

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No. 1593/2013

Order Pronounced on: 10.03.2016

***Hon'ble Mr. A. K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)***

Dr. Neelam Bhalla
D/o Shri S.P.S.Bhalla
Scientist 'F'
Defence Terrain Research Laboratory (DTRL),
Defence Research Development Organisation (DRDO),
Metcalfe House, Civil Lines,
Delhi-110054
R/o Type-5, C-20 HUDCO Place,
Andrews Ganj,
New Delhi-110049.

- Applicant

(Applicant in person)

Vs.

1. Union of India
Through its Secretary,
Ministry of Defence,
South Block,
New Delhi-110011.
2. Department of Defence Research & Development,
Ministry of Defence,
Through its Secretary, DG of DRDO &
Scientific Advisor to Raksha Mantri,
DRDO Bhawan,
Raja ji Marg,
New Delhi-110015.
3. Recruitment & Assessment Centre (RAC)
Through its Chairman

Defence Research & Development Organisation (DRDO)
Lucknow Road,
Timarpur,
Delhi-110054.

- Respondents

(By Advocate: Sh. D.S.Mahendru)

ORDER

Hon'ble Shri V.N.Gaur, Member (A)

The applicant has filed this OA with the following prayer:

- (a) To set aside the impugned SRO-21 dated 23.3.2012 issued by the Department of Defence Research & Development, Ministry of Defence.
- (b) To set aside the proceedings of Internal Screening Committee (Main) as per impugned order dated 11.4.2013 issued by the Respondent No.3 (RAC).
- (c) To allow cost(s) to the Applicant against the Respondents, in the interest of justice.
- (d) To pass such other order(s) and further reliefs which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.

2. The applicant started her career as Scientist-B at Computer Centre, Delhi under respondent no.2 on 19.10.1984. By the year 2005 she had been promoted to the grade of Scientist-F. In the year 2010 after becoming eligible for consideration for the grade of Scientist-G under Flexible Complimenting Scheme (FCS), the applicant was considered by the respondents but was not declared fit for promotion. The procedure for promotion from

Scientist-F to Scientist-G as laid down in the Defence Research and Development Service Rules, 1979 (DRDS Rules) envisaged that an Internal Screening Committee (ISC) shall review the Confidential Performance Appraisal Reports (CPARs) of Scientist-F on completion of minimum residency period of 5 years. The ISC would evolve its own criteria for deciding the eligibility of Scientists for consideration by the Assessment Board and award average marks to Scientists on the basis of its review. Thereafter, a Peer Committee shall assess the Scientists-F who have been recommended by the ISC for promotion to the next higher grade and will make its own recommendations. In the year 1990 the DRDS Rules 1979 was amended to include a provision that “there shall be no assessment interview”.

3. The applicant was again considered by the ISC in 2011 but was not recommended for assessment by the Peer Committee. In the year 2012 the respondent no.2 through a notification dated 23.03.2012 amended the DRDS Rules splitting the ISC into two committees, namely, ISC (Preliminary) and ISC (Main). While the ISC (Preliminary) was to evaluate Performance Appraisal Reports of the Scientists-F and report to ISC (Main), the ISC (Main) was to interact with the Scientist-F and make recommendations to Peer Committee. The applicant was considered by the ISC (Preliminary) in 2012 and was cleared for further screening by the ISC (Main). But the applicant did not participate in the interaction and

therefore was not recommended for assessment by the Peer Committee. In the year 2013 the ISC (Preliminary) had cleared the promotion of the applicant but the ISC (Main) did not recommend her for assessment by the Peer Committee.

4. The applicant in this OA has sought quashing of the amendment of the DRDS Rules, 1979 by SRO-21 of 23.03.2012 and setting aside of the proceedings of ISC (Main) as per the impugned order dated 11.04.2013 by which she had been called for interaction with the ISC (Main) on 16.05.2013. In the OA the applicant has alleged non-communication of PARs for the period 2005-08 which she had to obtain through RTI route. This compelled her to participate in the ISC (Main) under protest in the year 2012. However, since the applicant has not claimed any relief for herself, we will not discuss those details which pertain to her consideration for promotion by any of the Screening/Peer Committees.

