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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH: AT HYDERABAD.

O.A.No. 1237 of 1996

Date of Order :- 21-01-1999.

Between :

1. N.H.Reddy, s/o N. Ramachandra Reddy aged about 44 years, Working as Scientist 'D' at Central Ground Water Board, Southern Region, Hyderabad.
2. K.V.S.Shastry, s/o K. Bhaskar Rao, aged about 48 years, Working as Scientist 'D' at Central Ground Water Board, Southern Region, Hyderabad.
3. B. Jaya Kumar, s/o B. Papaiah, aged about 46 years, Working as Scientist 'D' at Central Ground Water Board, Southern Region, Hyderabad.

... APPLICANTS

A N D

1. The Union of India, through Secretary to the Government of India, Ministry of Water Resources, Shramshakti Bhavan, New Delhi.
2. The Chairman, Central Ground Water Board, Ministry Water Resources, CGO Complex, NH IV, Faridabad.

... RESPONDENTS

Counsel for Applicants : Mr. R. Briz Mohan Singh

Counsel for Respondents : Mr. V. Rajeswara Rao, CGSC.

CORAM :

THE HONOURABLE JUSTICE SHRI D.H.NASIR : VICE-CHAIRMAN

THE HONOURABLE SHRI H.RAJENDRA PRASAD : MEMBER (A)

(Order per Hon'ble Justice Shri D.H.Nasir, Vice-Chairman).

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O R D E R.

( Per Hon'ble Mr.Justice D.H. Nasir, Vice-Chairman )

1. There are three applicants in this O.A.. The legality of Rule 6(3)(a) of the Central Ground Water Board (Group 'A' Posts) Recruitment Rules, 1987 is challenged in this O.A. mainly on the ground that it was contrary to the policy of the Department of Science and Technology, ~~1986~~ Government of India, issued under DST/MS/1(45) dated 28-5-1986 and to issue a consequential direction to the respondents to treat the effective date of promotion of the applicants to the post of Scientists 'D' as 1-1-1994 with all attendant benefits.
  
2. The applicants were initially appointed as Junior Hydrogeologists in 1978. With a view to removing stagnation in Scientific posts, the Department of Science and Technology laid down certain guidelines under DST/MS/1(45)/82 dated 14/22-11-1982 (Annexure-A.1 to the OAP) in pursuance of the recommendations of the Third Pay Commission and a scheme called "Flexible Complementing Scheme" ('FCS' for short) was introduced in the Scientific departments for giving effect to the recommendations of the Third Pay Commission. The scheme was applicable to three levels viz., (a) S-I Rs.700-1300; (b) S-II Rs.1100-1600 and (c) S-III Rs.1500-2000. Upward movement to S-III level was intended to be, by and large, without reference to the availability of vacancies subject to

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condition that total number of posts so filled in S-III level under the scheme should not exceed 30% of the total number of posts in S-I, S-II and S-III put together. However, according to the applicants, by OM No.A42014/2/86-Adt.I(A) dated 28-5-1986 (Annexure-A.2 to the OA), the Department of Science and Technology removed the restriction of limiting the post at S-III level by stating that there would be no restriction as regards percentage and full flexibility would be available in all grades upto Rs.2500-3000 (S-IV); proven merit and records of research would be the only criteria and that a minimum residency of 5 years in each grade would be required for promotion under the scheme.

3. All Scientific and Non-Scientific departments having Scientific Organisations under them were directed by the said letter to approach the Department of Personnel & Training for amendment of Recruitment Rules to incorporate FCS providing insitu promotions to the Scientists.

4. Further, according to the applicants, the respondents framed rules viz., Central Ground Water Board (Group 'A' Posts) Recruitment Rules, 1987 which were contrary to the spirit and intention of the policy recommendations. The Rules came into force with effect from 6-6-1987. Under Rule-5 of the aforesaid Rules, all Group 'A' officers working in the Board and holding on regular basis, the posts specified in Column 1 were to be redesignated as specified in Column 3 and they were deemed to have been appointed at the initial constitution of the posts. The posts of Junior Hydrogeologists shown under Item No.3 of Column-1 had to be redesignated as Scientist 'B' and hence all the applicants had to be redesignated as Scientist 'B' from the date of initial constitution of the said posts. Further according to the applicants, an Assessment Board ought to have been constituted on 1-1-1988 to recommend the names of Scientists 'B' for promotion to the post of Scientists 'C' including the applicants in view of the fact that the applicants by then had put in the requisite service of 5 years in the grade of Scientist 'B'. Seventy posts were available in this grade with the respondent Board.

The respondents, however, failed to consider the cases of of Scientists 'B' for promotion to the posts of Scientists 'C' including the applicants as a result of which the applicants complained that they were put to severe recurring loss and could not get higher pay on account of non-promotion. They were all promoted subsequently to the post of Scientist 'C' with effect from 26-2-1992 instead of 1-1-1988.

