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CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.932/96

DATE OF ORDER: 22-4-1999.

BETWEEN :

B. SHYAM PRASAD .. APPLICANT

A N D

1. The Union of India,
Represented by its Secretary,
Government of India,
Ministry of Water Resources,
Shramshakti Bhavan,
New Delhi.
2. The Chairman,
Central Ground Water Board,
Ministry of Water Resources,
C.G.O.Complex, N.H.IV.,
Faridabad.

.. RESPONDENTS

COUNSEL FOR APPLICANT : MR.BRIZ MOHAN SINGH

COUNSEL FOR RESPONDENTS : MR. B.N.SHARMA, Sr.CGSC.

CORAM :

THE HONOURABLE MR. JUSTICE D.H. NASIR, VICE-CHAIRMAN

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER(ADMN.)

... Contd....

O R D E R .

Jutice D.H. Nair, VC :

1. The applicant who is working as Senior Hydrologist in the Central Ground Water Board since 27.10.1975 as Scientist 'D', claims to be the seniormost Hydrologist in the Southern Region, Hyderabad and second seniormost on All India basis. His effective date of promotion to the post of Scientist 'D' is sought to be treated as 1.1.1988 or atleast 3.6.1988 instead of 30.6.1988 and the combined seniority list dated 10.1.1996 of Scientists 'D' is sought to be rectified on the basis of the effective date of his promotion to the post of Scientist 'D'.

2. This Bench was confronted with a similar situation in OA No.1237/96 which was disposed of with a direction to the respondents to constitute Review Assessment Board and to consider the question why the applicants of the said O.A. 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. While the principles remain the same, the relief claimed in the present O.A. is slightly different inasmuch as the applicant in the instant case claims to be entitled to be treated as 'promoted' to the post of Scientist 'D' from 1.1.1988 instead of 30.6.1988. In our earlier order in OA No.1237 of 1996 disposed of on 21.1.1999 we have observed as follows :

"30. From the perusal of the said notification dated 22.4.1996 it also becomes evident that in

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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.3000-100-125-4500/- 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."

3. In the present O.A. in paragraph-6.12 the applicant makes a statement that he was promoted to the post of Scientist 'D'. However, according to the applicant, 30.6.1988 having been given as effective date without any monetary benefits was not in order. According to the applicant, the effective date should have been 1.1.1988 instead of 30.6.1988.

4. The respondents' say is that the Flexible Complementing Scheme ('FCS' for short) was introduced in C.W.G.B. vide notification dated 6.6.1987. Hydrogeology, Geophysics, Mechanical and Hydrometeorology disciplines were included in the FCS but the discipline of Hydrology was left out. Subsequently two applications were filed - one before the Hyderabad Bench and the other before the Principal Bench, New Delhi of the Central Administrative Tribunal by the officers of the Hydrology discipline in which a direction was given to the Government to take a decision to include Hydrology discipline also in the FCS. Accordingly, the Government of India decided to include the Hydrology discipline in the FCS by making suitable amendments in the Recruitment Rules, 1987. In the amendment proposal it was suggested that the Senior Hydrologists who had put in 5 years of service in that grade on 1.1.1988 could be considered eligible for notional promotion as Scientist 'D' with effect from 30.6.1988. After examining the proposal the Government expressed the following view :

" In view of the fact that there are only 5 officers who will be eligible for promotion as also the fact that there is a CAT judgment to the effect that officers of the Hydrology discipline should also be covered under the FCS, we may perhaps have no objection to the proposal. In case the proposal is agreed to, the date from which the amendment to include Hydrology as a Discipline under the FCS should be not from the date of joining of the Juniors most/last officer from the list of

of officers approved by the Selection Committee but from a date earlier than the date on which the Selection Committee met. Only then the proceedings of the said Commission can be reviewed."

5. Basing on the approval given by the Government, the respondents decided that the Hydrology discipline be included in the FCS with effect from the original date 6.6.1987, the date from which other disciplines were brought under FCS and a proposal to that effect was forwarded to the UPSC for concurrence. The UPSC, however, felt that an explanatory note should be furnished to the Commission to show whether anyone's interest would be affected adversely by giving retrospective effect to the rules. The Ministry furnished the following explanatory memorandum which was appended to the draft recruitment rules.

" The CGWB (Scientific Group A Posts) Recruitment Rules, 1987 were applicable to Group A posts in the scientific disciplines of Hydrogeology, Hydrometeorology, Geophysics and Chemistry of the CGWB. In the said Rules, the Scientific Discipline of Hydrology in the CGWB was not included.

