

**Central Administrative Tribunal
Principal Bench**

OA No.92/2015
MA No.61/2015

Order Reserved on: 20.05.2016

Pronounced on: 30.05.2016.

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. Dr. V.S. Rao Chintala,
S/o Sri Venkateswara Rao,
D-1/A-08, HUDCO Place Extension,
Andrews Ganj,
New Delhi-110 049.
2. Dr. V. Sampath,
S/o Shri K. Varadarajan, IAS (Retd.),
Presently residing at C9/100, Kendriya Vihar,
Poonamaliee High Road, Velappanchavadi,
Annamalai Nagar,
Chennai-600777
Tamil Nadu.
3. Shri T.V.P. Bhaskara Rao,
S/o T. Sanjeeva Rao,
Presently residing at TF-1, Chase Enclave,
Mundvel, Vasco Da Gama,
Goa-403 802.
4. Dr. K.J. Ramesh,
S/o K. Jayaram Chetty,
D-1/41, HUDCO Place Extension,
Andrews Ganj,
New Delhi-110 049.
5. Dr. M. Sudhakar,
S/o M. Subbaramaiah,
FF1, Home Craft Building No.6,

Techno Park,
Chogam Road,
Porvarim,
Goa-403 521.

-Applicants

(By Advocates : Shri R.K. Kapoor with Ms. Kheyali
Sarkar)

Versus

1. Secretary to the Government of India,
Ministry of Earth Sciences (MoES)
(formerly Department of Ocean Development-DoD),
Mahasagar Bhavan, Block 12,
CGO Complex, Lodhi Road,
New Delhi-110003.
2. Secretary to the Government of India,
Department of Science & Technology (DST),
Technology Bhavan,
New Mehrauli Road,
New Delhi-110 016.
3. Secretary to the Government of India,
Department of Personnel and Training (DoPT),
North Block
New Delhi-110 001.

- Respondents.

(By Advocate : Shri R.N. Singh with Mr. Amit Sinha)

O R D E R

Mr. K.N. Shrivastava, Member (A):

This OA has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for in the OA read as under:

“(a) direct the respondents to consider and grant the benefit of FCS to the Applicants, with all consequential benefits including arrears, along with arrears in the subsequent grades as well, and to suitably modify the dates of in situ promotions by antedating the same from the dates when the eligibility period was completed by the Applicants in the respective grades from Scientist F as per the details of eligibility, to the Scientist G, as per the chart mentioned below:

S. No.	Name of the Scientist	Dates of eligibility Identified by the Respondent Authorities	Dates from which promotion already granted prior to the OA No.2296/2009	Dates from which now the promotions to be granted.
1	Dr.VS Rao Chintala	01.07.2004	09.08.2005	01.07.2004
2	Dr.V Sampath	01.01.2002	09.08.2005	01.01.2002
3	Sh. TVP Bhaskara Rao	01.07.2003	09.08.2005	01.07.2003
4	Dr.K.J. Ramesh	01.07.2004	05.10.2006	01.07.2004
5	Dr, M. Sudhakar	01.07.2006	07.08.2007	01.07.2006

(b) direct the respondents to consider and grant the benefit of FCS to the Applicants, with all consequential benefits including monetary benefits in the subsequent grades as well, and to suitably modify the dates of in situ promotions by antedating the same from the dates when the eligibility period was completed by the Applicants.

(c) Set aside the part of the impugned order dated 12.10.2012 wherein the respondent authorities have denied the promotions to the Applicants i.e. w.e.f. 09.08.2005 in case of Dr. V.S. Rao Chintalal, 09.08.2005 in case of Dr. V. Sampath, 09.08.2005 in case of Shri TVP Bhaskara Rao, 05.10.2006 in case of Dr. K J Ramesh, 07.08.2007 in case of Dr. M Sudhakar and direct them to grant promotions w.e.f. 01.07.2004 in case of Dr. V S Rao Chintala, 01.01.2002 in case of Dr. V. Sampath, 01.07.2003 in case of Shri T V P Bhaskara Rao, 01.07.2004 in case of Dr. K J Ramesh, 01.07.2006 in case of Dr. M. Sudhakar.

