

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.85/2002

Date of order: 6-12-2003

1. I.K.Sharma, S/o Sh.Guljari Lal Sharma, working as Scientist 'C', Office of Regional Director, Central Ground Water Board, Jaipur.
2. Dr.M.N.Khan, S/o Sh.Nihal Ahmed Khan, working as Scientist 'C', Office of Regional Director, Central Ground Water Board, Jaipur.

...Applicants.

Vs.

1. Union of India through Secretary, Mini.of Water Resources, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. Chairman, Central Ground Water Board, Mini.of Water Resources, Central Govt Offices Complex, N.H.No.4, Faridabad.
3. Director (Administration), Central Ground Water Board, Mini.of Water Resources, Central Govt Offices Complex, N.H.No.4, Faridabad.

Respondents.

O.A.No.429/98

1. Dr.M.N.Khan, S/o Sh.Nihal Ahmed Khan, working as Scientist 'C', Office of Regional Director, Central Ground Water Board, Jaipur.
2. I.K.Sharma, S/o Sh.Guljari Lal Sharma, working as Scientist 'C', Office of Regional Director, Central Ground Water Board, Jaipur.

...Applicants.

Vs.

1. Union of India through Secretary, Mini.of Water Resources, Shram Shakti Bhawan, Rafi Marg, New Delhi.

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2. The Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi.
3. Central Ground Water Board through its Chairman, Mini.of Water Resources, Central Govt Offices Complex, N.H.No.4, Faridabad.
4. Sh.Y.B,Kaushik S/o Sh.M.N.Kaushik at present working as Scientist-C, CGWB, 1103 Ansal Bhawan, K.G.Marg, New Delhi.
5. Dr.Arjit Dey, S/o Sh.P.B.Dey, Scientist-C, CGWB, 1103, Ansal Bhawan, K.G.Marg, New Delhi.
6. Sh.Sunil Kumar, S/o Sh.Kabool Singh, Scientist-C, CGWB, New CGO Complex, Faridabad.
7. Dr.Uma Kapoor, W/o Sh.Naresh Kapoor, Scientist-C, CGWB, Jam Nagar House, Man Singh Road, New Delhi.

Respondents.

Mr.Prahlad Singh - Counsel for applicants.

Mr.S.S.Hasan, proxy of Mr.S.M.Khan Counsel for respondents.

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER.

By this common order, we propose to dispose of both the O.As as decision in O.A No.85/02 which relates to grant of promotion of the applicants as Scientist-C from 1.1.1993 instead of 1.1.94 will have direct bearing on O.A No.429/98 pertaining to further consideration of the applicants to the post of Scientist-D which promotion are made under the Flexible Complementary Scheme (FCS).

2. Now, facts which are common in both the cases may be noticed. The admitted facts are that the applicants two in numbers i.e. S/Shri I.K.Sharma and Dr.M.N.Khan, were initially appointed on the post of ~~of~~ Assistant Hydrogeologists in scale


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Rs.2000-3500 by direct recruitment on selection by the UPSC on 15.6.84 and 30.11.83 respectively. In Hydrogeology cadres consist of the post of Asstt.Hydrogeologist, scale Rs.2000-3500(7500-12000), Scientist-B scale Rs.2200-4000(8000-13500), Scientist-C, scale Rs.3000-4500(10000-15200) and Scientist-D, scale Rs.3700-5000 (12000-16500). The promotion from the posts of Asstt.Hydrogeologist to that of Scientist-B were to be made under the Recruitment & Promotion Rules whereas the posts of Scientist-C and Scientist-D were to be filled in by way of 'insitu' promotion under the FCS on the terms and conditions mentioned therein. According to the CGWB (Scientist Group-A Posts) Recruitment Rules, 1987, Asstt.Hydrogeologist are eligible for promotion to the post of Scientist-B on completion of 3 years of service. However, the DPC for promotion to the post of Scientist-B which met in 1987 made recommendations for promotion against vacancies for the years upto 1985. Thereafter no DPC met. The applicants made representations to the respondents praying that they should act in accordance with the rules and hold DPC every year for filling up the vacancies arising in each year. The representations so made by the applicants however failed to evoke any response from the respondents. Thereafter, the DPC met in 1993 and its recommendations were implemented by passing the order of promotion on 30.6.95 by which the applicants were granted promotion to the post of Scientist-B. Further, the respondents also published an eligibility list for promotion to the post of Scientist-C but they failed to include the names of the applicants in the eligibility list apparently on the ground that the applicants had not completed 5 years service in the grade of Scientist-B as per the FCS. Aggrieved on this count as well representations were made by the applicants with the

