

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 24.09.2004.

OA No. 395/2002

1. Smt. Manohar Sharma w/o late Shri J.S.Sharma r/o 60/22, Sector-6, Pratap Nagar, Sanganer, Jaipur
2. Lt. Col. Anand Sharma s/o late Shri J.S.Sharma
3. Smt. Usha Yogi d/o late Shri J.S.Sharma
4. Shri Girish Sharma s/o late Shri J.S.Sharma residing at 60/22, Sector-6, Pratap Nagar, Sanganer.

.. Applicant

Versus

1. Secretary to the Govt. of India, Department of Personnel, Training and Administrative Reforms, North Block, New Delhi.
2. The Director, Central Building Research Institute, Roorkee.
3. Director General, Council of Scientific and Industrial Research (CSIR) Anusandhan Bhawan, 2-Rafi Marg, New Delhi.

.. Respondents

Mr. S.B.Mathur, counsel for applicant

Mr. V.S.Gurjar, counsel for respondents

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

This application was filed by the original applicant against the order dated 30.10.2001 (Ann.A1) and order dated 30.1.2002 (Ann.A2) issued by the Council of Scientific and

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Industrial Research (CSIR), Rafi Marg, New Delhi whereby the representation for granting merit promotion under Bye Law 71(b) was rejected. In relief clause, the original applicant has prayed for quashing and setting aside the aforesaid impugned orders with further directions to the respondents to accord benefit of promotion w.e.f. 1.2.87 of Scientist-F in the pay scale of Rs. 5100-6300 and his salary be accordingly fixed for the subsequent period and all consequential benefits including pensionary benefits admissible to him under the rules may be allowed.

2. Facts of the case are that the original applicant late Shri J.S.Sharma was initially appointed by the Central Building Research Institute (CBRI) where he joined his duty on 1.11.1957. Thereafter the original applicant was given promotion in different grades of scientist and ultimately he was promoted to Grade-IV (4) as Scientist E-II w.e.f. 1.2.1982 in the pay scale of Rs. 4500-5700 with basic pay of Rs. 4650/- per month. The original applicant retired from the post of Scientist E-II, CBRI, Roorki on attaining the age of superannuation on 30.6.94. It is further pleaded that at the time of retirement, the basic salary of the applicant was Rs. 6000/- per month besides other perks and allowances. Further case of the original applicant is that the applicant having completed the residency period of 5 years as Scientist E-II on 1.2.87 submitted an application which was duly forwarded and recommended by the Director, CBRI to the Director General, CSIR that his promotion as Scientist-F be made effective from the stipulated assessment period as applicable in all the *And Normal* Merit _{Assessment} Schemes for that purpose. It is further stated that the applicant submitted his application for merit promotion on 7.3.1991. The CBRI administration put up the

application to all the 5 Scientists who all gave 'Outstanding' grading. The Director, CBRI also gave 'Outstanding' grading to the applicant and the application proforma was forwarded to CSIR, New Delhi. It is further stated in the OA that two Refrees approved by the CSIR also gave their assessment as 'Outstanding'. The CBRI Research and Advisory Council (RAC) Chairman and all other members including the Director, CBRI gave 'Outstanding' assessment grading. The aforesaid application was also forwarded by the Additional Director, CBRI to Dr. S.K.Joshi, Director General, CSIR, New Delhi on 30.6.1993. The grievance of the applicant is that despite fulfilling the requisite qualification as laid down under Bye Law 71(b) and also that his case for promotion to Scientist-F was duly recommended by the CBRI, RAC and was sent in September, 1993 to CSIR for the purpose of clearing these cases but despite this his case was not considered by the Committee for merit promotion, though the Committee had a few meetings. The original applicant has also placed on record letter dated 22.4.94 written by the Director (Additional charge), CBRI to the Financial adviser, CSIR requesting that since Shri Sharma ^{Aslo} retired on 30.6.1994 and would like that his merit promotion orders are sent before his superannuation so that all matters of pension can be decided. Since the case of the original application for his merit promotion was not considered, as such he retired on superannuation on 30.6.94. The original applicant ultimately received letter dated 11.7.97 (Ann.A6) from the respondents thereby stating that no case of merit promotion/advance increments has been processed and such cases will be considered only when a decision to operate the Merit Promotion scheme is taken. The applicant has also placed on record letter dated 16.11.98 (Ann.A17) on record whereby the applicant was informed that as per

