

**Central Administrative Tribunal
Principal Bench**

OA No.3016/2015

New Delhi, this the 4th day of July, 2017

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

Dr. G. J. Samathanam (retired)
aged 61 years
S/o Late S. Gnanamanickam
R/o 3025, Parker Residency,
Sector 61, Kundli, Sonepat 131029.
Haryana. Applicant.

(By Advocates : Shri Rana Mukherjee, Senior Advocate with
Mr. Shyam Nandan and Ms. Aparna Iyer)

Versus

1. Department of Science and Technology,
(through its Secretary to the Govt. of India)
Technology Bhavan,
New Mehrauli Road,
New Delhi 110 016.
2. Department of Personnel and Training
(through its Secretary to the Govt. of India)
North Block,
New Delhi 110 001. Respondents.

(By Advocate : Shri Rajeev Kumar)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman :

Flexible Complementing Scheme (FCS) for Scientists of various Scientific Departments was introduced by the Central Government on the recommendations of 5th Central Pay Commission. The Scheme was notified vide Officer Memorandum dated 09.11.1998. This

Scheme replaced Assured Career Progression Scheme and was made applicable to Scientists and Technologists who are engaged in scientific activities and services under rigorous evaluation of norms.

The Scheme had two features; *in situ* promotion on completion of the prescribed residency period and *in situ* promotion for exceptionally meritorious candidates with all outstanding gradings, relaxing the residency period. The relaxation being not more than one year on any single occasion and such relaxation will be limited to a maximum of two occasions in their entire career.

2. The applicant was selected for the post of Junior Analyst by Union Public Service Commission and appointed to the said post w.e.f. 13.04.1998. He earned promotions to the post of Senior Scientific Officer Grade-I (SSO-I) now called Scientist-C with Grade Pay of Rs.6600/- on 25.06.1990, and to the next grade, i.e., Scientist-D w.e.f. 25.07.1995 with Grade Pay of Rs.7600/-, and after completing five years was promoted to the next grade of Director (Scientist-F) in the Grade Pay of Rs.8,900/- w.e.f. 01.07.2000. The next promotion of the applicant was to the post of Scientist-G in the pay scale of Rs.18400-22400 (pre-revised) now PB-4, Rs.37,400-67,000 with Grade Pay of Rs.10,000. He was called to appear before the Assessment Board on 25.08.2004 on completion of period of four years in place of five years residency period as "exceptionally meritorious candidate" as per the FCS norms. As per this fast track promotion as prescribed

under the FCS norms, promotions are made on 1st January or 1st July of the year. The applicant completed four years as Scientist-F on 01.07.2004 and became due for consideration for next promotion w.e.f. the due date, i.e., 01.07.2004. The process for FCS review due as on 01.07.2004 started in April, 2004. As per the FCS Scheme, the last date for submission of ACRs of eligible/short listed candidates was 30.04.2004. The applicant submitted his ACRs on 21.05.2004. The Screening Committee convened on 14.07.2004 for consideration of the exceptionally meritorious candidates for promotion of Scientist-F to Scientist-G, screened the applicant. The Committee recommended the applicant for his promotion to Scientist-G under the "exceptionally meritorious candidate" category w.e.f. 01.07.2004. The applicant was informed vide OM dated 18.08.2004 to appear before the Assessment Board on 25.08.2004. The Assessment Board interviewed the applicant on 25.08.2004 and approved the applicant's promotion to Scientist-G w.e.f. 01.07.2004. The appointment of the applicant as Scientist-G was to be approved by the Appointments Committee of the Cabinet (ACC). The approval of the ACC came only on 05.10.2006 and promotion of the applicant to the post of Scientist-G was made effective from 05.10.2006 instead of 01.07.2004, i.e., the date of his eligibility. The applicant made various representations to the Secretary, DST. Reference is made to some of the representations dated 23.10.2006 and 28.08.2007 seeking a

direction for his promotion w.e.f. 01.07.2004 as "exceptionally meritorious candidate". The representations of the applicant were, however, declined by respondent No.1 vide order dated 05.09.2007 on the basis of a communication of DoP&T dated 28.02.2007 intimating that the ACC has not approved the proposal for granting retrospective promotion to him. The said OM further refers to reiteration of ACC not to allow retrospective promotion.

