

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, PRESCOT RD, 4TH FLR.

MUMBAI - 400 001.

*Original
in of 992/93*

ORIGINAL APPLICATION NOS: 992/93 & 1003/93.

DATED THIS 11 DAY OF JULY, 1997.

CORAM: Hon'ble Shri B.S. Hegde, Member (J).
Hon'ble Shri M.R. Kolhatkar, Member (A).

O.A. NO. 992/93.

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... Applicants.

By Advocate Shri Y.R. Singh.

O.A. 1003/93.

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PO, Khadakwasla, RS,
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9. S. N. Mone,
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... Applicants.

By Advocate Shri Y. P. Singh.

v/s.

1. Union of India
through the Secretary,
MOWR, Shram Shakti Bhawan,
Rafi Marg New Delhi - 11.
2. The Secretary,
UPSC,
Shahajahan Road,
New Delhi - 11.
3. The Director,
C.W.F.R.S., Khadakwasla,
Pune - 411 024.

... Respondents.

By Advocate Shri M. I. Sethna

I O R D E R I

I Per Shri M.R. Kelhatkar, Member (A) I

OA 992/93 has been filed by two senior Research Officers of respondent No.3 and OA-1003/93 has been filed by ten Chief Research Officers of respondent No.3. As these two OAs raise a common issue, namely date of promotion

i.e. whether the same is to be granted from the date of completion of 5 years of service/or whether from the date of issue of order of promotion and involve interpretation of same rules namely Central Water Power Research Station, Pune, (recruitment)rules, 1982, they are being disposed of by a common order. For facility of reference facts in OA-1003/93 are referred to. It needs to be kept in view that OA-992/93 deals with Senior Research Officers and OA-1003/93 deals with Chief Research Officers. It is not disputed that the relevant promotional channel for applicants is from Research Officer to Senior Research Officer and/Senior Research Officer to Chief Research Officer. It is not disputed also that the applicants are challenging/orders dated 18/9/91 viz order No. 4/9/89 E.II dated 18/9/91 (page-19). It is/ reference to promotion being effective with immediate effect i.e. date of order that/challenged in these OAs.

2. The contention of the applicants is that the rules incorporate the scheme of flexible complementing and insitu promotion. This scheme is referred to in Rule-5 "Future Maintenance" which is reproduced below:-

5. Future Maintenance

1. The method of recruitment, age limit, qualifications and other matters connected therewith shall be as specified in columns 5 to 13 of the Schedule annexed to these rules.
2. The system of flexible complementing and in situ promotion of departmental officers in the grades of Research Officer, Senior Research Officer and Chief Research Officer to the respective higher grades, namely, Senior Research Officer, Chief Research Officer and Joint Director.
3. Subject to the condition that at any given point of time, the number of posts in the grade of Joint Director and Chief Research Officer shall not exceed 30% of the total number of posts in the grades of Research Officer, Senior Research Officer, Chief Research Officer and Joint Director put

together and provided further that the number of posts in the grade of Joint Director shall not exceed 30% of the total number of posts in the grades of Chief Research Officer and Joint Director put together and to the condition that the total number of posts taken together shall not exceed, there shall be complete flexibility in the number of posts in relation to the respective grades.

4. The departmental officers who have rendered, in the respective grades, regular service of not less than 5 years may be recommended by the Board of Assessment for promotion to the next higher grade on the basis of the assessment of the record of service and interview, for evaluating their scientific contribution and achievements."

3. According to the rules, Board of Assessment consists of Chairman or Member UPSC as Chairman and other members and Notes 2 and 3 below the composition of Board of Assessment in Column-12, various schedules read as below:-

Note 2 - The proceedings of the Board will be subject to approval by Union Public Service Commission.

Note 3 - The date from which the recommendations of the Board will be effective shall be decided in consultation with the Union Public Service Commission."