prayer to treat the applicants eligible for promotion to the post of Scientist-C on the ground that if promotions would have been granted to them to the post of Scientist-B against the vacancies of the years 1987 or 1988 or 1989 then they could also become eligible for promotion to the post of Scientist-C. Since the grievance of the applicants were not met, they filed O.A No.60/96 there by praying that the eligibility for appointment to the post of Scientist-C published on 25.10.95 which does not include name of the applicants be declared as illegal or alternatively the respondents may be directed to include the name of the applicants by treating them eligible for promotion to Scientist-C. The said O.A was allowed by this Tribunal vide order dated 12.2.98 thereby holding that as per the seniority list published on 1.1.97 which has been annexed to MA No.24/98, the applicants have been treated as senior to the persons who are appointed to the post of Scientist-B on 4.10.90 (Sh.Rana Chatterjee at Sl.No.23). Thus, when the eligibility list was published on 25.10.95, the applicant would have completed 5 years of service on the post of Scientist-B. Thus, in our view the applicants would be eligible for being considered for promotion of the post of Scientist-C. Further, as per the schedule to the aforesaid recruitment rules, officers who have rendered a total of 8 years of service in scale Rs.2000-3500 would also be eligible for promotion to the post of Scientist-C. Since, the applicants have rendered more than 8 years of service by the time, the question arose whether they would be eligible for promotion to the post of Scientist-C, as per notification dated 25.10.95. Thus, either way, the applicants are eligible for being considered for promotion to the post of Scientist-C. On the basis of these observations, this Tribunal directed the respondents to hold a review DPC/

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Board of Assessment in order to consider the cases of the applicants for promotion to the post of Scientist-C and if they are found suitable for promotion in accordance with the rules, grant them promotion w.e.f. the date from which other persons mentioned in the eligibility list dated 25.10.95 have been granted promotion and necessary consequential benefits be granted to the applicants. At this stage, it may be relevant to mention here that the respondents instead of complying with the direction issued by this Tribunal in O.A No.60/96, issued further eligibility list for the post of Scientist-D vide order dated 2.12.98. The applicants being aggrieved by the aforesaid action of the respondents filed O.A No.429/98 thereby alleging that consequent upon the order of this Tribunal dated 12.2.98 in O.A No.90/96, the respondents had not yet convened a Review DPC/Board of Assessment and if the respondents have acted in accordance with the directions issued by the Tribunal, the applicants could have been promoted to the post of Scientist-C retrospectively thus making them eligible for consideration to the post of Scientist-D. Alongwith this O.A, the applicants also filed application for interim relief which was registered as MA No.248/98 and this Tribunal vide order dated 12.1.99, directed the respondents to go ahead with the selection process for the post of Scientist-D and also directed the respondents to allow and consider the applicants provisionally for selection to the post of Scientist-D and the respondents were further directed to keep the selection process in the sealed cover till the next date. This interim order is still continuing. It may also be relevant to mention here that the respondents also filed Writ Petition No.4628/98 against the impugned order of the Tribunal dated 12.2.98 before the Rajasthan High Court Bench at Jaipur and the said Writ Petition



was also dismissed by the Division Bench vide its order dated 25.2.2000 thereby holding that there is no reason to interfere in the impugned judgment and the direction given by the CAT which is in conformity with the service rules with cost of Rs.2000/- payable to the applicants. The applicants also filed two Contempt Petition Nos.9/99 and C.P.No.33/01 for payment of pay and allowances and fixation of their seniority at the correct places which were also disposed of subsequently. After dismissal of the Writ Petition by the High Court, the respondents issued Office Order dated 4.1.01 (Annx.A3) thereby promoting the applicants as Jr.Hydrogeologist (Scientist-B) w.e.f. 1.10.88 and further promoted them to the grade of Scientist-C w.e.f. 1.1.94 and it was also mentioned that they will be eligible for all consequential benefits of the above promotion admissible under the rules. Against this order, the applicants have filed O.A No.85/02 praying for the following reliefs:

