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CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH

O.A. No.060/00401/2014

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Coram: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

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14. R.N. Singh s/o Late Jagdish Prasad Singh (Retd.) r/o A-11, Fortune Glory Extn, Bawadia Kalan, Bhopal - 462039.
15. Dr. S.B. Singh s/o Late V.D. Singh (Retd) r/o 1081, Windsor Park Vaibhav Khand, Indirapuram, Ghaziabad.
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17. R.S. Thakur s/o Late Pratap Singh (Retd) r/o House No. 44-B, Pocket -I, Sector 18, Rohini, New Delhi - 110089.
18. R.P. Mathur s/o Late B.S. Mathur (Retd) r/o K-23, Shyam Nagar, Janpath, Jaipur.

19. R.C. Jain s/o Shri Yugal Kishor Jain (Retd.) r/o B-502, Creative Hut, Sector 21-C, Faridabad.
20. D.S. Saini s/o Late Ram Kishan Singh r/o Kothi No. 30, Sector 59, Phase IV, Mohali, Punjab.

.....Applicants

Versus

1. Union of India through Secretary, Ministry of Water Resources, New Delhi.
2. Central Ground Water Board, NH-IV, Bhujal Bhawan, Faridabad, Haryana through its Chairman.
3. DOP&T through Secretary, Ministry of Personnel, Public Grievances and Pensions, CGO Complex, North Block, New Delhi.

.....Respondents

Present: Mr. Dhiraj Chawla, counsel for the applicants
Mr. V.K. Arya, counsel for the respondents

Order

BY HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER(J)

1. By filing this O.A. under Section 19 of Administrative Tribunals Act, 1985, applicants Abhijit Ray etc have claimed the following relief:-

"(i) The application is directed against the impugned orders dated 26.03.2014, Annexure A-1 whereby the claim of the applicants for grant of in-situ promotion by way of financial up-gradation to the Grade of Scientist 'C' w.e.f., 28-5-1986 in view of the same having been granted to their **juniors** vide orders Annexures A-4 & A-5 has been rejected on the ground that the juniors (Group B officers) were granted the benefit of FCS w.e.f 28-5-1986 in view of the judgment Annexure A-3 and whereas recruitment rules applicable to the applicants were notified in 1987 and therefore the benefit of FCS was extended w.e.f 1988 being wholly arbitrary and erroneous.

(ii) The applicants further seek directions to grant them in-situ promotion by way of financial up-gradation to the Grade of Scientist 'C' w.e.f. 28-5-1986 in view of the same having been granted to their **juniors** vide orders Annexures A-4 & A-5 in pursuance to the judgment Annexure A-3 whereas the seniors like the applicants have been denied the benefit of in-situ promotion w.e.f. 28-5-1986 despite recommendations of respondent no. 2 vide letter dated 15-4-2013 Annexure A-7.

(iii) To further direct the respondents to grant in-situ promotion to the Grade of Scientist 'D' w.e.f 1.1.92, instead of 1994-1996 when the Applicants were given the Grade of

Scientist 'D' with all consequential benefits including pay revisions from time to time and release the arrears of pay & revised pension forthwith alongwith 12% interest till its actual disbursement."

2. Case of the applicants is that they belonged to Group 'A' Scientific Posts in Central Ground Water Board (in short, CGWB), Faridabad- Respondent No. 2. The promotional hierarchy from the post of Scientist 'B' (Group 'A') in CGWB is as under:-

- (i) Scientist 'C'
- (ii) Scientist 'D'
- (iii) Regional Director
- (iv) Member
- (v) Chairman

To ease the prevalent stagnation in scientific cadres, the Department of Science and Technology introduced Flexible Complementing Scheme (in short, FCS) in November, 1983 (Annexure R-1), as per recommendation of 3rd Pay Commission. Under FCS, the scientists were to be considered for in-situ promotion from one Grade to the next higher Grade after a prescribed period of service on the basis of merit and ability irrespective of occurrence of vacancy in the higher Grade. Initially, it was introduced only in some of the departments/organizations but it was decided to be extended to all scientific institutions/organizations of the Central Government. CGWB also occurred at Sr. No. 10(iii) in the accompanying list of S & T institutions in Annexure R-1. The Ministry of Science & Technology modified the FCS vide O.M. dated 28.05.1986 (Annexure A-2) making it applicable to group 'B' posts as well.

3. Recruitment Rules for Group 'A' posts in CGWB were notified on 18.05.1987. FCS for in-situ promotion was to be followed according to the Recruitment Rules for promotion of Scientist 'B' (Group-A) to higher grades of Scientist 'C' and Scientist 'D'. The nomenclature of

Junior Hydrogeologist, Senior Hydrogeologist and Director were accordingly re-designated as Scientist 'B', Scientist 'C' and Scientist 'D'.

