

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.170/00727/2017

DATED THIS THE 19TH DAY OF MARCH 2019

HON'BLE DR. K.B. SURESH, MEMBER(J)

HON'BLE SHRI CV.SANKAR MEMBER (A)

Dr.Anil Ernest,  
Aged about 39 years,  
S/o A. Ernest,  
Scientist  
Council of Scientific Industrial &  
Research,  
Fourth Paradigm Institute  
Wind Tunnel Road  
Bengaluru-560 037.

... Applicant

(By Advocate Shri NG.Phadke)

vs.

1.Union of India  
By its Secretary,  
Ministry of Science and Technology,  
Department of Scientific & Industrial  
Research, Anusandhan Bhavan,  
No.2, Rafi Marg, New Delhi - 110 001.

2.The Director General  
Council of Scientific Industrial &  
Research, Anusandhan Bhavan,  
No.2, Rafi Marg, New Delhi - 110 001.

3.The Chairman,  
CSIR Recruitment & Assessment Board,  
Library Avenue Pusa,  
CSIR Complex,  
New Delhi - 110 012.

4.The Head,  
Council of Scientific Industrial &  
Research,  
Fourth Paradigm Institute  
Wind Tunnel Road  
Bengaluru-560 037. .... Respondents

(By Shri Gajendra Vasu... Sr. Panel Counsel for R-1)  
(By Shri K.Ananda .... Counsel for R-2 to 4)

ORDER (ORAL)

HON'BLE DR. K.B. SURESH, MEMBER (J):

1. Heard. The respondents submit that the matter is covered by 2 elements. One is that they have already given the applicant promotion and all the consequences of that also paid to him. The applicant submits that going by his eligibility his promotion ought to have dated back from 2012 and not from 2015. The respondents rely on our order in OA.No.470/2008 dated 25.3.2011 which we quote:-

"O R D E R  
HON'BLE SMT K.N.K.KARTHIYANI

*The applicant at the time of his superannuation on 31.08.2005, was working as a Scientist Grade-IV(5) in the respondent organisation and he was posted as Deputy Director and Head, Department of Meat, Fish and Poultry Technology. He had become eligible for the next promotion to the post of Scientist Grade IV(6) on completion of 5 years in grade IV (5) on 1.2.2004. The promotions to the higher grades are on the basis of Flexible Complementing Scheme (FSC) that*

*is to say that on promotion the post stands upgraded as personal to the officer and on vacation of the post by him it would revert back to grade to which it belonged initially. The applicant's grievance is that the respondent organisation has found him unfit for promotion to Grade IV(6). The applicant has produced as Annexure-A2 to the O.A the Rules for Recruitment and Assessment Promotion of Scientists Gr.IV in CSIR – 2001 (hereinafter called as Rcruitment Rules). Certain amendments were carried out to this rule vide communication dated 20<sup>th</sup> March, 2008 (Annexure-A12). As per this amendment promotion to the level of Scientists Grade IV (6) shall be on the basis of :*

- (i) Preliminary screening by an Internal Screening Committee formed as per Rule 7.5.3. which takes into account Annual Confidential Reports recorded for the years covered under the residency period and*
- (ii) Assessment by a duly constituted Peer Committee which takes into account the Annual Confidential Reports and the work Reports for the years, covered under the residency period without holding any assessment interview".*

*It is further laid down in the said communication that the amended rule will be applicable for all cases of assessment from the date of the communication, i.e., 20.3.2008 coming before the Review Assessment Board (RAB), including pending cases of earlier years. On completion of 5 years service in Grade IV(5), the Internal Screening Committee assessed the eligibility of the applicant for promotion based on the marks awarded in the ACRs. The minimum average percentage of*