(d) any other relief/order which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case may also be passed in favour of the applicants and against the respondents,

(e) award costs of the proceedings.”

2. The brief facts of this case are as under.

2.1 The applicants are Scientists belonging to the Department of Earth Science (DES), which was earlier known as Department of Ocean Development. The applicant nos.1, 2 and 3 have retired, whereas applicant nos.4 and 5 are still in service. Their claim is that under the Flexible Complementing Scheme (FCS) for the Scientists, they ought to have been promoted to the grade of Scientist 'G' from 1st January/1st July of the respective years after they had acquired the eligibility for the said promotion. As the same has been denied to them vide the impugned Annexure A-1 orders dated 12.10.2012, they have approached this Tribunal in the instant OA.

2.2 This is the second round of litigation between these two parties before the Tribunal. The applicants had earlier filed OA-2296/2009 claiming almost the same benefits as they have claimed in the present OA. The said OA was disposed by the Tribunal vide order dated 04.08.2010, the operative part of which reads as under:

“15. Considering the facts and circumstances of the case and statutory provisions available for the in situ promotion

and our detailed analysis on the issues, we direct the Respondents to consider each of the Applicants case for in situ promotion under FCS to Scientist-G grade according to their fulfillment of the residency period. If they are found eligible, they should be granted in situ promotion to the grade of Scientist-G with effect from 1st January or 1st July of the respective year, they are found to be eligible and the consequential benefits would accrue to them. The Respondents are further directed to review the case of the Applicants through appropriate Committee/Board as per FCS and such an exercise should be completed within a period of three months from the date of receipt of a certified copy of this order.”

2.3 Under the FCS, for promoting the Scientists to the next grade, the following steps are followed:

- i) For all those Scientists who complete the eligibility period, also called the residency period, a Screening Committee is constituted, which assesses the Annual Confidential Reports (ACRs) of the Scientists earned during the residency period. It recommends for further consideration only those Scientists who cross the threshold in respect of the ACR gradings.
- ii) The Scientists who are recommended by the Screening Committee for further consideration, on the basis of their ACR gradings crossing the prescribed threshold, are called for interview by the Departmental Peer Review Committee (DPRC); also called Assessment Board.

iii) The Assessment Board interviews the shortlisted Scientists and based on their performance in the interview and in the scientific fields, recommends the eligible ones for promotion to DES.

iv) The DES on the basis of the recommendations of the Screening Committee and Assessment Board, sends appropriate proposal to the ACC for approval.

v) After the ACC approved, the promotion order is issued by DES.

2.4 If a Scientist has taken any leave during the residency period, his residency period gets extended to the extent of the leave-period. FCS also prescribes the field-experience for promotion of the Scientists. If a Scientist grade 'F' is to be promoted to the Scientist grade 'G', as is the case of the present applicants, the field experience prescribed is five years. Promotion under FCS is not automatic.

2.5 As delay was taking place at the end of the respondents to comply with the directions of the Tribunal contained in order dated 04.08.2010 in OA No.2296/2009, the applicants filed CP no.644/2011. During the pendency of the said CP,

the respondents issued Annexure A-1 orders dated 12.10.2012. A coordinate Bench of the Tribunal, taking cognizance of the Annexure A-1 orders dated 12.10.2012, closed the CP vide order dated 12.09.2014 with the following observations:

*“...we are of the opinion that it would be difficult to hold that the respondents have willfully and intentionally disregarded the direction in the order dated 04.08.2010 passed in OA No.2296/2009, and thus are guilty of committing contempt of this Court. As noticed above, *prima facie*, as has been alleged, there are disputes regarding the degree of compliance, for which liberty is given to the applicants to file fresh OA raising all points, but contempt cannot be maintained. We, therefore, without expressing any opinion on the merit of the submissions and contentions raised on both sides, provide that it would be open to the applicants to file fresh OA, if they are still aggrieved by the office order dated 12.10.2012 wherein all these submissions can be gone into but it does not come within the scope of contempt jurisdiction.”*

2.6 Availing the liberty granted by the Tribunal in the order dated 12.09.2014 in CP-644/2011, applicants have filed the instant OA, impugning the Annexure A-1 orders dated 12.10.2012.