3. The applicant filed OA No.3877/2014 before this Tribunal. This OA was disposed of vide order dated 03.11.2014 with the following directions:-

"4. In view of the above position, we direct the respondents to consider the prayers made by the applicant in this OA and pass appropriate orders thereon. If the applicant is covered by the said order of this Tribunal, he shall also be given the same benefits. In any case, they shall pass appropriate speaking order within a period of two months from the date of receipt of a certified copy of this order. Accordingly, this is disposed of at the admission stage itself. There shall be no order as to costs."

While issuing the aforesaid directions, the Tribunal relied upon two earlier orders passed in OA No.1111/2012 and OA No.2276/2013 decided on 17.07.2014, as also the judgment of Hon'ble Delhi High Court in the matter of *S. K. Murti vs. Union of India & Anr.* in W.P. No.14263/2004 decided on 05.10.2010. The judgment of Delhi High Court was upheld by the Apex Court. The relevant part of the order of the Tribunal reads as under:-

"5. We allow this OA and direct that the applicants will be entitled to the same benefit as was granted to applicants of OA-

1111/2012. This benefit will be extended within a period of eight weeks from the date of receipt of a certified copy of this order. No costs."

The respondents passed the order dated 12.01.2015 (Annexure A-1) detailing therein the sequence of events and final promotion of the applicant. The relevant extract of the said order is noticed hereunder:-

"3. The assessment process for review as on 01.07.2004 in respect of Dr. Samathanam was initiated in the month of April, 2004 i.e. well before the date of review. As per record, Dr. Samathanam submitted his ACR for the year 2003-04 (required for his assessment for review as on 01.07.2004) to his Reporting Officer only on 21.05.2004 i.e., after more than one month of prescribed date of submission on 15.04.2004. The ACR was reviewed on 05.06.2004. The Screening Committee meeting could be convened only on 14.07.2004 i.e., after collection of ACR records of all the eligible candidates. The meeting of Assessment Board was held on 25.08.2004 and recommendation of the Assessment Board constituted in accordance with the provisions contained in the aforesaid Rules, 2004 were received in September, 2004 and the proposal was sent to the DoP&T for obtaining the approval of Appointing Authority i.e. ACC in the month of September, 2004. In September, 2004, DoP&T requested for resubmission of DST's proposal for consideration of ACC, advising to keep in view the true spirit and objective of FCS guidelines of DoP&T which inter alia stipulate qualifications, field experience, involvement in S&T activities etc. among rigorous norms and procedures for grant of promotions under FCS. The proposal was resubmitted in October, 2004. However, DoP&T sought further clarifications pertaining to the requisite field experience in April, 2005 which were sent in May, 2005. In October, 2005, DoP&T communicated the directions of ACC for constitution of a High Level Peer Review Committee to clearly lay down the criteria for consideration the cases of promotion under FCS also directing DST to resubmit the case of Dr. G. J. Samathanam among other cases for promotion under FCS for consideration after obtaining recommendations of the Committee. The proposal was placed before the 'High Level Peer Review Committee' which recommended Dr. G. J. Samathanam among other Scientists for *in situ* promotion under FCS. The minutes

of the meeting of the 'High Level Peer Review Committee' along with the proposal in the prescribed proforma was forwarded to DoP&T for placing the same before ACC. ACC however, requested for some additional inputs. The recommendations of the 'High Level Peer Review Committee' along with the additional inputs were forwarded to DoP&T for consideration of ACC in August, 2006.

4. DoP&T conveyed approval of ACC for promotion of Dr. G. J. Samathanam among other Scientists for *in situ* promotion under FCS to the grade of Scientist 'G' in October 2006. As conveyed, the promotions were to take effect from 05.10.2006. The promotions were not prescribed to take effect from retrospective date. This is keeping in view the guidelines issued by DoP&T vide OM No.AB-14017/32/2002-Estt(RR) dated 17/07/2002 which inter alia prescribe that the promotions under FCS shall be prospective after competent authority has approved the same, ACC being the competent authority in the case of Dr. G. Samathanam for promotion from Scientist 'F' to Scientist 'G' did not prescribe promotion to be effective from retrospective date."

While dealing with the judgments referred to by the Tribunal in its order dated 03.11.2014, it is stated that the DoP&T decided to challenge the judgment dated 17.07.2014 passed by Principal Bench of this Tribunal, and regarding the applicability of the judgment of Delhi High Court which was upheld by the Apex Court, it is stated that the said judgment is applicable only to the applicants of that case.