*ACR score for eligibility for consideration of promotion is 85% on completion of 5 years' service and 80% on completion of 6 years' service in the basic grade i.e., Grade IV(5). The applicant was not found eligible for consideration for promotion by the Internal Assessment Committee as his percentage score was less than 85% on the date of completion of 5 years service in Grade IV (5) i.e., as on 1.2.2004 (due date of assessment). However, on completion of 6 years of service in the basic grade, he became eligible for promotion as his average percentage in the ACR Score was above 80%. His case was forwarded to the RAB for further assessment of the work by the Assessment Committee. As per Rule 7.6.3 of the Recruitment Rules for Recruitment and Assessment Promotion the assessment committee has to be constituted discipline wise for promotion to Grade IV (5) and above. Under Rule 7.6.5 the Assessment committee has to submit their recommendations as 'fit for promotion' or "not yet fit for promotion". There was an amendment to the Recruitment Rules on 12.3.2007 (copy at Annexure-A3) by which, Rule 7.6.5 of the Recruitment Rules was amended to the effect that Assessment committee submit its recommendation as 'fit for promotion' or "not yet fit for promotion" on the basis of the thresh hold marks for promotion from the Scientists Grade IV (5) to Grade IV (6). The thresh hold marks are 85% in the first chance and 80% in the second chance (as the applicant retired on 31.8.2005, his second chance was the last chance). In the said communication it is mentioned that the DG,CSIR had constituted a committee to lay down the parameters on which merit is to be decided in matters of selection, promotion etc., in order to bring transparency in evaluation of merit and furtherance of confidence building amongst the employees. The recommendations of the committee was approved by the CSIR in the 168<sup>th</sup> meeting held on*

*8.12.2006 and it was as per the said approval that the communication dated 12.3.2007 amending Rule 7.6.5 of the Recruitment Rules was issued. However, the applicant's chance (second chance) for promotion to Grade IV (6) was not considered till 26.2.2008. By a communication dated 26.2.2008 (Annexure-A6) the applicant was called upon to submit his Work Report in the prescribed format for onward transmission to RAB as he was found eligible for consideration for promotion as per the recommendations of the Screening Committee (on the due date of assessment of 1.2.2005 for the assessment year of 2004-05). In response to the same, the applicant had forwarded his Work Report etc, as at Annexure-A7. On 8.9.2008, the applicant was informed that his case was not recommended for promotion. Copy of the communication is at Annexure-A8-impugned order. The applicant submits that 10 other scientists were approved for promotion and the applicant has been discriminated. However he has no grievance against the promotion given to his colleagues but his is only praying that he should also be treated equally like the 10 scientists who were approved for promotion. When the applicant came to know unofficially, of the rejection of his case, he submitted a representation to DG, CSIR by name as at Annexure-A10 and futher another representation on 25.9.2008 (Annexure-A11). These representations have not been replied.*

*2. The applicant contends that the functions of the RAB constituted vide Annexure-A13 are similar to the functions of the Departmental Promotion committee (DPC) functioning in various Ministries of the Government of India. The DCPs of Personnel and Training and as per the latest instructions issued on 8.2.2002, the DPC has to assess the promotion with reference to the prescribed Bench mark and grade the officers as 'fit' or 'unfit' only. In the case of RAB instead of the Bench*

*mark, thresh hold marks are prescribed under the order dated 13.3.2007 (Annexure-A13). The 5<sup>th</sup> Central Pay Commission in paragraph 51.28 had emphasised the need to make the system for promotion under the Flexible Complementing Scheme (FCS) more open, objective, reasonable and transparent to eliminate subjectivity and maximise satisfaction with the Scheme as far as possible. These recommendations were partially accepted and DOP&T had issued instructions on 9.11.1998 (Annexure-A15) laying down the criteria for considering promotions under the FCS. The applicant submits that his case should have been considered based on the thresh hold mark as laid down in the amendment to the Rules dated 12.3.2007 (Annexure-A3) or by any other uniform/reasonable criteria in the matter of thresh hold marks. It will be noticed that the procedure followed by the RAB in the instant case lacks in transparency as the procedure/criteria regarding the thresh hold mark is not made public before the commencement of the assessment exercise. After his non selection in the first chance, the applicant was under the dark in the matter of expectations by RAB for his selection in the second chance.*

3. *The applicant contends that the assessment committee is not supposed to make comparative selection based on the comparative merit of the candidate. The choice is left to the Peer Committee to decide and recommend one's candidature as fit for promotion or not yet fit for promotion either on the basis of thresh hold marks criteria as prescribed under Annexure-A3 or by application of a different uniform standard as decided by the Peer committee/RAB. The norms for assessment /recommendation for both Internal Screening Committee and Peer Committee / Assessment Committee are not different and therefore, it that the peer Committee should have extraordinary reasons before it in recommending a candidate like the applicant as*

*'not yet fit' for promotion when his case is recommended by the Internal Screening Committee in terms of Annexure – A6.*