instructions given by the CSIR the scheme of merit promotion under MANAS (revised) and for optees of erstwhile bye-law 71(b) has been kept in abeyance. Thereafter the original application made representation dated 25.9.2001 (Ann.A18) requesting the respondents to get his case finalised. Ultimately, vide letter dated 30.10.01 with reference to his representation, the applicant was informed that the matter has been considered by the competent authority but his request was not acceded to. The original applicant subsequently made representation dated 21.11.2001 (Ann.A19) and the applicant was informed vide letter dated 30.1.2002 that the decision already communicated stand reiterated. It is only thereafter that the applicant has filed this OA thereby praying for the aforesaid reliefs.

2. At this stage, it may be relevant to mention here that the original applicant Shri J.S.Sharma died during the pendency of this OA and thereafter a Misc. Application was moved by the legal representatives for bringing them on record. Accordingly, the said MA was allowed and it is now the legal representatives of the original applicant who have been impleaded as applicants in this OA in place of the deceased original applicant.

3. The respondents have filed reply. The facts as stated above have not been disputed by the respondents. In the reply, the respondents have taken objection of limitation as according to the respondents, original applicant is seeking relief w.e.f. 1987 and the OA has been preferred in the year 2002 i.e. after delay of almost 15 years. Therefore, the OA is liable to be rejected on this ground at the very threshold. On merits, it has been admitted that the case of the applicant ^{Wts}

examined under the erstwhile bye Law 71(b) being the optee of Merit Promotion-Advance Increment (MP-AI) Scheme. It is further stated that the said scheme was not operated effectively although some exercise was done to call for the particulars of the employees for grant of benefit when another scheme Merit And Normal Assessment Scheme (MANAS) was being revised, it was decided by the Director General, CSIR that since the scheme under Merit and Normal Assessment (MANAS(R) was not being operated, therefore, MP-AI scheme should also not operate for the optees of 71 (b) till the scheme for MP-AI is revised and a final decision is taken. It was on that account that the case of the original applicant for further promotion was deferred/kept in abeyance.

4. The original applicant has also filed rejoinder. thereby reiterating the submissions made in the OA. Alongwith rejoinder, the original application has also annexed copy of OM dated 17.1.2003 (Ann.A22) where persons namely Shri K.C.Naithani who have retired on 30.6.98 and Shri N.N.Bhise who retired on 31.5.2000 and who were optees for promotion for the post of Scientist E-II to that of Scientist-F under the normal assessment scheme of the revised MANAS, have been promoted to the higher post of Sciensit F with retrospective effect vide the said OM, that too long time after attaining superannuation. The fact that such persons were granted promotion from retrospective date has not been denied by the respondents. However, their stand is that they were granted promotion under the normal assessment scheme of revised MANAS whereas the applicant is optee of bye law 71(b) which is a separate scheme.

5. We have heard the learned counsel for the parties and

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gone through the material placed on record.

5.1 Before we advert to the facts of the case, it may be noticed that promotional avenues of the scientific and technical employees of the CSIR were initially governed by the bye law 71(b) of MP-AI which was operative w.e.f. 1.1.66. Subsequently, the respondents introduced Normal Recruitment and Assessment Scheme (NRAS) w.e.f. 1.2.81. Option was given to all those who were covered under bye law 71(b) to switch over to NRAS or to continue under bye law 71(b). However, the applicant opted to continued under bye law 71(b). Thereafter a high power committee was set up to implement the recommendation of the Fourth Pay Commission in the CSIR and the said Committee was also to review the functioning of the existing assessment and merit scheme. The recommendation of this Committee was considered by the governing body at its meeting held on 23.12.87 and thereafter decision was taken in the meeting of the governing body on 26.4.90 and finally the scheme titled Merit and Normal Assessment Scheme (MANAS) was made applicable to those employees who were governed by the NRAS as on 1.4.88. This scheme i.e. MANAS remained operative upto 31.12.2000. Thus, in the department there were two sets of schemes which govern promotion of scientific and technical employees viz. one who were covered under MP-AI scheme under erstwhile bye law 71(b) and new assessment scheme known as NRAS which was subsequently substituted by another revised scheme MANAS. Since the applicant was optee of erstwhile bye law 71(b), as such his case for further promotion to Scientist-F was to be considered in the light of provision contained under bye law 71(b). From the facts as stated above, it is not disputed that the scheme of erstwhile bye law 71(b) provided for promotion to the grade of Scientist-F from the grade of Scientist E-II with further stipulation that 50% of

