

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.Nos.970/98, 932/98, 933/98, 934/98, 88/99 & 89/99.

Thursday, this the 29th day of August, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Smt. Shanta Shastri, Member (Administrative).

O.A.No.970/98.

1. Shri M.M. Kale,
2. Shri M.B. Shitole,
3. Shri S.C. Patel,
4. Shri J.M. Shirke,
5. Shri P.B. Deolalikar,
6. Shri V.B. Joshi,
7. Shri S.G. Patnaik,

All are working as
Chief Research Officer,
C.W.P. & R.S., Khadakwasla,
Pune - 411 024.

... Applicants.

By Advocate Shri Suresh Kumar.

Vs.

1. Union of India, through
the Secretary,
Ministry of Water Resource,
Shram Shakti Bhavan,
Rafi Marg, New Delhi-110011.
2. The Secretary,
Union Public Service Commission,
Shahjahan Road, New Delhi-110011.
3. The Director,
C.W.P. & R.S.,
Khadakwasla, Pune-411024.

... Respondents.

By Advocates Shri V.D. Vadhavkar, Shri
V.G. Keger and Shri R.K. Shetty.

O.A.No.932/98.

1. Shri D.P. Shah,
2. Shri S.S. Kapileshwar,
3. Shri D.N. Deshmukh,
4. Shri V.G. Bhawe,
5. Shri S.D. Kulkarni,
6. Shri K. Venugopalan,
7. Shri R.D. Kulkarni,
8. Shri V.M. Bapaye,
9. Shri A.S. Barve,
10. Shri J.D. Prayag,
11. Shri Narayanan Prasad,

12. Shri V.V. Vaze,
13. Shri P.M. Sinnarkar

All are working as
Sr. Research Officer,
C.W.P. & R.S., Khadakwasla,
Pune - 411 024.

.. Applicants.

By Advocate Shri Suresh Kumar.

Vs.

1. Union of India, through
the Secretary,
Ministry of Water Resource,
Shram Shakti Bhavan,
Rafi Marg, New Delhi-110011.
2. The Secretary,
Union Public Service Commission,
Shahjahan Road, New Delhi-110011.
3. The Director,
C.W.P. & R.S.,
Khadakwasla, Pune-411024.

.. Respondents.

By Advocates Shri V.D. Vadhavkar, Shri
V.G. Rege and Shri R.K. Sheety.

O.A.No. 233/92.

1. Dr. G.J. Rao,
2. Shri C.G. Chaphalkar,
3. Shri A.D. Bapat,
4. Shri V.J. Ghonde,
5. Shri B.K. Shah,
6. Shri R.C. Jadhav,

All are working as
Sr. Research Officer,
C.W.P. & R.S., Khadakwasla,
Pune - 411 024.

.. Applicants.

By Advocate Shri Suresh Kumar.

Vs.

1. Union of India, through
the Secretary,
Ministry of Water Resource,
Shram Shakti Bhavan,
Rafi Marg, New Delhi-110011.
2. The Secretary,
Union Public Service Commission,
Shahjahan Road, New Delhi-110011.
3. The Director,
C.W.P. & R.S.,
Khadakwasla, Pune-411024.

.. Respondents.

By Advocates Shri V.D. Vadhavkar, Shri V.G. Rege and Shri R.K. Shetty.

O.A.No. 234/23.

1. Shri R.K. Kamble,
 2. Shri M.D. Kudale,
 3. Dr.S.K. Roy,
 4. Dr.C.B. Singh,
 5. Shri P.C. Pethe,
- All are working as
Sr. Research Officer,
C.W.P. & R.S., Khadakwasla,
Pune - 411 024.

.. Applicants.

By Advocate Shri Suresh Kumar.

Vs.

1. Union of India, through
the Secretary,
Ministry of Water Resource,
Shram Shakti Bhavan,
Rafi Marg, New Delhi-110011.
2. The Secretary,
Union Public Service Commission,
Shahjahan Road, New Delhi-110011.
3. The Director,
C.W.P. & R.S.,
Khadakwasla, Pune - 411 024.

.. Respondents.

By Advocates Shri V.D. Vadhavkar, Shri V.G. Rege and Shri R.K. Shetty.

O.A. 88/22.

1. Shri A.K. Agrawal,
D-4, CMPRS Staff Colony,
Kirkatwadi, Pune.
2. Shri K.R. Dhawan,
Sachu Apartment,
Bhamburda Nagar, Singhagad Road,
Khadakwasla, Pune.
3. Dr. (Smt.) C.K. Rani,
D-10, CMPRS Colony,
Kirkatwadi, Pune.
4. Shri C.K. Das,
G-7, Samarth Park,
Anand Nagar, Pune.
5. Shri P.B. Mehendale,
2, Sumeet Swamand Society

Lane 1, Subakar Nagar No.2,
Pune.

