

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 456/01 AND 600/01.

Dated this Friday, the 22nd day of February, 2002.

CORAM : Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman.
Hon'ble Shri M. P. Singh, Member (A).

Dr. I. Azariah,
Joint Director,
Central Water and Power Research Station,
Khadakwasla, Pune-411 024.

Residing at - E8, CWPRS Colony,
Khadakwasla, Pune - 411 024.

Applicant in
O.A.No. 456/2001.

(Applicant in Person)

Dr. U. V. Purandare,
Joint Director,
Central Water & Power Research Station,
Khadakwasla, Pune - 411 024.

Residing at - 1316, Shivajinagar,
Jangali Maharaj Road, Pune 411 005. ...

Applicant in
O.A. No. 600/2001.


(Applicant in person)

VERSUS

1. Union of India through
The Secretary to the Govt.
of India, Ministry of Water
Resources, New Delhi-110 001.
2. The Chairman,
Union Public Service Commission,
dholpur House, Shahajahan Road,
New delhi-110 011.
3. The Director,
Central Water and Power Research
Station, Khadakwasla,
Pune-411 024.

... Respondents in
both the O.As.

(By Advocate Shri V. G. Rege)



O R D E R (ORAL)PER : Shri M. P. Singh, Member (A).

The issue raised in these two O.As (No. 456/2001 and 600/2001) and the relief claimed by the Applicants are identical. We, therefore, proceed to dispose of these O.As. by passing a common order. O.A. No. 456/2001 is taken as a leading O.A.

2. The applicant in O.A.No. 456/2001 has sought relief by praying for a direction to quash and set ~~aside~~ the D.P.C. proceedings held on 19.06.2001 for filling up the two posts of Additional Director. He has also sought direction to respondents to implement the Modified Flexible Complementing Scheme (M.F.C.S. in short) as notified by D.O.P.&T. Guidelines dated 09.11.1998.

3. The applicant joined Central Water and Power Research Station (C.W.P.R.S.in short) in July, 1975. Thereafter, he was promoted to the post of Sr. Research Officer, Chief Research Officer and Joint Director. He has been working as Joint Director since September, 1996 and the next higher post for promotion available to him is that of Additional Director. According to the applicant, the Respondents had initiated action to fill up the post of Additional Director as per the D.P.C. procedure whereby disregarding the orders of the D.O.P.&T. It is stated by him that the M.F.S.C. has to be applied for promotion to Group 'A' R & D Posts in Scientific Services and D.P.C. procedure cannot be made applicable for appointment to the post of Additional Director. Since the Respondents have not adopted the procedure as envisaged in the modified FCS for filling up the two posts of Additional Director, he has filed this O.A. claiming the aforesaid reliefs.



4. The Respondents in their reply have stated that the FCS is applicable for making appointments to Group 'A' posts from the post of Research Officer to the post of Joint Director. The Swaminathan Committee in its report made recommendations for creation of post of Additional Director between the posts of Joint Director and Director. It also made recommendation for applicability of FCS between the post of Research Officer and Additional Director. The Government of India, in its wisdom, while accepting the recommendations for making applicable the FCS to the posts from the Research Officer to the Joint Director, did not accept the said recommendations of the Committee with regard to applicability of FCS for the post of Additional Director. The post of Additional Director was created in the year 1979. Therefore, the Recruitment Rules which were initially framed in the year 1966 were amended in the year 1979 so as to govern the appointment to the post of Additional Director. As per the provisions of the said rule, the appointment to the post of Additional Director is to be made from a field consisting of Joint Director (Scientific) and Joint director (Engineering) in the CWPRS with three years service in the grade rendered after appointment thereto on regular basis, by a duly constituted Departmental Promotion Committee as prescribed in the said rules. Since the said Recruitment Rules do not make any provision for making the FCS applicable for appointment to the post of Additional Director, the respondents cannot fill up the post of Additional Director under the said modified FCS. According to

them, the appointment made to the post of Additional Director vide order dated 12.07.2001 were strictly in accordance with the provisions of the said Recruitment Rules of 1966 as amended by 1979 Rules. In view of this submissions, the O.A. does not merit any consideration and has to be dismissed.

5. Heard the applicant in person and Shri V. G. Rege for the Respondents.

6. During the course of argument, the applicant drew our attention to the OM issued by the Department of Science and Technology on 28.05.1986 (Annexure A7). He also drew our attention to the OM dated 09.11.1998 issued by the Department Of Personnel in pursuance of the recommendations of the Fifth Pay Commission. He further pointed out that Vth Pay Commission had recommended that Government should review the FCS and take a decision to make FCS applicable to the post of Additional Director in the C.W.P.R.S., Pune. He, therefore, submitted that since the Pay Commission has made the recommendation and the D.O.P.&T. has also written to the Department to make the scheme applicable upto the level of Scientist 'G', (Rs. 18400-22400) which includes the post of Additional Director, the department should have taken action to fill up the post of Additional Director under F.C.S. He further submitted that after the letter had been issued by the D.O.P.&T. on 09.11.1998 the D.P.C. Rules which were being followed by the department in filling up the posts of Additional Director became non-applicable and that the Respondents should have filled up these two posts of Additional Director under the FCS.

7. On the other hand, the Learned Counsel for Respondents submitted that the two posts of Additional Director have been filled up strictly in accordance with the existing Recruitment Rules of 1966 as amended in 1979. He further submitted that the recommendations of Fifth Pay Commission for making the FCS applicable to the post of Additional Director and Director are under consideration and a proposal has already been sent by Respondent No. 3 to Respondent No. 1 for taking necessary action and the matter is being processed. Since Respondent No. 1 has to consult various Ministries and Department of Government of India including the U.P.S.C. before taking a decision as to whether this scheme is to be made applicable to the post of Additional Director and Director, this will take some time.

8. The admitted facts of the case are that the FCS is applicable in CPWRS only in respect of the post from Research Officer to the post of Joint Director. The post of Additional Director and Director do not come under the perview of this scheme. The post of Director and Additional Director are governed by the Recruitment Rules of 1966 and 1979. The respondents have taken action to fill up the post on 12.07.2001 strictly in accordance with the existing recruitment rules. The administrative instructions issued by the Department of Science & Technology and the D.O.P.T. are directory in nature and cannot have precedence over the Recruitment Rules which have been framed under Article 309 of the Constitution of India. In view of this position, we do not find any infirmity or illegality in the

action taken by the Respondents to fill up the posts of Additional Director.

9. In the light of the above discussion, the O.A. is devoid of merit and is liable to be dismissed. We do so accordingly. O.A. No. 600/2001 also stands dismissed. No order as to costs.

M.P. Singh
(M.P. SINGH)
MEMBER (A)

B. Dikshit
(BIRENDRA DIKSHIT)
VICE-CHAIRMAN.

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Jud dt 22/2/02
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on 22/2/02 (S)
OT in at
600/01
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