4. The contention of the applicants is that they are entitled for promotion under relevant rules on completion of specified years of service/ In this connection, they rely on Department of Personnel, O.M. No.122034/6/89/ Esst(D) dated 24/4/89 which is at Exhibit-2(page-59). Paras 2 and 3 of the Memorandum are relevant and are reproduced below:-

"2. There are, however, certain situations in which promotions are made in situ such as appointment to a post in the non-functional selection grade or on promotion to a higher grade under flexible complementing scheme. In these types of cases, the officers are entitled for promotion under the relevant rules on completion of specified years of service.

3. It has been observed that in certain

cases falling in the category referred to in para 2 above, proposals for promotion of the concerned officers have been sent to the Establishment Officer for submission to the ACC after the date on which the promotion was due seeking approval for promotion from a retrospective date. All Ministries/Departments are requested to ensure that in cases where promotions have to take effect from a particular date, a decision on the recommendation of the DPC is taken by the administrative Ministry/Department at least two months before the date from which the promotion is to be given effect and proposals for obtaining the approval of the ACC are sent immediately thereafter."

5. Counsel for the applicant contends that the implications of in situ are spelt out in para-2 of the Office Memorandum and the precautions to be taken/ that promotions are effected well in time/ of the O.M. which envisages that a decision on the recommendation of the DPC is/taken by the Department at least two months before the date from which the promotion is to be given effect.

6. Counsel for applicant submits that till 1988, the respondents used to order promotions with retrospective effect i.e. from the date of completion of 5 years of service even if the recommendations of the Board of Assessment were available on a subsequent date. However, in their case the respondents have followed a different policy and this is discriminatory. Counsel for the applicant also refers to a copy of CAG Circular No.NGE/22/1992 dated 7/5/92 on the subject of clarification regarding in situ promotion reported at SLJ-1992(3) page-38., in para-4 of which it is stated

"that if an employee fulfils the criteria for in situ promotion and becomes eligible for such promotion with effect from 1/4/91, he may be given in situ promotion from that day since there is no change of duties involved."

"Reference to 1/4/91 is in a particular context and does not apply to the present case but the principle is the same."

7. Counsel for applicant also relies on the judgement of this Tribunal in OA-257/93 in the case of Nirmalya Ghosh v/s. Union of India decided by the Tribunal on 27/7/95 where the question of identical cadre in the same organisation was under consideration. In that case, the circumstances were slightly different. xxxxxxxxxxxxxxxxx, the applicant was away abroad and had entered into correspondence regarding his in situ promotion and the Tribunal dealt with the contention of the respondents and its own conclusions in paras 5 and 6 of the judgement which are reproduced below:-

"5. The Counsel for the respondents argued that the policy to give promotions with retrospective date has been revised by the Government in the year 1989 and now all promotions are being made effective from prospective date. Since the applicant was assessed for promotion in the year 1991, which was after the change in the policy of the Government, he has been given promotion as per the policy from prospective date. He has further argued that although it has been mentioned in letter dated 9/11/89 that when considered promotion would be effective with effect from 1/1/88 provided he is otherwise found fit by the Board of Assessment, however, after change in the policy his case could not be dealt with according to the previous procedure. Counsel for the respondents has also argued that since nobody has been promoted from retrospective date after 1989 and subsequently promotions have been given effective from prospective date, as such there is no denial of equal opportunity and natural justice.

6. We are of the opinion that the case of the applicant should be governed by the old policy and the rules which were applicable before 1989 specially in view of the assurance given to him by the department that as and when he is considered for promotion it would be from backdate i.e. 1/1/88. The applicant had taken care of the question of promotion from backdate while seeking information from the Ministry well in time and on the assurance of the Ministry that his promotion would be considered from backdate i.e. 1/1/88 when his juniors were promoted, he felt assured and completed his studies abroad."