5. The applicant, who argued the matter in person, also submitted written arguments and challenged the impugned SRO-21 dated 23.03.2012 mainly on the following grounds:

- (1) The personal interview with ISC (Main) effectively carries 100% marks, which is much more than permissible limit of 50%.

- (2) Chairman RAC (respondent no.3) is heading both the ISC (Main) and the Peer Committee which creates an apprehension of bias.
- (3) The SRO-21 does not lay down any guidelines or criteria or any benchmarks for conducting interaction by the ISC (Main).
- (4) Para 8 (2)(e) of DRDS Rules had specific provision that there shall be no assessment interview for senior level promotion of Scientific-F. Thus, the provision of interaction in SRO-21 is contrary to the provisions of the rules. The role of ISC (Main) to block consideration of some of the Scientists by the Peer Committee is not within its scope and the objective of which is to ensure that all meritorious Scientists have to be considered irrespective of the vacancy.
- (5) The SRO-21 also is inconsistent with the recommendation of the 6th CPC accepted by the DOP&T on 10.09.2010.
- (6) The SRO-21 again makes an exception of promotion from Scientist-F to Scientist-G by introducing the process of interview whereas at higher levels there is no provision for conducting interviews.

6. The applicant during her oral submissions stated that the role of ISC (Main) is not properly defined and the word used in SRO-21 is cryptic and vague in interpretation. In the absence of any guidelines or criteria on the basis of which the interaction is to be conducted, the ISC (Main) gets bestowed with unbridled power and discretion to make or mar the future of Senior Scientists. Since the ISC (Main) has assumed the authority of not sending the name of a Scientist for assessment by the Peer Committee, it amounts to assigning 100% marks to the process of interaction which is nothing but a camouflage interview. The applicant relied on the judgment in the case of **Director General, Indian Council for Agricultural Research and ors. Vs. D. Sundara Raju**, (2011) 6 SCC 605 wherein the Hon'ble Supreme Court had considered even 50% marks allocated for the interview to be highly excessive and contrary to the legal position. The applicant invoked Articles 14 and 16 of the Constitution while arguing that denial of equal opportunity to all the eligible Scientists to be considered by the Peer Committee was violative of these provisions of the Constitution of India. In this regard a reference was made to the judgment of Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others vs. Uma Devi and others**, 2006 (4) SCC 1. The applicant also submitted that when the Chairman, Recruitment and Assessment Centre (RAC) was chairing both the ISC (Main) and the Peer Committee,

it was impossible to make the selection fair and unbiased. Reliance was placed on **Secretary, State of Gujarat and another vs. Hon'ble Mr. Justice R.A.Mehta (Retd) &ors.**, 2014 (1) SPR 4779 in which the Hon'ble Supreme Court discussing the doctrine of bias observed that “*what is relevant is actually the reasonableness of the apprehension in this regard, in the mind of such party. In case such apprehension exists, the trial/judgment/order etc. would stand vitiated, for want of impartiality, and such judgment/order becomes a nullity. The trial becomes “coram non judice”.*

7. The applicant has referred to the composition of ISC (Main) which though named as “internal”, has external members nominated in the Committee. The SRO-21 actually introduces Peer Committee at level-2 under the garb of ISC (Main). The process of interview introduced by SRO-21, according to the applicant, negates the very purpose of introducing FCS which is intended to hold the morale of Scientists high in order to keep them motivated and to stop the flight of talent from Government organisations. The DRDO by issuing SRO-21 has violated the policy of Government of India promulgated through the nodal department, i.e. DOP&T, to regulate promotion and seniority of scientists by taking a plea that DRDO is exempt from the purview of UPSC and DOP&T. The DRDO has taken contradictory stand by stating on one hand that the recruitment/promotion of