4. In the counter affidavit filed by the respondents, the stand as noticed in the impugned order and reproduced by us hereinabove is reiterated.

5. The applicant has filed detailed rejoinder reiterating the averments made in the OA. He has meticulously detailed the sequence of events in Annexure AR-1 (colly) to the rejoinder.

6. We have heard learned counsel for the parties at length.

7. The following admitted facts have emerged from the pleadings of the parties:-

- (i) The applicant was due for promotion from Scientist-F to Scientist-G on 01.07.2004 on completion of four years residency period (relaxed criteria) as "exceptionally meritorious candidate", and w.e.f. 01.07.2005 on completion of five years residency period in normal course.
- (ii) The applicant was recommended for accelerated promotion as "exceptionally meritorious candidate" for his promotion to Scientist-G w.e.f. 01.07.2004.
- (iii) The ACRs of the applicant for the period 2000-2001, 2001-2002 and 2002-2003 were already available with the respondents. However, the ACR for the period 2003-2004 were furnished by the applicant on 21.05.2004 as against the prescribed date 30.04.2004. There was delay in submission of ACRs in case of other candidates as well. The ACRs of the applicant were reviewed on 05.06.2004.

The Screening Committee meeting could only be convened on 14.07.2004 after collection of ACRs of the eligible candidates. The meeting of the Assessment Board was held on 25.08.2004. The Assessment Board recommended the case of the applicant for his promotion under the "exceptionally meritorious candidate" w.e.f. 01.07.2004. A proposal was sent to the DoP&T for obtaining approval of the ACC in the month of September, 2004. The DoP&T requested for resubmission of DST's proposal for consideration of the ACC advising to keep in view the objectives of the FCS Guidelines etc. The proposal was resubmitted in October, 2004. The DoP&T sought further clarifications pertaining to field experience in April, 2005. In between, some directions were issued by the ACC. The ACC decided that a High Level Peer Committee should be constituted to lay down the criteria for considering the cases for promotion under FCS. These directions of the ACC were communicated on 25.10.2005 for constitution of a High Level Peer Review Committee. On 10.02.2006, the High Level Peer Review Committee approved the proposal for *in situ* promotion of the applicant under the FCS which was forwarded on 31.03.2006 to DoP&T for placing before the ACC. The

ACC sought some additional inputs vide its communication dated 19.06.2006. The recommendations of the High Level Peer Review Committee along with additional inputs were forwarded to DoP&T for consideration of the ACC on 04.08.2006 and ACC accorded approval to promotion of the applicant as Scientist-G on 05.10.2006, and the applicant was accordingly promoted to the post of Scientist-G with effect from the said date.

8. Thus, the only question which remains to be examined and considered by this Tribunal is as to whether the applicant is entitled to retrospective promotion w.e.f. 01.07.2004 instead of 05.10.2006.

9. Shri Rana Mukherjee, Learned Senior Advocate appearing on behalf of the applicant strenuously argued that the applicant was due for promotion under the relaxed criteria being "exceptionally meritorious candidate" w.e.f. 01.07.2004. He was duly recommended by the Screening Committee and the Assessment Board for his promotion with effect from the said date strictly in accordance with the criteria laid down under the Flexible Complementing Scheme of 1998. His contention is that even under normal promotion, the applicant was due for promotion w.e.f. 01.07.2005 on completion of five years of residency period as prescribed under the FCS. There was no deficiency on the part of the applicant as his one ACR was

also provided on 21.05.2004 that is before the Screening Committee met on 05.06.2004. His further contention is that the Screening Committee could only be constituted on 14.07.2004. The delay in submissions of ACRs was not on the part of the applicant but on the part of all other eligible candidates. The Screening Committee recommended promotion to the applicant w.e.f. 01.07.2004. The Assessment Board on consideration approved the promotion of the applicant w.e.f. the said date in its meeting held on 25.08.2004. The delay in approval of the ACC is not attributable to the applicant. Otherwise also, the ACC in its wisdom decided to reassess the applicant and other eligible candidates by a High Level Peer Review Committee constituted by respondent No.1. The said Committee also approved promotion of the applicant. In this process, the applicant has suffered a great loss and grave injustice has been caused to him. In normal circumstances, without being considered under the "exceptionally meritorious candidate", the applicant would have earned promotion w.e.f. 01.07.2005 but on account of delay caused at the level of ACC, his promotion has been delayed for more than two years and he has been promoted w.e.f. 05.10.2006 which is totally unjustified and is discouraging for the Scientists. His further contention is that the very object of the Flexible Complementing Scheme of encouraging the scientific activities has been frustrated by this approach of the respondents.