3. Pursuant to the notices, the respondents entered appearance and filed their reply. The applicants thereafter filed their rejoinder. With the completion of the pleadings, the case was taken up for hearing of arguments of the parties on

20.05.2016. Shri R.K. Kapoor with Ms. Kheyali Sarkar, learned counsel for the applicants and Shri R.N. Singh with Mr. Amit Sinha, learned counsel for respondents argued the case.

4. The FCS was introduced pursuant to the acceptance of the 5th Central Pay Commission's recommendations by the Government of India and accordingly Annexure R-1 OM No.2/41/97-PIC dated 09.11.1998 was issued by the Department of Personnel & Training (DoPT), Government of India. The Scheme stipulates screening of the eligible Scientists on the basis of the gradings in the ACRs of the Scientists for promotion on a scale of 10, giving 10 marks for "outstanding", 08 marks for "Very Good", 06 marks for "Good", 04 marks for "average" and zero for "Poor". It further stipulates that for a Scientist to be promoted from Grade 'F' to Grade 'G', he ought to have obtained 90% gradings.

5. The table below would indicate the details of these applicants as to the dates of their eligibility, meeting of Screening Committee, interview by the Assessment Board/DPRC, ACC approval etc.:

Applicant no.	Eligibility date	Date of Screening Committee Meeting	Assessment Board/DPRC Meeting date	ACC Approval/promoted	Remarks
1	01.07.2004	20.10.2004	16.12.2004	09.08.2005	Review Screening Committee/DPRC on 11.04.2011 pursuant to CAT order, did not find him eligible for promotion before 09.08.2005
2	01.01.2002	20.10.2004	-do-	09.08.2005	
3	01.07.2003	-do-	-do	-do-	
4	01.07.2004 Came from DST	(after High Level Peer Review Committee on 10.02.2006, ACC proposal sent		05.10.2006	ACC rejected on 11.03.2005 He was originally with Department of Science & Technology and laterally transferred to DES with the post, when he was in Scientist 'F' grade.
5	01.07.2006	21.03.2007	31.03.2007	07.08.2007	

6. We have gone through all the five impugned Annexure A-1 orders dated 12.10.2012, one each passed in respect of the individual applicants. Broadly the reasons given for the grant of FCS benefits from a particular date to applicants are as under:

i) Dr. V.S. Rao, Chintala, applicant no.1:

His gradings for the year 2001, 2002, 2003 and 2004 were found to be below the mark but a lenient view was taken and his

case was recommended by the Screening Committee on 20.10.2004, and Assessment Board on 09.08.2005 and with the approval of the ACC on 21.02.2012, he was promoted to Scientist Grade 'G' on 09.08.2005, although he had become eligible for promotion to Scientist grade 'G' on 01.07.2004.

ii) Dr. V. Sampath, applicant no.2:

There was delay at his end in submission of his ACRs as on 26.11.2010. His ACRs for the year 2000-01 and 2001-02 were not available on 26.10.2010, - the date when the Screening Committee meeting was scheduled. He had become eligible for promotion to the Scientist grade 'G' on 01.01.2002. Finally his case was recommended by the Screening Committee for promotion on 20.10.2004, Assessment Board on 16.12.2004 and with the approval of the ACC on 20.12.2004, he was promoted to the Scientist grade 'G' on 09.08.2005.

iii) Shri T.V.P. Bhaskara Rao, applicant no.3:

He became eligible for promotion to Scientist grade 'G' on 01.07.2003. Although the Screening Committee had recommended him for promotion on 29.10.2004 itself but the Assessment Board could not clear him as he was not cleared from the vigilance angle. The vigilance cleared him on