scientific and technical personnel in the DRDO was exempt from consultation with the UPSC and on the other hand they have adopted DOP&T guidelines in their functioning. According to the applicant, DRDO cannot be allowed to make its own rules and policies which are arbitrary and violative of Articles 14 & 16 of the Constitution. The applicant relied on **Praveen Singh vs. State of Punjab & ors.**, AIR 2001 SC 152 holding that “while it is true that administrative or quasi-judicial authority clothed with the power of selection and appointment ought to be left unfettered in adaptation of procedural aspect but that does not however mean and imply that the same would be made available to an employer at the cost of fair play, good conscience and equity.” The SRO-21 in such a manner has paved the way for backdoor promotions which has been assailed before the Hon’ble Supreme Court in **Ajay Hasia vs. Khalid Mujib**, AIR 1981 SC 487 wherein it has been held that:

“Now there can be no doubt that having regard to the drawback and deficiencies in the oral interview test and the conditions prevailing in the country, particularly when there is deterioration in moral values and corruption and nepotism are very much on the increase, allocation of high percentage of marks for the oral interview as compared to the marks allocated for the written test, cannot be accepted by the court as free from vice of arbitrariness.”

8. According to the applicant, the Peer Committee with the interaction of SRO-21 has lost all meaning and credibility as can be seen from the datashowing that during the years 2012, 2013 and 2014 the ISC (Main) considered 333, 376 and 425 Scientists

and eliminated 69%, 69.42% and 71% and recommended 102, 115 and 123 Scientists for consideration by Peer Committee. The Peer Committee cleared the recommendations of ISC (Main) without any change in number. That shows that the Peer Committee has no independent view in the matter of promotion after the ISC (Main) has taken a view.

9. Learned counsel for the respondents submitted that DRDO was a premier scientific and technical organisation helping in equipping the defence force with most modern equipments based on the state of the art technology. Its objective is to achieve excellence in the area of defence science and technology and make available critical technologies indigenously. It was, therefore, necessary that while the morale of the scientists is maintained at a very high level to retain them within the organisation, it was equally important to ensure that upward movement of scientists was strictly merit bases to avoid any sluggishness or complacency. Recognising the peculiarity of the problems faced by the DRDO, the Government of India, vide GSR no.512 dated 18.05.1985 issued by DOP&T, amended the UPSC (Exemption from Consultation) Regulations, 1958 exempting DRDO from consultation with UPSC in recruitment and promotion of scientific and technical personnel. As per the Allocation of Business Rules, the DRDO is also exempt from the purview of DOPT with regard to the matters of recruitment and

promotion. The FCS notified by the DOP&T vide OM dated 10.09.2010 following the 6th CPC was also not applicable to the DRDS as mentioned in the Scheme itself.

10. The learned counsel further submitted that the Rule 8 (2) of the amended DRDS Rules provides for ISC (Main) to interact with the scientists before making its recommendations to the Peer Committee. The ISC (Preliminary) is authorised to evolve its own criteria for deciding eligibility of the Scientists for consideration by the assessment committees, i.e. ISC (Main) and Peer Committee. The final recommendation is to be made by the Peer Committee taking into consideration the merit, achievement, personality, leadership and managerial quality. The post of Scientist-G is a very senior level post and due to huge increase in the number of Scientists-F under consideration, the assessment by the Peer Committee for promotion from Scientist-F to Scientist-G has to be much more rigorous than promotion in the lower hierarchy. The respondent no.2 therefore decided to conduct the screening at two levels, i.e. ISC (Preliminary) and ISC (Main).

11. Elaborating on the process of interaction the learned counsel stated that the scientists recommended by ISC (Preliminary) are requested to make a 10 minute presentation of their achievement to the ISC (Main). During interaction, the ISC (Main) evaluates the subject knowledge, professional achievements,

Research & Innovation aptitude, internal/external vision, management skills etc. of the Scientists. Only those Scientists who score matching percentages of marks as per the criteria mentioned above are further recommended for assessment by the Peer Committee. According to the learned counsel the case laws relied on by the applicant relates to appointment and not for promotion except the judgment in **Director General, ICAR** (supra). In that case there was no mention in the scheme for the interview procedure and 50% marks allocated to interview was held unjustified by the Apex Court since the appellants did not even disclose to the respondents that interview would be held. In fact the Apex Court quoted from its own judgment in **Ashok Kumar Yadav & others vs. State of Haryana& others**, (1985) 4 SCC 417, wherein it was observed that there may be posts and appointments where the only proper method of selection may be by a viva voce test.