4. *In the instant case rejection of assessment promotion from Scientist 'F'to Scientist'G'is done without any valid and sustainable reasons and this act on the part of the respondents 2 7 3 is arbitrary/discriminatory and high handed. Thus, the impugned action is in violation of article 14&16 of the Constitution of India. Rule 7.6.3 of the rules makes it clear that, the Assessment Committee for Scientist Group IV (5) and above is required to be constituted discipline wise. Since personal interview by the Assessment Committee is done away in terms of the communication dated 20.3.2008, Annexure- A12, respondents have to demonstrate that Assessment Committee constituted in the instant case is in accordance with this rule. If the constitution of the Assessment Committee suffers on this account, the rejection order issued to him would be automatically bad in law.*

5 *The applicant prays for the following reliefs:-*

- a) *Call for the records and proceeds from the respondents 2 & 3 relating to the Assessment promotion exercise in question and peruse the same.*
- b) *Quash the decision relating to applicant as communicated under Director, CFTRI, Mysore, R-4 order No.FT-15(167/4)/139/2006-RAPR/E.II dated 8.9.2008 Ann.A8.*
- c) *Direct the respondents to review the assessment promotion case of the applicant from Scientist 'F' to Scientist 'G' afresh in the light of this Hon'ble Tribunal's order and to extend the benefit of promotion to the applicant from due date with all consequential benefits including the monetary benefits flowing therefrom.*

d) *Pass any other order or direction that this Hon'ble Tribunal "may deem it fit and necessary in the facts and circumstances of the present case and in the interest of justice and equity".*

6. *In the reply statement, respondents 2 to 4 have stated that the applicant was considered for the assessment promotion to Scientist IV (6) on 1.2.2004 but he was not recommended. Again he was considered during the year 2008 for the assessment year 2004-2005 as on the due date of 1.2.2005. This time also he was not recommended for promotion. The rule 7.6.5 as per Annexure-A3 came into force with effect from 1.4.2007. To be eligible for assessment interview and to get recommended for promotion up to 31.3.2007, the ACR scores was the criterion. The eligible candidates are thereafter assessed based on their Work Reports. Prior to 20.3.2008, the Assessment Committee used to interview the candidates who are eligible for promotion. After the amendment to Rule 7.2 Vide the circular dated 20.3.2008 the assessment Committee / Peer Committee considers the work report the said Reports. Regarding the promotion given to 10 other scientists the applicant has clearly submitted that he has no grievance against this and in the same breath he is saying that he has been discriminated. The question of discriminating the applicant against others does not arise as his case was also duly considered by the RAB as per rules. Since the work report of the applicant did not satisfy the Assessment Committee, the applicant was not recommended for promotion to the next higher grade. Regarding the non-consideration of the representation submitted by the applicant, the respondents say that CSIR has a well laid down procedure for dealing with the representations of Scientists which they file on not being assessed for promotion. The applicant in fact had to send his*

*representation through CFTRI in accordance with the guidelines contained in CSIR circular dated 28.10.2005. The applicant had instead sent his representation directly to the Director General, CSIR.*

7. *Vide circular dated 20.3.2008, there is no interview by the Peer Committee. The eligible candidates are required to furnish details of work done by them in specially devised format of Work Report containing various parameters for review by the duly constituted Peer (Assessments) which are due in the year 2004-05 and onwards have been completed in April, 2008 after the amendment to the Recruitment Rules vide circular dated 20.3.2008. The procedure followed by the CSIR is not the same as the procedure followed by the DPCs constituted by the Ministries of Government of India. The RAB does the assessment of Scientists based on the Recruitment Rules 2001 as amended from time to time. The respondents admit that the assessments which were due up to 31.3.2004 were done on the basis of the ACR scores and a personal interview of the eligible candidates. However, the assessment for the year 2004-05 onwards were on the basis of the review of Annual Confidential Reports and Work Reports for the years covered under the relevant residency period. It is reiterated that the Internal Screening Committee recommendation is only regarding the eligibility for consideration for promotion (on the basis of the ACR scores) and the Peer Committee makes its recommendation based on the ACRs and the Work Reports. Since the applicant did not have the standard set by the Peer (Assessment) Committee, regarding work reports he was not recommended for promotion. Respondent Nos 2 & 3 have not arbitrarily/discriminatorily rejected the case of the applicant. The respondents have also stated that the Peer (assessment) Committee was constituted ensuring that the discipline/broad area of the specialisation of each candidate is*

*covered by members of the Assessment Committee. The respondents have prayed that the O.A. may be dismissed.*

8. *The applicant has not filed any rejoinder. The applicant has filed written arguments and the respondents 2 to 4 have filed Synopsis of the arguments reiterating their respective stands in the O.A. and the reply statement.*