5. The applicants made several representations expressing their grievances but did not find any favour from the respondents. Original Application No.1438/95 was, therefore, filed by the applicants before this Tribunal complaining that they had been discriminated firstly because their cases were not considered at the time when the cases of Scientist 'C' category were considered and were promoted; secondly because, even when the applicants were promoted, the effect was not given from due date; thirdly because they were deprived of these benefits for no valid reason and lastly because their further promotions had been unduly <sup>prolonged</sup> prolonged apart from the denial of benefit of higher pay for the period from 1988 to 1992.

6. It is further pointed out by the applicants that certain officers belonging to the category of the present applicants, filed OA No.985/CH/1994 before the Chandigarh Bench of this Tribunal. The said OA was allowed by order dated 11-7-1995 (Annexure-A-5 to OA) by directing the respondents to constitute Review Assessment Board to consider promotion of the applicants therein with effect from a definite date in 1987 or 1988 under the Rules after assessing the eligibility of the applicants therein for their promotion from the date of appointment as Scientist 'B' to the grade of Scientist 'C'. Further directions were also given to constitute Assessment Board for considering the eligibility of each

applicant on completion of 5 years in the grade of Scientist 'C' for promotion to the next higher grade of Scientist 'D' on their acquiring requisite qualifying service.

7. Further according to the present applicants, during the pendency of the O.A., the respondents agreed to extend the benefit of the judgment of the Chandigarh Bench of this Tribunal to all similarly placed persons who were promoted as Scientist 'C' in the year 1992 along with the applicants before the Chandigarh Bench and the promotions of all Scientists 'C' were antedated with effect from 23-8-1988 as per letter dated 10-5-1996 (Annexure-A.6 to the OA), in which it is clearly stated in the opening paragraph as under :-

" In partial modification of this Ministry's notifications No.7-5/89-GW dated 14-07-92, 24-03-92, 30-04-92, 14-07-92, 08-09-92, 10-03-93 and 02-02-1996, the President is pleased to appoint the following Scientists 'B' to the grade of Scientist 'C' in the scale of pay of Rs.3000-100-3500-125-4500/- in the Central Ground Water Board on temporary basis with effect from the dates mentioned against their names in their names in their respective disciplines. ..."

In the concluding paragraph of the said notification it is stated as under :

" The above mentioned officers will be eligible for all the consequential benefits, viz., seniority in the grade of Scientist 'C' and arrears of pay etc., with effect from the date of their promotions."

8. The names of the present applicants appear at Sl. Nos. 27, 31 and 32. In view of the above, according to the applicants, since no further orders were required to be passed, O.A.No.1438/95 before this Tribunal filed by the present applicants was dismissed as infructuous.

9. The applicants further submit that in view of their promotions to the post of Scientist 'C' having been antedated to 23-8-1988 they were deemed to have completed 5 years of residency period in the category of Scientist 'C' on 22-08-1993 and as per Rule 6(2) the applicants became eligible for being considered for promotion to the post of Scientist 'D' on 1-1-1994. The Assessment Committee which met on 10-07-1996 for this purpose, however, directed that the date of promotion of the applicants to the post Scientist 'D' be made effective from 1-1-1996. By notification No.22/14/94-GW(Vol-IV)/1864 dated 27-08-1996 (Annexure-A.7) the applicants were promoted to the post of Scientist 'D' along with several others in the pay scale of Rs.3,700-125-4,700-150-5000, but the effective date of promotion was shown as 1-1-1996 against each applicant instead of 01-01-1994. The names of the applicants appear at Sl.Nos.87, 91 and 92 of the list.

10. In view of the above, according to the applicants, the entire purpose of making rules for time-bound insitu promotions irrespective of the existence of actual vacancies, with a view to removing stagnation, was defeated and therefore the action of the respondents in promoting the applicants with effect from 01-01-1996 instead of 01-01-1994 was illegal and void.

11. The respondents do not dispute that the Department of Science and Technology had approved and issued guidelines and norms for introduction of FCS in Scientific Departments Organisations Institutions under the Government of India. But according to them, the same <sup>were</sup> ~~are~~ not applicable to the personnel working in the Central Ground Water Board, Ministry of Water Resources, which came into being on 15-7-1995 unless the rules were framed by applying the said guidelines by the Ministry of Water Resources.

12. Further according to the Respondents, Rules were framed in

1987 itself. Since the validity thereof was challenged, after a lapse of 6 years, the action was time-barred, according to the respondents. The determination of similar issues by the Chandigarh Bench of this Tribunal also did not save the limitation, according to the Respondents and in support of this contention, the respondents placed reliance on the decision of the Hon'ble Supreme Court in the case of STATE OF KARNATAKA AND OTHERS Vs. SM. KOTIRAYYA AND OTHERS (1) and urged that this O.A should be dismissed on the ground of delay and laches.