6. Shri A.S. James,
Flat No.A-1, B Wing,
Ganga Park, Mundhwa Road,
Pune.
7. Shri D.M. Shinde,
D-13, CWPRS Staff Colony,
Kirkatwadi, Pune.
8. Shri Y.N. Srivastava,
D-19, CWPRS Staff Colony,
Kirkatwadi, Pune.
9. Shri T. Nagendra,
C-18, CWPRS Staff Colony,
Kirkatwadi, Pune.
10. Shri A.K. Ghosh,
Q.No.C-46, CWPRS Staff Colony,
Kirkatwadi, Pune.
11. Shri R.A. Patil,
Q.No.D-12, CWPRS Staff Colony,
Kirkatwadi, Pune.

.. Applicants.

By Advocate Shri Guresh Kumar.

Vs.

1. Union of India, through
the Secretary,
Ministry of Water Resource,
Shram Shakti Bhavan,
New Delhi - 110 011.
2. The Secretary,
Union Public Service Commission,
Shakti Mahan Road,
New Delhi - 110 011.
3. The Director,
C.W.P. & R.S.,
Khadakwasla, Pune-411 024.

.. Respondents.

By Advocates Shri V.D. Vadhavkar, Shri
V.C. ... and Shri R.K. Shetty.

Q.A.No.10/22.

1. Shri R.R. Gupta,
Q.No.C-2, CWPRS Colony,
Kirkatwadi, Pune.

2. Smt. R.G. Joshi,
37, Gurukripa,
Sangamnagar,
Pune.
 3. Shri S.N. Wadwankar,
Flat No.10, Chandragupta
Coop. Housing Society,
17/1B, Wingane Khurd,
Pune.
 4. Shri K.N. Narayankar,
Q.No.D-8, CWPRS Colony,
Khadakwasla, Pune.
 5. Shri M.K. Pawar,
Q.No.11, CWPRS Colony,
Khadakwasla, Pune.
 6. Shri N.K. Khaparde,
Anandya Apartment,
Flat No.9, Mukai Nagar,
Khadakwasla, Pune.
- ... Applicants.

By Advocate Shri Suresh Kumar

Vs.

1. Union of India,
through the Secretary,
Ministry of Water Resource,
Shri. Shakti Bhavan,
B-1, New Delhi-110011.
2. The Secretary,
Union Public Service Commission,
Shahjahan Road,
New Delhi - 110 011.
3. The Director,
C.P.R. & R.O.,
Khadakwasla,
P.O. - 411 024.

... Respondents.

By advocates Shri V.D. Vadhavkar,
Shri V.G. Rege and Shri R.K. Shetty.

Order (Oral)

In all these six OAs the issue involved is
through the dates of promotion and the condition for same
different. In O.A.Nos.970/98, 952/98, 953/98 and 954/98,
Shri V.D. Vadhavkar, Counsel appears for Respondents and
in O.A.No.38/99 and 89/99, Shri V.G. Rege appears for

Respondents No.1 and 3 and Shri R.K. Shetty appears for Respondent No.2 in O.A.89/93.

2. For the purpose of illustration, we discuss O.A.970/90. In this O.A. the applicants had completed 5 years as Chief Research Officer on various dates in Central Water & Power Research Station. Starting with Shri M.V. Hale who completed 5 years on 1.1.1988 upto Shri S.G. Patnaik who completed 5 years period on 1.1.1991. The promotion channel for the applicants are from Research Assistant to Assistant Research Officer, Assistant Research Officer to Research Officer, Research Officer to Sr. Research Officer, Sr. Research Officer to Chief Research Officer, from Chief Research Officer to Joint Director, from Joint Director to Additional Director and from Additional Director to Director. According to the applicants a special flexible complementing scheme is applicable in the organisation where they are working and as per this scheme those who have completed not less than 5 years in a particular post, become eligible for promotion to the next higher post subject to their being assessed suitable by the D.P.C.

3. The main contention of the applicants is that they had completed the 5 years period of service in the respective posts but they were considered for promotion to higher posts under the flexible complementing scheme much later i.e. beyond the period of 5 years and were granted promotion from the date the DPC recommended them

for promotion. Thus the objective of the scheme has been defeated and the applicants have been denied the promotion on the due date when they had completed 5 years service. This affected their further promotions to the higher posts.

