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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00017/2015

Friday, this the 26th day of October, 2018

C O R A M :

**HON'BLE MRS.P.GOPINATH
HON'BLE MR.ASHISH KALIA**

**.... ADMINISTRATIVE MEMBER
....JUDICIAL MEMBER**

Dr.B.H.Channakeshava Murthy,
Scientist C, Zoological Survey of India,
Western Ghat Regional Centre, (WGRC),
Jaferkhan Colony, Erahhipalam,
Kozhikode -673 006

...Applicant

(By Advocate – Mr.R.Rajasekharan Pillai)

V e r s u s

1. The Union of India represented by the Secretary,
Ministry of Environment and Forest,
Govt. Of India,
New Delhi – 110 001.
2. The Director,
Zoological Survey of India,
Prani Vigyan Bhawan,
M-Block, New Alipore, Kolkata-700 053.
3. The Head of Office,
Zoological Survey of India,
Prani Vigyan Bhawan,
M-Block, New Alipore,
Kolkata – 700 053.
4. The Officer-in-Charge,
Zoological Survey of India,
WGRC, Jaferkhan Colony,
Erahhipalam,
Kozhikode-673 006.
5. The Internal Screening Committee
represented by Dr.K.Venkataraman,
Director Zoological Survey,
Prani Vigyan Bhawan, M-Block,
New Alipore, Kolkata -700 053.

...Respondents

(By Sr.PCGC – Mr.N.Anil Kumar)

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This Application having been heard on 23rd October 2018, the Tribunal on 26.10.2018 delivered the following :

ORDER

Per : Mr.ASHISH KALIA, JUDICIAL MEMBER

The relief sought for by the applicant in the above OA are:

- I Quash Annexure-AVI as arbitrary, illegal, and tainted malafides to the extent that it omits the applicant's name.
- II Direct the 2nd respondent to include the applicant's name along with the person included in Annexure-AVI before the External Assessment Board constituted by the 1st respondent.
- III Declare that the applicant is entitled to be included in the panel to be placed before the External Assessment Committee forthwith.
- IV Award costs to the applicant.

2. The briefs facts of the cases are the applicant was appointed as Scientist Grade 'B' with effect from 01.11.2014 under the respondents. Later on he has been promoted to the grade of Scientist 'C' with effect from 01.01.2010. Though initially he has been promoted only with effect from 10.03.2010 but on account of the OM dated 24.05.2013 issued by the first respondents, his date of promotion was given with effect from 30.01.2014 under the Flexible Complimenting Scheme (FCS) in the respective grades in consonance with the recommendations of 5th and 6th Central Pay Commission orders. It is further submitted in terms of office order No.11/2014 dated 03.02.2014 antedating the applicant's promotion to the Scientist 'C' Grade was given effect from 01.01.2010 in the pay band of Rs.15600-39100 with the grade pay of Rs.6,600/-. It is further submitted that under the FCS scheme the Scientist should be given periodical promotion in every three years for upgradation to Scientist Grade 'C'

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from Scientist Grade 'B'. The major criteria is ACRs of the individual concerned with 'Very Good' and above and as far as promotion from Grade 'C' to Grade 'D' is considered in every four years subject to the condition that Scientist concerned should have one outstanding with the remaining 'Very Good' entries in the ACRs. As a matter of fact since the applicant has been retrospectively granted the Scientist-C with effect from 01.01.2010 he should have been considered for grant of FCS in the Scientist 'D' Grade in 2014 itself. It is further stated that he has not been given promotion to the next higher grade in the FCS scheme because he was not having one 'Outstanding' ACR in the preceding four years of ACRs, he had only four 'Very Good' and no 'Outstanding'. Being aggrieved he has approached this Tribunal for redressal of his grievance for non-inclusion of his name in the list of candidates selected for promotion to the post of Scientist dated 02.01.2015 in which precariously he is not there.

