

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00501/2015

Wednesday, this the 13th day of February, 2019.

CORAM

**Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

C.Rajkumar, aged 46 years
S/o Karuppayah
Scientist 'C' (Senior Hydrologist)
Central Ground Water Board, Kerala Region
Kedaram Complex, Kesavadasapuram
Thiruvananthapuram-695 004.
Residing at AN 10B, TC-2/2081(2)
Adarsh Nagar, Pottakuzhi, Pattom
Thiruvananthapuram-695 004.

Applicant

[Advocate: Mr. P.Nandakumar]

versus

1. Union of India represented by
the Secretary to Government of India
Ministry of Water Resources,
Shram Sakthi Bhavan
New Delhi-110 001.
2. The Chairman
Central Ground Water Board
Ministry of Water Resources
Bhujal Bhavan
NH-IV, Faridabad-121 011.
3. The Director (Administration)
Central Ground Water Board,
Bhujal Bhavan
NH IV, Faridabad-121 011.

Respondents

[Advocate: Mr.Thomas mathew Nellimoottil, Sr.PCGC]

The OA having been heard on 7th February, 2019, this Tribunal delivered the following order on 13.02.2019:

ORDER**By Ashish Kalia, Judicial Member**

The applicant is presently working as Senior Hydrologist, Scientist 'C' in the Central Ground Water Board, Kerala Region at Thiruvananthapuram in pay band III (Rs.15600-39100 with Grade Pay Rs.6600). He joined as Assistant Hydrologist on 21.9.1998 in Group-B in pay band of Rs.9300-34800+ GP of Rs.4800/-. After 8 years of service, he was entitled to be promoted as Senior Hydrologist (Scientist 'C') in Group-A w.e.f. 1.1.2007. On completion of another 5 years service (residency period), he is eligible to be further promoted as Senior Hydrologist (Scientist 'D') in Group-A in the pay band of Rs.15600-39100 + Grade Pay of Rs.7600 w.e.f. 1.1.2012. Therefore, as on 1.1.2007, the applicant was entitled to be promoted as Senior Hydrologist whereas he was given promotion only w.e.f. 7.4.2008. Further he is also entitled to be promoted as Senior Hydrologist (Scientist D) w.e.f. 1.1.2012. Since the respondents are granting promotions only to those approaching the Tribunal, the applicant has filed the present OA.

2. It is submitted that a Flexible Complementing Scheme (FCS) for Scientists is in existence in the Central Ground Water Board. The minimum residency period linked to performance from the post of Scientist 'C' to Scientist 'D' is 5 years. There are two levels of assessment for FCS. The first one is at internal level for screening purpose and the next level external assessment by UPSC. The applicant is eligible for promotion as Scientist 'D' under FCS as he has covered the minimum residency period. Since the applicant was eligible to be considered for promotion along with other candidates included in Annexure A3, he filed OA No.1149 of 2013 before this Tribunal seeking a direction to call the applicants

for Board Assessment/interview/Personal Talk. The Tribunal, by an interim order dated 9.12.2013, permitted the applicant to participate in the Board of Assessment/Interview/Personal Talk for promotion to the post of Scientist 'D'. It was also ordered that the result of the interview should be published only after obtaining leave of this Tribunal. The Board of Assessment/Interview/Personal Talk for retrospective in situ promotion to the grade of Scientist-D in pay Band 3 (corresponding pay band of Rs.15600-39100) plus Grade Pay of Rs.7600, scheduled on 8.1.2015 had been convened by UPSC in respect of 14 officers which included the applicant herein also. The applicant joined as Assistant Hydrologist on 21.9.1998 in Group-B in the pay band of Rs.9300-34800 + Grade Pay of Rs.4800. After 8 years of service he was entitled to be promoted as Senior Hydrologist (Scientist C) in Group-A in the pay band of Rs.15600-39100 + GP of Rs.6600/- w.e.f. 1.1.2007. But the applicant was not promoted to the post of Scientist Grade-D in spite of their promoting juniors to the applicant, overlooking the rightful claim of the applicant. Hence he has filed this OA for redressal of his grievance.

3. Notices were issued to the respondents who filed their reply statement through their counsel Sri Thomas Mathew Nellimoottil, Sr.PCGC. It is submitted by the respondents that in implementation of the interim order dated 9.12.2013 in OA No.1149/2013, the applicant was interviewed by the Board of Assessment on 8.1.2015 along with 13 other candidates for assessing his fitness for promotion to the grade of Scientist Grade-D under FCS against the year 2012. The Board of Assessment had assessed the applicant 'not yet fit' for the year 2012, as informed by the UPSC as per letter marked as Annexure R2.

Reply statement on behalf of respondents 1 to 3 has also been filed, reiterating the stand taken in the earlier reply of the respondents.