The applicants were Junior Hydrogeologists/Geophysicists in 1986, re-designated as Scientist 'B' (Group A), in the year 1986 having already completed 8-9 years of residency period against the required period of five years. Consequently, they were entitled to promotion in the grade of Scientist 'C' w.e.f. 28.05.1986 and next upgradation to Scientist 'D' w.e.f. 01.01.1992 after completion of five years as Scientist 'C'. Out of 20 applicants, 15 had retired before filing of the O.A. and only 5 were serving when the O.A. was filed.

4. FCS as implemented by CGWB did not include Group 'B' officers. Some Group 'B' officers filed O.A. No. 1032 of 1996 titled V.S.

Sambasiva Rao and Others Vs. Union of India and Others before

Hyderabad Bench of the Tribunal claiming inclusion of Group 'B' officers also in the ambit of FCS in view of O.M. dated 28.05.1986 (Annexure A-2) making it applicable to their Grade also. The said O.A. was allowed vide order dated 19.04.1999 (Annexure A-3). Writ Petition No. 22349 of 1999 preferred by Union of India against the said order was dismissed by Andhra Pradesh High Court vide order dated 10.09.2008 and SLP against the same was dismissed by the Hon'ble Supreme Court vide order dated 31.08.2009. Consequently, benefit of FCS was extended to Group 'B' and also to Group 'C' officers vide orders dated 29.04.2010 (Annexure A-4) and 04.05.2010 (Annexure A-5) even qua officers who were not party to the case of V. Sambasiva Rao (supra).

They were granted benefit of FCS w.e.f. 28.05.1986. They were juniors to the applicants and some of them may not even have been in service when the applicants joined. Applicant No. 4- Anita Gupta made representation dated 05.08.2010 followed by reminders dated 22.09.2010, 23.05.2011, 29.06.2011, 14.10.2011, 13.02.2013 &

08.08.2013 (Annexure-6 collectively) seeking benefit of FCS w.e.f. 28.05.1986 thereby granting Grade of Scientist 'C' w.e.f. 28.05.1986 and Grade of Scientist 'D' w.e.f. 01.01.1992. It may be worth mentioning that the applicants have already been granted Grade of Scientist 'C' w.e.f. 01.01.1988. Respondent No. 2- CGWB vide letter dated 15.04.2013 (Annexure A-7) recommended the claim of the applicants for ante-dating the date of their promotion in the grade of Scientist 'C' w.e.f. 28.05.1986 instead of 01.01.1988. However, getting no response, the applicants filed O.A. NO. 060/00021/2014 which was disposed of by this Tribunal vide order dated 10.01.2014 (Annexure A-8) directing Respondent No. 1 to consider the claim of the applicants and to take a view in the matter in the light of judgment in the case of V. Sambasiva Rao (supra) and to extend the benefit to the applicants if they are found entitled to the same or to pass reasoned speaking order. Thereupon, claim of the applicants has been rejected by Respondent No. 1 vide order dated 26.03.2014 (Annexure A-1) which is under challenge in the instant O.A.

5. The applicants have based their claim on proposal (Annexure A-7) and on judgment in the case of V. Sambasiva Rao (supra).

6. Respondents No. 1 and 2 in their (amended) written statement, while not disputing the factual position, have controverted the claim of the applicants. It has been pleaded that Group 'A' scientific officers of CGWB were included in the FCS Scheme dated 14/22.11.1983 (Annexure R-1) introduced for the first time. Group 'A' officers were included in the said scheme vide Recruitment Rules of 1987 (Annexure R-2). Vide O.M. dated 28.05.1986 (Annexure A-2), benefit of FCS was also extended to Group 'B' scientific officers. However, Recruitment Rules of Group 'B' scientific officers framed by CGWB excluded the

benefit of FCS to Group 'B' officers, but the same was extended by CGWB to group 'B' scientific officers in their meeting dated 06.04.2010(pursuant to order in the case of V. Sambasiva Rao (supra)).

Consequently, Group 'B' officers have been granted the said benefit retrospectively. However, there is no illegality in the impugned order (Annexure A-1) because the applicants are not eligible for in-situ promotion w.e.f. 28.05.1986. The applicants were recruited directly as Group 'A' Scientific officers in CGWB. Consequently, they are not entitled to the same benefits as applicable to Group 'B' scientific officers.

Order in the case of V. Sambasiva Rao (supra) is qua Group 'B' officers.

Recruitment Rules of Group 'A' officers were notified in the year 1987 and benefit has already been extended to the applicants w.e.f. 01.01.1988.

7. No rejoinder has been filed by the applicants.
8. We have heard counsel for the parties and perused the case file.
9. Learned counsel for the applicants contended that benefit of FCS should be given to the applicants w.e.f. 28.05.1986 because the same has been given to Group 'B' officers, who were juniors to the applicants, vide orders Annexures A-4 and A-5 pursuant to judgment (Annexure A-3) in the case of V. Sambasiva Rao (supra). Reference was also made to recommendation made by the CWGB vide letter dated 15.04.2013 (Annexure A-7). It was also submitted that the claim of the applicants is not barred by limitation because claim of the applicants has now been rejected vide letter dated 26.03.2014 (Annexure A-1) and the instant O.A. was filed immediately thereafter on 08.05.2014 within limitation period of one year.