8. Counsel for respondents contends that as was stated in the case of Nirmalya Ghosh case in para-5, his

stand in relation to the present case is similar. According to the counsel, the process of formulating proposal for promotion involves elaborate work within the office and consultation with different organisations. Due to these various administrative exigencies, the process of selection always takes some time as the recommendations are to be sent to the UPSC for assessment and their views. The policy regarding giving promotion from retrospective effect was in vogue till 1988 and has been stopped by Government in the year 1989., in view of the Government interpretation of notes 2 and 3 below the recruitment rule (referred to above). As per the present policy of the Government, therefore all promotions are being made from prospective date. Not only the applicants but full batch of 17 officers considered were given promotion from prospective date and this policy is still continuing in all subsequent cases. Counsel for the respondents also pointed out that the Department had sent the proposals to UPSC in 1989 but the same were returned back in 1991.

9. So far as the case of Nirmalya Ghosh is concerned, counsel for the respondents argues that the facts were different. The Tribunal gave the benefit in that case because of the previous correspondence and the Tribunal did not interfere with the policy of the Government.

10. We have considered the matter. It appears that the Government changed the policy in 1989 and the change of policy appears to have been based on a particular reading of the rules and in particular notes 2 and 3 below the recruitment rules reproduced above. Note-2 envisages that the proceedings are subject to approval of UPSC. This in our view does not have bearing on the date of effect of the promotion. Note-3 states that the date from which the recommendations of the Board will be effective shall be decided in consultation with the UPSC. It is contended that the UPSC is a constitutional body and the advice of the UPSC

as to the date of promotion is binding on the Government. But it is not disputed that the same rules were interpreted differently till 1988. We therefore specifically sought clarification as to whether there was any change of rules in 1989. It was clarified that there was no change of rules in 1989 inspite of what is stated in Nirmalya Ghosh but there was change of policy and the change of policy was apparently based on different interpretation of the rules. But the policy or interpretation of rules cannot depart from a plain reading of rules. We have cited at length rule-5 relating to future maintenance of the cadre. These rules envisage that the officers of the cadre are subject to scheme of flexible complementing and in situ promotion. These rules however make it clear that the whole scheme is based on fixity of over all number of posts and maintenance of inter-se ratios and so long as this ratio is maintained, it is not clear how the department can differ from the implication of the rule of "in situ promotion" by which the concerned officers are promoted inspite of there being no change in duties and responsibilities of the post subject to assessment.

11. The Department of Personnel, O.M. dated 24/4/89, quoted by us also implies that the concerned officers are entitled for promotion on completion of specified years of service subject to assessment and this is also the import of the CAG circular dated 7/5/92 quoted by us. Assuming that the UPSC has given the advise that promotions should be made from the date of issue of orders and not from the date of completion of 5 years, this advise is required to be tested against the touchstone of rules. UPSC, though a constitutional body, is not above law and cannot render advise which is against the import of rules. In any case it is not the contention of the respondents that the UPSC has given advise regarding promotion being effective from a particular date. The contention of the respondents is only related to the change of policy and as observed by us, the change of policy cannot be contrary to

the rules. As pointed out by the counsel for applicant, change of policy has also not been publicised and the policy followed up to 1988 has to be treated as the policy which has received the sanctity of rules and which cannot be violated without following the due procedure of publications and objections.

12. We do agree with the counsel for respondents that the case of Nirmalya Ghosh does not help the applicant because in that case, the Tribunal proceeded on the basis of respondents being bound by previous correspondence and granted the relief to the applicant by invoking the doctrine of estoppel. However, that case did not go into the contents of the rule and the validity of the policy and in the instant case we have done so and we are inclined to grant relief.

13. There is another consideration. The Department may send the proposals to UPSC but the UPSC may take 1 year to process one set of proposals and 18 months to process another set of proposals. Does this mean that the promotions will then be given on such different dates related to bureaucratic delays? This would be highly arbitrary and would be against the mandate of rules in flexible complementing and in situ promotion which are designed specifically for scientists.

14. OA therefore succeeds. The Impugned orders dated 18/9/91 are quashed and set aside to the extent of date of effect. Respondents are directed to grant promotion to applicants after completion of 5 years of service subject to assessment irrespective of date of issue of order and give all consequential benefits to applicants including arrears of salary, Payments of arrears being confined to 1 year prior to filing of the OA. There will be no orders as to costs.

MEMBER (A)

abp.

MEMBER (J)