

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 24th day of December, 2010

ORIGINAL APPLICATION NO. 204/2010

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Sujeet Kumar son of Shri K.K. Prasad aged about 46 years, resident of 15/114, Malviya Nagar, Jaipur and presently working as Assistant Hydro-geologist, Central Ground Water Board (Western Region), Jaipur.

.....Applicant

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through Secretary, Ministry of Water Resources, Shram Shakti Bhawan, New Delhi.
2. Chairman, Central Ground Water Board, Central Head Quarter Office NH-IV, Faridabad.
3. Regional Director, Central Ground Water Board (Western Region), 6-A, Jhalana Doongari, Jaipur.

.....Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The main grievance of the applicant in this case is regarding consideration for the post of Scientist 'B' (Group A Gazetted) in the pay band of Rs.15600-39100 with grade pay of Rs.5400 by way of in-situ promotion as the applicant was not held eligible for consideration for the said promotion. Feeling aggrieved by the action of the respondents, the applicant has filed this OA thereby praying for the following reliefs:-

- "(i) That the entire record relating to the case be called for and after perusing the same respondents be directed to allow the applicant to

appear before Assessment Board for promotion to the grade of Scientist B in PB 3 scale Rs.15600-39100 with grade pay Rs.5400 and to give promotion from the year 2002/2003 with all consequential benefits.

- (ii) That the respondents be directed to treat the applicant as eligible for the promotion to the grade of Scientist B in PB-3 scale Rs.15600-39100 with grade pay Rs.5400 and name of the applicant be interpolate at appropriate place in Annexure A/1 and A/2.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded."

2. When the matter was listed on 19.04.2010, this Tribunal had passed the following order:-

"The applicant has filed this OA for the reason that he has not been called for interview/personal talk before the Special Board of Assessment to the grade of Scientist B in the pay scale of Rs.15600-39100 with the Grade Pay of Rs.5400 by way of in-situ promotion going on from 16.4.2010 to 20.4.2010, as notified vide orders dated 12.4.210 and 13.4.2010 (Annexure A/1 & A/2 respectively), inspite of the fact that the applicant is eligible to appear before the Special Assessment Board as he is holding the post of Assistant Hydro-geologist since 3.4.1997 on ad hoc basis. As per Annexure-1 attached with the order dated 31.3.1997 (Annexure A/3), name of the applicant appears at S. No. 19.

Issue notices to the respondents, returnable within two weeks. Service of notices on the respondents will be affected by the applicant Hum Dust/by Speed Post within a period of three days and to submit proof thereof in the Registry within seven days. Respondents are directed to file reply to the interim prayer of the applicant within ten days.

As regards interim prayer, learned counsel for the applicant invited attention of the Bench to the OM dated 28.5.1986 (Annexure A/4), wherein it has been mentioned that minimum residency of five years in each grade will be required for promotion under Flexible Complementing Scheme (CFS, for short).

The applicant was promoted as Assistant Hydro-geologist, on ad hoc basis, in the pay scale of Rs.2000-3500 (pre-revised) [Revised Rs.9300-34800 with

grade pay Rs.4800 in PB-III] vide order dated 31.3.1997 (Annexure A/3).

From perusal of the orders dated 12.4.2010 and 13.4.2010 (Annexure A/1 and Annexure A/2 respectively), it is evident that Assistant Hydro-geologist have been allowed to appear for interview/personal talk for promotion to the post of Scientist-B in PB-3 scale Rs.15600-39100 with Grade Pay Rs.5400 under FCS.

I also find that CAT, Hyderabad Bench as well as CAT Jabalpur Bench, as per Annexure A/12 & A/13, have granted similar interim relief to the similarly situated officers to appear in the interview/personal talk for the post of Scientist-B.

Learned counsel for the applicant submitted that the applicant has also completed five years of residency period and as such he is also entitled for the same interim relief.

Having regard to the facts of the case, the respondents are hereby directed to allow the applicant provisionally to appear for interview/personal talk for the post of Scientist-B (PB-3) being held from 16.4.2010 to 20.4.2010. Result of the applicant should be kept in sealed cover. The applicant will have the right for promotion only if he fulfils the requisite eligibility conditions."

3. The respondents have filed their reply thereby justifying their action. The respondents have also filed an MA thereby enclosing the copy of the judgment of the Hyderabad Bench of the Tribunal dated 30.08.2010 passed in OA No. 370/2010 & 371/2010 whereby the Hon'ble Tribunal has held that for the purpose of promotion to the post of Scientist-B, eligibility has to be seen as on 01.01.1998 and the person should possess 3 years regular service in Group B (Gazetted) Scientific category (feeder post). Since admittedly, the applicant is not possessing the three years of service in Group B Scientific (Gazetted) category (feeder post) as on 01.01.1998, as such in terms of the judgment rendered by the Hyderabad Bench of the Tribunal, the applicant is not entitled to any relief.



4. Learned counsel for the applicant has brought to our notice the judgment of the Hon'ble Andhra Pradesh High Court passed in Writ Petition No. 24398/2010 whereby the judgment of the Hyderabad Bench of the Tribunal was considered and the Writ Petition was disposed in terms of the observations made in the order, which is to the following effect:-

"The learned counsel on either side fairly conceded that the controversy involved in this Writ Petition is squarely covered by an order of this Court dated 10.9.2008 rendered in Writ Petition No. 22349 of 1999 which was filed by the State aggrieved by the order dated 19.04.1999 passed in OA No. 1032 of 1996 by the Tribunal. In the said judgment, it is held as follows:-

"In the circumstances, the Tribunal ought not to have directed the petitioners to revise 1995 Rules so as to include the benefit of FCS for the Group-B posts. However, having regard to the Presidential Order, which has statutory force, pursuant to which the Department of Science and Technology issued OM dated 02.05.1986 and the consequent OM dated 09.11.1998, we are of the considered view that the petitioner is under obligation to implement OM dated 02.05.1986, as modified by OM 09.11.1998 and take further action to implement the FCS in respect of respondents-applicants.

Subject to the aforesaid modification the writ petition is dismissed."

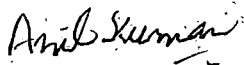
It is stated that the Apex Court by order dated 31.08.2009 dismissed the Special Leave to Appeal (Civil) in CC No. 7347 of 2009 filed by the Union of India affirming the order dated 10.09.2008 in Writ Petition No. 22349 of 1999.

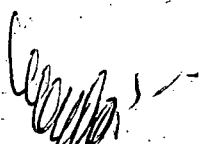
Therefore, this Writ Petition is disposed of in terms of and in accordance with the order of this Court dated 10.09.2008 rendered in Writ Petition No. 22349 of 1999. No costs."

19

5. In view of the judgment rendered by the Hon'ble Andhra Pradesh High Court in Writ Petition No. 24398/2010 in the case of M. Ramakrishna Reddy & Others vs. Government of India, Ministry of Water Resources, New Delhi & Others, this OA is also disposed in the aforesaid terms and the respondents are directed to proceed in the matter in accordance with the order dated 10.09.2008 rendered in Writ Petition No. 22349 of 1999.

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


(ANIL KUMAR)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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