13. Further according to the respondents, the scheme was applicable only to Group 'A' services/cadres in Scientific Departments under Government of India. The proposal to introduce the FCS in CGWB was approved in the light of the aforesaid guidelines, to cover the following disciplines :

- (1) Hydrology
- (2) Chemistry
- (3) Geophysics
- (4) Hydrometeorology and
- (5) Hydrology.

The proposal was approved by the Government of India in October, 1985. However, the UPSC did not agree for inclusion of Hydrology discipline on the ground that there was no such post at the entrance level (Junior Time scale) of Group 'A' posts. The Commission, therefore, suggested that the post of Junior Hydrologist may be upgraded from the pay scale of Rs.650-1200 (pre-revised) to Rs.700-1300 (pre-revised) for bringing the same within the purview of the scheme and thereafter the scheme was approved by the UPSC vide their letter dated 27-11-1986 after excluding the discipline of Hydrology. The scheme was notified vide notification No.25/32/84/-GW dated

18-05-1987 and was published in the Gazette of India on 6-6-1987. In the meantime, the Department of Science and Technology vide their O.M.No.A/42012/2/86/Admn.I(A) dated 28-05-1986 (i) extended the FCS to the lower pay scale of Rs.650-1200 (Revised) and the higher pay scale of Rs.2500-3000 (pre-revised) and (ii) removed restrictions in regard to the percentages and provided full flexibility in all grades up to Rs.2500-3000 (pre-revised). This O.M., however, did not come to the notice of the Ministry of Water Resources before introduction of the FCS vide CGWB (Scientific Group 'A' posts) Recruitment Rules, 1987 and, therefore, according to the respondents, the contention of the applicants that these rules were made contrary to the above O.M. was not correct.

14. The respondents clarify that in compliance with the orders of the Tribunal in OA 753/87 filed by B.Shyam Prasad Senior Hydrologist, CGWB, a proposal to amend the CGWB (Scientific Group A Posts) Recruitment Rules, 1987 was prepared for the following purposes :

- (a) To include the Hydrology discipline in FCS;
- (b) To bring in full flexibility in all grades.

Accordingly, CGWB (Scientific Group A posts) Recruitment Rules, <sup>were framed in</sup> 1995 superseding the Recruitment Rules of 1987 and thereby bringing the Hydrology discipline under FCS and removing the restriction of 30% limit in the posts of Scientist 'D'.

15. Further, according to the respondents, the posts which were in existence prior to the said Recruitment Rules, were re-designated as Scientist 'D', Scientist 'C' and Scientist 'B' respectively vide Ministry of Water Resources order No.25-32-84-GW dated 3-6-1988. Accordingly, all Junior Hydrogeologists (including the applicants) were re-designated as Scientist 'B' (Junior Hydrogeologist) with effect from 03-06-1988.

16. A proposal for promotion of 106 Scientists 'B' including the applicants to the grade of Scientist 'C' in the pay scale of Rs.3000-4500 was prepared in June, 1987. The proposal was re-cast and revised for insitu promotion of all eligible Scientists 'B' to the grade of Scientists 'C' in the pay scale of Rs.3000-4500. The revised proposal for consideration of 53 Scientists 'B' to the grade of Scientists 'C' could not be placed before the Assessment Board of the UPSC upto 1991 due to administrative reasons beyond the control of the Government. The UPSC fixed the meeting of the Assessment Board on 2nd, 6th, 7th and 8th January, 1992 and finally on the recommendations of the Assessment Board, the officers including the applicants were promoted to the post of Scientists 'C' in the pay scale of Rs.3000-4500 from the date of taking over charge of the post, vide Ministry of Water Resources letter No.7-5-89-GW dated 25-02-1992 and 14-09-1992.

17. It is further contended by the respondents that the FCS was introduced in 1987 in the Central Ground Water Board to provide insitu promotions to the departmental candidates ~~dates~~ of Scientific stream (Group 'A' cadre) to the next higher grade of Scientist 'C' and Scientist 'D'. Accordingly the Recruitment rules for the posts of Scientist 'D', Scientist 'C' and Scientist 'B' were notified by the Ministry vide notification No.25-32/84-GW dated 18-05-1987. In pursuance of para-5 of the Ministry's notification dated 18-05-1987 the posts which were in existence prior to the notification of the said rules were redesignated as Scientist 'D', Scientist 'C' and Scientist 'B' respectively, and the post of Junior Hydrogeologist was redesignated as Scientist 'B'. Since there was a complete flexibility in the grade of Scientist 'C' in the pay scale of Rs.3000-4500 all the officers having 5 years regular service in their respective grades of Scientist 'B' (Junior Hydrogeologist), Junior Geophysicist, Chemist and Hydrometeorologist were to be considered for next higher insitu promotion under the FCS.