12. Rejoining the argument the applicant submitted that the interaction is a two way communication and there was nothing mentioned in the rules that would imply that the process of selection would be on the basis of interview and it would carry a weightage of 100%. There can be no elimination on the basis of interview as per the DRDS Rules, 1979. Since the promotion under FCS is granted to remove stagnation, the process of

interaction cannot be allowed to do away with intents of FCS. The Scientists were not competing with each other under FCS rather the promotion was based on merits and records of research of the individual. SRO-21 was earlier challenged by another Scientist in OA No.1532/2013 who has superannuated after earning his promotion to Scientist-G and hence that OA was closed.

13. We have heard the applicant and the learned counsel for the respondents.

14. The main issues before us are:

- (i) whether the “interaction” as envisaged by SRO-21 is the same as “interview” which has been prohibited by the DRDS Rules, 1979?
- (ii) whether the respondents had the power to introduce the procedure of interaction by the ISC (Main)?
- (iii) whether it was necessary to notify the procedure/criteria for assessment of Scientists by ISC (Main)?
- (iv) whether the ISC (Main) could eliminate the names of some Scientists from the list of Scientists to be assessed by the Peer Committee?

(v) whether there can be a genuine apprehension of bias when both the ISC (Main) and Peer Committee are headed by the same person, i.e., Chairman RAC?

15. Before we proceed further, for the convenience of reference the relevant provisions of DRDS Rules and SRO-21 are reproduced below:

DRDS Rules, 1979 (un-amended)

“Rule 8

(2) (a) xxx xxx xxx

The Internal Screening Committees constituted as specified in Schedule 1A and 1B, shall review the confidential performance appraisal reports of Scientists ‘B’ on completion of minimum residency period of three years and Scientists ‘C’, ‘D’ and ‘E’ on completion of minimum residency period of four years and of Scientist ‘F’ and Scientist ‘G’ on completion of minimum residency period of five years and three years respectively as on 30th June of the year to which the assessment boards pertain. The Internal Screening Committee shall evolve its own criteria for deciding the eligibility of scientists for consideration by the Assessment Boards and award average marks for the scientists.

Xxx xxx xxx

(b) (i) xxx xxx xxx

(ii) A Peer Committee constituted as specified in Schedule 1D shall assess those Scientists ‘F’ who have completed the prescribed minimum residency period and are recommended by the Internal Screening Committee for assessment for promotion to the next higher grade.

Xxx xxx xxx

(e)** Recommendations for promotion of Scientists ‘F’, who have been declared eligible by the Internal Screening Committee, to Scientists ‘G’ shall be made by the Peer Committee taking into consideration merit achievements, personality, leadership and managerial qualities etc. There shall be no assessment interview.

Xxx xxx xxx

***Schedule 1B**
(See Rule 8(2))

**** The Internal Screening Committee to review
confidential performance appraisal reports of
Scientist 'F' and Scientist 'G'**

(a) Scientist 'F'

- (i) Secretary, Department of Defence Research and Development or a Distinguished Scientist nominated by him.
-Chairperson
- (ii) Two Scientists not below the level of Scientist 'G' nominated by the Secretary, Department of Defence Research and Development.

