

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.320/2013

Dated this Wednesday the 10th day of April, 2019.

**Coram: Dr.Bhagwan Sahai, Member (Administrative)
Shri R.N. Singh, Member (Judicial).**

Smt.Jyotsna Navendu Rohekar,
Scientist "B", (Ministry of
Communication & Information Technology),
National Informatics Centre,
Udyog Bhavan, Ganesh Khind Road,
Pune - 411 007.

Residing at :
109/2, Chaitranya,
Road No.5, J.P. Nagar,
Goregaon (East),
Mumbai - 400 063.

.. Applicant.

(In person).

Versus

1. The Secretary,
Ministry of Communication
& Information Technology,
Electronics Niketan,
C.G.O. Complex, Lodhi Road,
New Delhi - 110 003.
2. The Director General,
Ministry of Communication
& Information Technology,
A-Block, C.G.O. Complex,
Lodhi Road, New Delhi - 110 003.
3. Ms.P.V. Kamat,
Senior Technical Director,
National Informatics Centre,
Udyog Bhavan, Ganesh Khind Road,
Pune - 411 007.
4. Dr.B.K. Gairola,
Ex.Director General of NIC,
Ministry of Communication
& Information Technology,
A-Block, C.G.O. Complex,
Lodhi Road, New Delhi - 110 003.
5. Mr.V.H. Deshpande,
Scientist "E",

National Informatics Centre,
Udyog Bhavan, Ganesh Khind Road,
Pune - 411 007.

6. Mrs.Meera Joshi,
Scientist "E"
National Informatics Centre,
11th Floor, New Administrative Building,
Opposite Mantralaya,
Mumbai - 400 032. .. Respondents.

(By Advocate Shri V.S. Masurkar).

Order reserved on : 11.02.2019

Order delivered on : 10.04.2019

O R D E R

Per: Dr.Bhagwan Sahai, Member (A) .

Smt.Jyotsna Navendu Rohekar, Scientist
'B', National Informatics Centre, Ministry of
Communication & Information Technology, Udyog
Bhavan, Pune filed this O.A. on 12.03.2013 seeking
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(a). setting aside of report dated 30.10.2010
of the Review Committee;

(b). order that the applicant should be
promoted from Scientist-B to Scientist-C with
effect from 01.01.1999;

(c). order that the applicant should be
promoted on notional basis to Scientist-D & E with
consequential benefits with effect from the dates
on which her juniors were promoted;

(d). order that there should not be any
victimization or harassment to her on account of
this litigation;

(e). order that promotees promoted vide orders dated 01.01.1999 and 31.12.1999 if found illegal should be brought down along with Respondent No.5 and 6 to their respective positions as on 31.12.1998; and

(f). provide cost of this O.A.

2. Brief facts of the case:

2(a). The applicant is working as Scientist 'B' with National Informatics Centre (for short NIC), Pune. She joined NIC as Computer Operator on 06.09.1982 and at that time she was having a B.Sc. Degree and a Diploma in COBOL and System Analysis. In 1983, her designation was changed to Scientific Assistant-A. On 01.01.1986 she was promoted as Scientific Assistant-B and on 01.01.1989 she was again promoted as Scientific Officer 'B'. Then on 01.01.1995 she was promoted as Scientist/Engineer Grade 'B'.

2(b). The Ministry of Science and Technology, Government of India issued OM dated 42014/2/86-Adm.I(A) on 28.05.1986 for reorganization of working in Scientific departments. As per Para (ii) of the personnel policy, the minimum educational qualification required for Scientific posts is Master's degree in Science or Bachelor's degree in engineering, technology, medicine or equivalent (Annex-A-6).

2(c). The Department of Personnel and Training (DOPT) issued on 09.11.1998 a new Flexible Complementing Scheme for in-situ promotions applicable to Scientific and Technical Group 'A' posts in the Department of Science and Technology. Under the FCS Rules, 1998, (Para 3(b), no person other than a person possessing the essential educational qualification of at least a Master's Degree in Natural / Agricultural Sciences or a Bachelor's Degree in Engineering or Technology or medicine shall be eligible for in-situ promotion (page 48 of OA).

2(d). The applicant corresponded with the respondents about the minimum qualification required for the post of Scientist to seek information as on what basis graduates are being selected for promotion to the post of Scientist which was against the guidelines issued by the DOPT in its OM dated 09.11.1998. However, she claims that she did not receive any reply. When she became due for promotion on 01.01.1999, the respondents called her on 20.12.1998 to attend an interview. She attended the interview on 24.12.1998 through Video Conferencing but she was not promoted while many other graduates were promoted from Scientist 'B' to Scientist 'C'. She received a reply dated 07.11.2000 about rejection

of her representation dated 18.02.2000 stating that officers with graduation plus diploma in Computer Science could get promoted only upto Scientist 'C' (Annex-A-9, page 48).

