

THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
HYDERABAD

Regd. No. 1032/96



10.12.1996

V. Sambasiva Rao & 9 Ors.

Mr. R. BrizMohan Singh

ADVOCATE FOR THE
RESPONDENT (S)

V. Sambasiva Rao & 9 Ors.

Mr. Vinod Kumar

ADVOCATE FOR THE
RESPONDENT (S)

Mr. N.R.A. Shri Justice D.H. Nasir, Vice Chairman

Mr. C.N.R.L. Shri H. Rajendra Prasad, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. Whether referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether the Judgment is to be circulated to the other benches

JUDGMENT DELIVERED BY H. Rajendra Prasad, M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. 1032/96

Date: 19/4/96

Between:

1. V. Shambasiva Rao
2. P. Vijaya Kumar
3. A.G. Sugriva Reddy
4. K. Dwarkanath
5. R.V. Vidyasagar
6. K. Lakshminarayana
7. B. Saibaba
8. Mrs. Sabera Aijaz
9. B. Umamaheswara Rao
10. M. Venkata Gopal

.. Applicants

A N D

1. Union of India,
Secretary
Govt. of India,
Ministry of Water Resources,
Shramshakti Bhawan,
New Delhi.
2. The Chairman
Central Ground Water Board,
Ministry of Water Research,
C.G.O. Complex, N.H. IV,
Faridabad.

.. Respondents

Counsel for the Applicants : Mr. R. Briz Mohan Singh

Counsel for the Respondents : Mr. Vinod Kumar

Couram:

Hon'ble Shri Justice D.H. Nasir, Vice-Chairman

Hon'ble Shri H. Rajendra Prasad, Member (A) *not in*

JUDGEMENT

(Per Hon'ble Shri H. Rajendra Prasad, Member (A))

1. Heard Mr. Brij Mohan Singh for the Applicants and Mr. Vinod Kumar for the Respondents.

2. In this OA, filed under Section 19 of the Central Administrative Tribunals Act, 1986, the validity of Central Ground-Water Board (Group "A" Posts) Recruitment Rules, 1987, and 1995 is challenged insofar as they relate to the exclusion of Group "B" Assistant Chemist/Assistant Hydrogeologist from the purview of the Flexible Complementing Scheme evolved by the Department of Science & Technology in 1983 and modified in 1986, in pursuance of the recommendation of the III Pay Commission, and thereby shutting out the prospect of their promotion to Junior Chemist/Hydrogeologist(Scientist 'B') and above.

3. The Central Ground Water Board under the Ministry of Water Resources (formerly known as Ministry of Irrigation) is listed as a Scientific Organisation by the Government. The various posts in and under the Board are scientific posts. Any Scheme or policy aimed at enhancing the job-satisfaction and career-advancement of scientific personnel would therefore be applicable to the scientific officers of the Board. And if such a policy is evolved by the Ministry of Science & Technology and its nodal agency in all scientific matters, it becomes incumbent on the part of every Scientific Organisation in all Ministries to adopt it completely in respect of their own scientific personnel.

This, complain the Applicants in this OA, has not happened in the instant case and resultantly their hopes of career-advancement have been all but blighted in foreseeable future.

4. One of the Applicants herein, an Assistant Chemist and the rest are Assistant Hydrogeologists, all of which are gazetted posts of Group "B" in pay-scale Rs.650-1,200(pre-revised)/Rs.2,000-3500(Revised). Seven of the Applicants were promoted from Senior Technical Assistant after a service of five to eight years while three were directly recruited to Group "B" (earlier called class II) service between 1987-91. All of them belong to Hydrogeology wing of ^{the} service.

which comprises five different disciplines: Hydrology, Geophysics, Hydrometeorology and the eponymous Hydrogeology. Quite arguably, the Applicants can be promoted, over a time and in their turn, to Junior Chemist/Hydrogeologist(Scientist "B"), Senior Chemist/Hydrogeologist(Scientist "C") and Director (Scientist "D") all of which positions are in Group "A", - in pay scales ranging from Rs.700-3,000 (pre-revised), upto 67% of the vacancies in the promotional posts, assuming, of course, that they continue to remain meritorious enough for such successive promotions.