9. *We agree with the respondents that the applicant is relying only on the amendment dated 12.3.2007 (Annexure-A3) which was followed only for the period from 1.4.2007 to 20.3.2008 when the next amendment came into force. It would appear that the respondents had done away with the interview/work report assessment for promotions in the different grade of Scientists, by the amendment dated 12.3.2007. Even for promotion from yet fit for promotion was to be made on the basis of the thresh hold marks based on the ACRs. It is not forthcoming as to why the applicant's case which had become due as on 1.2.2005 (for the second chance consideration) was considered only as late as in April, 2008. However, this issue has not been raised by the applicant as a ground. His first chance for consideration on completion of 5 years in Grade IV (5) was also considered only in the year 2005. We had called for the ACRs and records of deliberations of the assessment Committee and the Peer Committee and have perused the same. From the recommendations of the Assessment Committee pertaining to the period from 1.4.2003 to 31.3.2004 (the period covering the first due date of assessment of the applicant, i.e. 1.2.2004), we find that the Committee had considered the case of the applicant only on 30.8.2005, a day prior to the superannuation of the applicant and had found him as 'not fit for promotion'. The applicant has no grievance against this as he himself was aware that his ACR scores were less than the required thresh hold of 85 %(as stated in the*

O.A). A perusal of the ACRs submitted by the respondents in which the percentage scores are noted at the end of every year also confirmed this. However, the applicant has stated in the O.A that he has been called for the interview for the first chance of consideration and he was not recommended. According to his own statement which has been confirmed by the respondents, when the thresh hold marks in the ACRs are less than 85% in the first year of consideration he would not have been eligible for further consideration by the Peer Committee. The respondents have also not contradicted the statement made by the applicant that he was called for interview in the first chance but was found unfit for promotion. However, as the issue before us is consideration of the applicant in the second chance, we do not have to discuss the matter relating to the first consideration any further.

10. The applicant himself has admitted that the Recruitment Rules were amended with effect from 20.3.2008. As per the amended rule for promotion to the level of Scientists Group IV (6) i.e. of Scientist Group IV(5) shall made on the basis of :

- (i) preliminary screening by an Internal Screening Committee formed as per Rule 7.5.3 which takes into account the Annual Confidential Reports recorded for the years covered under the residency period and
- (ii) Assessment by a duly constituted Peer Committee which takes into account the Annual Confidential Reports and the Works Reports for the years, covered under the residency period without holding any assessment interview.

*It is clearly stated in the above amendment that the Peer Committee takes into account the Annual Confidential Report and the Work Reports for the year covered under the residency period. The applicant had submitted his Work Report vide Annexure-A7 in response to the communication dated 26<sup>th</sup> February, 2008 (Annexure-A6). As seen from the proceedings of the Peer Committee meeting held on 27.4.2008 the Peer Committee has assessed the applicant as 'not yet fit for promotion' on the due date of assessment i.e., 1.2.2005 (the date on which the second chance for consideration became due. The respondents have categorically stated that these recommendations were made after assessing the ACRs and the Work Report for the relevant years. If the committee had found that the applicant's work reports were not upto the Bench mark level, this Tribunal cannot interfere with the said finding. The fact that the Internal Assessment Committee has found the applicant eligible for promotion", does not make him 'fit for promotion'. The clearance given by the Internal Assessment Committee is only with reference to the scores in the ACRs, which makes the applicant eligible for consideration" by the Peer (Assessment) Committee which does the assessment based on ACRs and Work Reports. The applicant himself has admitted that as per the circular dated 13.3.2007 (Annexure-A13) the RAB has powers to review and device its own procedures for recruitment and assessment and may vary the procedure but such a procedure shall not come in conflict with the provision of CSIR Scientists Recruitment & Assessment Promotion Rules 2001 (Clause C.1 of the circular). The applicant has not brought out anything to show that the procedure adopted by the Peer Committee was in conflict with the provisions of the Recruitment Rules 2001. In this background we do not find any reason to interfere with the decision*

*taken by the respondent grant of promotion to the applicant.*

11. *The OA is dismissed. There shall be no order as to costs.”*

2. But then, we note in that case in page No.10 para 9 of that order we had held on the basis of hearing of the parties “ *The applicant has no grievance against this as he himself was aware that his ACR scores were less than the required thresh hold of 85 %(as stated in the O.A). A perusal of the ACRs submitted by the respondents in which the percentage scores are noted at the end of every year also confirmed this”*