2(e). The applicant states that the respondent No.1 issued OM dated 06.08.2001 in pursuance to the DOPT guidelines of 09.11.1998, in which the educational qualification mentioned is the same as in the DOPT OM. However, there was no mention about dilution or modification applicable to the promotion of graduates. The applicant has also stated that if the respondents had followed the OM of 06.08.2001, then it is not clear as to why they admitted in the High Court that they had no such norms. To promote certain candidates first and then to issue the amendment to Recruitment Rules is not permissible in law, it has been claimed.

2(f). Not satisfied with the above reply, the applicant filed O.A.819/2002 on 18.09.2002 before this Tribunal and another O.A.245/2003 on 13.03.2003. On both those OAs the Tribunal passed a common order on 30.01.2008 directing the respondents to convene a review DPC to consider her case as on 23.12.1999 to 30.12.1998 for promotion to the post of Scientist 'C' with effect from 01.01.1999 and on considering the case of the applicant by the review DPC if she is found fit she

should be promoted to the post of Scientist 'C' from 01.01.1999 with consequential benefits (Annex-A-10).

2 (g). In its order the Tribunal had also noticed that there had been overwriting and changing of Grade 'A' to Grade 'B' in the ACRs of the applicant for the years 1998, 1997 and 1996. That order of the Tribunal was challenged by the respondents in High Court in Writ Petition No.1569/2008, which was dismissed on 11.09.2008 finding no infirmity in the order of the Tribunal. The applicant has also claimed that during hearing of that Writ Petition, the respondents had admitted before the High Court that there were no norms prescribed for giving weightage to ACRs and interview taken through video conferencing.

2 (h). The applicant then filed a Contempt Petition No.09/2009 on 20.01.2009 for non compliance with the order of the High Court. The respondents filed an SLP before the Apex Court which was also dismissed on 13.07.2009 as the respondents could not produce any evidence on record to show that they had complied with the guidelines issued by the DOPT in its OM dated 09.11.1998, nor any notification about amending the essential educational qualification for the post of Scientist.

2(i). During pendency of the C.P., the respondents formed a Review Committee and called the applicant for an interview on 04.12.2009, but the applicant did not attend it because constitution of the Review Committee was against the order of the Tribunal which had directed to hold a review DPC and not a Review Committee. The respondents convened another Review Committee on 04.12.2009 but the applicant did not attend it for the same reason as mentioned above. Then on 06.10.2010 the Tribunal passed an order based on the contention of the applicant that she was already qualified in the interview and, therefore, further interview was unnecessary and directed the applicant to attend the Review Committee meeting.

2(j). On 30.10.2010, the applicant attended the interview as directed by the Tribunal but without prejudice to her rights and contentions to challenge the process of interview. In that interview held through video conferencing, the respondents declared the applicant as ineligible for promotion for having not scored the required percentage of 80% marks for passing the interview. But the applicant claims that she was declared unfit without showing the criteria for such declaration. Then the Contempt Petition was dismissed on 01.02.2011. Thereafter the applicant

again filed another O.A.387/2011 on 28.03.2011 which was later on withdrawn by her. Hence this O.A.

The applicant has submitted her written notes of arguments on 31.01.2019 after making their copy available to counsel for the respondents. The latter has also submitted his written notes of arguments. On 11.02.2019, when the case was again scheduled for hearing, the applicant explained that in addition to her written arguments already submitted she has nothing more to add. Heard the counsel for the respondents.

3. Contentions of the parties:

The applicant has contended that -

3(a). as directed by the Tribunal on 30.01.2008 to reconsider her case a review DPC was to be convened for her promotion as Scientist 'C'. She also claims that the Tribunal had held that she was eligible for that promotion as far as her educational qualification was concerned in view of her inclusion in the list of eligible candidates called for interview in December, 1998 and many other candidates called for the same interview were also only graduates like her;

3(b). the respondents have never disclosed which Recruitment Rules have been applied by them in promoting the candidates and have not produced any

evidence before the Tribunal to show that they have given promotions as per DOPT OM dated 09.11.1998. Only after 8 years i.e. 30.10.2010, the respondents called her for review DPC and declared her unfit in view of the DOPT OM. The recommendations of the Review Committee meeting held on 30.10.2010 through video conferencing should be set aside as she was declared unfit in that meeting by giving her only 57% marks;

3(c). the tampering of her ACRs, the criteria for promotion to the post of Scientist 'C' and method of giving marks by the earlier DPC on 24.12.1998 have not been considered by the Review Committee, hence recommendations of the Review Committee declaring her unfit are in violation of the DOPT instructions. Since the respondents have promoted simple graduate candidates in December, 1998, the Flexible Complementing Scheme rules contained in the DOPT OM of 09.11.1998 were not followed. Therefore, the report of the Committee is nothing but mere scrap of paper;