irrespective of the sanctioned posts which were ~~to~~ in number as shown in the Recruitment Rules for the post of Scientist 'C'. Accordingly, a proposal for promotion of Scientist 'B' of all disciplines who were eligible for consideration for insitu promotion to the post of Scientist 'C' in the pay scale of Rs.3000-4500 was prepared. However, the same could not be sent to the UPSC due to a review DPC held for the post of Junior Hydrogeologist (now Scientist 'B' / Junior Hydrogeologist) in pursuance of the judgement of the Punjab and Haryana High Court in the case of V.M.Sikka, Junior Hydrogeologist. Accordingly, the proposal was modified and sent to the UPSC on 16-08-1989. The Commission fixed the meeting of the Assessment Board for holding interviews of all eligible candidates for promotion to the post of Scientist 'C' in the pay scale of Rs.300-4500 on 2nd, 6th, 7th and 8th January, 1992 and finally according to the recommendations of the Assessment Board, 50 Scientists 'B' (49 officers against the year 1987 and 1 against the year 1988) including the five applicants in the present case who were empanelled for 1987 were promoted to the post of Scientist 'C' in the pay scale of Rs.3000-4500 with effect from 26-2-1992, the date of taking over charge of the post and thereafter 17 Scientists 'B' including the applicants represented for considering their promotion to the grade of Scientist 'C' under FCS with effect from 6-6-1987 itself i.e. from the ~~date~~ of FCS coming into force in the CGWB. While their representations were under consideration, C.P. Srivastav and 4 other Scientists 'C' of CGWB filed OA No.491/CH/94 before the Chandigarh Bench of this Tribunal and in pursuance of the order dated 25-05-1994 in the said O.A., the representations of the applicants were considered in the light of the instructions contained in DOPT's OM No.22011/5/86-Estt (D)

dated 10-4-1989 which inter alia provided that the promotion of officers included in the panel would be effective from the date of validity of panel or the date of their actual promotion whichever is earlier. This decision of the Government was conveyed to all representationists vide CGWB's letter No.14-7/94/CH(Estt) dated 18-08-1994. Thus, according to the respondents, directions of the Tribunal in OA 491/CH/94 were complied with by sending replies to all the representationists.

18. Being aggrieved by the said reply, C.P.Srivastav and four other Scientists 'C' filed another O.A.No.985/CH/94 before the Chandigarh Bench of this Tribunal which was disposed of by order dated 11-07-1995, the operative part of which was as follows :

" For the foregoing reasons, we find that this application deserves to be allowed. While allowing this application, the orders contained in Annexure-A.1 are quashed. The respondents are directed to constitute a Review Assessment Board which shall consider the promotion of the applicants with effect from a definite date in the year 1987 or 1988 under the Rules Annexure A-3 assessing the eligibility of the applicants for their promotion from grade of Scientists-B to grade of Scientist 'C'. In case, the recommendations already made by the Assessment Board relate to their eligibility upto the year 1987, they be given promotion from a date in the year 1987 or in the year 1988 under the said rules which would be assessed by the respondents. They are further directed to constitute Assessment Board for considering the eligibility for each of the applicant on completion of their five years in the grade of Scientist 'C' for their promotion from this grade to the next higher grade of Scientists 'D' on their acquiring the requisite qualifying service. In case of their promotions

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from the date earlier than the date given in their earlier promotions and their promotion further to the grade of Scientist 'D', the respondents shall grant the applicants so promoted all consequential benefits including increments and arrears, if any. These directions be complied by the respondents within a period of four months from the date of receipt of this order."

19. The above judgement was examined by the Government and it was decided to implement the orders in respect of five petitioners only. While doing so, the effective date of promotion in the grade of Scientist 'C' in respect of the applicants was required to be determined. All the applicants had requested the Tribunal to issue directions to the respondents for their promotion to the post of Scientist 'C' with effect from 06-06-1987 (date of introduction of FCS in the Central Ground Water Board). However, the Tribunal in its order passed on 11-07-1995 directed that "In case, the recommendations already made by the Assessment Board relate to their eligibility upto the year 1987, they be given promotion from a date in the year 1987 or in the year 1988 under the said rules. According to the respondents, since the officers had become eligible from the year 1987, their eligibility was decided as on 01-01-1988 as per Rule 6(2) of the Central Ground Water Board (Scientific Group 'A' Posts) Recruitment Rules, 1987 and in that view of the matter, they could not have been given promotion prior to 1-1-1988. Further according to the respondents, as per the seniority list of Scientist 'C' (Hydrogeology) as on 01-06-1994 the names of these five officers figures at Sl.Nos.62, 63, 64, 80 and 86. There were 39 persons figuring in the seniority list (Sl.Nos.11 to 49) who were promoted as Scientist 'C' on various dates after 01-01-1988. The promotion of the last person, namely, A.R.Bhaisare figured at Sl.No.49 was given on 22-08-1988. Therefore, the promotion of these five persons could be antedated to a date after 22-08-1988 only. Had

