

**Central Administrative Tribunal
Principal Bench**

**OA No. 2077/2013
MA No.196/2014**

New Delhi, this the 23rd day of July, 2016

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

Shri R.K. Rustagi,
S/o Shri F.C. Rustagi,
Aged about 58 years,
R/o A-8/T-1, A-Block,
Dilshad Garden,
Delhi-110095.

...applicant

(By Advocate : Shri T.D. Yadav)

Versus

1. Union of Indian through,
Secretary, Govt. of India,
M/o Environment and Forests,
CGO Complex, Lodhi Road,
New Delhi.
2. The Chairman,
Central Pollution Control Board,
Parivesh Bhawan,
East Arjun Nagar,
Delhi-110032.
3. The Member Secretary,
Central Pollution Control Board,
Parivesh Bhawan,
East Arjun Nagar,
Delhi-110032.

...respondents

(By Advocate : Ms. Charu Amwani for Shri Prashant Kumar)

ORDER (ORAL)

Justice Permod Kohli, Chairman :-

The applicant joined Central Pollution Control Board as Junior Laboratory Assistant on 09.12.1981. He earned promotions as Senior

Laboratory Assistant, Junior Scientific Assistant, Senior Scientific Assistant and thereafter as Scientist 'B' on 20.07.2001. The respondents notified regulations regarding regularisation to the Scientific and Technical Group 'A' posts in Central Pollution Control Board called as Central Pollution Control Board Regulations 2009. These regulations were later on amended vide notification dated 13.10.2011.

2. The final seniority list of Scientist 'B' was issued on 01.01.2010 (Annexure 'F'). The applicant figures at Sl. No.7 in the seniority list. It is alleged that the applicant was assessed for promotion as Scientist 'C' in April, 2010 under Flexible Complementing Scheme (FCS), but ignored, whereas a number of juniors, namely, Vinay Gangal, U.A. Ansari, V.K. Sachan and G.K. Ahuja were promoted as Scientist 'C' under FCS vide impugned order dated 29.04.2010. Again in the year 2013, the applicant was called for interview for upgradation as Scientist 'C' under FCS on 15.03.2013. The applicant again was not promoted and his juniors were promoted vide order dated 26.04.2013. The names of juniors have also been indicated in the para 4.12 of the OA. The applicant made a representation dated 09.05.2013 and thereafter filed the present OA, seeking a direction for quashment of the impugned promotion orders of his juniors with further prayer for a direction for his promotion as Scientist 'C' with all consequential benefits of seniority and pay and allowances etc.

3. The respondents have filed a detailed counter annexing thereto the regulations notified by the respondent Board regulating the

promotion of Scientists including Scientist 'B' to Scientist 'C'. It is stated that the applicant was considered for promotion under FCS in the year 2010 as also in 2013. However, he could not qualify the interview and, thus, has not earned promotions on the basis of the laid down criteria.

4. In the year 2009, the criteria laid down for promotion was as follows :-

“9. Criteria for considering promotions under Flexible Complementing Scheme:-

- (1) (i) All officers shall be first screened on the basis of grading in the Annual Confidential Reports (ACRs) for consideration for promotion;
- (ii) the ACRs should be assessed on a 10 – point scale giving 10 marks for “Outstanding”, 8 marks for “Very Good”, 6 marks for “Good”, 4 marks for “Average” and 0 for “Poor” and only those officers who satisfy the minimum residency period linked to their performance as indicated in the table below be screened in:-

TABLE

| | Number of years required in the grade for eligibility | | | | | |
|----------------------------|---|-----|-----|-----|-----|-----|
| | 3 | 4 | 5 | 6 | 7 | 8 |
| | Minimum percentage for eligibility | | | | | |
| Scientist B to Scientist C | 85% | 80% | 70% | 65% | 60% | - |
| Scientist C to Scientist D | - | 85% | 80% | 75% | 70% | 60% |
| Scientist D to Scientist E | - | 85% | 80% | 75% | 70% | 60% |
| Scientist E to Scientist F | - | - | 85% | 80% | 75% | 70% |

(2) (i) All officers who are screened in shall be called for an interview;

(ii) the performance in the interview will also be graded similarly on a 10 - Point Scale and the eligibility for promotion will be based on the same norms as in the above Table.”

