similar cases to CAT (PB), New Delhi in which Hon'ble CAT (PB) passed a common order on 20.01.2011 (Annexure CA-19) all the applications were dismissed. The order reads as follows:-

"Prayer in all these matters is to transfer the Original Application pending at different Benches in the country to the Principal Bench to avoid conflicting opinion. However, it is not in dispute now that Hyderabad Bench dismissed similar Original Application against which a Writ Petition NO.24452/10 filed before the Hon'ble Andhra Pradesh high Court has been allowed unsetting the orders passed by the Hyderabad Bench of this Tribunal. Once, now the view of High Court is available, there is no likelihood of conflicting opinion in deciding the cases pending at different Benches of this Tribunal. All these applications are therefore dismissed. A copy of this order be placed in al the above PT files."

6. The applicant has filed Rejoinder Affidavit to the Counter Affidavit filed by the respondents more or less reiterating his contentions as raised in the OA. The applicant has stated that vide letter dated 15.12.2003 the decision was taken to implement the FCS Scheme

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introduced in 1986, as modified by letter dated 09.11.1998 and as such Group 'B' Scientific (Gazetted) officers completing three years regular service after 1986 became eligible for in situ promotion to the grade of Scientist 'B' in CGWB. It is not open for the respondents to create an artificial cutoff date for extension of the benefit of FCS Scheme to the Group 'B' officers. It is also stated that an identical question had cropped up subsequently and similar directions were given by Hon'ble High Court of Andhra Pradesh in Writ Petition No.24398 of 2010 and before the Calcutta Bench of this Tribunal in O.A.No.1004/2010 and relying upon the earlier directions hold that the judgment passed by Hon'ble High Court and Hon'ble Supreme Court are binding upon the respective parties and the same is also applicable in this case.

7. During the course of hearing the learned counsel for the applicant submitted an Office Order No.80 of 2014 dated (unreadable) by which one Dr. M. Sudheer Kumar and Sh. G. Praveen Kumar have been given the benefits of FCS Scheme w.e.f. 2004 and 2007 respectively.


8. We have heard the learned counsel for both the parties and perused the material available on record.

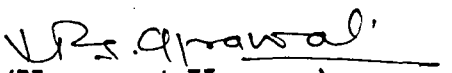
9. The learned counsel for the applicant through the narration of the history of cases filed by various persons have sought to establish the fact that the FCS scheme extends to and covers the post of Assistant Chemists in the scale of Rs.6500-10,000 (Pre-revised) as per the O.M. dated 02.05.1986 as modified by O.M. dated 09.11.1998. This is a proposition which has already been settled by

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the Andhra Pradesh High Court vide its order passed in W.P.No.24398 and 22349 and by the Principle Bench vide its order dated 19.02.2011. However, none of these orders have given any direction with regard to determining the cutoff date for inclusion of persons in the impugned order dated 13.04.2010. The contention of the respondents are that in the impugned order only those persons who had put in three years service as on 1998 have been included. By her own admission the applicant was promoted to the post of Assistant Chemist w.e.f.; 05.01.2001. The copy of the promotion order dated (unreadable) submitted during the course of hearing does not clarify that the two officers promoted under the FCS were considered by the same assessment committee that intervened the panel as annexed with impugned order dated 13.04.2010. From the promotion dates (2004 & 2007) it would appear that the same was determined by subsequent assessment not challenged in the present OA. The applicant has not demonstrated that any of the impugned lists includes person/persons who was/were similarly situated as herself that is who had been promoted w.e.f. 05.01.2001 has been considered and that she was superseded.

10. In view of the above, the OA is liable to be dismissed and is accordingly dismissed. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

Amit/-