the scientists eligible during a particular year would be promoted if found suitable. It is also not in dispute that such a promotion was to be granted after completion of 5 years residency period as Scientist E-II which period the original applicants has admittedly completed on 1.2.87. It is also not in dispute that the case of the original applicant for promotion to Sciensit-F was recommended by various authorities including two referees approved by the CSIR. In fact, the matter was also placed before the Committee constituted for that purpose but final selection in that behalf was not made as the competent authority has decided to withhold operation of the scheme till the decision on merit promotion is taken. At this stage, it will be useful to quote relevant portion of the ground of reply, which will clinch the matter in issue:-

".....Although some preliminary exercise as provided under the Scheme for the grant of Merit Promotion-Advance Increment (MP-AI) was done yet the action was not completed as the competent authority has decided to withhold operation of the scheme till a decision on the grant of Merits Promotion was taken. The reasons for not considering the case of the applicant for further promotion was on account of the fact that the scheme was not operated under which the applicant claims such benefit..."

5.2 To the similar effect is the reply given by the respondents to para 3.1.6 at pages 52-53. Relevant portion of which is also reproduced hereinunder:-

".....It is pertinent to mention here that Merit and Normal Assessment Scheme (MANAS) which was w.e.f. 01.04.1988 mentioned that centrally operated Merit Promotion - Advance Increments (MP-AI) scheme would be applicable only to optees of 71(b) bye-law. It is

relevant to mention here that the said Scheme was not operated effectively although some exercise was done to call for the particulars of employees for grant of benefit when Merit and Normal Assessment Scheme (MANAS) was being revised, it was decided by the Director General, CSIR that since the scheme under Merit and Normal Assessment Scheme (MANAS(R) was not being operated, therefore, Merit Promotion - Advance Increment Scheme should also not operate for the optees of 71(b) till the Scheme for Merit Promotion-Advance Increment is revised and a final decision is taken..."

Thus from the portion as quoted above, it is clear that reason for deferring the case of the original applicant for promotion to Scientist-F was that since the scheme under MANAS(R) was not being operated, therefore, Merit Promotion-Advance Increment scheme, should also not be operated for the optees of 71(b). Further, it is also clear from the reply that although some preliminary exercise as provided under the scheme for grant of Merit Promotion-Advance Increment was done but the action was not completed as the competent authority has decided to withhold operation of the scheme till a decision on grant of Merit Promotion was taken. The applicant with the rejoinder has placed on record OM dated 17.1.2003 (Ann.A22) whereby assessment promotion of Scientist E-II in Group IV(4) to the higher grade of Scientist-F in group-IV (5) under normal assessment scheme of revised MANAS was given to persons mentioned therein from the retrospective date. In fact, such benefit was given to Shri K.C.Naithani w.e.f. 1.1.96 and to Shri N.N.Bhise w.e.f. 4.6.99. The applicant has categorically stated in the rejoinder that the benefit to these employees were given after their retirement. If it is

so, it is not understood why the similar benefit was not extended to the original applicant in terms of MP-AI scheme under bye law 71(b) especially when the respondents in their reply have specifically stated that although some preliminary exercise as provided under the scheme for grant of merit promotion-advance increment in respect of the original applicant was done but it was decided by the Director General, CSIR that since the scheme under MANAS (R) was not being operated, therefore, Merit Promotion-Advance Increment scheme should also not operate for the optees of 71(b) till the scheme for MP-AI is revised and a final decision is taken. Admittedly, the respondents have operated MANAS (R) in respect of Scientist E-II and have also granted promotion to the grade of Scientist-F with retrospective effect upto the year ending 31.12.2000 vide OM dated 17.1.2003, ^{in the same parity} As such it was incumbent upon the respondents to extend the benefit of assessment promotion to Scientist E-II to the grade of Scientist-F in respect of optees of bye law 71(b). Having not done so, the action of the respondents in not granting benefit of promotion to the original applicant cannot be justified.