these persons been given promotion from an earlier date of 39 persons figuring at Sl.Nos. 11 to 49 of the seniority list, they would have become junior to these persons which would not have been justified. Hence, the promotion of C.P.Srivastava, A.K. Bhatia, Sushil Gupta, Smt. Anita Gupta and D.S.Saini who were working as Scientist 'C' with effect from 22.6.1992 which was the date of their taking over charge of the post was antedated to 23.8.1988. On the same analogy, promotion of the remaining similarly placed 51 officers were also antedated to 23-8-1988 in consultation with the DOPT and Ministry of Law.

20. These officers were subsequently considered for promotion to the grade of Scientist 'D' keeping in view Rule 6(3)(b) of the Central Ground Water Board (Scientific Group 'A' Posts) Recruitment Rules,1987 which stipulates that the total number of officers in the grade of Scientist 'D' shall not exceed 30% of the total number of posts in the grade of Scientist 'B', Scientist 'C' and Scientist 'D' put together. On applying the above limitation, there were 101 posts only in the grade of Scientist 'D'. Based on the above 52 officers including 12 officers whose dates of promotion in the grade of Scientist 'C' were antedated to 23-8-1988 were promoted to the next higher grade of Scientist 'D' as on 1-1-1994 and six officers whose dates of promotion were also antedated to 23-8-1988 in the grade of Scientist 'C' (including the applicants) were promoted to the grade of Scientist 'D' as on 1-1-1995 and the remaining officers whose dates of appointment were antedated to 23-8-1988 in the grade of Scientist 'C' including the applicants, namely, N.H.Reddy, K.V.S.Sastry and B. Jayakumar were promoted to the grade of Scientist 'D' with effect from 1-1-1996 in view of the fact that the provision of complete flexibility as contained in the Central Ground Water Board (Scientific Group 'A' Posts) Recruitment Rules,1995 came into existence with effect from 15-7-1995. Prior to the notification of CGWB (Scientific Group 'A' Posts) Recruitment Rules,1995 promotion to the grade of

Scientist 'D' was subject to the limit of 30% of the total posts and therefore, the applicants, namely, N.H.Reddy, K.V.S. Sastry and B. Jayakumar could not be accommodated earlier and that after introduction of complete flexibility with effect from 15-7-1995 they were given promotion with effect from 1-1-1996. Therefore, according to the respondents, there was no basis for their claim to get promotion from an earlier date.

21. The learned counsel for both the parties extensively argued their respective cases in the background of the facts as stated herein above. Four basic issues emerge for our consideration from the submissions made by them :

- (1) Whether Rule 6(3) of the Central Ground Water Board (Group 'A' Posts ) Recruitment Rules,1987 is liable to be struck down on the ground that it imposes unreasonable restriction on the right of promotion ?
- (2) Whether any illegality is committed by the respondents by not granting promotion to the applicants from 1-1-1988 for Scientists 'B' and Scientist 'C' ?
- (3) Whether the respondents committed any illegality by disregarding the claim advanced by the applicants that 1-1-1994 should be taken as effective date for their subsequent promotion and not 1-1-1996 ?
- (4) Whether the delay in taking decision regarding promotion in question caused any prejudice to the applicants and whether on that count any irreparable loss was caused to the applicants ?

22. As far as the legality of Rule 6(3) is concerned, new rules came into existence by notification dated 28th June, 1995. The earlier rules were framed on 18th May, 1987. Clause (a) of sub-rule (3) of Rule 6 of 1987 Rules provided that total number of officers in the grade of Scientist 'D' shall not exceed 30% of the

total number of posts in the grade of Scientist 'B', Scientist 'C' and Scientist 'D' put together. The restriction of 30% has been done away with in the revised rules framed in 1995 but not without trailing its adverse effect. In Rule 17 of the new Rules 1995 sub-rule (3) provides that the Central Ground Water Board (Scientific Group 'A' Posts) Recruitment Rules, 1987 in so far as they relate to the posts included in the schedule to the Rules of 1995 stand repealed. The existence of the restriction in 1987 Rules could have caused prejudice to the applicants if they were denied promotion from Scientist 'B' to Scientist 'C' with effect from 23-8-1988 as already held earlier. Now since the said restriction has altogether been deleted, the question of declaring the said provision to be illegal on the ground that it was defeating the very purpose of the Flexible Complementing Scheme, does not survive, but it does become necessary to remedy the ill-effect left behind by that restriction.