These rules were notified in the Gazette of India vide GSR No.434.

The CGWB (Scientific Group A Posts) Recruitment Rules, 1987 are, therefore, superseded by the CGWB (Scientific Group A Posts) Recruitment Rules, 1995 to bring in the Group A posts of the Hydrology discipline of the CGWB also under its purview.

Since the principal rules were published in the Gazette of India, vide GSR No.434 on 6th June, 1987, Rule 6(8) of CGWB (Scientific Group A Posts) Recruitment Rules, 1993 has been given retrospective effect and deemed to have come into force w.e.f. 6.6.87, the date when the principal rules were published in the Gazette of India.

Giving retrospective effect to the said rules will not prejudicially affect the interest of any person."

6. It is further contended by the respondents that although it was proposed to give retrospective effect to the Recruitment Rules from 6.6.1987, 30.6.1988 was mentioned in the Rules with reference to promotion of the juniormost officer on the basis of the recommendations of the Selection Committee of 1988 and that there was no interpolation of these dates subsequently as alleged by the applicant. The applicant's claim as regards his seniority earlier than 30.6.1988 was neither found feasible nor practicable, as such exercise would upset the settled seniority of more than 7 years of others who are not parties to the present O.A. The applicant's claim came to be included in the Scientist Grade, according to the respondents, because of later inclusion of Hydrologist in the FCS under the CGWB (Scientific Group A Posts) Recruitment Rules, 1995 in supersession of 1987 Recruitment Rules which did not include the Hydrology discipline under the FCS. Therefore, according to the respondents, it was but natural and logical that the applicant be included in the grade of Scientist 'D' as the last man without affecting the position of other Scientist 'D' officers.

7. According to the respondents as per Para-6(3)(a) of the Recruitment Rules,1987 the system of flexible complementation and insitu promotions was to be followed in the matter of promotion of departmental officers in the grades of Scientist 'B' and 'C' the respective higher grades, namely, Scientist 'C' and 'D' subject to a condition that the total number of officers in the grade of Scientist 'D' did not exceed 30 per cent of the total number of posts in the Grades of Scientist 'B', 'C' and 'D' put together and in that view of the matter, according to the respondents it was not correct to say that the promotions as contemplated under the Recruitment Rules,1987 were time-bound promotions irrespective of the existence of actual vacancies. The respondents do concede that the restriction of 30 per cent had been removed and complete flexibility in promotion from one grade to another had been introduced under the Recruitment Rules,1995. But even under these rules, according to the respondents, total number of officers was not supposed to exceed the total number of posts in the grades of Scientist 'B', 'C' and 'D' at any given point of time.

8. Further according to the respondents, soon after his promotion the applicant submitted a representation in which he stated that by giving him notional promotion with effect from 30.6.1988 as Scientist 'D', gross injustice was done to him as he would become junior to the persons who had already been promoted as Scientist 'D' on the basis of the recommendations of the Review Assessment Board held in February,1988. He further stated, as mentioned on page/12 of the reply affidavit, that since he was eligible for promotion as on 1.1.1988 he should have been considered along with the officers of other disciplines and given due seniority in the panel of 1987. The respondents concede

that the intention in amending the CGWB (Scientific Group A Posts) Recruitment Rules, 1987 was to provide for offsetting the disadvantage suffered by the officers of hydrology discipline due to their exclusion from the FCS. When the matter was considered by the Government it was held that in view of the fact that there were only 5 officers who would be eligible for promotion as also in view of the fact that the officers of Hydrology discipline were required to be considered, according to the directions given by the Tribunal, for inclusion under the FCS, they could have no objection to the proposal. It was further observed that the date of inclusion of Hydrology discipline under FCS should not be 30.6.1988 being the date of joining of the juniormost/last officer in the list of officers approved by the Selection Committee but from a date earlier than the date on which the Selection Committee met. However, according to the respondents, the applicant's plea to give him seniority and actual promotion from a date earlier than 30.6.1988 had no merits. It is further contended by the respondents that the applicant could not be given actual benefit of promotion and seniority as claimed by him having regard to the fact that he did not physically hold the higher post and did not perform the duties and responsibilities attached to the said post. There was also no concept of seniority in the FCS which had no linkage to vacancies, according to the respondents.

