

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Original Application No.146/2011
This the 17th day of July 2012**

Hon'ble Mr. B.V. Rao, Member (J).

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

1. Ajai Kumar, aged about 60 years, son of late D.N. Srivastava, R/o F-1/B, River Bank Colony, Lucknow.
2. P.K. Tripathi, aged about 42 years, son of Sri M.P. Tripathi, R/o L-1/129 B, Priyadarshini Colony, Sitapur Road, Lucknow.
3. Rajan Singh, aged about 54 years, son of Late Sri Bhagwant Singh, R/o 13/13, Vikas Nagar, Lucknow.
4. S.G. Bhartariya, aged about 40 years, son of Late V.G. Saxena, R/o Type-IV/15, Kendranchal Colony, Sector-K, Aliganj, Lucknow.
5. Prashant Kumar Rai, aged about 40 years, son of Sri Sumangal Prakash Rai, R/o Type-IV Q.No.50, Akanksha Colony, Jankipuram, Lucknow.
6. Dr. Ram Prakash, aged about 50 yeas, son of Sri Sant Prasad, R/o 532A/402, Gulab Badi, Aliganj, Lucknow.
7. M.M. Srivastava, aged about 61 years, son of Late Jalpa Lal Srivastava, R/o 9/23, Vikas Nagar, Lucknow.
8. Dr. S.K. Srivastava, aged about 47 years, son of Sri J.C. Srivastava, R/o C-44/4, Paper Mill Colony, Lucknow.

...Applicants.

By Advocate: Sri N.C. Srivastava.

Versus.

1. Union of India, through Secretary, Ministry of Water Resources, Govt. of India, Shram Shaki Bhawan, New Delhi.
2. The Chairman, Central Ground Water Board, Jam Nagar House, Man Singh Road, New Delhi.
3. The Administrative Officer, central Ground Water Board, Bhujal Bhawan, NH-IV, Faridabad.
4. The Secretary, Ministry of Personnel and Training, New Delhi.

.... Respondents.



By Advocate: Sri Rajendra Singh.

ORDER (Oral)

By Hon'ble Mr. B.V. Rao, Member (J).

1. This O.A. has been filed for the following relief's;

"(i). To quash the letter dated 31.12.2010 issued by O.P.No.3 as contained in Annexure No.12 thereto and to declare the inaction of the respondents is not granting promotion to the applicants the grade of Scientist-C and Scientist-D under FCS from the dates of their eligibility as illegal and arbitrary.

(ii). To direct the respondents to grant promotion to the applicants from the dates of their eligibility as mentioned in this O.A. with all consequential benefits such as seniority, pay and allowances etc.

(iii). Any other or additional relief including the cost which the Hon'ble Tribunal may deem fit and proper be also awarded in favour of the applicants."

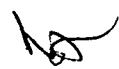
2. Heard the learned counsel for both the parties at length and perused the material on record.

3. The brief facts of the case are that the applicant no.1 was initially and substantially appointed on the post of Senior Technical Assistant (Hydrometeorology) and while working he was promoted to the post of Scientist 'B' and joined on 5.9.1997. Thereafter, he was promoted as Scientist 'C' on 24.07.2009 whereas he was entitled for promotion to the post of Scientist -'C' from 01.01.2003 and in the grade of Scientist-D from 01.01.2008 under Flexible Complementing Scheme. The applicant No.2 was appointed as Scientist-B on 21.04.1997 and as Scientist-C on 24.7.2009 and his date of eligibility in the grade of Scientist-C is 01.01.2003 and in the grade of Scientist-D is 01.01.2008. The applicant no.3 was appointed on the post of Senior Technical Assistant (Hydrometeorology) on 03.06.1986 and he was promotion as Scientist-B with effect from 04.07.1997 and Scientist-C on 06.11.2009. He became entitled for promotion to the post of Scientist-C on 01.01.2003 and Scientist-D on 01.01.2008. The applicant No.4 was appointed as Scientist-B on 08.07.1997 and promoted as Scientist-C w.e.f. 24.7.2009 and his eligibility in the grade of Scientist C is 01.01.2003 and in the grade of Scientist D is 01.01,2008. The applicant No.5 was appointed as Scientist B on