3. Notices were issued to the respondents and they have put up appearance and filed written reply.

4. In the reply statement they have submitted that the case of the applicant was considered for in situ promotion from Scientist 'C' to Scientist 'D' as on 01.01.2015 under the Flexible Complimenting Scheme (FCS) as per the guidelines issued by DOPT and his proposal was placed before Internal Screening Committee (ISC) for assessment of his ACRs/APARs for considering his suitability to be called for interview by the Departmental Assessment Committee (DAC). Since Dr.Murthy did not meet the percentage of marks based on ACRs/APARs for the relevant residency period in the lower grade of Scientist 'C', he was not screened-in by ISC as on 01.01.2014 i.e., the due date of eligibility/review for consideration of in situ promotion from the grade

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of Scientist 'C' to Scientist 'D' under FCS. As per the DOP&T OM No.2/41/97-PIC dated 09.11.1998 all Scientists will be screened on the basis of grading in the Annual Confidential Reports on a 10 point scale and only those Scientists who satisfy the minimum residency period linked to their performance as indicated in the table below, will be "screened in":

Grade	Number of year in the grade					
	3	4	5	6	7	8
Minimum percentage of Marks for eligibility						
Scientist-B to Scientist-C	85.00%	80.00%	70.00%	65.00%	60.00%	-
Scientist-C to Scientist-D	-	85.00%	80.00%	75.00%	70.00%	60.00%
Scientist-D to Scientist-E	-	85.00%	80.00%	75.00%	70.00%	60.00%
Scientist-E to Scientist-F	-	-	85.00%	80.00%	75.00%	70.00%
Scientist-F to Scientist-G	-	-	85.00%	80.00%	75.00%	70.00%

The period of residency is relaxable up to one year in case of "exceptionally meritorious scientist".

5. As per the DOP&T OM dated 09.11.1998 of Scientist who are screened-in were called for an interview and they have graded similarly on a 10 point scale and eligibility for promotion will be based on same norms as in the above table. The said DAC has to award marks to each scientist based on the performance in the interview. Those who obtained the qualifying marks out of total marks of 100 had been promoted subject to approval by the competent authority. The qualifying marks secured by the Scientist is determined by the grade to which he is being considered for promotion and the number of years of service rendered in the present grade as per the criteria laid down in the above given table.

6. That the ACRs are 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) for "poor". There are 20 attributes, each

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attribute having 5 columns against each representing each of the above grading. A tally of the grading accorded to the scientist by his Reporting Officer is made in a Proforma. These grading are converted to marks based on the above criteria which would give the total marks out of 200, awarded to the said Scientist by his Reporting Officer. The above marks are then converted to percentage. The overall grading given by the Reviewing Officer is also taken into account by giving 100 marks for "outstanding", 80 marks for "very good", 60 marks for "good", 40 marks for "average" and) for "poor". For each year ACR in respect of Scientist 100 marks are allotted for evaluation to Reporting Officer and similarly 100 marks are allotted to Reviewing Officer. The average marks out of 100 marks obtained by the Scientist from the Reporting Officer and Reviewing Officer are added and overall average is taken out of total 200 marks. This procedure is repeated for each year taking into account his total residency period and the net average is calculated.

7. It is further submitted by the respondents that the applicant was screened out as on 01.01.2014 and as per FCS guidelines he was to be considered for review again after a gap of one year i.e., as on 01.01.2015. The applicant was considered for Screening-in as on 01.01.2015 but he could not meet the required percentage of marks (80%) for Screening-in to the grade of Scientist 'B'. Based on his ACRs/APARs he has obtained 79.7% marks. It is further submitted that the actual average percentage of marks for the relevant residency periods of ACRs/APARs are taken into consideration and if such marks are less than the required percentage, the same are not rounded off to meet the required percentage. Therefore, the applicant was not called for interview for the in situ promotion to the grade of Scientist 'D' as

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on 01.01.2015 i.e., the review date for his assessment of suitability for in situ promotion to the Grade of Scientist 'D' However, the applicant has been allowed to appear for interview for in situ promotion to the grade of Scientist "D" as per Order of Hon'ble CAT, Ernakulam Bench in OA No.180/00017/2015 dated 13th January 2015 subject to the outcome of the said OA. That the applicant Dr.Murthy, Scientist 'C' appeared for interview on 16.01.2015 in the Ministry and the recommendations of the DAC for his in situ promotion to the grade of Scientist 'D' has not been declared.

8. Heard the Counsel for the parties at length and perused the records. Mr.Rajasekharan Pillai for applicant and Shri Anil Kumar, Senior Standing Counsel for respondents appreciated the legal position. The crux of the argument heard by this Bench was that the applicant should have been considered for the post of Scientist Grade 'D' in terms of the office memorandum issued by the Government India, Department of Personnel and Training on 10.09.2010.

"2. The recommendations of the Commission have been examined in detail in the context of FCS and a revised comprehensive scheme is enclosed for immediate necessary action by all concerned Ministries and Departments. All the Ministries/departments shall initiate action for review of the provisions of the Flexible complimenting Scheme and amend the provisions of relevant recruitment rules so that the scheme is brought in conformity with the decision/guidelines being conveyed vide this Office Memorandum. Assessment of Scientists from 01.01.2011 shall be done accordingly."