- (i) The respondents may be directed to give promotion to the applicants as Scientist-C from 1.1.93. Accordingly the respondents may further be directed to modify the order dated 4.1.02.
- (ii) By further order or direction the respondents may be directed to assign correct seniority to the applicants and accordingly the seniority list dated 6.7.01 may kindly be ordered to be modified; and
- (iii) By further order or direction the respondents may be directed to pay to the applicants actual salary of Scientist-B from 1.10.88 and Scientist-C from 1.1.93 with arrears through out and interest @ 24% per annum with all consequential benefits.

3. The main challenge of the applicants in the O.A is that

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the judgment of the Tribunal in O.A No.60/96 has not been correctly implemented and the applicants are entitled for promotion to the post of Scientist-C from 1.1.93 the date from which other persons mentioned in the eligibility list dated 25.10.95 have been granted such promotion. Further case of the applicants is that in case the appointment/promotion of the applicants as Scientist-C is antedated to 1.1.93, then they would be eligible for consideration to the post of Scientist-D and as such their name has been wrongly excluded in the order dated 2.12.98.

4. On the other hand the case of the respondents is that the judgment of this Tribunal in O.A No.60/96 has been correctly implemented. It has further been stated that though according to the seniority list of 1.7.86, S/Sh.Y.B.Kaushik, G.V.V.R.G.S. Prasad Rao, K.R.Swaminarayana and D.S.Pandey were junior to the applicant Sh.I.K.Sharma but senior to Dr.M.N.Khan on the post of Asstt.Hydrogeologist were promoted to the next higher post of Scientist-B against promotion quota for the year 1985 in August 1987 but name of Sh.I.K.Sharma was not included in the eligibility list as he joined on the post of Asstt. Hydrogeologist on 15.6.84 and was not eligible for promotion to the post of Scientist-B against the vacancy of 1985 as he did not complete his probation period of two years upto the year 1985. Regarding Dr.M.N.Khan, it has been stated that his name was considered against the vacancy pertaining to the year 1985 but his name did not find place in the <sup>Select</sup> seniority list drawn by the DPC. However, both the applicants were promoted as Scientist-B w.e.f. 1.10.88 against the vacancies of 1988. Further, both these applicants were promoted to Scientist-C w.e.f. 1.1.94 under FCS after completing the 5 years requisite service. Since, the applicants have not completed 5 years

service as Scientist-B as on 1.1.93, as such they could not be promoted as Scientist-C w.e.f. 1.1.93. It has further been submitted that though the applicants have put in 8 years service in the grade of Rs.2000-3500 in the year 1991-1992 but they were not entitled for promotion to the post of Scientist-C directly from that grade as the Tribunal has wrongly interpreted the relevant clause which relates to the filling-up of vacant post of Scientist-C through transfer on deputation (with short-term contract) and the underlined idea of this clause was not to keep the post of Scientist-C vacant for indefinite period in the larger interest of Govt work. The situation of filling up of the functional post of Scientist-C on deputation basis has never arisen in the CGWB and the Tribunal interpreted this clause and passed the order dated 12.2.98 directing the respondent department to hold a review DPC/Board of Assessment in order to consider the case of the applicants for promotion to the post of Scientist-C and grant them promotion with effect from the date from which other persons mentioned in the eligibility list dated 25.10.95 have been granted promotion with consequential benefits. It is further averred that since the applicants have not put in 5 years service as Scientist-C as on 1.1.98 as such their name were not rightly included in the eligibility list dated 2.12.98 and as such the applicants were not eligible for further in situ promotion to the post of Scientist-D, the result of which has been kept in sealed cover in pursuance to the interim order. It is further averred that both the applicants were not called for interview and personal talk for the post of Scientist-D alongwith other officers interviewed on 27.1.99 & 5.2.99 by the UPSC.