3(d). when the NIC is not covered under the FCS rules and promotions have also been given from 01.01.1999 till today, they are all illegal and, therefore, all those promotees should be brought down to their respective positions as on 31.12.1998. For deviations from the DOPT OM in

promoting others, the respondents have taken a shelter under a policy decision contained in the reply of 07.11.2000;

3(e). the applicant has now made Shri V.H. Deshpande and Smt.Meera Joshi as Respondent No.5 and 6 in the present O.A., who were also promoted although they were only simple graduates like the applicant. Smt.P.V. Kamat has been impleaded in this O.A. as she was one of the members of the Review Committee which held its meeting on 30.10.2010;

3(f). the applicant admits that if all promotions made between 01.01.1999 to 31.12.1999 are reversed holding them as illegal, then in that case the applicant would also not get any promotion. If the respondents prove that all the promotees were legally promoted, then the applicant would also be entitled for promotion as Scientist 'E' as all those promoted earlier were junior to her and she should get appropriate seniority as being senior to Shri Deshpande;

3(g). the applicant lost the opportunity of promotion because of fraudulent trick of the respondents and the DPC in marking the applicant as absent when she was actually present before the DPC and was also interviewed on 24.12.1998. The non-grant of promotion to her by the Review Committee

on 30.10.2010 is violation of her fundamental rights under Article 14, 16 and 21 of the Constitution of India as equality before law and equal protection of law contemplate that the accrued and existing rights will not be taken away from the applicant thereby violating her fundamental rights to consider her for promotion;

3(h). the report of the Review Committee dated 30.10.2010 is illegal, arbitrary and discriminatory and promotion given by the DPC are illegal and, therefore, the promotees should be reversed to their positions as on 30.12.1998. As per directions of the Tribunal in its decision of 30.01.2008 in O.A.817/2002, the scope of review DPC was limited to reconsideration of ACRs of the applicant in light of the findings of the Tribunal. The scope of holding review DPC did not include interviewing of the applicant once again. However, by misreading the judgment of the Tribunal and conveniently ignoring the findings recorded therein, they arbitrarily recorded that the applicant had secured only 57% marks as against 80% required for promotion. This is a case of deliberate, wilful, intentional overreaching of the findings of the Tribunal and deserves to be seriously deprecated once again;

3(i). the High Court has also held that the

applicant had appeared for interview in the year 1998 and, therefore, subjecting the applicant to a fresh interview in the year 2010 was erroneous and, therefore, the marks given in the interview are required to be ignored. The respondents have deliberately used 2010 interview to disqualify the applicant as the marks allotted in the interview are usually incapable of being judicially reviewed by Courts and Tribunals. While in the judgment/order of the Tribunal dated 30.01.2008 the applicant was held to have qualified in the interview of 1998 and the only aspect where the DPC had faulted was in the matter of giving marks in the ACR which was manipulated/tampered with for the years 1996, 1997 and 1998. The Tribunal also noticed that the ACRs for the years 1997 and 1998 were in fact 'Very Good' but by overwriting they had been changed to 'Good' and the review DPC was required to go into this aspect while considering the case of the applicant and, therefore, the marks given in the interview of 2010 cannot be considered;

3(j). the reliance of Respondent No.2 on relaxation Note of 16.07.1999 about special dispensation in essential qualification appears to be incorrect for many reasons. It was only a note and there is no proof of amendment of recruitment

qualifications. That note was of 16.07.1999. Therefore, that note is irrelevant for the present case;

3(k). since the Respondent No.3,4,5 and 6 have not shown any interest in this case as per the orders of the Tribunal on 27.04.2015 and 17.08.2015, the case should be decided exparte against them. In para No.1 of the DOPT OM on Flexible Complementing Scheme, no special dispensation has been given to any Department and in Para 2(a) it was also specifically laid down that the FCS shall not be applicable where the criteria specified vide this OM are not fully met. As per Annex-I to the OM, the criteria to decide the fitness of a candidate for promotion are residency period of 3 years, essential educational qualification, minimum percentage of ACRs and minimum percentage of marks in review interview. The posts of Scientist 'B' and Scientist 'C' are below the post of Group 'A' and Respondent No.1 and 2 have no legal rights to change the designation of post like Scientist 'B', Scientist 'C' and so on to Group 'B'.