5. On the basis of the aforesaid criteria, the applicant did meet the minimum benchmark insofar as the ACRs are concerned. However, he could not secure minimum 60% marks in the interview, in accordance with sub para (2) of Regulation 9 of the Regulations. Similarly, in the year 2013, the assessment for promotion was to be made under the amended Regulation 9. Under the amended Regulation 9, the minimum benchmark for upgradation under FCS to Scientist ‘C’ was ‘Good’. In second consideration in the year 2013, again the applicant could not secure minimum 60% marks in the interview, though he was having ‘Good’ grading in his ACR.

6. The applicant secured only 15 marks out of 60 in interview and, thus, failed to make the grade for promotion as Scientist ‘C’. This contention, however, is not supported by the substituted Regulation 9. The relevant extract of the same is reproduced hereunder :-

“3. Regulation 9 shall be substituted by the following namely :-

Criteria for considering promotions under Flexible Complementing Scheme :-

(a) An annual work report format to capture scientific content of work performed (Appendix-III) would be filled up by the officer along with the ACR

and would get reported upon by the reporting officer. The internal peer assessment would be in part 'C' at the time of consideration under FCS.

The new format on "annual work report" will not replace the regular system of recording ACR. The proposed format will be filled by the officer under consideration for the purpose of assessment and screening.

- (b) All scientists eligible as per the scheme for the FCS and meeting the benchmark of 'Good' for Scientist 'C' and 'Very Good' for Scientist D and above shall be considered for up-gradation under FCS. Exceptionally meritorious candidates with all outstanding grading may be granted relaxation in the residency period, the relaxation being not more than one year or any single occasion, limited to a maximum of two occasions in their entire career. However, the assessment under FCS for next grade would only be three times and thereafter the scientist would be covered under modified ACP scheme according to provisions of that scheme. The scientist who has been granted any grade under MACP can be considered for next grade under FCS according to the eligibility and other provisions of FCS.
- (c) Scientists/Technical experts doing management/administrative work shall not be considered for upgradation under FCS. They shall only be given benefit of upgradation under MACP."

7. The substituted Regulation 9 does not prescribe any kind of interview and, thus, on what basis the interview was conducted by the authorities in the year 2013 and how the marks for interview were allocated is not forthcoming from the record. Learned counsel appearing for the respondents has also not been able to assist us on this count. Thus, we are of the opinion that in second consideration in the year 2013, there was no provision for interview and even the 60% marks earmarked for the interview does not seem to be in accordance

with the Regulations. The applicant having secured 'Good' grading in his ACRs and his scientific work was required to be assessed by competent Board for his consideration for promotion from Scientist 'B' to Scientist 'C' in the year 2013. We find that the consideration of the applicant in the year 2013 was not according to the prescribed criteria/norms. The learned counsel for applicant has placed on record a copy of order dated 18.07.2014, whereby, Scientists 'B' have been promoted as Scientists 'C' in the Central Pollution Control Board w.e.f. 16.07.2014 and the applicant's name finds mention at Sl. No.1. Presently, the applicant has, thus, earned promotion as Scientist 'C' w.e.f. 16.07.2014. Since the applicant's consideration for promotion in March, 2013 was not according to the substituted/amended Regulation 9, denial of promotion to him in the said consideration is, thus, absolutely unwarranted and illegal.

8. In the above circumstances, this Application is disposed of with the following directions :-

- (i) The competent authority shall consider the applicant for promotion afresh as Scientist 'C' with effect from the date his juniors were promoted in the year 2013.
- (ii) His consideration shall be in accordance with substituted/amended Regulation 9 and, if on such consideration, he is found to have made the grade, he shall be

so promoted with effect from the date his juniors were promoted as Scientist 'C' in the year 2013.

9. Let this exercise be completed within a period of three months.

(V.N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

'rk'