5. We have heard the learned counsel for the parties and gone through the material on record.



6. The main contention of the counsel for the applicants is that the applicants are entitled to the benefit of promotion to the post of Scientist-C from 1.1.93 as were given to juniors/ similarly situated persons included in the eligibility list dated 25.10.98, pursuant to the order of this Tribunal dated 12.2.98 instead of 1.1.94. He further argued that by granting promotion to the applicants as Scientist-C from 1.1.94, the applicants have been deprived of their further consideration to the post of Scientist-D by not including them in the eligibility list dated 2.12.98 whereas such benefit has been given to junior/similarly situated persons under FCS. On the other hand the learned counsel for the respondents submits that the directions given in O.A No.60/96 dated 12.2.98 have been complied with in the right prospective since the applicants were promoted as Scientist-B w.e.f. 1.10.98 against the 1998 vacancies and they could be promoted as Scientist-C by granting them in situ promotion under FCS only after 5 years of service and as such they were rightly promoted as Scientist-C on 1.1.94. He further submits that since they have not completed 5 years of service in the grade of Scientist-C as on 1.1.98, as such their name were not rightly included in the eligibility list prepared for the post of Scientist-D vide order dated 2.12.98.

7. We have given thoughtful consideration to the contentions raised by the counsel for the parties. The sole question which requires our consideration is whether the direction given by this Tribunal vide order dated 12.2.98 in O.A No.60/96 has been complied with and review DPC have been held in conformity with the direction so issued. While disposing of O.A No.60/96, this Tribunal observed that the applicants are eligible for promotion to the post of Scientist-C on two counts namely the


applicants have been treated as senior to persons who were appointed to the post of Scientist-B on 4.10.90 and when the eligibility list was published on 25.10.95 the applicants would have completed 5 years of service on the post of Scientist-B as per rules. Thus the applicants would be eligible for being considered for promotion to the post of Scientist-C. Secondly, as per schedule to the aforesaid recruitment rules, officers who have rendered a total of 8 years of service in the scale Rs.2000-3500 would also be eligible for promotion to the post of Scientist-C. The applicants joined the post in scale Rs.2000-3500 in 1983/1984 and continued in this post till their promotion as Scientist-B in 1995. Thus they would have rendered more than 8 years service by the time the question arose whether they would be eligible for promotion to the post of Scientist-C as per the notification dated 25.10.95. Thus, either way the applicants are eligible for being considered for promotion to the post of Scientist-C. After making the aforesaid observation, the Tribunal issued the following direction:

'14. The respondents are accordingly directed to hold a review DPC/Board of Assessment in order to consider the cases of the applicants for promotion to the post of Scientist-C and if they are found suitable for promotion in accordance with the rules, grant them promotion w.e.f. the date from which other persons mentioned in the eligibility list dated 25.10.95 have been granted promotion and necessary consequential benefits shall be granted to the applicants'.

7. From the portions quoted above and the observations made in the order, it is quite evident that the Tribunal has observed that the applicant joined in the post/scale Rs.2000-

3500 in 1983/1984 and continued in this post till their promotion as Scientist-B in 1995. Thus, they would have rendered more than 8 years of service by the time question arose whether they would be eligible for promotion to Scientist-C as per notification dated 25.10.95 and on the basis of this finding directed the respondents to hold review DPC to consider the case of the applicants for promotion to the post of Scientist-C and if they are found suitable for promotion grant them promotion w.e.f. the date from which other persons mentioned in the eligibility list dated 25.10.95 have granted such promotion with consequential benefits. It is not disputed that the applicants were not suitable for promotion to the post of Scientist-C but the applicants have been denied the benefits of Scientist-C w.e.f. 1.1.93, the date from which other persons mentioned in the eligibility list dated 25.10.95 were granted promotion simply on the ground that they were promoted as Scientist-B in October 1988 and as such they are not eligible for in situ promotion under FCS w.e.f. 1.1.93 and they became eligible only on 1.1.94 on which date such benefits have been extended to them. We see no force in the submission made by the respondents. From the observation and portion of the order dated 12.2.98 as quoted above. it is quite evident that the applicants have to be given promotion to the post of Scientist-C, from the date from which other persons mentioned in the eligibility list dated 25.10.95 have been granted promotion in case they are found suitable. As already stated above, it is not a case of the respondents that the applicants were not found suitable by the DPC. It has been fairly conceded by the counsel for the respondents that applicants were found suitable by the DPC for promotion to Scientist-C though they were promoted Scientist-B latter than other persons who were