5.3 In fact, we have adjourned this case from time to time in order to grant time to the respondents to consider the case of the original applicant in the light of subsequent events whereby promotion has been granted to the scientists covered under MANAS vide OM dated 17.1.2003 (Ann.A22) but nothing tangible in this regard has been done by the respondents. Thus, action of the respondents in granting assessment promotion of Scientist E-II to Scientist-F covered under revised MANAS and not extending similar benefits to the scientists covered under MP-AI under bye law 71(b) is arbitrary and discriminatory. The ground taken by the respondents in order to justify their action in not granting

promotion to the original applicant to the grade of Scientist-F as can be seen from the reply, relevant portion of which has been reproduced hereinabove, does not exist now in view of the fact that the respondents have decided to grant benefit to the scientists covered under MANAS(R) and it was on that account that the decision was also deferred in the case of the original applicant whose case was covered under bye law 71(b). On that parity, the respondents should have suo-moto considered the case of the original applicant for grant of assessment promotion to Scientist-F as per bye law 71(b). Thus, we are of the view that the original applicant has made a case for grant of relief and the action of the respondents in not considering his case for assessment promotion to the post of Scientist-F under bye law 71(b) is arbitrary and discriminatory.

5.4 Accordingly, the impugned order dated 30.10.2001 (Ann.A1) and 30.01.2002 (Ann.A2) whereby the representation of the original applicant was rejected are hereby quashed and set-aside.

6. Before parting with the matter, we may also advert to the half hearted submissions made by the learned counsel for the respondents regarding limitation. At the outset, it may be stated that the submissions made by the learned counsel for the respondents deserve outright rejection in view of the stand taken by the respondents in the reply as well as vide letter dated 16.11.98 (Ann.A17) whereby the applicant was informed that the scheme of merit promotion under MANAS and for promotion of erstwhile bye law 71(b) have been kept in abeyance and the original applicant was informed that his case will be considered only when decision is taken to operate the scheme by the CSIR. This was also the stand taken by the

respondents in the reply. It is only after filing of this OA that decision was taken by the respondents to operate the scheme of merit promotion under MANAS and in fact the promotion in respect of 6 scientists to the grade of Scientist-F from retrospective date was issued vide OM dated 17.1.2003 (Ann.A22). Thus, the respondents cannot plead that the present application is time barred. In fact, the cause of action has arisen in favour of the original applicant only in January, 2003 when promotion order in respect of Scientists covered under MANAS was issued and scheme for scientist covered under this scheme was operated whereas no such action to operate the scheme in respect of the scientists covered under erstwhile bye law 71(b) was taken. Thus the objection raised by the respondents is without any substance and the same is rejected.

7. In view of what has been stated above, the present application is allowed. The respondents are directed to place the matter of the original applicant before the assessment committee for the assessment promotion to the next higher grade of Scientist-F under erstwhile bye law 71(b) and on the basis of recommendations so made by the assessment committee, if the original applicant is found fit for grant of assessment promotion to the grade of Scientist-F, he shall be extended the benefit of assessment promotion from the retrospective due date as was done in the case of assessment promotion of Scientists E-II to the grade of Scientist-F under normal assessment scheme of revised MANAS (Ann.A20). Such exercise will be done within a period of 3 months from the date of receipt of a copy of this order and pay of the original applicants be fixed under normal rules and legal representatives of the original applicant will be entitled to

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all consequential benefits including family pension etc.. No costs.


(A.K.BHANDARI)

Member (A)


(M.L.CHAUHAN)

Member (J)