3. But then, it is admitted case by both parties that in the PMS applicant had secured 92 & 93 marks for the first 3 years . But then in work report assessment by the new Committee he had been given only 82 marks. But then it seems to be covered by Annexure A-10 which we quote:-

“(107)

*Sub:- Amendment of CSIR Scientists Assessment Promotion Rules.*

*I am directed to state that the competent authority has been pleased to approve certain amendments in the Assessment Promotion Rules, in terms of Rule 9 of CSIR Scientists Recruitment and Assessment Promotion (CSRAP) Rules, 2001, as amended earlier and notified through CSIR circular letter No.I-5(1)/2008-RAB, dated 29.2.2008.*

*2. The guiding principles that have been kept in mind while defining the*

*changes in the Assessment Promotion Rules, include - enhanced efficiency, timely completion of assessments, and saving time and cost in conducting the assessments. These principles have already been implemented for the assessment promotion of Scientists F to G, with the approval of Governing Body given at its meeting held on 22nd June, 2007. This has proved to be effective in timely completion of the assessment process. The extension of this process in respect of the Scientists at lower levels will result in greater efficiency in assessment at lower levels also. These modifications in the assessment process are also justifiable in view of marginal difference in the pay packages when the promotion is within the same pay band.*

*3. The following amendments are approved by the competent authority:*

- a. Interview to be retained only for progression from PB-3 to PB-4, i.e. Sr. Scientist to Principal Scientist;*
- b. For other levels, within a pay-band, the assessment will be based on the Annual Performance Report/Performance Mapping of Scientists and Work Report for the period of assessment;*
- c. Besides declaring the result of assessment as "Fit for promotion" or "Not yet fit for promotion", an additional provision of "Promotion deferred by one year" has been introduced for those who are falling short by upto two marks only for promotion as per 'DRDO Scientists assessment promotion rules';*
- d. The number of chances for assessment will not be limited;*
- e. Existing Junior Scientists and "Scientists" who are currently not having the requisite entry level qualifications (as per revised recruitment rules notified vide letter No. 1- (1)/174/2009-RAB, dated 01.06.2011) in PB3 will have to acquire higher qualification prior to their being assessed for the next Pay band namely PB-4.*

4. *The above amendments will be applicable for promotion of Scientists for the Assessment Year 2010-2011 and onwards.*

*Copy of CSIR letter No. 1-5(1)/174(AcPr)/2009-RAB dated 1.6.2011"*

4. In its para 3 (b) it is stated that " *For other levels, within a pay-band, the assessment will be based on the Annual Performance Report/Performance Mapping of Scientists and Work Report for the period of assessment*". Therefore, we had asked the learned counsel for the respondents as to elucidate on this point. Apparently, for this assessment, they have not maintained any parameters or guidelines. It is their individual contribution nothing else. So it is to be assessed at best with its assessment. Assessment must be based on 92+82 or 93+82 and the mean to be taken. In that case applicant has already passed the threshold 85%. Therefore, applicant is eligible for promotion from 2012 onwards on the specific date available for it. It is hereby declared. A mandate is issued to do so within the next 2 months.

5. OA is allowed. No order as to costs.

(CV.SANKAR)  
MEMBER (A)

(DR. K.B. SURESH)  
MEMBER (J)

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**Annexures referred to by the applicant in OA No.727/2017**

Annexure A1: Copy of Rule 7.4 of Recruitment & Assessment promotion rules

Annexure A2: Copy of PMS Marks dt. 9.6.2017

Annexure A3: Copy of circular dt.17.05.2016

Annexure A4: Copy of Assessment by Board dt.14.9.2016.

Annexure A5: Copy of communication dt.15.3.2017

Annexure A6: Copy of Representation dt.19.6.2017.

Annexure A7: Copy of impugned order dt. 6.11.2017.

Annexure A8: Copy of amended rule 7.2 of CSIR

Annexure A9: Copy of TRTI information dt. 4.5.2017.

**Annexure referred to by the Respondents in the reply**

Annexure R1: Copy of CSRAP Rules 2001

Annexure R2: Copy of amendment to CSRAP Rules 2001 para 7.6.5 dt. 12.3.2007

Annexure R3: Copy of proceedings dt.14.9.2016 of Assessment Committee

**Annexure referred in Rejoinder**

Annexure A10: Copy of amended RR dt.1.6.2011

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