junior/similarly situated to the applicant. This Tribunal in O.A No.60/96 vide order dated 12.2.98 while interpreting the relevant clause of R&P Rules as per Schedule appended to the Rules held that persons with 8 years regular service in the scale Rs.2000-3500 or equivalent are eligible for promotion to the post of Scientist-B issued direction to hold review DPC and promote the applicants if found suitable for promotion from the date from which other persons mentioned in the eligibility list dated 25.10.95 have been granted promotion. This decision has attained finality when the Writ Petition was dismissed by the Rajasthan High Court Jaipur Bench vide judgment dated 25.2.2000 holding that direction given by the CAT is in conformity with service rules. The respondents have not considered the case of the applicant in the light of direction given by this Tribunal vide order dated 12.2.98 in O.A No.60/96 on the ground that relevant clause have not been rightly interpreted by the Tribunal which ground is not available to the respondents in view of the finality of decision. Admittedly, the applicants who were appointed in the scale of Rs.2000-3500 in the year 1983-84 have completed 8 years of service in the grade in 1991/1992 and were eligible for promotion to the post of Scientist-C w.e.f. 1.1.93, when persons mentioned in the eligibility list dated 25.10.95 were promoted. Thus, we are of the view that as per the direction issued by this Tribunal vide order dated 12.2.98 in O.A No.60/96, the applicants are entitled for promotion to Scientist-C w.e.f. 1.1.93, the date from which other persons mentioned in the eligibility list dated 25.10.95 have been granted such promotion. Consequently the order dated 4.1.01 (Annx.A3) appended in O.A No.85/02 is hereby quashed to this extent. Further prayer of the applicants in O.A No.85/02 that they be given actual salary of Scientist-B




w.e.f. 1.10.88 is hereby rejected as the order dated 12.2.98 in O.A No.60/96 relates only to the promotion of the applicant to the post of Scientist-C and consequential benefits thereof. Accordingly O.A No.85/02 is allowed to the extent mentioned above.

9. In O.A No.429/98, the challenge of the applicant is to the order dated 2.12.98 (Annx.A1) whereby name of the applicants has not been included in the eligibility list prepared for consideration of the candidature to the post of Scientist-D and the applicants have prayed that the said order be declared as illegal inasmuch as it does not include the name of the applicants though they are eligible for consideration to the post of Scientist-D. The applicants have also prayed for a direction to the respondents to include their names in the eligibility list and if they are selected then they may be given all consequential benefits arising out of it. Since we have held that the applicants are entitled for promotion to the post of Scientist-C w.e.f. 1.1.93, the date from which other persons mentioned in the eligibility list was granted such promotion pursuant to the direction given by this Tribunal in O.A No.60/96 and such decision has attained finality by dismissing the writ petition by the Hon'ble Rajasthan High Court by holding that the judgment and direction given by the Tribunal is in conformity with the service rules, the applicants were eligible for consideration to the post of Scientist-D under the FCS as they would have put in 5 years service as on 1.1.98. Thus their names could not have been excluded in the eligibility list dated 2.12.98 (Annx.A1).

10. Now, the question which requires our consideration is as to what relief the applicants are entitled. It has been stated by the applicants in their rejoinder that pursuant to the

interim direction of this Tribunal dated 12.1.99, the respondents asked bio-data of the applicants by order dated 28.1.99 which they have submitted but till date they have not been called for interview/personal talk. Since we have held that the applicants were eligible for consideration to the post of Scientist-D under FCS as such the ends of justice will be met if the candidature of the applicants are also considered by a duly constituted Assessment Board for the post of Scientist-D and a fresh result be prepared taking into consideration the selection already made pursuant to the eligibility list Annx.A1 by assigning proper place to the applicants. The selection made pursuant to the impugned eligibility list Annx.A1 and result prepared and kept in the sealed cover shall not be given effect to. Resultantly, O.A No.429/98 is allowed to the extent mentioned above.

11. Accordingly, both O.As No.85/02 and 429/98 are allowed in terms of the observations made above with no order as to costs.

  
(M.L. Chauhan)

Member(J)

  
(H.O. Gupta)

Member(A)