31.10.2000 and thereafter promoted, as Scientist C on 24.7.2009 and his date of eligibility for Scientist C is 01.01.2006 and Scientist D is 01.01.2011. The applicant no.6 was appointed as Senior Technical Assistant on 10.11.1986 and thereafter, he was promoted to the post of Assistant Chemist on 5.1.2001 and joined as Scientist B on 8.11.2001 and Scientist C on 24.7.2009 and his date of eligibility in the grade of Scientist-C is 01.01.2007. The applicant no.7 was appointed on the post of Senior Technical Assistant in the month of March 1974 and thereafter, he was promoted to the post of Assistant Geophysicist in the month of April 1996 and on the post of Scientist-B in May 2001 and Scientist-C on 24.7.2009 and his date of eligibility in the grade of Scientist-C is 01.01.2007. Lastly, applicant no.8 was initially appointed as Senior Technical Assistant on 15.1.1987 and thereafter promoted to the post of Assistant Chemist on 4.1.2001 and joined on the post of Scientist-B on 21.2.2002 and Scientist-C on 24.7.2009 and his date of eligibility to Scientist-C is 01.01.2008.

4. According to learned counsel for the applicant all the applicants were promoted as Scientist-C by an order No.489/2009 dated 24.7.2009 (Annexure-1) in pursuance of Ministry's Officer order No.7/11/2008-CGWB. It is also stated that a Flexible Complementing Scheme (hereinafter referred to as FCS) was introduced for Scientists in Scientific and Technology departments of the Govt. of India, to ensure the opening of promotional avenue for the Scientists working under various Ministries of Govt. of India called Central Ground Water Board (Scientific Group 'A' Posts) Recruitment Rules, 1965 where the recruitment and in situ promotions and system of FCS is provided. It is submitted that FCS was introduced by the Govt. of India with a view to avoid stagnation and to provide promotional avenue to the Scientists working in the Scientific and Technology departments and as per the provisions envisage in FCS the applicants became entitled to promotion to the post of Scientist-C on completion of 5 years service as Scientist-B. It is also submitted on behalf of the applicants that the respondents have anti-dated some other 47 similarly situated Scientists of 1992 to 1996 batch on the post of



Scientist-C against the vacancies of the year 1988 and 1989 with all consequential benefits vide order dated 22.4.1996 (Annexure-4).

5. It is further submitted that in compliance of the order passed by Hon'ble High Court of Andhra Pradesh the respondents have promoted 128 similarly situated Scientists under FCS to the post of Scientists-B with all consequential benefits vide order dated 4.5.2010 (Annexure-5). The applicants have also submitted several representations to accord the same benefits as were given to other similarly situated persons, but no order on the representations of the applicants has been passed as yet. It is the case of the applicants that similarly situated persons have filed Original Application bearing **OA No.189/2007 (P.K. Sahajpal & Anr. Vs. Union of India & Others)** before Jaipur Bench of this Tribunal, which was allowed vide orders dated 12.11.2009, and the applicants therein were held entitled for promotion under the Flexible Complementing Scheme from the respective dates of their eligibility. Aggrieved with the aforesaid order, the respondents therein preferred a Writ Petition No.8177/2010 before the Hon'ble High Court of Judicature for Rajasthan at Jaipur Bench, which has also been confirmed by the Hon'ble High Court of Judicature for Rajasthan at Jaipur. The operative part of the order reads as under:-

" In the facts and circumstances of the case, therefore, the learned Tribunal has not committed any error by following the past precedent as was done while allowing the O.As. vide judgments dated 11th and 12th April, 2005 passed by the Central Administrative Tribunal Jaipur Bench, Jaipur and at the Principal Seat of the Central Administrative Tribunal in O.A.No.1157 of 2004. The appellants having themselves accepted and complied with similar directions cannot discriminated in the case of the present respondents No.2 and 3. Moreover, the instructions cannot override the judgments of the learned Tribunal.

We find no error apparent on the face of record so as to call for any interference in this writ petition.