4. In this connection learned counsel for the applicants submits that this particular issue was considered with reference to the same organisation in the Judgement passed by this Tribunal in O.A. Nos.992/93 and 1003/93. The applicants in O.A.992/93 were Sr. Research Officer while in O.A.1003/93 there were 10 Chief Research Officers. In this Judgement, the Tribunal held that the applicants were entitled to be promoted from the date they completed 5 years service and not from the date the DPC meeting was held. The learned counsel further submits that a similar decision was taken by the Principal Bench also in another O.A.No.1715/95 in which same ratio was laid down that the promotion under the flexible complementing scheme has to be from the date of completion of 5 years of service in the post and not from the date of issue of promotion orders after holding the DPC. The respondents in the aforesaid O.A. filed writ petition No.2484/2000 in Delhi High Court, which was dismissed in limine. The learned counsel also submits that as far as the Judgement of the Bombay Bench of the Tribunal is concerned the same is carried over in Writ Petition No.6433/97 before the

Bombay High Court and the same is pending. The applicants are praying that they should be granted the benefit of the Judgement of the Bombay Bench delivered on 11.2.1997. The applicants further submit that immediately after the Judgment was delivered they had approached the respondents to extend the benefit of the aforesaid Judgment to them also and therefore, some time elapsed before they could approach the Tribunal. The applicants have prayed as follows:

8.1 To hold and declare that the applicant is entitled for promotion in grade of Chief Research Officer w.e.f. from the date they have completed five year of service in the grade of Senior Research Officer as shown in para 4.4. of O.A. with all consequential benefits as granted in O.A.No.1003 of 1993.

8.2 To hold and declare that the applicant is entitled to be considered for promotion to the grade of Joint Director w.e.f. date shown in para 4.15 herein above as per judgement on O.A.1003 of 1993 being ex A-VI with all consequential benefits as granted in O.A.No.1003 of 1993.

8.3 To direct the respondents to consider the applicants No.1 to 3 for promotion to the grade of Joint Director scheduled on 18.11.1998 as they have completed five year service in the grade of Chief Research Officer as on 13th May 1993.

8.4 The applicant be allowed to file joint application.

8.5 This Hon'ble Tribunal may be pleased to grant any other relief to which the applicant may be found entitled and in this regard may pass any such order or direction or settle with as seemed fit.

8.6 Cost of this application may be paid by the applicant.

5. The respondents submit that even though it has

been provided in the scheme of flexible complementing scheme that those who have put in not less than 5 years of service are to be considered for promotion to the next higher grade, they have to be first assessed by the DPC and found fit. It is only thereafter that they could be considered for promotion which is not automatic. Also the learned counsel for respondents, Shri V.D. Vadhavkar submits that till 1988 the respondents used to order promotion with retrospective effect i.e. from the date of completion of 5 years of service even though the recommendations of the Board and assessment were available on a subsequent date. However, this position came to be changed in 1989 and now all the promotions are being made effective from prospective date as per the Department of Personnel & Training Circular dated 24.4.1989. The respondents have, therefore, rightly granted the promotion to the applicants prospectively i.e. from the date of issue of their promotion orders. The respondents have also referred to the letter from Union Public Service Commission (in short UPSC) of 20.3.1991 wherein UPSC has clarified that in terms of instructions of Department of Personnel & Training, the promotions can be given effect to only from a prospective date and, therefore, the promotion of all the officers viz. Research Officer/Sr. Research Officer who were recommended for promotion under their letter dated 17.5.1991 should be given effect to from prospective dates and not from the retrospective dates as was earlier

recommended. The learned counsel for respondents, therefore, submits that this being the position the respondents action cannot be faulted and the applicants are not entitled for any retrospective promotion from the date of completion of 5 years of service. Shri V.G. Rege, Learned Counsel for Respondents No.1 to 3 in O.A.No.88/99 argued that unlike in other schemes like OTBP, TOBP where it has been specifically stipulated that promotion shall be given effect after completion of 16 years or 20 years, in the case of flexible complementation scheme, there is no such specific stipulation, although the scheme says that the person should have completed not less than 5 years of service and therefore, it cannot be construed that promotion should be from the date of actual completion of exactly 5 years of service and, therefore, the promotion can be granted from that date.

6. In regard to the judgement of the Principal Bench, Bombay Bench and the judgement of the Delhi High Court, the learned counsel for respondents pointed out that the Delhi High Court has only dismissed the Writ Petition in limine without going into the full merits of the case and in this judgement reference is made to the O.A 222/99 decided by the Bombay Bench which is pending in Writ Petition in the Bombay High Court. Thus it is

not attain any finality although he admits that the facts in the O.A.1715/95 are similar to the present case.