5. With a view to ease the prevalent stagnation in scientific cadres the Department of Science & Technology introduced in November, 1983, what was called Flexible Complementing Scheme as per the recommendations of III Pay Commission (Annexure-2 to the OA). Under this the scientists were to be considered for promotion from one grade to next higher grade after a prescribed period of service on the basis of merit and ability irrespective of the occurrence of vacancy in the higher grade. Initially introduced only in some of the Departments/Organisations the scheme was decided to be extended to all scientific institutions/organisations of the Government at the initiative of the Science Advisory Committee to the Cabinet. Certain guidelines were issued in this regard for the introduction/extension of the scheme to these institutions/organisations (pages 23-29 of the OA). The concerned Ministries were asked to frame and process proposals for the introduction of Flexible Complementing in organisations/institutions under them. The Respondent Organisation in this case was included at serial No.10(iii) in the accompanying list of S&T Institutions where the Scheme was to be introduced.

The scheme was, however, made applicable only to Group "A" Services at that stage (Guideline/Norm No.2, page 25 of the OA)

6. The Ministry of Science & Technology notified in May, 1986, the Presidential assent to certain innovations in the personnel policy in Scientific Departments aimed at providing a better executive support system than what was available till

then with a view to enabling the Scientific Departments and scientific organisations in non-scientific departments for effective realisation of result-oriented and time-bound programmes of scientific research and technological development. As a part of these changes, Flexible Complementing, which was restricted till then to Grades of Rs.700-1,300, Rs.1,100 - 1,600 and Rs.1,500 - 2,000. Para 2 of the Personnel Policy in the said document runs as under:

"2. Flexible complementing providing in situ promotion to scientists whose work is satisfactory has already been introduced in scientific departments. This is, however, at present restricted to the Grades: Rs700-1300, Rs.1100-1600 and Rs.1500-2000, with a proviso that the total number of posts in the grade of Rs.1500-2000 will be not more than 30% of the total number of posts in the three grades. A limited application of flexible complementing is also permissible to the posts in the scale Rs1800-2250. Having regard to the fact that in some scientific departments there has been induction of scientists in the scale of Rs.650-1200, it has been decided to introduce flexible complementing beginning with the grade of Rs.650-1200 where this also serves as a direct recruitment grade. It has also been decided to extend the flexible complementing scheme upto the scale of Rs.2500-3000. There will be no restriction as regards percentages and full flexibility will be available in all grades upto Rs.2500-3000; proven merit and records of research will be the only criteria. A minimum residency of 5 years in each grade will be required for promotion under flexible complementing."

Scientific and non-scientific Departments having scientific organisations under them were asked to approach the Ministry of Personnel and Finance for approval of the follow-up measures required for incorporating the Flexible Complementing in the relevant recruitment rules in order to provide in situ promotions to their scientists in accordance with the Scheme and the Guidelines.

7. Nearly one year later, on 18th May, 1987, the Central Ground Water Board (Scientific Group "A" Posts) Recruitment Rules were published. As the very title of the Rules denote, these related to the initial constitution, future maintainence, method of recruitment, age limits, qualifications and "other matters" regulating the Group "A" Scientific posts in the Board. It was clearly stated in the rules that

the system of Flexible Complementing and in situ promotions shall be followed in the matter of promotions to officers of Scientist "B" (Rs.2,200 - 4000) to higher grades of Scientist "C" (Rs.3,000 - 4,500) and Scientist "D" (Rs.3,700 - 5,000). The Applicants who were in the grade "C" (Rs.650 - 1,200) were thus left out of the purview of the Scheme despite the fact that Ministry of Science & Technology OM dated 28th May, 1986, issued prior to the formulation and publication of these Rules, had introduced the flexible complementing beginning with the grade of Rs. 650 - 1,200. The Recruitment Rules of 1987 may be said to have thus ignored the policy-decision as well as a cardinal guideline issued by the nodal Ministry in an important area of introduction of the Flexible Complementing Scheme.

8. The 1987 Recruitment Rules were later repealed and replaced by the Central Ground-Water Board (Scientific Group "A" Posts) Recruitment Rules, 1995, promulgated on 28th June, 1995, providing, inter alia, for application of flexible complementing and in situ promotions of departmental officers in the grades of Scientist "B" to grades "C" & "D" above. The provision for promotions envisaged in 1995 rules are in para materia to those of 1987, the intervening eight years between the two sets of rules not having made any difference to the promotion prospects of officers of Group "B" in the grade of Rs.650-1,200, like the present Applicants. The initial exclusion of the officers of this grade (Rs.650-1,200) - which was in violation of the policy-decisions and guidelines of the Science & Technology Ministry- was not only left unrectified but got perpetrated in the 1995 Rules.