In promoting other candidates having lower educational qualification, the Respondents No.1 and 2 have applied only 3 norms i.e. residency period, minimum percentage of ACR assessment marks and

minimum percentage of marks in review interview. The claim of the respondents that they got the power under Article 309 of the Constitution to amend or modify any at any time is not applicable to the Flexible Complementing Scheme notified under DOPT OM dated 09.11.1998 on recommendations of the 5th CPC;

3(1). the applicant has also attempted to benefit from these caselaws:-

(i). **District Collector & Chairman, Vizianagram Social Welfare Residential School Society Vizianagram and another Vs. M. Tripura Sundari Devi reported in 1990 3 SCC**, in which it was held that when an advertisement mentions a particular qualification and an appointment is made in disregard to it then it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who have similar or better qualification than the appointee or appointees but who had not applied for the post because they did not possess the qualification mentioned in the advertisement.

(ii). **In case of Umrao Singh Vs. Punjabi University, Patiala and others (2005) 13 SCC 365**, while dealing with the power of selection Committee for relaxation of norms, it was held that although Court must look with respect upon the performance

in duties by experts in the respective fields, it cannot abdicate its function of ushering in a society based on rule of law. Once it is satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. The power to relax must be clearly spelt out and cannot otherwise be exercised.

(iii). In case of **Bhanu Pratap Vs. State of Haryana and others in Civil Appeal No.6205/2011**, the Apex Court held that if rounding off is given to the appellant as sought by him there has to be similar rounding off for a person who has missed 33% in one of the papers just by a whisker. It is provided that a person who could not get 50% in aggregate in the written test, if this rule of rounding off is offered, then he would also get qualified. Somewhere a line has to be drawn and that line has to be strictly observed like a Lakshman Rekha and no variation of the same is possible unless it is provided under the Rules itself. Therefore, when the applicant has been denied promotion from the date on which her junior was promoted it amounts to discrimination.

Based on these case laws, the applicant claims that if all of the promotees have been

promoted from Scientist-B to Scientist-F during last 20 years, then she is also legally entitled to get all promotions upto Scientist-F with all consequential benefits;

3 (m). at the end of her written submission, the applicant has also mentioned that she has no grudge against all her colleagues or against the respondents.

The respondents have contended that -

3 (n). this O.A. has been filed as a completely old story and the applicant has totally overlooked the legal implications of the order of the Tribunal dated 06.10.2010 in C.P.No.9/2009 in O.A.245/2010. The applicant did not challenge that order of the Tribunal which would establish whether the applicant should have appeared for the interview conducted by the experts under the Flexible Complementing Scheme or not.

As mentioned in Para 3 of the Tribunal's order dated 06.10.2010, it was the contention of the petitioner in the CP that earlier the Tribunal had observed that the petitioner had already qualified in the earlier interview and further interview is uncalled for. However, since the matter is still pending and she is called for interview, we think in the interest of justice and the factual situation, she will appear for the

interview before DPC (now called Review DPC Committee) on the date as may be fixed by them. This is without prejudice to her contention as aforesaid. The Review DPC Committee, after complying with the directions issued by the Tribunal will report the matter on the next date.

The respondents accordingly complied with the order of the Tribunal and that is why after hearing both the parties, the Contempt Petition was disposed of on 01.02.2011. In view of the above direction of the Tribunal, the present O.A. is devoid of merit and liable to be rejected;

3(o). the National Informatics Centre is under the Department of Electronics and Information Technology, Government of India, it is a Scientific and Technical organization for implementing use of Information Technology in the process of governance. While it was set up in 1975-76, it was brought under the Planning Commission in March, 1998 and was again placed under the Ministry of Information Technology at the time of its creation in October, 1999;

3(p). general instructions and policy decisions of the DOPT dealing with promotion by conducting DPC is not applicable in Science and Technology Departments and there is no concept of review DPC in the Department. Also in this Department there

is no concept of availability of vacancy for promotion. Also seniority and seniority list have no relevance for considering promotions in the Science and Technology Departments. Those Departments have a different Scheme called the Flexible Complementing Scheme under implementation as sanctioned by the DOPT;

3(q). performance in the present grade during the prescribed residency period is the core of the review process and career advancement is based on merit. For this purpose the assessment for promotion is in two stages; i.e. screening by a Screening Committee on the basis of performance as reflected in the officer's confidential reports and interview by a Selection Committee. The minimum required length of service in a grade only makes persons in that grade eligible for being called for personal interview and it does not confer any right on them for promotion;

3(r). after appointment of the applicant as Computer Operator from 06.09.1982, she was re-designated as Scientific/Technical Assistant-A, then as Scientific/Technical Assistant-B from 01.10.1986, as Scientific Officer/Engineer-'SB' from 01.10.1989 and as Scientific-B with effect from 01.01.1995;

3(s). in the order of the Tribunal in O.A.245/2003 filed by the applicant, the denial of promotion by the Review Committee to the post of Scientist-C from 01.01.1999 was set aside and it was directed that the applicant be deemed promoted as Scientist-C with effect from 01.01.1999 with due seniority. Prior to that, the applicant had filed another O.A.817/2002 challenging the non-grant of personal hearing to the applicant by then Secretary, Ministry of Information and Technology. Both these OAs were dismissed by the Tribunal vide order dated 02.01.2004.