Xxx xxx xxx

***Schedule 1D**
(See rule 8(2))

**The Peer Committee for assessing suitability of Scientist 'F'
and Scientist 'G' for promotion to the next higher grade in
Defence Research and Development Service**

- (i) Chairman, Recruitment and Assessment Centre, Department of Defence Research and Development
-Chairperson
- (ii) Secretary, Department of Defence Research and Development.
-Member
- (iii) Any two Secretaries from other Scientific Departments of the Central Government, decided by the Chairperson.
-Member
- (iv) An eminent Scientist or Management Specialist, nominated by the Chairperson.
-Member
- (v) One Distinguished Scientist of Defence Research and Development Organisation, nominated by Director General of Research and Development.
-Member

16. The SRO-21 dated 23.03.2012 modifies the process of screening by ISC of un-amended DRDS Rules 1979, by

introducing ISC (Preliminary) and ISC (Main) in the following manner:

“In the Defence Research and Development Service Rules, 1979 (hereinafter referred to as principal rules) (a) after Clause (4), the following clauses shall be inserted, namely:-

(4A) “Internal Screening Committee (Main), means the Committee constituted under sub-rule(2) of rule 8 for the purpose of interactions with Scientists ‘F’ for promotion and giving their recommendations to the Peer Committee”.

(4B) “Internal Screening Committee (Preliminary), means the Committee constituted under sub-rule (2) of rule 8 for the purpose of evaluating the performance appraisal reports of Scientists ‘F’ for promotion and giving their recommendations to the Internal Screening Committee (Main)”,

(b) in rule 8, in sub-rule(2) in paragraph(b),-

“(ia) after item (i) the following item shall be inserted, namely.-

(A) For promotion from Scientist ‘F’ to Scientist ‘G’, Internal Screening Committee (Preliminary) specified under Schedule 1B shall screen Performance Appraisal Reports and award average of marks for the Scientists ‘F’.

(ib) The Internal Screening Committee (Main) specified under Schedule 1B shall interact with the Scientists ‘F’ and make recommendations to Peer Committee”.

Xxxxx

(e) “Recommendations for promotion of Scientists ‘F’ who have been recommended by the Internal Screening Committee (Main) to Scientist ‘G’, shall be made by the Peer Committee taking into consideration the merit, achievements, personality, leadership and managerial qualified etc.”,

Schedule 1B

[See Rule 8 (2)]

The Internal Screening Committee (Preliminary), to review Performance Appraisal Reports of Scientist ‘F’, Internal Screening Committee (Main) for interaction with Scientists ‘F’ and Internal Screening Committee to review Performance Appraisal Reports of Scientist ‘G’

Internal Screening Committee: (Preliminary)

(a) Scientist ‘F’

(i) Secretary, Department of Defence Research and Development or a Distinguished Scientist by him. -Chairperson

(ii) Two Scientists now below the level of Scientist 'H' nominated by the Secretary, Department of Defence Research and Development. - Members

Internal Screening Committee-(Main)

(i) Chairman Recruitment and Assessment Centre or a person having proven knowledge, experience and expertise in any field namely Science or Mathematics or Psychology or Engineering or Technology or Metallurgy, as the case may be to be nominated by the Central Government -Chairperson

(ii) Two Scientists not below the level of Scientist 'H' nominated by the Secretary, Department of Defence Research and Development. -Members

(iii) Two external members (one subject expert and one Management Specialist) nominated by the Secretary, Department of Defence Research and Development -Members”

17. It has been the contention of the applicant that interaction procedure introduced by SRO-21 is nothing but a process of interview camouflaged as interaction. Rule 8 (ii) (e) of DRDS Rules, 1979 (reproduced above) specifically prohibits any assessment interview.

18. A careful reading of the provision would show that the ISC has been authorised to evolve “its own criteria” for deciding the eligibility for consideration by the Assessment Board by awarding average marks to the Scientists. Through amendments during the period of 1990 to 2006, some of the criteria have also been formally incorporated in the rules in paras 8 (ii) (a) (i), 8 (ii) (a) (ii) and 8 (ii) (a) (iv). It is also observed that the ISC (Main) has to declare a candidate “eligible” for assessment of Peer Committee, and separately the Rules do not provide for conducting ‘interview’