4. On direction by this Tribunal, a detailed affidavit has been filed by the UPSC. The short point raised before this Tribunal by the applicant herein is whether the remarks "not yet fit" written by the UPSC needs interpretation. As per the applicant, the Board of Assessment did not find him unfit but found 'yet to be fit' since the Department informed that the applicant had not completed the mandatory service of 5 years as on 1.1.2012 after becoming a Scientist-C. On the contrary, the respondents have submitted that as per the provision in the existing Recruitment Rules, under FCS, one Sri H.P.Jayaprakash and Sri C.Rajkumar, the applicant herein did not fulfill the eligibility criteria of five years' regular service in the grade of Scientist Grade-C as on 1.1.2012. Hence they were not eligible for their in-situ promotion under FCS w.e.f. 1.1.2012. In compliance with the interim order dated 10.12.2013 of CAT, Bangalore Bench in OA 1510/2013 filed by Sri H.P.Jayaprakash and the interim order dated 9.12.2013 of this Tribunal in OA No..1149/2013 filed by the applicant herein, their names had been included in the proposal for promotion along with other eligible officers. The UPSC recommendation at Annexure R4 is reproduced hereunder:

S.No.	Name of the Officer	Assessment
1	H.P.Jayaprakash	'FIT' (The Ministry need to take a judicious decision, as he is not eligible for in-situ promotion under FCS as on 01.01.2012.)
2	C.Rajkumar	'NOT YET FIT'

As such the applicant is not eligible for his promotion to the grade of Scientist-D.

5. In the detailed reply statement, Sri Thomas Mathew Nellimoottil, Sr.PCGC has drawn our attention to para 4 of the affidavit where it is categorically stated that the applicant was assessed and found not fit for in situ promotion to Scientist Grade-D under FCS Scheme only because of the reason that the applicant was not promoted to Scientist Grade-D. Prior to this, as per the FCS Scheme, the Assessment Board for judging should have majority of external members possessing expertise in the field. Greater emphasis to be placed on achievements as evaluated by an independent peer group rather than seniority. The revised assessment procedure as per Annexure A1 shall henceforth be followed by all Scientific Ministries/Departments for considering advancement under FCS. Henceforth, the benefit of FCS shall be extended only in such departments as are involved in creating new scientific knowledge or innovative engineering, technological or medical techniques or which are predominantly involved in professional research and development and/or application of scientific knowledge. The modified criteria for identifying departments as scientific and technical and parameters for determining scientific activities and services, scientists and engineers and scientific posts will be as in the Annexure II to the Scheme. A plain reading of these two clauses of FCS convinces us that it is not a time bound promotion. It has to go into the innovation of scientific knowledge of the scientists by which has contributed to the technological and medical techniques of their fields. Sri Thomas Mathew Nellimoottil has drawn our attention that two persons are identical who had appeared pursuance to the court orders, one of them Mr.Jayaprakash had been found fit and the applicant not found fit, and the details of works and research papers and performance were considered by the experts and found Sri Rajkumar

not yet fit. It does not mean that the applicant is not having 5 year residency period. We have considered all aspects. We are in agreement with the submission made by the counsel for the respondents. The Tribunal has no expertise to assess an employee in the matter of promotion. It is for an expert body to assess the applicant for promotion as Grade-D Scientist. We have called records from the UPSC also in a sealed cover and find that what Mr.Thomas Mathew Nellimoottil has submitted at the Bar is correct. Sri S.P.Jayaprakash has been considered and found fit whereas applicant has been found not fit. The applicant was duly assessed by the Board as well as by the UPSC. The Apex Court has held in numerous decisions that it is the domain of expert body rather the judicial forum for giving direction for promotion. We are of the view that pursuant to our direction, the applicant was duly considered and the Board had judged the entire performance of the applicant and found him not fit. Thus we find no merit in the OA. The same is dismissed. No order as to costs.

(Ashish Kalia)
Judicial Member

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(E.K.Bharat Bhushan)
Administrative Member

Annexures filed by the applicant:

Annexure A1: Copy of the order of the 1st respondent dated 25.6.2008.

Annexure A2: Copy of the order of O.M. dated 10.9.2010.

Annexure A3: Copy of order dated 13.11.2013 issued by the 3rd respondent.

Annexure A4: Copy of the proposal dated 5.12.2014 issued by the 3rd respondent.

Annexure A5: Copy of order dated 26.8.2011 in OA No.55/2010 of CAT, Ernakulam.

Annexure A6: Copy of order dated 17.11.2011 in OA no.433/2010 of Principal Bench, New Delhi.

Annexure A7: Copy of order dated 21.02.2014 issued by the 3rd respondent.

Annexure A8: Copy of order dated 1.1.2015 issued by the 3rd respondent.

Annexure A9: Copy of representation submitted by the applicant before the 2nd respondent dated 14.2.2014.

Annexure A9(a) Copy of covering letter dated 6.3.2014.

Annexure |A10: Copy of judgment dated 10.9.2008 of the Hon'ble High Court of Andhra Pradesh.

Annexure A11: Copy of letter dated 4.11.2015.

Annexure A12: Copy of office note dated 21.7.2015.

Annexures produced by the respondents:

Annexure R1: Copy of reply statement filed by respondents in OA 1149/2013 filed by the applicant.

Annexure R2: Copy of compliance report filed by the respondents.

Annexure R3: Copy of interim order dated 9.12.2013 of this Tribunal in OA 1149/2013.

Annexure R4: Copy of letter dated 3.8.2015 of UPSC.

Annexure R5: Copy of order bearing No.294 of 2017 issued under letter No.3 (G.S.Menon) 2015-Sci.Estt.2986 dated 15.5.2017.

Annexure R6: Copy of letter bearing No.1/64(11)/2014-API (STF) from Under Secretary (STF), UPSC addressed to the Secretary to GOI, Ministry of Water Resources dated 3.8.2015.

Annexure R7: Copy of letter No.5(02)/CAT/2015-KR-2170 dated 3.12.2018.