When the applicant challenged the dismissal of those two OAs by the Tribunal in Writ Petition No.320/2004, the High Court disposed it of at admission stage vide order dated 08.03.2004, condoning the delay in filing the O.A. and directed the Tribunal to decide those two OAs on merit;

3(t). when she attempted to file copies of large number of documents through M.A.344/2004 in O.A.245/2003, that M.A. was disposed of on 07.08.2004 stating that these documents are public documents and the applicant can inspect them and, therefore, these may also be supplied to her. The respondents complied with the direction of the Tribunal on the M.A. dated 17.08.2004 by making the mentioned documents available to her and also by

producing some of the documents before the Tribunal;

3(u). then by dismissing the O.A.817/2002 as infructuous, the Tribunal on 30.01.2008 allowed the O.A.245/2003 by directing the respondents to convene a review DPC to consider the case of the applicant for promotion to the post of Scientist-C as on 23.12.1998 to 30.12.1998. As per the directions of the Tribunal in its orders dated 30.01.2008 and 06.10.2010, a meeting of the review DPC was held on 30.10.2010 to consider her case. On considering the case of the applicant, the Committee gave her a score of 57% marks which was lower than the minimum 80% required for promotion;

3(v). from 11.08.1981 (i.e. prior to the DOPT OM dated 09.11.1998), NIC has been following a policy for Group-A Scientific and Technical Officers. For the posts/officers below Group-A, the instructions contained in OM dated 18.07.1983 and 01.10.1984 are applicable. As per Note-7 to the OM of 01.10.1984, the ceiling upto which Scientific / Technical Assistants and Scientific Officer/Engineers Grade 'SB' recruited initially with the qualification of M.Sc./B.Sc./Diploma in Engineering can be considered for promotion is the grade of Scientist/Engineer 'SD' i.e. currently Scientist-C. For promotion beyond Scientist-C, the officer must

fulfil the conditions prescribed for those grades (Exhibits R-4 and R-5);

3(w). since the DOPT OM dated 09.11.1998 on FCS policy was also applicable to Ministry of Science and Technology, Department of Electronics, National Informatics Centre, Planning Commission, career advancement of NIC Officers recruited prior to that notification was getting affected adversely. Therefore, the NIC took up the matter with DOPT, which after examining the proposal, granted a special dispensation vide note dated 16.07.1999 to NIC regarding essential qualifications for in-situ promotion under Flexible Complementing Scheme in addition to those prescribed under the DOPT OM dated 09.11.1998 (Exhibit R-7). As per the DOPT OM dated 09.11.1998 and OM of Ministry of Information Technology dated 15.11.2000, applicability of Flexible Complementing Scheme for Group 'A' Scientists and Technology Officers was notified. Hence the question of granting promotion to the applicant from 01.01.1999 does not arise;

3(x). as per the order of the Tribunal dated 06.10.2010, the Review Committee was constituted and its meeting was scheduled on 23.09.2009 and 04.12.2009. The applicant had been intimated about it through email and speed post. However, on both these dates the applicant remained absent and,

therefore, the Committee could not consider her case;

3(y). the meeting of the Review Committee was again held on 30.10.2010, which the applicant attended through video conferencing and the Committee considered her case for promotion to the post of Scientist-C with effect from 01.01.1999 as per order of the Tribunal dated 30.01.2008. The qualifying marks for selection to the post of Scientist-C are 80% but the applicant secured only 57% marks, hence she could not be promoted. The Competent Authority approved the recommendations of the Review Committee dated 09.11.2010 and the applicant was informed accordingly on 18.11.2010. Therefore, the applicant has no ground to challenge the promotion orders of other officers on 01.01.1999 and 31.12.1999.