9. This exclusion/omission is the main ground of grievance of the Applicants in this OA. They proceed to argue how they, despite rendering service ranging between 6 to 14 years, have not only not been promoted so far from their existing grade/post to the next higher grade, but do not see any reasonable prospect under the present dispensation of Recruitment Rules of such promotions coming their way in the foreseeable

future, owing to the operation and interaction of diverse factors and situations.

10. The counter-affidavit in this case, filed nearly one-and-a-half-years after the issue of a notice to the Respondents, is hardly of any great help and is seen to be embarrassingly inadequate in clarifying the position in any material aspect of the case. Apart from being replete with avoidable minor errors, the reply hardly illuminates the position on any substantive issue figuring in this case. Allusions are made to non-existent Annexures to the Counter-Affidavit, ^{and} repeated references are made and reliance placed on a so-called "preliminary objection" - though it is not clear what this objection really is about. The counter-affidavit states that according to a "clarification" issued by the Department of Science and Technology, no scheme exists for Flexible Complementing of Group "B" officers like the present Applicants. This clarification is supposed to be in Annexure II to the counter which, however, is not found on record, not apparently having been filed. One other reference is made to a recommendation of V Pay Commission to the effect that the Flexible Complementing Scheme for Groups "B" "C" & "D" "has to be withdrawn" and it is suggested that this particular recommendation was "actively" considered. It is not known in the first place if the Scheme had ever been made applicable to Groups "C" and "D" and whether, therefore, there was any scope or real need to withdraw it from those groups. Next, considerable effort is expended in explaining the mode and method of recruitment of junior Chemist/Hydrogeologist - "according to the provision laid down in the Recruitment Rules for each categories of posts" - the exact relevance of which is far from clear. Then it is stated that the extension of Flexible Complementing Scheme to Group "B" officers envisaged in Science & Technology Department OM of 28th May, 1986, has not been applied to the officers of Science & Technology Department itself: this bald assertion being not backed by any document. The "real fact" purported to give the sanctioned strength of Scientist "B" (Chemist) and (Junior Hydrogeologist) remains undisclosed by the unexplained blank spaces in that sentence. By

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"Chemist" is probably meant "Junior Chemist" . It is revealed that 14 posts of "Chemist" and 75 vacancies of Junior Hydrogeologists are lying unfilled and that proposals are under consideration for filling them up - by whom these are proposed to be filled is not made clear.

11. The Applicants complain that Respondent-2 had at one stage proposed the inclusion of Group "B" Officers of the Board in the Flexible Complementing Scheme, but it was decided, at the instance of Respondent-1, to defer the proposal. This is evident from para (i) of the Board's Letter of 10th August, 1994, addressed to UPSC. (Annexure-5 to the OA) The said paragraph, importantly relevant as it is to the discussion of the facts of this case, is as under :

(i) Eventhough the proposal for inclusion of Group "B" Officers in the different scientific streams in the scale of Rs.2000-3500/- in the Flexible Complementing Scheme was under consideration, a decision was taken with the approval of Secretary(HR) to exclude them as inclusion of Group "B" would have delayed further the whole exercise in view of review of Flexible Complementing Scheme.

12. The counter-affidavit has this to say on this aspect of the case:

In reply to the averments made in para 6.19 it is submitted that no doubt, a proposal for inclusion of Group-B posts was sent to the respondent No.1, vido this office letter dated 6-3-1996 (Annexure-R.IV) But the proposal could not be considered as the definition of Scientist/Scientific posts and Scientific departments was under review of V Pay Commission. Further action on the said proposal would be taken only after the Govt's decision on the recommendations of Vth Pay Commission as mentioned in para 2 of preliminary objection is received.