22-A. It is quite possible that the present applicants would have become entitled to promotion to next higher grade of Scientist 'D' with effect from 1-1-1994 if the posts in the grade of Scientist 'D' were not limited to 101 as stated by the respondents. This limitation of 101 posts had to be applied in view of the erstwhile restriction that the total number of officers in the grade of Scientist 'D' should not exceed 30% of the total number of posts in B, C and D grades. As a result of this erstwhile restriction after limiting the Grade 'D' posts to 101, only 52 officers including 12 officers whose date of promotion in the grade of Scientist 'C' had to be antedated to 23-8-1988 were promoted to the next higher grade of Scientist 'D' with effect from 1-1-1994 and six officers whose dates of promotion were antedated to 23-8-1988 in the grade of Scientist 'C' were promoted to the grade of Scientist 'D' with effect from 1-1-1995 and the remaining officers whose date of promotion were antedated to 23-8-1988 in the grade of Scientist 'C' including the applicants were promoted from 1-1-1996. There can be no doubt about the fact that the applicants/situated with those o

whose dates of promotion to 'C' grade Scientist was antedated to 23-8-1988 and therefore, great injustice had been caused to the applicants by not allowing them the promotion to the next higher grade from 1-1-1994. This, in our opinion, is clearly an act of discrimination which is hit by Article 14 of the Constitution of India. It is this adverse effect which has resulted from the erstwhile restriction of 30% which is required to be retrieved from the situation of discrimination and we are of the opinion that the mere fact that the erstwhile rules of 1987 though repealed from 28th June, 1995 and substituted by new set of rules in which the restriction of 30% was removed, can not be allowed to act as a deterrent factor to the rights conferred upon the applicants along with other similarly situated Scientists by the Flexible complementary Scheme. For the purpose of giving effect to the said scheme in its full compass, it is necessary that the applicants and other similarly situated incumbents should be considered for promotion with effect from 1-1-1994 and for this purpose, if necessary, the matter may be referred to the Review Assessment Board to remove the ill-effects of 30% restriction so as to fall in line with the frame work of the Flexible Complementing Scheme.

23. In the reply statement, the respondents have in terms stated that the Department of Science and Technology extended the F.C.S. to the pay scale of Rs.650-1200 (re-revised) and higher pay scale of Rs.2500-3000 (pre-revised). But unfortunately, according to the respondents' OM dated 28-05-1986, by which the aforesaid decision was communicated extending the FCS to the lower pay scale did not come to the notice of the Ministry of Water Resources before introduction of FCS vide CGWB (Scientific Group 'A' posts) Recruitment Rules, 1987. It need hardly be stated that the contention that " the OM did not come to the notice of the Ministry" cannot absolve the respondents from the liability which is created by their own

acts and deeds, and cannot produce any ill-effect on the statutory rights emerging from the scheme which was notified on 18-5-1987 vide notification No. 25/32/84-GW.

24. The second point whether any illegality is committed by the respondents by not granting promotion to the applicants from 1-1-1988 from the post of Scientist 'B' to the post of Scientist 'C' <sup>also</sup> does not survive for our consideration in view of the decision of the Chandigarh Bench of this Tribunal relating to this aspect of the case before us, which has been accepted and implemented by the respondents. The Chandigarh Bench of this Tribunal in O.A.No.985/CH/94 dated 11-7-1995 (C.P.Srivastava and 4 others v. Union of India) in paragraph-14 of its judgment directed the respondents to constitute review Assessment Board for considering the promotion of the applicants (in that case) with effect from a definite date in 1987 or 1988 and in case the recommendations <sup>were</sup> <sup>in</sup> made by the Assessment Board relating to their eligibility upto the year 1987, promotion be given to them from a date in the year 1987 or in the year 1988 under the said rules which would be assessed by the respondents. The respondents are further directed by the Bench to constitute Assessment Board for considering the eligibility of the applicants on completion of their five years in the grade of Scientist 'C' for their promotion from this grade to the next higher grade of Scientist 'D' on their acquiring the requisite qualifying service. A direction was further given by the Chandigarh Bench that, <sup>in</sup> <sup>case</sup> their promotions are made effective from the date earlier than the date given in their earlier promotions and their promotion further to the grade of Scientist 'D', the respondents shall grant the applicants <sup>so</sup> <sup>all</sup> promoted all consequential benefits including increments and arrears, if any. The respondents were directed to comply with the same within a period of four months from the date of receipt of the said order.