7. Learned counsel for the respondents in O.A.Nos.1 to 4 has raised the issue regarding limitation. According to him, the applicants are claiming promotion in the year 1988 and 1991 by approaching this Tribunal in the year 1998 and 1991 thus therefore, the claim is barred by limitation, delay and laches. Therefore, the O.As are not maintainable and deserves to be dismissed on this ground itself. The applicants have not even filed any application for condonation of delay and in fact, it is clearly held by the Supreme Court in R.C. Sharma Vs. Udhham Singh Kamal that when there are delay and laches and application is beyond the period of limitation and there is no application for condonation of delay, the O.A. deserves to be dismissed on the ground of limitation.

8. Learned counsel Shri V.B. Rege also raised the issue that the O.A. is filed by a number of applicants but there is no application for joining of the respondents in or O.A. and, therefore, the O.A. is liable to be dismissed.

9. The learned counsel for the applicants explained that as soon as the judgement was delivered in O.A.No.992/93, the applicants made a representation to

the respondents. After exhausting the remedy, the applicants have thereafter approached this Tribunal, thus there is no delay and therefore, the question of making application for condonation of delay does not arise. In regard to the joining of applicants, the learned counsel for applicants admits that there is no separate application filed for joining of the applicants in the same O.A., however, the prayer is included in the para 2 relating to reliefs sought and, therefore, the O.A. cannot be dismissed on this ground for not joining of the applicants.

10. We have heard the learned counsel for applicants as well as the respondents and have given careful consideration to the pleadings. The issue is whether the promotion is to be granted under the flexible complementing scheme immediately after completion of 5 years or from the date the actual orders of promotion are issued. According to the respondents it has to be from the date of issue of orders, while the applicants insist that it should be on completion of 5 years service. We have perused the relevant judgments.

11. Before we proceed to decide the matter in merit we find that the applicants are claiming different promotions from the different periods e.g. some of them are claiming promotion from Sr. Research Officer to Chief Research Officer from 1991 and from Chief Research

Officer to the post of Joint Director from 1998. As far as their prayer for promotion from 1991 is concerned, we have to hold that their prayer is hit by limitation. They ought to have approached this Tribunal when the cause of action arose. Their plea is that the Judgment was given in 1997 and they are praying to extend the benefit of the Judgement. This cannot help them as nothing prevented them in coming independently to the Tribunal earlier, therefore, as far as the promotion pertaining to 1991 or even 1996 are concerned we reject the prayer.

12. In regard to joining of parties since request is included in the prayer clause, we accept the same and allow it.

13. In our considered view the main objective behind introducing the flexible complementing scheme for Scientists is that they get promotions at regular intervals without having to wait for vacancies to occur. These are not regular promotions. It is a special scheme and, therefore, in our considered view, even though the wording used is "less than 5 years of service", intention behind the scheme is that the employees Scientists should get promotions after completion of specific period of service. This is the intent of the scheme. We have also observed in the present case that the respondents have a responsibility of holding the DPCs

in time which they have not discharged properly. The meetings of the Board of assessment are not held regularly, in fact the scheme has stipulated this and one does not have to wait for vacancies to occur. As a regular exercise, respondents should consider the Scientists for promotion as per the scheme well in advance instead what we find is that meetings are held much later sometimes going beyond even one year. This defeats the very purpose of the scheme for which it has been introduced. In our considered view therefore, the applicants are entitled to be considered for promotion from the date they completed 5 years of service and not from the prospective date when the Board of Assessment chose to meet which may be much later. We do not deny that the applicants ought to be assessed before they can be promoted. That is a pre-condition but the promotion orders must be given from the date of the completion of 5 years. This is an incentive to the Scientists to keep themselves active and alert throughout service. This is exactly the ratio which has been laid down in the Judgement in O.A. Nos. 992/88 and 111/88 followed in the judgement of the Principal Bench in C.A.N. 1111/95 as upheld by the High Court of Bombay. The respondents argued about the change in policy from the year 1989. It is seen that this particular issue of the respondents has already been covered in the judgement of the Bombay Bench as already discussed and Tribunal has ordered that the promotions have to be from the date of

completion of 5 years of service. We are not persuaded therefore, to take any view other than the one already expressed in the O.A. decided by the Bombay Bench or the Principal Bench upheld by High Court of Delhi. Bombay High Court has not given any stay order. We therefore, allow the O.As. we make it clear however that each individual applicant's case has to be dealt with on its own merit. If a Scientist had been considered for promotion but was not found fit for promotion after assessment, then in that case the stipulation of completion of 5 years would not arise. Therefore, we allow the O.As in respect of the promotion of the Scientists who had completed 5 years of service in 1993 and 1999 only. The same applies in all the O.As. Accordingly, the O.As are disposed off, with no order as to costs.

(Smt. Chanta Shastri)
Member (A)

(Birendra Saks)
Vice Chairman