for assessment. It cannot be, therefore, concluded that there can be no ‘interaction’ between the ISC and the Scientists at the time of deciding their eligibility for further consideration by the Peer Committee. Notwithstanding this interpretation, it can be argued that once the highest committee that has to take a view about the promotion of a Scientist, i.e., Peer Committee is not allowed to interview that Scientist, it will be illogical to conclude that a Screening Committee should be allowed to ‘interact’ with the Scientists which is nothing but interview by another name. It is for this reason perhaps that the respondents have included the word “interaction” in SRO-21 and not the word “interview”. An “interaction” is a process of two way communication between two parties while “interview” envisages a candidate to respond to the questions put by the other party and the evaluation of the candidates would be on the basis of the response to those questions. If the interaction is conducted in its true spirit, it may perhaps be beneficial to the Scientist because he has one more opportunity to explain the work done by him, underline the important achievements as he would perceive it and fill in the gaps, if any, in the written submissions and the performance record. The interaction can be considered to be a part of the process of “review of the performance appraisal reports, professional achievements etc.” However, the respondents in the

additional affidavit filed through MA 74/2015 have narrated the role of ISC (Main) in the following manner:

“9. The ISC (Main) interacts with the scientists recommended by ISC (Preliminary) wherein the scientists are requested to make a 10 minute presentation of their achievement. During interaction, the committee evaluates the subject knowledge, professional achievements, Research & Innovation aptitude, internal/external vision, management skills etc of the scientists. Only those scientists who score matching percentages of marks as per the criteria mentioned above are further recommended for assessment by the Peer Committee.”

19. The respondents have thus admitted that the ISC (Main) through the process of interaction evaluates the subject knowledge, Research and Innovation aptitude, internal/external vision, management skills etc. besides professional achievements which can be accessed from the records. It is difficult to appreciate how an “interaction” to evaluate subject knowledge, professional achievement, research and development aptitude and internal and external vision can be categorised as different from the process of “interview”. From this perspective, the interaction is nothing but an interview which is not permitted under the DRDS Rules, 1979.

20. We are, however, conscious of the fact that DRDO is a premier research and development organisation working on the frontier areas of defence science and technology with the responsibility of equipping our defence forces with State of the Art fighting machines, gadgets and developmental support by maximising indigenous knowhow. It has to work in the critical areas of technology which is not be available from other sources

on acceptable terms and affordable prices. To achieve this objective the DRDO has to depend on its outstanding cadre of Scientists. The organisation has to maintain the morale of the scientists by meeting their expectations and aspirations within the codified DRDO rules. Considering these objectives, as a matter of policy, the Government of India has exempted the organisation from consultation with the UPSC and from the purview of the DOP&T. However, that would not preclude respondents, who are responsible for efficient functioning of the organisation, from adopting any equitable but rigorous criteria for appointing and promoting Scientists in DRDO. The applicant has indicated in the list of dates and events that the assessment of scientists through interview was barred by an amendment of DRDS Rules in 1990. We do not see any reason as to why the respondents can not further modify the rules on the basis of the experience of the past more than 20 years of maintaining a cadre of top level defence scientists to bring in an element of interaction, if not interview.. It is also important to note that maintaining the morale is not synonymous with allowing all the scientists to progress up the ladder without passing through a rigorous process of evaluation and elimination. In the background of Ashok Kumar Yadav (supra) we are of the view that the process of interaction for promotion to senior positions in DRDO, so long as it is well defined and distinct from the process of interview,

cannot be called discriminatory that may attract Articles 14 and 16.

21. As discussed in the preceding paras, we find that the main drawback in the process of interaction is the fact that respondents have not issued any detailed guidelines to the Committee that would allow the ISC (Main) to review the work of ISC (Preliminary) rather than becoming an interview board. In our view the respondents have power to amend the rules to introduce 'interaction' as one of the tools for evaluation and review the work of the scientists, provided the ISC (Main) does not function practically like the final authority to allow or not to allow assessment by the Peer Committee which will be contrary to the Rules. The data placed on record by the applicant, not denied by the respondents, regarding the number of Scientists recommended by the ISC (Main) and Peer Committee reads as follows:

