

**Central Administrative Tribunal
Principal Bench, New Delhi**

**OA No.535/2014
With
OA No.4063/2013**

New Delhi, this the 14th day of November, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

1. OA No.535/2014.

1. Sh. R. K. Mathur
Aged about 56 years
S/o Late H. M. Mathur
R/o C-400, Sector Alpha 1,
Greater Noida, UP.

2. Sh. G. K. Vijh
Aged about 56 years
S/o Sh. R. C. Vijh
R/o D-32, Sector-22,
Plot No.11, Classic Apartment,
Dwarka, New Delhi.

3. Sh. N. V. Mahure
Aged about 52 years
S/o late V. K. Mahure,
R/o 47-B, Arjun Nagar,
Safdarjung Enclave,
New Delhi. Applicant.

(By Advocate : Sh. S. K. Gupta)

2. OA No.4063/2013

1. Sh. Mahabir Dixit
Aged about 49 years,
S/o Sh. Sant Ram Dixit
C/o Scientist D, CSMRS,
Olof Palme Marg, Hauz Khas,
New Delhi 110 016.

2. Dr. Manish Gupta
Aged about 43 years,
S/o Dr. R. D. Gupta
C/o Scientist D, CSMRS,

Olof Palme Marg, Hauz Khas,
New Delhi 110 016.

3. Sh. Hari Dev
Aged about 48 years,
S/o Sh. Bachana Ram
Scientist D, CSMRS,
C/o Olof Palme Marg, Hauz Khas,
New Delhi 110 016.
4. Sh. U. S. Vidyarthi
Aged about 48 years
S/o Sh. Dhanush Dhari Sharma
C/o Scientist D, CSMRS,
Olof Palme Marg, Hauz Khas
New Delhi 110 016.
5. Sh. N. Kumar Vel
Aged about 43 years,
S/o Sh. G. Narayan Samy
C/o Scientist D, CSMRS
Olof Palme Marg, Hauz Khas
New Delhi 110 016. ... Applicants.

(By Advocate : Shri S. K. Gupta)

Vs.

Union of India through

1. Secretary
Ministry of Water Resources
Sharam Shakti Bhawan,
New Delhi 110 001.
2. Director
Central Soil & Materials Research Station,
Ministry of Water Resources
Olof Palme Marg, Hauz Khas,
New Delhi 110016.
3. Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road,
New Delhi. ... Respondents.

(By Advocate : Shri R. K. Jain)

: O R D E R (ORAL) :**Justice L. Narasimha Reddy, Chairman :**

The applicants in both the OAs are Scientists-C in the Central Soil and Material Research Station, Ministry of Water Resources, New Delhi, the 2nd respondent herein. Their services were governed by Central Soil and Materials Research Station, New Delhi (Group A) Posts Recruitment Rules, 1983 (for short, Rules of 1983), framed through notification dated 29.10.1983. The Rules provided for fixation of *inter se* seniority and promotion to higher grades, subject to certain conditions. The Rules were amended in the year 2010 through notification dated 23.11.2010 superseding the Rules of 1983, w.e.f. 01.01.2011.

2. In the organisation, Flexible Complementing Scheme (for short, FCS), is being implemented. Under this, Scientist of a particular category would become eligible to be promoted to the next category on completion of stipulated length of service, subject to evaluation by the Departmental Assessment Board (for short, DAB). The categories involved are Research Officer (RO), Senior Research Officer (SRO), Chief Research Officer (CRO) and Joint Director. Under the Rules of 1983, the ceiling of 30% was prescribed as regards certain categories, in the context of operating the FCS. That, however, was relaxed under the Rules of 2010. Another

aspect of change in the Rules of 2010 is that there is stipulation to the effect that promotions, whenever ordered shall be prospective in nature and there cannot be any retrospective promotion.

3. The applicants contend that the DAB was conducted in the year 2006, by which time, they did not become eligible to be promoted to the next higher category, and though they became eligible in the year 2007 & 2008, the DAB was conducted only in the year 2013, subsequent to the framing of new Rules, but they were denied promotion with effect from the date from which they became eligible. They submitted a representation to the respondents in this behalf. Though a communication dated 28.05.2013, the 2nd respondent informed the applicants that they are not entitled to be promoted with retrospective effect in view of the stipulations contained in the new Rules of 2010. The same is challenged in this OA.

4. The respondents filed a counter affidavit opposing the OA, and an objection is raised to the limitation. On merits, it is stated that the DPC could not be held subsequent to 2006 in view of the ongoing process for amendment to the Rules, in compliance with the directions issued by the Hon'ble Delhi High Court, and thereafter the DAB met. It is also stated that the provisions of law which are in force as

on the date of the meeting of DAB would become applicable and the contention of the applicants cannot be accepted.

5. We heard Shri S. K. Gupta, learned counsel for the applicants and Shri R. K. Jain, learned counsel for the respondents in detail.

6. The question that arises for consideration in this OA is as to whether the promotion of the applicants to a higher post is to be governed by the Rules of 1983 or the Rules of 2010.

7. It is not in dispute that the applicants acquired eligibility to be promoted to a higher post in the year 2007 & 2008. We are not on the question as to the justification or otherwise of not holding the DPC till the year 2013. The reason is that the Government was seriously considering amendment of the Rules as per the directions issued by the Delhi High Court. Ultimately, the DAB met in the year 2013 and found all the applicants herein to be eligible to be promoted to the next higher post.

8. Rule 6 (9) of the Rules of 2010 reads as under:-

“(9) The effective date of promotion of officers those found eligible for promotion under the Flexible Complementing Scheme shall be the date of approval of the promotion proposals by the Approving Authority of Assessment Board’s recommendations but retrospective promotion shall not be admissible in any case.”

On account of this Rule, retrospective promotion was denied to the applicants.

9. The respondents have taken the view that since the cases of the applicants were considered at a time when the Rules of 2010 were in force, the conditions contained therein were applied. In this behalf, the judgment of the Hon'ble Supreme Court in **Y.V. Rangaiah And Ors. vs J. Sreenivasa Rao And Ors.** (1983) 3 SCC 284 becomes relevant. After discussing the matter at length, their Lordships observed as under:-

“9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Register Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”

From this, it becomes evident that if an employee has acquired eligibility under the existing rules, he cannot be

subjected to any disadvantage or loss, on account of change of rules thereafter. The same situation obtains in this case also.

10. We, therefore, direct the 2nd respondent to convene a review DAB to consider the cases of the applicants and other eligible persons against all the vacancies that existed before 01.01.2011, with reference to the Rules of 1983 in all respects including the one of eligibility and ceiling limits, and in case it is found that they are eligible to be promoted, promotion shall be effected under the said rules in all respects. The exercise in this behalf shall be completed within a period of four months from the date of receipt of certified copy of this order. This order shall not be construed as expressing any view on retrospectivity or otherwise of the promotions.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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