3(z). As per special dispensation agreed to the DOPT to the proposal of NIC regarding essential qualifications for in-situ promotion under Flexible Complementing Scheme (in addition to those qualifications prescribed under the DOPT OM of 09.11.1998), existing employees with B.Sc. Degree with P.G. Diploma in Computer Science were allowed promotion under the Flexible Complementing Scheme upto Scientist-C. For promotion in the year 1999, the Committee had considered the case of the

applicant in December, 1998 but she was not found fit. For subsequent years interviews were held in December, 1999, April, 2001, December, 2001 and January, 2002 which the applicant did not attend demanding documents of others;

3(za). as per directions of the Tribunal dated 30.01.2008 in O.A.245/2003 and dated 06.10.2010, NIC nominated its Dy. Director General (Smt.Vandana Sharma) to investigate the case of overwriting/interpolations in the ACR dossiers of the applicant as observed by the Tribunal. In the minutes of that investigation, it has been recorded that Smt.Suman Bakshi, who was the controlling officer of the applicant at that time, admitted that she had herself done the changes of overwriting and appended her initials as 'SB'. Therefore, grievance of the applicant on that ground is not relevant now;

3(zb). in the case of Union of India & Others Vs. B. Annathurai & Another, the Apex Court has held that if the respondents despite being given opportunity to appear in the selection, chose not to appear for promotion and stayed away from it, they cannot seek a promotion without appearing in the interview with retrospective date. In any case, such action on their part was at peril on their own service career and also detrimental to their

interest. Having taken such a vital unilateral decision, they cannot now seek to take advantage of their own wrong.

It was in view of this that the Tribunal ordered the applicant to attend the interview to be taken by the Review Committee. Then applicant attended the interview on 30.10.2010 and by considering all the relevant provisions of the Flexible Complementing Scheme, the Review Committee examined fitness of the applicant or otherwise. The applicant was, however, found to be unfit for the promotion;

3(zc). the respondents have also cited the Apex Court caselaw i.e. **Union of India & Another Vs. S.K. Goel & Ors. AIR 2007 SC 1199**, which held that the DPC enjoyed full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidates being considered by it. Hence, the interference by the High Court is not called for;

3(zd). the written notes of arguments submitted by the counsel for the respondents are on behalf of all the respondents i.e. Respondent No.1 to 4. The Respondents No.3 and 4 have performed their official work as members of the Review/Interview Committee/Board without any malafide against the applicant and all the allegations made by her

against them are denied. The Respondent No.1 was not involved in the process of review for promotion of the applicant during December, 1998. Under the Rules/guidelines applicable for assessing officers for promotion, disclosure of marks secured by such Scientists and Technical Officers during the evaluation process is not provided. Therefore, the claim of the applicant that she was not given correct marks scored by her is devoid of merit;

3(ze). the interview Board/review Committee evaluated the case of the applicant based on the extant norms / criteria and did not recommend her for promotion to the grade of Scientist-C from 01.01.1999. The applicant also failed to utilize the subsequent opportunities for her evaluation during following years. Thus instead of availing of the opportunities made available to her for appearing in the interview as per the prescribed norms for consideration for promotion to Scientist-C, she herself on her own will chose to remain absent and instead she has been filing repeated OAs for that promotion;

3(zf). the applicant now also seeks further promotions on notional basis to the grades of Scientist-D and Scientist-E with effect from the dates on which her juniors were promoted. However, this claim of the applicant is devoid of merit

because she is not eligible for further promotions when on being evaluated for fitness as per the prescribed procedure, she could not qualify for promotion even to Scientist-C and there is no concept of seniority for in-situ promotions under the Flexible Complementing Scheme for Scientists and Technical Officers;

3(zg). in the present O.A. she is seeking the same relief which had already been considered by the Tribunal in the earlier O.A.245/2003. Therefore, the relief being sought by the applicant now in the present O.A. for promotion to Scientist-C is an attempt to get reopened the same issue which was decided by the Tribunal in the earlier OAs. This is also against the principles of resjudicata as the same had already been considered by the Tribunal in her O.A.245/2003.

In fact O.A.817/2002 and O.A.245/2003 were dismissed by the Tribunal on being time-barred. Subsequently in the Writ Petition filed in the High Court by the applicant (319/2004 and 320/2004), the delay in filing of the O.A. was condoned and her request for hearing the OAs was allowed. Then by a common order dated 30.01.2008, the O.A.817/2002 was dismissed as infructuous and O.A.245/2003 was allowed with direction to the respondents (para 19) to convene a review DPC to consider her case as on

23.12.1998 to 30.12.1998 for the purpose of promotion to the post of Scientist-C with effect from 01.01.1999;

3(zh). in that order the Tribunal also took a view that the applicant was eligible as far as her educational qualification was concerned because she had been included in the list of eligible candidates called for interview in December, 1998; she was on par with other candidates promoted as Scientist-C, and she was legally entitled to be considered for the same. When the respondents filed a compliance affidavit on 19.11.2000 along with minutes of the meeting of the Review Committee on 01.02.2011 the Tribunal closed the Contempt Petition No.09/2009 filed by the applicant. Therefore, the applicant's attempt now to get reopened or revisited the same issues through the present O.A. is liable to be rejected with heavy cost;