25. In para-7 of the reply statement it is stated that in pursuance of para-5 of the Ministry's notification dated

18-5-1987 the posts which were in existence prior to the notification of the Recruitment Rules of 1987 were redesignated as Scientist 'D', Scientist 'C' and Scientist 'B' respectively. Accordingly, all the Junior Hydrogeologists (including the applicant herein) were redesignated as Scientist 'B' (Junior Hydrogeologist) with effect from 3-6-1988. The respondents raised a contention that the review DPC was held for the promotion of 106 Junior Hydrogeologists (Now Scientist 'B') in pursuance of the judgment of the Punjab and Haryana High Court in V.M. Sikka's case, Junior Hydrogeologist and the proposal was modified and a revised proposal was sent to UPSC on 16-8-1989 and finally on the recommendations of the Assessment Board 50 Scientists 'B' including the present applicants who were empanelled for 1987 were promoted to the post of Scientist 'C' in the pay scale of Rs.3000-4500 with effect from 26-2-1992.

26. However, we cannot lose sight of the fact that the Chandigarh Bench of this Tribunal vide its order dated 11-7-1995 directed to constitute a review Assessment Board for considering the promotion with effect from a definite date in the year 1987 or 1988 under the rules, to assess the eligibility of the applicants (before that Bench) for their promotion from the grade of Scientist 'B' to the grade of Scientist 'C' and further that in the event of the recommendations having already been made by the Assessment Board relating to their eligibility upto the year 1987, they should be given promotion from a date in the year 1987 or in the year 1988 under the said rules. The respondents were further directed to constitute the Assessment Board for considering the eligibility of each of the applicants on completion of 5 years in the grade of Scientist 'C' for their promotion from this grade to the next higher grade of Scientist 'D' on their acquiring the requisite qualifying service.

27. The learned Standing Counsel for the respondents submitted that the judgment of the Chandigarh Bench of this Tribunal was examined by the Government and it was decided to implement the said judgment in respect of the five petitioners

only, <sup>because</sup> since the officers who became eligible from the year 1987, their eligibility was made effective from 23-8-1988 as per Rule 6(2) of the Recruitment Rules, 1987. The learned Standing Counsel for the respondents reiterated that if all the remaining officers whose dates of appointments were antedated to 23-8-1988 in the grade of Scientist 'C' (including the present applicants) <sup>they</sup> could be promoted to the grade of Scientist 'D' from 1-1-1996 as the provision of complete flexibility was contained in the Recruitment Rules, 1995 which came into force from 15-7-1995. Prior to the notification of the C.G.W.B. (Scientific Group 'A' Posts) Recruitment Rules, 1995 on 15-7-1995, promotion to the grade of Scientist 'D' was subject to the limit of 30% and therefore, the present applicants could not be accommodated earlier, <sup>and</sup> after introduction of complete flexibility, with effect from 1-1-1996. The learned Standing Counsel for the respondents, therefore, submitted that there was no basis for the claim advanced by the applicants to grant promotion from an earlier date.

28. The learned counsel for the applicants, however, opposing the submissions made on behalf of the respondents, argued that by virtue of the fact that the erstwhile rules of 1987 came into force from 18-5-1987, the Assessment Board ought to have been constituted on 1-1-1988 for recommendations to be made for promotion to the post of Scientist 'C' including the applicants, because by that time the applicants had already put in the requisite service of 5 years in the grade of Scientist 'B'. 70 posts in this grade were available at that time. But in contravention of the rules, the respondents refrained from considering the cases of Scientists 'B' for promotion to the post of Scientist 'C' including the applicants who were eventually promoted to the post of Scientist 'C'. The Chandigarh Bench of the Tribunal in OA No. 985/CH/94 allowing the O.A. specifically directed the respondents to constitute a review Assessment Board for considering the eligibility of each of the applicants in that OA on completion of 5 years in the grade of

Scientist 'C' for their promotion to the next higher grade on their acquiring the requisite qualifying service. Further according to the learned counsel for the applicants, the respondents during the pendency of this O.A. agreed to extend the benefit of the judgment of the Chandigarh Bench of the Tribunal to all similarly placed persons who were promoted as Scientists 'C' along with the applicants before the Chandigarh Bench whose promotions to the post of Scientist 'C' were antedated by giving effect thereof from 23-8-1988 as per letter dated 10-5-1996 (Annexure-6). Consequently the applicants attended the interview on 10-7-1996 for promotion to the post of Scientist 'D' after receiving the call letters.

29. On going through the contents of the letter dated 10th May, 1996 addressed to all the Heads of Offices of Central Ground Water Board forwarding therewith a copy of the Ministry's notification No.25/54/95-GW.I/800 dated 22-4-1996 it transpires that instructions were issued for antedating the date of promotion in respect of 47 officers in the grade of Scientist 'C'.

