

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.806/2016

This the 7th day of October, 2016

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. V. N. Gaur, Member (A)

1. Babu Nair S/o N. Ramanujam,
Scientist 'D', Central Ground Water Board,
Jamnagar House, New Delhi.
2. N. R. Bhagat S/o Gathi Ram,
Scientist 'D', Central Ground Water Board,
NWHR, Shastri Nagar, Jammu (J&K).
3. K. N. Nagaraja,
Scientist 'D', Central Ground Water Board,
SWR, Bangalore, Karnataka.
4. T. Balakrishnan,
Scientist 'D', Central Ground Water Board,
SECR, Chennai.
5. A. Balachandran S/o T. Anjan,
Scientist 'D', Central Ground Water Board,
Flat D, Block-II, New No.13,
MGR Nagar, Valenchary,
Chennai.

... Applicants

(By Advocate: Mr. V. S. R. Krishna)

Versus

1. Union of India through
Secretary, Ministry of Water Resources,
Shram Shakti Bhawan,
Rafi Marg, New Delhi.
2. The Secretary,
Ministry of Personnel, Public Grievances
& Pensions, Department of Personnel & Training,
New Delhi.

3. Chairman,
Central Ground Water Board,
Bhujal Bhawan, NH-IV,
Faridabad.

... Respondents

(By Advocates: Mr. Rajeev Kumar)

O R D E R

Justice Permod Kohli, Chairman :

The applicants are working as Scientists 'D' in the Central Ground Water Board. The Government of India formulated a scheme to remove stagnation of scientific community and to grant them promotions at regular intervals. The said scheme, i.e., Flexible Complementing Scheme (FCS) was duly notified in the year 1986. The Scheme was further modified on the recommendations of the Fifth Central Pay Commission vide office memorandum dated 09.11.1998. Under the recruitment rules for promotion from Scientist 'B' to Scientist 'C' and from Scientist 'C' to Scientist 'D', the minimum residency period is four years. The grievance of the applicants is that their promotion from Scientist 'C' to Scientist 'D' was delayed for no valid reasons. It is stated that they became due for such promotion on 1st of January of the year when they completed the eligibility period.

2. Mr. V. S. R. Krishna, learned counsel for the applicants, submits that the case of the applicant is squarely covered by a

judgment dated 02.07.2014 passed by this Tribunal in OA No.2271/2013 – *Dr. S. Suresh and others v Union of India & others*. Mr. Rajeev Kumar, learned counsel appearing on behalf of the respondents, was given opportunity to seek instructions in this regard and also to file reply. He, however, submits that he has instructions to seek adjournment. As regards the fact that the case of the applicants is squarely covered by the judgment dated 02.07.2014 in OA No.2271/2013, he has not disputed the same. Otherwise also from the reading of the aforesaid judgment annexed with the OA, we find that the claim of the applicants is squarely covered by the same, wherein the following directions were issued:

“7. In the circumstances, we dispose of this Application at this stage with direction to the respondents that they shall consider to give benefits of Flexible Complimenting Scheme to the applicants with effect from the date when their juniors in service have been given the same, with all consequential benefits, arising therefrom.”

The issue is also covered by the judgment of the Hon’ble Supreme Court in *Union of India v S. K. Murti* [CC No.6864/2011] decided on 02.05.2011.

3. In *S. K. Murti’s* case (supra), the Tribunal had declined the relief to the applicant for deemed retrospective promotion. However, in writ petition filed before the High Court of Delhi [WP(C) No.14263/2004], the judgment of the Tribunal was set aside and

direction was issued by the Hon'ble High Court to promote the petitioner under the Flexible Complementing Scheme with effect from the date of eligibility. The Hon'ble High Court in its judgment dated 05.10.2010 ruled as under:

“8. That apart, instant case of promotion is not one where promotion has to be effected upon a vacancy arising. Subject to being found suitable the petitioner was entitled to be promoted *in situ*. The situation would be akin to granting a selection scale to a person and the date of eligibility would be the date wherefrom the benefit has to be accorded.

9. Under the circumstances we hold in favour of the petitioner and direct that the benefit granted to the petitioner be reckoned with effect from 1.1.1999 instead of 19.9.2000. Arrears would be paid within 12 weeks from today but without any interest.

No costs.”

When the matter was taken to the Apex Court, while upholding the reasons assigned by the High Court for directing the petitioners to promote the respondent with effect from the date of acquiring the eligibility, the Hon'ble Supreme Court dismissed the SLP of the Union of India and issued the following further directions, vide order dated 02.05.2011:

“Since the time fixed by the High Court for compliance of the direction given by it has already expired, we direct the petitioners to do the needful within four weeks from today. Similar order shall be passed for all similarly situated persons despite the fact that they may not have approached the High Court questioning the order passed by the Tribunal.

This direction is being given to avoid further litigation in the matter.”

4. This Application is accordingly disposed of in terms of the directions contained in *Union of India v S. K. Murti (supra)* and *Dr. S. Suresh and others (supra)*.

(V. N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

/as/