3(zi). none of the Scientists and Technical Officers of NIC not possessing post graduate degrees in the prescribed disciplines/areas has been promoted beyond the post of Scientist-C. The special dispensation agreed to by the DOPT through U.O.R. dated 16.07.1999 pertains to the promotion scheme for Science and Technology officers on the lines of Flexible Complementing Scheme subject to

the condition that the existing employees with B.Sc. and P.G. Diploma in Computer Science would be allowed promotion under the Scheme only upto the pre-revised pay scale of Rs.3000-4500 i.e. pay scale for Scientist-C. Promotions to Group 'A' S&T Officers with effect from 01.01.1999 are on the basis of the FCS policy of DOPT OM dated 09.11.1998 and the Ministry of Electronics and Information Technology OM dated 06.08.2001 issued with concurrence of the DOPT given on 16.07.1999;

3(zj). the attempt of the applicant to raise the issue of educational qualifications for promotion to Scientist-C is irrelevant, because her eligibility for promotion upto the grade of Scientist-C as on 01.01.1999 was never in doubt and it was also upheld by the Tribunal. However, her claim for promotion to the grade of Scientist-C was subject to fulfilment of the 3 conditions i. completion of prescribed residency period in previous grade, clearing of the screening process and on being found fit for promotion after evaluation by a duly constituted interview Board. Promotions of some of the officers were notified by the Ministry of Science and Technology on 16.07.1999 with effect from 01.01.1999. Since the applicant had completed the prescribed residency period, she was also screened for further

evaluation by the interview Board for promotion to the grade of Scientist-C to be effective from 01.01.1999. The applicant also attended the interview before the interview Board, but after evaluation, the Board did not recommend her name for the promotion. Therefore, averment made by the applicant about educational qualification and policy violation are misplaced;

3(zk). the Respondents No.5 and 6 possess Post Graduate degrees in their respective disciplines and are covered under the Ministry of Electronics & Information Technology OM dated 06.08.2001 by which the application of Flexible Complementing Scheme has been adopted for Group 'A' Scientists and Technical officers of the Ministry and its field organizations. The statement of the applicant in Paras 15 and 16 of her written submission is false because, now promotions of the existing Group 'A' officers are governed by the modified Personnel Policy for Group 'A' S&T officers of the Ministry and its field organizations notified order dated 19.09.2016 (Annex-WR-3);

3(zl). the precedents quoted by the applicant in Para 17 to 19 of her written submissions pertain to matters of direct recruitment and they are irrelevant in her case which is a matter of in-situ promotion under the Flexible Complementing Scheme.

The relief sought by the applicant is also self-contradictory as she seeks to be promoted to the grade of Scientist-C under the promotion policy which she terms as illegal. While the decision of the interview Board is a collective decision of members of the Board, the applicant has chosen the name of only one of the interview Board members as a respondent. This act of the applicant clearly shows her grudge against her colleagues and, therefore, her claim at the end of the written submissions that she does not bear any grudge against any of her colleagues/respondents is a false claim.

The claim of the applicant that all those who have been promoted vide order dated 01.01.1999 and order dated 31.12.1999 along with Respondents No.5 and 6 should be reverted back to their respective positions as on 31.12.1998 is not maintainable because she has not impleaded them in the O.A. to whom she claims to be senior. In view of these facts, the O.A. is totally devoid of merits and deserves to be dismissed with cost.

4. Analysis and conclusions:

We have perused the O.A. memo and its annexes, rejoinder of the applicant, reply and sur-rejoinder filed by the respondents, written arguments filed by the applicant and respondents

and considered the arguments advanced by both the parties. Based on our careful consideration of the foregoing, we conclude as follows.

4(a). The applicant has been earlier promoted three times on 01.01.1986, 01.01.1989 and 01.01.1995. On the issue of her promotion as Scientist-C, the applicant has been filing OAs since 2002. The present O.A. is 5th in the sequence. In between she filed C.P.9/2009 and two Writ Petitions No.319/2004 and 320/2004 in the High Court.

4(b). The FCS notified by the DOPT OM dated 09.11.1998 is for Group-A officers of Science and Technology Departments of Government of India. The applicant seems to have got totally confused with stipulations of this DOPT OM and stipulations of the OM of Department of Electronics and Information Technology dated 06.08.2001. The latter OM is for benefit of NIC officers like the applicant who were not getting the benefits of DOPT OM of 09.11.1998. In fact this order of the Ministry of Electronics and Information Technology was a special dispensation allowed with concurrence of DOPT under which employees of NIC having only B.Sc. Degree were allowed to be promoted upto the grade of Scientist-C. The applicant is not a Group-A employee of NIC, therefore, her contention that no

promotion can be made outside the provisions of this DOPT OM is irrelevant.

