

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

OF THE REGISTRY

ORDERS OF THE TRIBUNAL

12.11.2009

OA No. 189/2007

Mr. Sunil Samdaria, Counsel for applicant.
Mr. Kunal Rawat, Sr. Standing Counsel for respondents.

Heard learned counsel for the applicant.

For the reasons dictated separately, the OA is disposed of.


(B.L. KHATRI)
MEMBER(A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 12th day of November, 2009

ORIGINAL APPLICATION NO. 189/2007

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

1. P.K. Sahajpal son of Late Shri S.R. Sahajpal, aged about 51 years, Scientist-D, Office of the Regional Director, Central Ground Water Board, Jhalana Dungari, Jaipur.
2. Shri Waseem Ahmed son of Shri Late Toufique Ahmed, aged about 47 years, Scientist-D, Office of the Regional Director, Central Ground Water Board, Jhalana Dungari, Jaipur.

.....APPLICANTS

(By Advocate: Mr. Sunil Samdaria)

VERSUS

1. Union of India through
 - (i) The Secretary, Ministry of Water Resources, Shram Shakti Bhawan, Radi Marg, New Delhi.
 - (ii) The Secretary, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), New Delhi.
2. The Chairman, Central Ground Water Board, Ministry of Water Resources, Central Government Offices Complex, N.H. No. 4, Faridabad.
3. The Director (Administration), Central Government Water Board, Ministry of Water Resources, Central Government Offices Complex, N.H. No. 4, Faridabad.

.....RESPONDENT

(By Advocate : Kunal Rawat, Sr. Standing Counsel)

ORDER (ORAL)

The applicants two in number have filed this OA thereby praying for the following reliefs:-

- "(i) The order dated 19.9.2006 (Annexure A/3) may kindly be quashed and set aside, orders 20.9.2005 and 14.9.2005 (Annexure A/1 and A/2) be modified dated and the promotion of the applicants on the post of Scientist-D be antedated w.e.f. 1.1.2000 and 1.1.99 respectively with all

consequential benefits as has been given to all officers of the earlier batches.

- (ii) The applicants be allowed arrears of pay and allowances w.e.f. their due date of eligibility i.e. w.e.f. 01.01.2000 and 01.01.99 respectively as has been given to all officers of the earlier batches from the due date of their eligibility alongwith 12% interest per annum.
- (iii) Treating the applicants as promoted w.e.f. the date of their due date of eligibility viz. 1.1.2000 and 1.1.99 respectively, they be assigned due seniority position in the seniority list issued as on 2.1.07.
- (iv) Any other relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances stated above may also kindly be granted in favour of your humble applicants.

2. The grievance of the applicants is that they were eligible for promotion in the grade of Scientist-D in the pay scale of Rs.12000-375-16500 from the date of their eligibility which is in the case of applicant no. 1 is 01.01.2000 and in the case of applicant no. 2 is 01.01.1999 whereas pursuant to the order dated 22.09.2005 (Annexure A/1) and another office order dated 14.09.2004 (Annexure A/2), such promotion has been given to the applicant and the persons mentioned therein with immediate effect. It is further pleaded that some of the persons filed petitions before various Tribunals and the applicants in those OA have been granted such benefit from the date of their eligibility. For that purpose, learned counsel for the applicant has drawn our attention to office order dated 14.09.2004 (Annexure A/2) whereby the name of applicant no. 2 find mentioned at sl. no. (iii) and the name of one Shri R.N. Gupta and Shri P.K. Mahapatra find mentioned at sl nos. (ix) and (xi) respectively. Learned counsel for the applicants argued that these two persons named Shri R.N. Gupta and Shri P.K. Mahapatra, who were similarly situated and were granted promotion alongwith ^{applicant No 2} other vide order dated 14.09.2004, have been granted the aforesaid pay scale w.e.f. 01.01.1999. Not only that

persons similarly situated have been granted such scale from the date of their eligibility. Besides this, it was also argued that even the Department themselves has extended such benefit from retrospective date to 48 persons whose names find mentioned vide order dated 31.08.2005 (Annexure A/10) i.e. w.e.f. 01.01.1998.

3. This Tribunal after hearing the parties at length on 14.09.2009 passed the following order:-

"Heard in part. Learned counsel for applicant has drawn our attention to Annexure A/7 & A/9 whereby respondent have implemented the directions given in pursuance of the judgment rendered by different Benches and have granted benefit of arrears of pay from retrospective/ due date in the grade of Scientist 'D'. Learned counsel for the applicant has also drawn our attention to office order No. 755/2005 passed on 31.8.2005 (Annexure A/10) whereby respondent has granted benefits under FCS to as many as 48 persons from retrospective due date w.e.f. 1.1.1998. Learned counsel for the respondent could not satisfy the Bench as to why the applicant is not entitled to similar benefits when the respondents themselves have granted such benefits retrospectively w.e.f. 1.1.1998 for persons mentioned in Annexure A/10, when such course was not admissible to the respondents in terms of instructions dated 17.7.2002 (Annexure R/1) which has formed basis for denying the benefits to the applicant.

Let the matter be listed for hearing on 29.9.2009 on which date respondents may make submission or file an affidavit on this aspect.

It is made clear that no further adjournment shall be granted for the purpose.

CC to counsel for parties."


4. Thereafter the matter was adjourned to 29.09.2009, 21.10.2009 and 04.11.2009. Despite repeated opportunities granted to the respondents, they have not filed any Affidavit. From the material placed on record, it is evident that the respondents have granted benefit of aforesaid grade to various persons from the due date i.e. from the date of their eligibility whereas in the case of the applicants,

it has been given from prospective date. According to us, such a course was not admissible for the respondents, more particularly, in view of the fact that respondents themselves have granted benefit under FCS Scheme to as many as 48 persons from retrospective due date i.e. w.e.f. 01.01.1998 vide order dated 31.05.2008. The stand taken by the respondents that such a benefit could not have been granted to the applicants in view of the instructions issued by the DOPT OM dated 17.07.2002 is wholly misconceived and has been stated only to defeat the claim of the applicants especially when respondents have not adhered to the aforesaid instructions and have granted promotion to 48 persons vide order dated 31.08.2005 (Annexure A/10).

5. For the foregoing reasons, we are of the view that the applicants have made out a case for grant of relief. Accordingly, the respondents are directed to grant the benefit of FCS Scheme w.e.f. 01.01.2000 in the case of applicant no. 1 and w.e.f. 01.01.1999 in the case of applicant no. 2 alongwith all consequential benefits as has been granted to similarly situated persons.

6. With these observations, the OA is disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