30. From the perusal of the said notification dated 22-4-1996 it also becomes evident that in partial modification of the Ministry of Water Resources notifications dated 14-7-1992, 24-3-1992, 30-4-1992, 14-7-1992, 8-9-1992, 10-3-1993 and 2-2-1996 Scientists 'B' were appointed to the grade of Scientist 'C' in the scale of pay of Rs.3000-100-3500-125-4500/- in the Central Ground Water Board on temporary basis with effect from the dates mentioned against their names in their respective disciplines. The name of the first applicant N.H.Reddy appears at Sl.No.27 in this notification who was appointed to the grade of Scientist 'C' with effect from 23-8-1988. Similarly the remaining two applicants K.V.S.Shastry and B. Jayakumar whose names appear at Sl.Nos. 32 and 33 respectively were also appointed to the grade of Scientist 'C' with effect from the

same date i.e. 23-8-1988. In that view of the matter, therefore, the applicants could be unhesitatingly deemed to have completed 5 years of residency period in the category of Scientist 'C' on 22-8-1993 and therefore they became eligible for being considered for promotion to the post of Scientist 'D' with effect from 1-1-1994. We do not find any cause to disagree with this submission made by the learned counsel for the applicants. In that view of the matter, therefore, the first respondent was not justified in showing the effective date of promotion of the applicants as 1-1-1996 instead of 1-1-1994. We can also not lose sight of the fact that the promotions contemplated under the rules were time-bound promotions irrespective of the existence of actual vacancies. The purpose behind making the said promotions insitu and time-bound was precisely with a view to removing stagnation and therefore, there was no cause for not giving effect to the promotions from the due date to these applicants. We, therefore, have no doubt in our mind that the applicants were lawfully entitled to be promoted from Scientist 'B' to Scientist 'C' with effect from 23-8-1988 and further promotion from Scientist 'C' to Scientist 'D' on completion of the requisite period of 5 years from the earlier promotion i.e. with effect from 1st January, 1994.

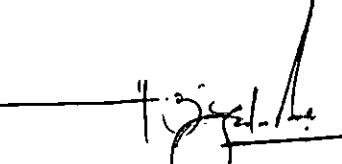
31. On the question of delay, the Assessment Committee though was constituted after 2 to 3 years from the due date of promotion, the effect of promotion was indeed required to be given from the due date and not from the date of meeting of the said Committee. It was also pointed out by the learned counsel for the applicants that in case of Central Scientific Institutions/ Organisations, the meeting of Expert Assessment Committee was held in December, 1991 and orders of promotions were issued on 2-1-1992 but according to the recommendations of the Expert Assessment Committee, the Scientists were given promotion from 1-4-1988 which was the actual due date.

32. Even in Full Board meeting of the respondents held on 14-06-1994 it was clarified while extending the benefit of flexible complementing scheme to other categories that its implementation was not linked with the availability of posts and that after 5 years subject to confirmation from the UPSC, the officers became entitled to next promotion. There is, therefore, no question of linking the due date of promotion to the date of meeting of the DPC/ Expert Committee. Any delay in holding the meeting for consideration of promotions cannot have the effect of sinking or protracting the legitimate and substantive right of the incumbent to be considered from due date and not from the date of the meeting. It is not the case of the respondents that the work of the present applicants was unsatisfactory. The respondents are, therefore, precluded from denying the benefit which the applicants are entitled to reap with effect from the due date of promotion. Any deviation, in our opinion, from the said object would amount to unlawfully denying the applicant's right to be promoted on completion of the requisite period of service in the lower grade and would hit at the root of the Flexible Complementing Scheme.

33. In view of what is stated above, this O.A. is disposed of with a direction to the respondents to constitute a Review Assessment Board and to consider the question why the present applicants as well as other similarly situated Scientists 'C' should not be given the effect of their promotion from the grade of Scientist 'C' to the grade of Scientist 'D' with effect from 1-1-1994 with all consequential benefits regarding seniority, payment of arrears and other entitlements, if any. This exercise is directed to be completed within three months from the date of receipt of a copy of this order. However, no direction is required to be given by this Tribunal on the question of the alleged illegality of 30% restriction as provided in the

erstwhile rules of 1987 as also with regard to the date from which the promotion from the grade of Scientist 'B' to the grade of Scientist 'C' with effect from 23-8-1988.

34. The O.A. is disposed of accordingly. No costs.

  
( H. RAJENDRA PRASAD )  
MEMBER (ADMN.)  
21 JAN 99.

  
( D. H. NASIR )  
VICE-CHAIRMAN.

DATED THE 21st JANUARY, 1999.

  
DJ/

98/1/99  
1ST AND 2ND COURT

COPY TO:-

1. HDHNJ
2. HHAP M(A)
3. HSSP M(J)
4. D.R. (A)
5. SPARE

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR :  
VICE CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD :  
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN :  
MEMBER (A)

THE HON'BLE MR. B. S. JAI PARAMESWAR :  
MEMBER (J)

DATED: 21-1-99

ORDER/JUDGMENT

M.A./R.A./C.P.NO.

In

O.A. NO. 1237/96.

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

(Geopen)