4(c). In fact as explained by the respondents, they have never held her educational qualification as ineligible for promotion as Scientist-C. The facts of the O.A. reveal that this is a very strange case in which the applicant has been provided repeated opportunities to participate in the selection process for promotion to Scientist-C but she herself refused to avail of all those opportunities and has been litigating for the last 17 years for that promotion. Along with other similarly qualified candidates, the applicant was also considered for that promotion in December, 1998. At that time she could not qualify for the promotion. In subsequent years she herself refused to attend the interview for that promotion in December, 1999, April, 2001, December, 2001, January, 2002, 23.09.2009 and 04.12.2009. Even when as per direction of the Tribunal dated 06.10.2010 the respondents organized the meeting of the Review Committee on 23.09.2009 and 04.12.2009, the applicant again took a confrontational and litigating stand claiming that it was not a review DPC and was only a Review Committee and thus refused to participate in the selection process.

In view of her own failure to participate in the selection process for the promotion, the applicant has forfeited her claim for that promotion. In this regard the reliance of the respondents on the view taken in the caselaw **Union of India & Ors. Vs. B. Annathurai & Another, in Civil Appeals No.1128 and 1129/2009 decided by the Apex Court on 20.02.2009** is correct. In that caselaw it was held that action of the respondents of non-appearance in the interview when called for selection was at the peril of their own service career and also definitely detrimental to their interest. Having taken such a vital unilateral decision they now cannot seek to take advantage of their own wrong. Exactly similar is the situation in the case of the present applicant as she repeatedly failed to attend the interview for promotion to the post of Scientist-C. Because of her own decision of non-participation in the selection process for the promotion, subsequently she is not justified in making a grievance against her such non-promotion.

4(d). As per direction of the Tribunal in C.P.09/2009 in O.A.245/2010 dated 06.10.2010, the applicant finally attended the meeting of the review DPC in 2010. That too conditionally by claiming her participation to be without prejudice

to her rights and contentions. However, again she failed to qualify for the promotion as she could score only 57% marks against the minimum requirement of 80% marks. The other claims of the applicant such as for reversion of other persons promoted in 1999, that the Respondents No.1 and 2 have no legal right to promote persons as Scientist-B, Scientist-C and so on; the respondents were not competent to consider promotions under the FCS beyond the stipulations prescribed by the DOPT etc, are imaginary and without any basis or justification. These claims are based on failure of the applicant to understand the stipulations under the FCS of DOPT OM dated 09.11.1998 and OM of the Department of Electronics and Information Technology referred to above. The applicant has consistently adopted a negative confrontational and litigating attitude towards the respondents. She is unable to notice/realize the positive aspects of the stipulations provided under the special dispensation of the Department of Electronics and IT for benefit of NIC employees like her with B.Sc. degree and PG diploma for promotion upto Scientist-C. She has failed to understand the difference between the merit based FCS promotions and seniority based promotions. Instead she perceives non-existent imaginary, negative aspects in the

special dispensation and has attempted to articulate grievance based on them. This tendency deserves to be deprecated.

4(e). The submission of the respondents that the Respondents No.5 and 6 were promoted at the relevant time because they possess the required qualification higher than the applicant is correct.

4(f). As directed by the Tribunal in its order dated 06.10.2010, about the overwriting in the ACR of the applicant for the years 1996, 1997 and 1998, the respondents have got inquiry conducted by Dy. Director General, NIC and in the course of that inquiry the then Reporting Officer of the applicant (Smt. Suman Bakshi) has categorically stated that the overwriting, etc were done by her and as token of the corrections, she had appended her initials as 'SB'. With that the applicant's grievance in this regard also lacks substance.

4(g). We find that the respondents have not discriminated against the applicant, they have applied the same procedure and criteria for judging fitness for promotion to all those promoted as well as the applicant. The DPC and review DPC/Review Committee have not relaxed any qualification for any of the promoted officers. Hence the three caselaws cited by the applicant are not applicable to her case. She has wrongly cited those caselaws.

4(h). On careful consideration of all the details of the case, we conclude that the present applicant is a self-obsessed vexatious litigant. All through the period after December, 1998 without availing of the opportunities made available to her to participate in the selection process, she has indulged in repeated litigation on the same issue of her promotion to Scientist-C through O.A.817/2002, O.A.819/2002, O.A.245/2003, O.A.387/2011, C.P.9/2009 and Writ Petitions No.3 & 320/2004. None of her claims mentioned in the present O.A. has any merit or substance, they are all totally imaginary and devoid of merit. Hence in fairness to the respondents, the applicant is liable to pay them full cost of this wasteful repeated litigation. However, as disposal of this O.A. has taken a long time, by taking a lenient view, we refrain from imposing the cost.

5. Decision :

The O.A. is dismissed. The parties to bear their own cost.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A).

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