Internal Screening Committee-Main		'Peer Committee'			
Number of scientists		Number of scientists			
Year	Considered	Knocked out/eliminated	Recommended for consideration by 'Peer Committee'	Considered	Recommended for promotion
2012	333	231 (69%)	102 (31%)	102	102
2013	376	261 (69.42%)	115 (30.58%)	115	115
2014	425	302 (71%)	123 (29%)	123	123

22. It is apparent that the ISC (Main) is practically the final authority to decide the promotion from Scientist-F to Scientist-G and the Peer Committee has only accorded its seal of approval. Admittedly the above data cannot be a conclusive ground to infer that Peer Committee has not applied its mind because it is possible that the ISC (Main) has been rigorous enough in its evaluation and Peer Committee did not find any reason to disagree with its recommendations. However, viewing the data alongside the fact that both these Committees are chaired by the same person the apprehension of bias gets credence and violates the principle laid down in **Praveen Singh** (supra) and **Secretary, State of Gujarat** (supra).

23. The question that arises is whether the rule envisaged the ISC (Main) to become the sole arbiter of fate of Scientist-F as far as promotion to the post of Scientist-G is concerned. The Rules even after SRO-21 envisage the ISC (Main) to interact with Scientist-F and make recommendations to the Peer Committee. Rule 4 (b) provides that the ISC (Preliminary) after evaluating the report of Scientist-F for promotion to Scientist-G will give their recommendation to ISC (Main) and ISC (Main) after interacting with the Scientist-F will give its report to the Peer Committee. From this, it cannot be concluded that the ISC (Main) can stop forwarding of the names of Scientists whom it does not recommend, being equivalent of assigning 100% marks to

interaction. [**DG, ICAR** (supra)] ISC (Main) has to submit the entire record to the Peer Committee giving the details of performance appraisal as reviewed by the ISC (Preliminary) and its own views on the basis of interaction with the Scientists, and allow the Peer Committee to take the final decision and thereby ensuring equal opportunity of consideration to all eligible Scientists-F.[**Uma Devi** (supra)].

24. The above data also brings to issue raised by the applicant regarding the possibility of bias in taking the decisions when both the Committees are chaired by the same person. We are inclined to agree with the apprehension of the applicant in this regard and hold the view that the ISC (Main) whose role is to screen and place the recommendation before the Peer Committee for final decision cannot have its Chairman common with the Chairman of the Peer Committee. Here we are supported by the Apex Court judgment in *Secretary, State of Gujarat* (supra) that the unfettered power of administrative authority in appointments and selection cannot be at the cost of fair play, good conscience and equity.

25. In the light of the foregoing discussion and the reasons stated, we do not find any justification for quashing the ISC (Preliminary) and ISC (Main) itself, but the composition of ISC (Main) and Peer Committee is quashed to the extent that the two

Committees are headed by the same person. The respondents are directed to nominate two different persons to Chair these Committees. The respondents shall also frame guidelines for the functioning of ISC (Main) in the manner, as discussed earlier in the order, where the interaction is not converted into an interview but conducted in accordance with those guidelines, with not more than 25% weightage to the interaction. The recommendations of ISC (Main) and the ISC (Preliminary) shall be placed before the Peer Committee to take the final decision. The respondents shall hold further promotions from Scientist-F to Scientist-G only after carrying out these directions not later than a period of three months from the date of receiving a copy of this order.

26. We do not find any justification to set aside the proceeding of ISC (Main) as per the impugned order dated 11.04.2013 for the reason that those Scientists have been promoted after the review by ISC (Preliminary), ISC (Main) and the Peer Committee in accordance with the Rules as it existed at that time. We do not find any illegality in their promotion. Further under the FCS, the merit based promotion is not related to vacancy, and therefore, the promotion of those Scientists cannot be said to have prejudiced the promotion of the applicant. In any case, the denial of promotion to the applicant also cannot be solely attributed to the SRO-21 and the process of interaction, because under the old

rules also during 2010 and 2011 she was not considered fit for promotion.

27. The OA is disposed of in terms of above directions.

(V.N. Gaur)
Member (A)

March 10, 2016

‘sd’

(A.K.Bhardwaj)
Member (J)