

**Central Administrative Tribunal
Principal Bench**

**OA No.1781/2015
MA No.544/2017**

New Delhi, this the 21st day of February, 2017

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

Dr. Anjum N. Rizvi, Aged about 47 years,
Scientist D, D/o Late Shri Nihal Ahmad Rizvi,
Presently Posted At :
Northern Regional Centre,
Zoological Survey of India,
218, Kaulagarh Road, Dehradun,
Uttarakhand-248195

...Applicant

(By Advocate : Shri R.K. Kapoor)

Versus

1. Union of India through,
Ministry of Environment of Forests
through its Secretary,
Paryavaran Bhavan,
CGO Complex, Lodhi Road,
New Delhi-110 003.
2. The Director,
Zoological Survey of India,
M-Block, New Alipore,
Kolkata-700053.

...Respondents

(By Advocate : Shri Vijay Kumar Sharma)

ORDER (ORAL)

Mr. Justice Permod Kohli, Chairman :

MA No.544/2017

Through this misc. application respondents seek to
place on record the sur-rejoinder.

2. Notice. Shri R.K. Kapoor, learned counsel for the applicant accepts notice. He does not want to file any objection to this application.

3. For the reasons recorded in this application, the same is allowed. The sur-rejoinder is taken on record.

OA No.1781/2015

4. The applicant was serving as Scientist 'C' in Zoological Survey of India which comes under the Ministry of Environment and Forests. He became due for consideration for *in situ* promotion from scientist 'C' to Scientist 'D' on completion of four years of service as on 01.07.2012 under the Flexible Complementing Scheme (FCS). The applicant was considered and has been promoted as Scientist 'D' w.e.f. 28.02.2015 vide Office Order No.25/2015 dated 02.02.2014. The grievance of the applicant is that he is entitled to *in situ* promotion from the date he became eligible for such promotion but he has been denied promotion with effect from the said date.

5. Mr. Vijay Kumar Sharma, learned counsel for the respondents, however, has relied upon Ministry of Environment and Forests OM dated 24.05.2013 which *inter alia* lays terms and conditions for grant of *in situ* promotion

under FCS to the Scientists whose cadre is controlled by the Ministry of Environment and Forests. It is stated that unless the nodal Ministry, namely, Ministry of Personnel, Public Grievances and Pensions grant clearance to the implementation of this OM, the Ministry of Environment, Forests and Climate Change is not competent to grant *in situ* promotion from the date an officer becomes eligible under the rules. Learned counsel for respondents also placed on record copy of Office Memorandum dated 24.05.2013. From the perusal of the said OM, we find that there is no specific provision which requires *in situ* promotions to be approved by the DOP&T pending amendment to the recruitment rules. The controversy has been finally settled by the Apex Court in the case of ***Union of India v. S.K. Murti*** [CC No.6864/2011] decided on 02.05.2011.

6. 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."

7. The present case is squarely covered by the aforesaid judgment. The applicant is entitled to *in situ* promotion from the date he acquired eligibility. His eligibility has otherwise been approved, as is evident from the promotion order dated 02.02.2015. It is also not the case of the respondents that he was not eligible on the date on completion of four years of residency as Scientist 'C'. Hon'ble Supreme Court has not only granted the relief but also held that all similarly situated Scientists will be entitled to similar benefits.

8. In this view of the matter, this OA is allowed. Respondents are directed to *ante date* the promotion of the applicant w.e.f. 01.07.2012 with all consequential benefits within a period of three months from the date of receipt of a certified copy of this order. There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/vb/