

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.170/01387/2018

DATED THIS THE 27TH DAY OF AUGUST 2019

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

HON'BLE SHRI CV.SANKAR MEMBER (A)

Dr. G.S.Geetha,
W/o P.Nataraja
Age 51 years
Occ: Scientist- (Social Science)
R/o No. 39, Block-22
1st Main Road, Madhuvana LO
Srirampura 2nd Stage,
Mysore 570 023

... Applicant

(By Shri P.Kamalesan..... Advocate)

vs.

1.The Union of India,
represented by the Secretary,
to Govt. Ministry of Textile,
Udyog Bhavan,
New Delhi - 110 001

2. Central Silk Board,
(Established by the Ministry of Textile,)
Govt. of India,
CSB Complex, BTM Layout,
Madiwala, Bangalore – 560 068

3.The Department of Personnel and Training
represented by the Secretary,
M/o Personnel, Public Grievances and Pensions
North Block New Delhi-110 001.

...Respondents

(By Shri Vishnu Bhat.. Senior Panel Counsel)

ORDER (ORAL)

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

1. Heard. The matter seems to be covered by our earlier orders except one aspect in OA.No.1442-1445/2018 and connected cases dated 21.3.2019 which we quote:-

"1.Heard. The matter relates to promotion granted almost a decade back. In this connection we need to refer to Annexure-A10 which we quote:-

*"F.No.25012/54/1999-Silk
Government of India
Ministry of Textiles*

*Udyog Bhavan
New Delhi
Date: 18th January, 2012*

TO

*The Member Secretary,
Central Silk Board,
B.T.M.Layout, Madivala,
Bangalore – 560 068.*

*Sub: Holding of Assessment interview for CSB under Modified
Flexible Complementing Scheme-Nomination of Ministry's
representative on the Assessment Committee- reg.*

Madam,

In continuation of this Ministry's letter of even number dated 13th January,2012, on the subject cited subject, I am directed to state that the following officers are nominated as Ministry's representative in the Assessment Committees for interviews for promotion.

1. *Shri Arindam Basu, Director (CSR&TI), Bangalore: Scientist 'B' to Scientist 'C'*
2. *Shri S.M.H. Qadri, Director (CSR&TI), Mysore : Scientist 'C' to Scientist 'D'*
3. *Shri N.D.George, Economic Adviser Ministry of Textiles : Scientist 'D' to Scientist 'E'*

2. *Shri R.K.Vashisht, Under Secretary (Silk) would also be present in the meetings.*

This issues with the approval of Secretary (Textiles).

Yours faithfully

Sd/-

(R.K.Vashisht)

Under Secretary to the Govt. of India

Tele.No.23062341”

2. *Following Annexure-A10, after 4 years time Annexure-A11 seems to be issued, which we quote:-*

“No. CSB.7(7)/2015-ES-II

Date 17th February, 2016

*The Joint Secretary (silk),
Ministry of Textiles,
Govt. Of India,
Udyog Bhavan,
Maulana Azad Road,
New Delhi – 110 107.*

Madam,

*Sub: Extension of in situ promotion under FCS to CSB Scientists
from the grade of Scientist-D to Scientist E – regarding.*

Kindly refer to Ministry's letter No.25012/02/2015-Silk dated 14th December, 2015 on the above subject. The Ministry's observation has been noted and the lapse on the part of CSB is admitted. However, as indicated in our letter of even number dated 7th October, 2015, after receipt of Ministry's letter No,25012/54/99-silk dated 11th August, 2008, the issue was discussed with Shri Manish Kumar Gupta, then Director (Silk), Ministry of textiles when he came to Bangalore on 26th August 2008 and as per his suggestion, a reply clarifying the position was furnished to the Ministry vide letter dated 29th August 2008 and CSB was awaiting further instructions from the Ministry on this issue.

Further, Ministry while rejecting CSB's proposal for extension of FCS at higher levels vide letter dated 13th July 2009 had indicated that it has been decided that the disposal of CSB to extend the FCS for CSB Scientists at the level of Scientist-E to Scientist-F and Scientist-F to Scientist-G cannot be acceded to. This also gave an impression that FCS sanctioned was at the levels from Scientist-B to Scientist-C Scientist-C to Scientist-D and Scientist-D to Scientist-E.