During the course of the argument learned Counsel for applicant, Mr.Pillai has drawn our attention to the clause no.2 herein above wherein it is directed to assess the Scientist as per the FCS scheme and amended provisions of Recruitment Rules with effect from 01.01.2011 and according to this scheme the Level-1 screening (internal) says the system of screening meritorious Scientist on the

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basis of ACRs may be opted in the selection process of Scientist eligible according to the FCS who met the Bench mark of 'Good' for Scientist 'C' and 'Very Good' for Scientist 'D' and above would be screened-in. The learned Counsel for the applicant drew our attention to Annexure R1 wherein for the year of 2012-2013 applicant has been awarded five Outstanding and fifteen Good in the ACRs/APARs. According to Mr.Pillai he is eligible for consideration for in situ promotion to Scientist Grade 'D'. On the contrary Counsel for the respondents laid emphasis on the percentage of marks awarded to the applicant which is less than 80% (79.7% was awarded) which is not sufficient for screening-in.

9. Thus his candidature, after due consideration under FCS by the DAC was rejected. The department has considered and amended the Recuritment Rules, adopting the amended scheme and made the same applicable with effect from 2015 onwards, whereas the directions in the amended scheme was to make it applicable w.e.f. 01.01.2011. The Flexible Complimenting Scheme is issued by the Government from time to time just to keep the Scientist motivated and to stop them from leaving the organisation. Thus in our considered view the Government direction to the aforesaid OM should have been implemented in toto and not with modification of date of implementation. We have no hesitation to say that the merit is only on the side of the applicant. The department should implement the said scheme of DOP&T OM dated 10.09.2010 from the intended date of implementation of the said scheme.

10. Consequently the applicant's ACR evaluation should have weighed in terms of this OM, wherein bench mark is 'Very Good' for the post of Scientist 'D'. The applicant is having sufficient number of

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'Very Good' in his ACRs/APARs. The present OA succeeds, we hereby direct that the applicant should be considered for the post of Scientist 'D' in terms of OM dated 10.09.2010 and give promotion if otherwise found eligible to the post of Scientist 'D' with all consequential benefits, pay and allowances etc within a period of 60 days from the date of receipt of this order. There is no order as to costs.

(Dated this the 26th October, 2018)

(ASHISH KALIA)
JUDICIAL MEMBER

(P.GOPINATH)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00017/2015

- 1. Annexure AI** – True copy of the Office order No.11/2014 dated 03.02.2014 of the 1st respondent.
 - 2. Annexure AII** – True copy of the letter dated 26.03.2014 from the applicant to the Hon'ble CAT Calcutta Bench through the applicant's counsel.
 - 3. Annexure AIII** – True copy of the intimation dated 20.11.2014 (e-mail) from the office of the 2nd respondent.
 - 4. Annexure AIV** – True copy of the printout of the electronic mail dated 20.11.2014 from the office of the 2nd respondent.
 - 5. Annexure AV** – True copy of the e-mail dated 31.12.2014 was seen uploaded at about 5.02 PM by the 5th respondent.
 - 6. Annexure AVI** – True copy of the Office Memorandum F.No.84-1/2014-Estt./dated 02.01.2015 (Annexure-AVI) issued by the 2nd respondent.
 - 7. Annexure AVII** – True copy of the printout of the e-mail sent by the applicant on 01.01.2015 to the 2nd and 5th respondent.
 - 8. Annexure AVIII** – True copy of the letter dated 01.01.2015 from the applicant to the 2nd respondent.
 - 9. Annexure R1** – Photocopy of the review on 01/01/2014 & 01/01/2015.
 - 10. Annexure R2** – Photocopy of the letter dated 02/01/2015.
 - 11. Annexure R3** – Photocopy of the Minutes held on 18/11/2014 & 10.12.2014.
 - 12. Annexure R4** – Photocopy of the OM No.AB-14017/37/2008-Estt(RR) dated 10/09/2010 issued by the DOP&T.
 - 13. Annexure AIX** – True copy of the ORDER dated 29.01.2015 No.F.03/02/2014/2014-P.III(Part) of the 1st respondent.
 - 14. Annexure AX** – True copy of the summary of the research achievements of the applicant.
 - 15. Annexure AXI** – True copy of the relevant extract of the Sunday Express dated 6th March 2016.
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