10. On the other hand, learned counsel for the respondents contended that the instant O.A. is hopelessly barred by limitation as cause of action, if any, arose to the applicants in the year 1986 and the instant O.A. has been filed 28 years thereafter as against limitation period of one year only. On merits, it was submitted that the applicants were Group 'A' officers and as per their Recruitment Rules, 1987, they have rightly been granted benefit of FCS w.e.f. 01.01.1988. Qua Group 'A' officers, FCS was introduced vide letter dated 14/22.11.1983 (Annexure R-1) which included CGWB as well. Vide O.M. dated 28.05.1986 (Annexure A-2), the benefit of FCS was extended to Group 'B' officers but FCS was already applicable to Group 'A' officers vide Annexure R-1. Judgment in the case of V. Sambasiva Rao (supra) also is qua Group 'B' officers and has no applicability to the applicants who were Group 'A' officers.

11. We have carefully considered the matter. In the instant O.A., a stale claim has been raised. The O.A. is barred by delay and laches, besides being hopelessly barred by limitation. The applicants are staking their claim for benefit of FCS w.e.f. 28.05.1986. The instant O.A. has been filed on 08.05.2014 i.e. after 28 years against limitation period of one year only. Thus, the O.A. is hopelessly barred by limitation, besides suffering from delay and laches. Stale claim raised after such long period cannot be entertained. In this view, we are supported by judgment of Principal Bench of the Tribunal in the case of

N. Chandrasekran & Another Vs. Union of India & Others AISLJ IV-2016(1) 684 and judgment of Calcutta High Court in the case of **Banalata Ojha Vs. State of West Bengal & Others 2016 (3) SLR**

12. In the aforesaid context, it is significant to notice that except applicant No. 4, the applicants never raised their claim before filing previous O.A. No.060/00021/2014 which was decided vide order dated 10.01.2014 (Annexure A-8) without issuing notice to the respondents and calling for their reply, with simple direction to Respondent No. 1 to consider the claim of the applicants and to take a view in the matter. For 28 long years, the applicants never raised their claim. Even applicant No. 4, for the first time, raised this claim by making representation dated 05.08.2010 (Annexure A-6) i.e. after 24 years, followed by reminders/representations. However, even previous O.A., for the first time, was filed in the year 2014 only. The applicants thus remained silent for long period of 28 years. They did not stake their claim even after judgment dated 13.04.1999 (Annexure A-3) of the Tribunal in the case of V. Sambasiva Rao (supra). On the other hand, they waited for decision of Hon'ble High Court and Hon'ble Supreme Court in the said case and implementation of the said order vide orders (Annexures A-4 and A-5) in April/May, 2010. It was thereafter only that applicant No. 4 made representation dated 05.08.2010. The applicants have, thus, raised a very stale and dead claim in this O.A. The O.A., thus, suffers from delay and laches and is also hopelessly barred by limitation.

13. Even on merits, the applicants are not entitled to any relief. Group 'B' officers in V. Sambasiva Rao (supra) had to file O.A. because they were altogether excluded from the applicability of FCS by CWGB. However, in the case of applicants, who are Group 'A' officers, benefit of FCS was extended to them w.e.f. 01.01.1988 vide Recruitment Rules of 1987. Consequently, the applicants are not at par with Group 'B' officers and, therefore, the applicants are not entitled to the benefit of judgment in the case of V. Sambasiva Rao (supra) because the

applicants cannot claim parity with Group 'B' officers. There cannot be said to be any discrimination on this count because the applicants are Group 'A' officers and are not at par with Group 'B' officers to whom V. Sambasiva Rao (supra) pertains. It has also been observed in the impugned order that Group 'A' and Group 'B' scientific officers of CGWB are not similarly circumstanced. Benefit of FCS was extended to Group 'B' officers by CWGB in view of judgment passed by CAT/High Court and upheld by the Apex Court whereas for Group 'A' officers, Recruitment Rules, notified in 1987, extended the benefit of FCS w.e.f. 01.01.1988. Thus, claim of the applicants for benefit of FCS w.e.f. 28.05.1986 has been rightly rejected. There is no infirmity much less illegality in the impugned order (Annexure-A-1).

14. The applicants also cannot succeed in their claim merely on the basis of proposal dated 15.04.2013 (Annexure-A-7) sent by CWGB to the Govt, because it was only a proposal.

15. For the reasons aforesaid, we find no merit in the instant O.A. which is accordingly dismissed with no order as to costs.

Ab
(RAJWANT SANDHU)
MEMBER (A)

LM
(JUSTICE L.N. MITTAL)
MEMBER (J)

PLACE: Chandigarh
Dated: 25.5.2016

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