05.08.2005 and with the approval of the ACC, he was promoted to the Scientist grade 'G' on 09.08.2005.

iv) Dr. K.J. Ramesh, applicant no.4:

He was earlier working under DST. Under FCS, he became eligible for promotion to Scientist grade 'G' on 01.07.2005. His case was processed for promotion by DST. He was recommended for promotion by the Screening Committee and Assessment Board constituted by DST but his case was rejected by the ACC on 11.03.2005. He was transferred from DST to DES along with post w.e.f. 20.10.2006. His case for promotion to the Scientist grade 'G' was placed before the "High Level Peer Review Committee (HLPRC) as per the ACC direction. HLPRC recommended his case for promotion on 10.02.2006 based on which DES forwarded his case for approval of the ACC. After obtaining the approval of the ACC, he was given promotion to the grade of Scientist grade 'G' on 05.10.2006.

v) Dr. M. Sudhakar, applicant no.5:

He acquired eligibility for promotion to the Scientist grade 'G' on 01.07.2006. The Screening Committee recommended his case for promotion to Scientist grade 'G' on 21.03.2007,

Assessment Board on 31.03.2007 and with the approval of ACC he was promoted on 07.08.2007.

7. We would like to observe that as per the directions of the Tribunal contained in order dated 04.08.2010 in OA no.2296/2009, the respondents have considered the cases of all these five applicants for their promotion to the Scientists grade 'G' and have passed speaking orders giving the rationale as to why these applicants have been promoted to the Scientists grade 'G' from the indicated dates in the orders. We also note that the prayers made in the instant OA and those made in OA-2296/2009 filed by them earlier are almost identical. For better clarity, the prayers made in OA-2296/2009 are reproduced below:

"(a) Allow the Original Application and Direct the Respondent Authorities to antedate the award of promotion to the Applicants as per their respective eligibilities listed at Para (v) above.

(b) Pass orders granting any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case;

(c) Award costs to the Applicants against the Respondents including the cost of litigation."

A clear similarity could be seen between these prayers and the prayers made in the instant OA (para-1 above).

8. Promotions under FCS are no doubt intended to be granted to the Scientists in various grades on their acquiring the

eligibility. In terms of DoPT OM No.AB-14017/32/2002-Estt(RR) dated 17.07.2002 (page 160 of the paper-book), such promotions are to be granted w.e.f. 1st January/1st July of the respective years. The OM also makes it abundantly clear that no promotion is granted with retrospective effect. For better appreciation of the instant case, the relevant extract of the said OM is reproduced below:

“2. As a matter of fact, no occasion requiring application of promotion with retrospective effect should arise in FCS cases, as it is provided in the rules for scientific posts that the Assessment Boards shall meet at least once a year to consider cases of in situ promotions. Rules notified for scientific posts also contain a provision for review of promotion by the Selection Committee/Assessment Board twice a year - before 1st January and 1st July of every year - and the Selection Committee/Assessment Board is required to make its recommendation on promotions keeping in view these crucial dates of 1st January and 1st July. The competent authority, which has to take a final view bases on these recommendations, shall ensure that no promotion is granted with retrospective effect.”

9. The Scheme of FCS at Annexure R-1 and the DoP&T OM dated 17.07.2002 make it absolutely clear that promotions of the Scientists to the higher grades, on acquisition of eligibility, is not automatic. The prescribed process is required to be followed viz. screening by the Screening Committee, interview by Assessment Board and final approval by the ACC. The respondents have explained the reasons for the delays that have taken place in the

grant of promotion to the applicants to the Scientist Grade 'G'.

These reasons are quite valid and acceptable.

10. As such, we do not find any infirmity, illegality or perversity in the Annexure A-1 orders. We would also like to observe that the applicants have not adduced any new grounds in the instant OA in support of their claims and have simply reiterated the grounds which they had already taken in their earlier OA-2296/2009.

11. In the conspectus, we do not find any merit in the OA and accordingly it is dismissed.

12. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

'San.'