10. Shri Rajeev Kumar, learned counsel for the respondents argued that because the approval was accorded by the competent authority, i.e., ACC on 05.10.2006, promotion could not have been granted prior to that. No other reason has been put forward by learned counsel for the respondents for denial of promotion to the applicant from due date.

11. The controversy is no more *res integra* being squarely covered by the judgment of Delhi High Court in the case of *S. K. Murti* (supra) wherein Delhi High Court passed the following directions:-

“5. Suffice would it be to state that the memorandum requires Flexible Complementing Scheme in situ promotions to be effected each year and for which the circular mandates that the assessments should be made well in advance keeping in view the crucial dates being 1st January and 1st July with effect wherefrom the Flexible Complementing Scheme in suit promotions have to be effected.

6. The last sentence of para 20 is relied upon by the respondents to urge that the office memorandum clearly states that no promotion should be granted with retrospective effect. To this the answer by the petitioner is that the preceding two sentences makes it very clear that the Assessment Boards have to be constituted well in advance keeping in view the fact that 1st January and 1st April of each year are crucial dates to effect promotions. W.P.(C).4516/2016 Page 10 of 11

7. Now, nobody can take advantage of his own wrong. Nothing has been shown to us by the respondents to justify not constituting the Assessment Board/Selection Committee in time.

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."

12. The aforesaid judgment was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court while approving the judgment of the High Court made further observations and issued directions, which reads as under:-

"The respondent, who was working as Scientist Grade-D in the Botanical Survey of India became eligible for promotion under FCS with effect from 1.1.1999. However, on account of delayed convening of the Departmental Review Committee/ Selection Committee, his promotion as delayed and by an order dated 20.10.2000, he was promoted with effect from 19.9.2000.

The respondent and 10 other Scientists of Botanical Survey of India filed Original Application No.826/2003 for directing the petitioners to promote them with effect from the date of eligibility, i.e. 1.1.1999. The Tribunal dismissed the original application and held that in view of the clarification given in O.M. Dated 10.11.1998, the applicants were not entitled to promotion with retrospective effect. The review petition filed by the respondent was dismissed by the Tribunal vide order dated 14.1.2004. However, Writ Petition (C) No.14263/2004 filed by the respondent was allowed by the Division Bench of the High Court and the petitioners were directed to give him all the benefits on the basis of deemed promotion with effect from 1.1.1999.

In our view, reasons assigned by the High Court for directing the petitioners to promote the respondent with effect from the date of acquiring the eligibility are legally correct and the impugned order does not suffer from any legal error warranting interference under Article 138 of the Constitution.

It is not in dispute that vacancies existed when the Departmental Review Committee considered the case of the respondent and other similarly situated persons for promotion. It is also not in dispute that in terms of paragraph 51.25 of the Vth Pay Commission Recommendations, the Departmental

Review Committee/ Assessment Board was required to meet every six months, i.e. in January and July and the promotions were to be made effective from the date of eligibility. Therefore, it is not possible to find any flaw in the direction given by the High Court.

The special leave petition is accordingly dismissed.

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.(Emphasis Supplied)"

The Hon'ble Supreme Court had clearly directed the respondents to grant relief to the similarly situated persons even they may not have approached the High Court. Thus, not only that the retrospective promotion from due date under FCS has been approved by the Hon'ble Supreme Court, the judgment has been made applicable to all similarly situated persons. It would not be wrong to suggest that the judgment of the Apex Court is judgment in rem. The plea of the respondents while rejecting the claim of the applicant that judgment in *S. K. Murti's case* (supra) is applicable only in the case of applicants therein is totally misconceived.

13. Under the given circumstances, this OA is allowed with the following directions:-

- (i) The applicant shall be entitled to the benefit of promotion as Scientist-G w.e.f. 01.07.2004 instead of 05.10.2006.

(ii) The respondents are directed to grant all consequential benefits on promotion to the applicant as Scientist-G w.e.f. 01.07.2004.

(iii) Since the applicant has already retired, respondents are directed to reassess his retiral benefits taking into consideration the impact of retrospective promotion as directed hereinabove from 01.07.2004, and to calculate the arrears of pension within a period of three months from the date of receipt of copy of this order, and actual benefits be released within a period of one month thereafter. No order as to costs.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/