9. It is pertinent to note that the respondents came out with a statement as stated on-14 of the reply affidavit that common eligibility list of Scientist 'D' had not been finalised by the respondents and that according to the tentative eligibility of the list of Scientist 'D' the applicant's name appeared at Sl.No.16 and by the time the Recruitment Rules were notified and meeting of the

Departmental Promotion Committee for promotion to the grade of Regional Director was convened - the applicant was likely to go up further in the eligibility list as some of the Scientists 'D' who were above him would be retiring. It is further stated by the respondents that it was also likely that 3 Scientists 'D' above the applicant may be promoted to the post of Director and in that case, the position of the applicant would further improve and he may stand covered in the zone of consideration.

10. The above grounds and contentions taken by the respondents do not justify the denial of effective date of promotion from 1.1.1988 instead of 30.6.1988. It is evident from the submissions made on behalf of the respondents as well as from the perusal of the contentions raised by them in their reply affidavit that the applicant would not have been relegated to Sl.No.16 in the seniority list if this promotion was made effective from 1.1.1988 instead of 30.6.1988. The respondents have endeavoured to justify their inaction by submitting that the proposal to introduce FCS in CGWB was prepared in the light of the guidelines to cover several disciplines including the Hydrology discipline in October, 1985. However, the UPSC did not agree to the inclusion of Hydrology discipline on the ground that there was no post at the entrance level (Junior time scale) of Group A and therefore, the Commission suggested that the post of Junior Hydrologist be upgraded from pay scale of Rs.650-1200 (Pre-revised) to Rs.750-1300 (Pre-revised) for bringing the same under the purview of the scheme and thereafter the scheme was approved by the UPSC after excluding the discipline of Hydrology. However, the Department of Science and Technology vide their OM dated 28.5.1986 extended the FCS to the lower pay scale of Rs.650-1200 and the higher pay scale of Rs.2500-3000 and

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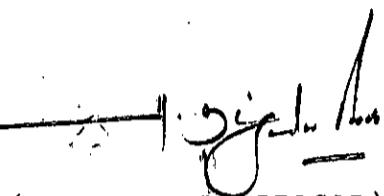
removed the restrictions in regard to percentages and provided full flexibility in all grades upto Rs.2500-3000/- According to the respondents themselves, "unfortunately this OM did not come to the notice of the Ministry of Water Resources before introduction of the FCS vide CGWB (Scientific Group A Posts) Recruitment Rules,1987". In the counter affidavit filed by the respondents in reply to OA No.753/87 (copy of which is filed by the applicant in this O.A.), it is stated that upgradation of the post of Junior Hydrologist from pay scale of Rs.650-1200 to Rs.700-1300 was not pursued on account of extension of the scheme to the lower level post in the pay scale of Rs.650-1200. In compliance with the order of the Tribunal in OA No.753/87 the proposal to amend the CWGB (Scientific Groupu A Posts) Recruitment Rules,1987 was prepared to include the Hydrology discipline in the FCS and to bring in full flexibility in all the grades.

11. In this background of facts the only factor which restrains us from straight away directing the respondents to treat the effective date in case of the applicant of this O.A. as 1.1.1988 instead of 30.6.1988 is to the fact that the same is likely to unsettle the seniority list which may have far-reaching implications. *Prima facie* no such effect was likely to be produced because of the inherent nature of the scheme to allow time-bound insitu promotions with a view to taking care of 'stagnation' and to remove the ceiling on the number of posts in Scientist 'D' cadre. However, when the question of promotion to the post of Director arises, 'seniority' may again play a vital role.

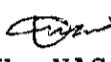
12. This O.A. is, therefore, disposed of with a direction to the respondents to reconsider the case of the applicant for granting him the relief as stated in the

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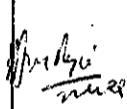
present O.A. so that injustice pleaded by the applicant may be redressed to the extent possible. The views expressed by this Tribunal in this judgment should be effectively considered and answered. Opportunity of hearing shall also be extended to the applicant and his submissions should also be dealt with adequately and a speaking order maybe passed by the competent authority within three months from the date of receipt of a copy of this order. No costs.



(H. RAJENDRA PRASAD)
MEMBER (ADMN.)


(D.H. NASIR)
VICE-CHAIRMAN.

DATED THE 22nd APRIL, 1999.



DJ/

1. 4-6-99
1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASTRI
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 PARANESWAR
MEMBER (J)

DATED: 22.4.99

ORDER/JUDGEMENT

IN THE MATTER OF

IN

D.A. NO. 932/96

ADMITTED AND IN TERIM DIRECTIONS
ISSUED:

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