The writ petition is accordingly dismissed.

The stay application (1764/2010) also stands dismissed."

6. It is stated that the respondents have complied with the judgment passed by Jaipur Bench vide order No.45 of 2011 dated 14.1.2011 (Annexure-10). It is also submitted that the meeting of assessment board for considering promotion from the post of Scientist-B to Scientist-C was held in the year 2002 and 2009. The

assessment board meeting has not been held between 2002 and 2009 as such, the applicants could not be considered for promotion in time.

7. The claim of the applicants have been contested by filing a Counter Affidavit on behalf of respondents stating therein that applicants were due for their promotion to the grade of Scientist-C under FCS w.e.f. their respective eligibility dates but, due to various court cases filed by some of the in-eligible officers, the meeting of the Board of Assessment for grant of promotion to Scientific Officers under FCS could not be convened within time by the UPSC. Moreover, the meeting of Board of Assessment was convened by the UPSC in June, 2009 only for considering the promotion to the grade of Scientist-C under FCS for the eligibility year 2002 to 2009. Accordingly, they have promoted to the grade of Scientist-C along with other 122 officer with prospective effect vide Office Order No.489 of 2009 dated 24.7.2009 (Annexure CR-1). It is further stated that on receipt of several representations for antedating of promotion from the date of actual admissibility; a proposal was send to the Ministry on 15.9.2009 (Annexure-CR-2). In response to the Board's proposal dated 15.09.2009, it has been informed vide letter dated 27.11.2009 (Annexure-CR-3) that the same was considered in consultation with the DOPT and the DOPT did not agree to the said proposal as acceptance of the same would result in a chain effect giving the retrospective benefits in every subsequent cases of promotion under FCS and stated that there is no violation of any rule position given in the FCS and as such, the allegations made by the applicants are false and baseless and the O.A. is being devoid of any merits and therefore, deserves to be dismissed with costs.

8. The applicant filed a Rejoinder Affidavit reiterating his pleadings and controverting the pleadings of the Counter Affidavit.

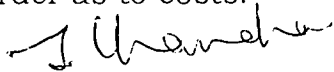
9. The point for consideration is whether the applicant is entitled for the relief as prayed for.

10. Before entering into the merits of the case, we carefully perused the judgment of Original Application No.189/2007 passed by Jaipur Bench of this Tribunal, which was allowed vide order dated 12.11.2009, and the applicants therein were held entitled for promotion under the Flexible Complementing Scheme (FCS) from

the respective dates of their eligibility. Aggrieved with the aforesaid order, the respondents therein preferred a Writ Petition No. 8177/2010 before the Hon'ble High Court of Judicature for Rajasthan at Jaipur Bench wherein, the anomaly is set at rest and it is further stated by the learned counsel for the applicants that the judgment of Rajasthan High Court passed in Writ Petition No.8177 of 2010 has also been confirmed by the Hon'ble Supreme Court and this fact has also not been disputed by the other side. Moreover, the respondents themselves have complied with the judgment passed by Jaipur Bench vide order No.45 of 2011 dated 14.1.2011 (Annexure-10). Hence, there can be no distinction between similarly situated employees. It is a just and wholesome principle commonly applied that discretion cannot be used discriminatory. Once the employees are in one integrated class with identical service condition, they cannot be discriminated against. Nevertheless, it was opposed from their side. But, from the above discussion, we reach to a definite conclusion that applicants were successful in substantiating their pleadings as above. We also do not find any good ground to deprive the applicants from getting the same benefits of similar norms and principles, which had been adhered, by the Principal Bench and other co-ordinate Benches of the Tribunal.

10. Finally, in view of the above, the impugned order dated 31.12.2010 (Annexure-12) issued by the Respondent No.3 is set-aside and the respondents are directed to grant the benefits of FCS Scheme to the applicants in the light of above decisions within two months from the date of receipt of a certified copy of this order alongwith all consequential benefits as has been granted to other similarly situated persons.

11. With these observations, the O.A. is disposed of with no order as to costs.



(Jayati Chandra)
Member (A)



(B.V. Rao)
Member (J)