13. The whole position on this particular aspect of the matter is as unclear as ever.

14. Examples indicative of insufficient care in the drafting of the counter-affidavit can multiplied. It would not be necessary to do so. Suffice it to say that the reply filed on behalf of the Respondents is

hardly adequate, failing as it does to clarify any point or issue of significance. The following paragraph on page-11 of the counter-affidavit, however, compels attention :

Since the Respondents No.1 and 2 were not aware of extending benefits of FCS to Group-B posts in the pay scale of Rs.650-1200 (Revised 2000 - 3500) by the Ministry of Science & Technology (Dept. of Science & Technology's) vide their OM dated 28-5-1986 as the copy of the said order was neither available with respondent No.1 nor with respondent No.2. In the absence of the said order, the question for including Group-B posts in CGWB therefore, could not be taken up at the time of introduction of FCS to Group A (Scientific posts) in 1987. Had the circular of Dept. of Science & Technology's could have come to the notice, action for inclusion of Group-B posts could have been taken into consideration at appropriate time. Later this proposal could not be considered due to the reasons as already explained in preceding paras.

15. The counter-affidavit in this case has been filed by the Regional Director of Central Ground-Water Board, Southern Region, on behalf of the Respondents, on being authorised to do so. If what is stated in the extract cited above is the official version and the admitted position of the Respondents, the revelation contained in it casts an entirely new and clinching light on the dispute in this case. It opens up a distinct possibility that the Recruitment Rules of 1987 and 1995 were formulated in a state of unawareness of the contents of Department of Science & Technology OM dated 28th May, 1986, extending the Flexible Complementing to officers in the grade of Rs.650-1200, where this also served as direct recruitment grade. It is noted that Applicants No. 5, 9, 10 were directly recruited through the UPSC as Assistant Hydrogeologists in the pre-revised scale of Rs.650-1200 which establishes the fact that the post to and the scale in which they were so inducted served as a direct recruitment grade.

It is also revealed in the Board's letter of 10th August, 1994 that at one time the Board was in fact considering a proposal for the inclusion of Group "B" Officers in different scientific streams in the scale of Rs.2000 - 3,500 in the Flexible Complementing Scheme, but then it was decided to defer a decision on this to avoid further delay to the ongoing review of the said Scheme as it

obtained them in relation to the officer-scientists of the Board(Annexure-5 to the OA). It is, however, not known why this proposal was not pursued thereafter and how it was left out of consideration while formulating the Recruitment Rules of 1995.

16. Given this admitted position it is clear that there is force in the Applicants' grievance about their exclusion from Flexible Complementing as envisaged in the Scheme and the connected guidelines of the concerned Ministry. No valid or acceptable reason has been advanced for such exclusion. It is stated by the Applicants that the interests of Group "C" and Group "D" staff of the Board are duly protected by a "Career Advancement Scheme" which ensures their time-bound promotion. On the other hand, Group "A" Officers of the Board have been covered by the Recruitment Rules of 1987 & 95. This leaves only the Group "B" officers from the purview of any scheme of time-bound promotions. It is

clear that such undesirable situation could well have been avoided by following the guidelines of the Government by their inclusion within the ambit of 1995 Rules.

17. In view of what has been stated and discussed above, it is held that the Applicants (Asstt.Chemist/Assistant Hydrogeologists) in this OA have been incorrectly and arbitrarily excluded from the operation of Flexible Complementing Scheme as extended to the Respondent Organisation by the Department of Science & Technology in November,1983, and extended further to the Group "B" Officers of their grade (Rs.650-1,200 pre-revised)/Rs.2,000-3,500, Revised) by the same Department in May, 1986. It is also held that the posts of Assistant Chemist and Asstt.Hydrogeologist are required to be incorporated as No.4 under the colum "Name of the Post" in the Table appearing between Rule 5 and 6 of Government of India Notification containing the Central Ground Water Board Recruitment Rules, 1995. Suitable additions/modifications are required to be made in the said Rules, wherever appropriate and necessary, with a view to extending the Flexible Complementing to these Applicants.

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18. It is directed therefore that a review be undertaken of the 1995 Rules to secure this objective. If necessary, the position of Flexible Complementing to Group "B" Officers in the scale of Rs.650-1,200/Rs.2,000-3,500 in the comparable scientific organisations and establishments of other Ministries may be ascertained. The review shall be undertaken and completed within six(6) months from the date of receipt of a copy of this order.

19. It is further directed that, consequent to such review of the Rules, the claims of the Applicants for in situ promotion to Junior Chemist/ Junior Hydrogeologists from the date of coming into effect of the Recruitment Rules of 1987 be considered on merits and in accordance with the prescribed procedures within two (2) months thereafter.

20. Thus the OA is disposed of. No Costs.

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CASE NUMBER . OA 1032

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TIME 19.4.98

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Central Administrative Tribunal
Hyderabad Bench