Since CSB was awaiting further instructions from the Ministry based on the clarifications furnished to the Ministry on 29th August, 2008, the then Member-Secretary had orally instructed that the practice of effecting in situ promotion from Scientist-D to E may be continued till we get clear orders from the Ministry and it is for this reasons that the two Officers were promoted in 2009 to 2010. This was approved by the then Member-Secretary both at the Screening stage as also after the Assessment interview. Further, status reports for having effecting these two promotions were promptly submitted to the Ministry. It is therefore clear that the officials who handled the

subject acted in good faith as per the instructions and with the approval of the then Member-Secretary only and it was not deliberate.

In view of the position indicated above, as the Officials have discharged their duties in good faith, it is requested that the matter may kindly be re-examined and treated as closed.

Yours faithfully

Sd/-

(Dr. H.Nagesh Prabhu)

Member-Secretary “

3. *The matter in issue seems to be that now the Ministry has devised a view that only the Scientists up to the level of D in the Central Silk Board (CSB), going by the size of that organization can be held to be eligible for Flexible Complementing Scheme of promotion which are available to all other Scientists in all other organizations. They say that this new view taken by the Ministry had therefore restricted the promotion of those Scientists from D to E and above on the Flexible Complementing Scheme. It was apparently after discussion, as found from the records of the Ministry's letter No. 25012/54/99-Silk dated 11.8.2008 that the issue was discussed with the Director (Silk), M/o Textiles and as per a suggestion clarified the position furnished to the Ministry and vide letter dated 29.8.2008 and apparently the Central Silk Board was awaiting further instructions from the Ministry on this issue. The Ministry now would say that for all these years Ministry had not given a clarification. But then, the then Member Secretary had orally instructed that the practice of effecting in-situ promotion for Scientists from D to E may be continued. This*

word 'continued' indicates that this practice was in vogue in the Central Silk Board till then. Therefore, if any current practice has to be stopped then it is to be by way of a compelling significant move. It cannot be by silence. In the interregnum between this and February 2016 apparently some persons were promoted. In the promotion DPCs representatives of Ministry had also attended and they were thereafter promoted.

4. Now the case of the Ministry seems to be that they will not recover any amounts from these persons. But they want to declare these promotions as ill begotten promotions and cancel them with a recurring effect on the applicants' in the fag end of their life. Some of them are 68-72 years of age. Therefore, it is submitted that the crucial effect of the White Washers judgement and the soul of the judgement will visit these persons' careers at the fag end of these persons. It may not be justified that their regularly obtained promotion at least at that point of time is under the vision even the Ministry at that point of time may not be now set aside. The matter seems to be covered by an order of the Hon'ble Apex Court in *Kusheswar Nath Pandey vs. State of Bihar & others* reported in (2013) 12 SCC 580 which we quote:-

“REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6658 OF 2013

(Arising out of SLP(C)No. 4037/2013)

KUSHESWAR NATH PANDEY .. APPELLANT(S)

vs.

STATE OF BIHAR & ORS. .. RESPONDENT(S)

J U D G M E N T

H.L.GOKHALE, J.

Heard Mr. Nagender Rai, learned senior counsel appearing for the appellant, Mr. Arijit Prasad, learned counsel for the State of Bihar and Mr. Mohan Jain, learned Additional Solicitor General for the respondent no.5. Leave granted.

2. This appeal seeks to challenge the judgment and order rendered by the Division Bench of the Patna High Court in L.P.A. No. 266 of 2011 dated 19.9.2012 whereby the Division Bench reversed the judgment of the Learned Single Judge of that High Court in case No. 4369 of 2010.

3. The facts leading to this case are as under:

The appellant herein joined the service under the State of Bihar on 5th May, 1979 and on 29th August, 1981, he was promoted as a Correspondence Clerk. An order was subsequently issued by the Finance Department on 13.11.1998 granting him promotion with effect from 1st September, 1991 which was a time bound promotion. Subsequently it was found that this promotion was irregular for not passing a promotional examination prior thereto and therefore the orders were issued on 16.9.2009 and 5.10.2009 for canceling this time bound promotion.

4. Being aggrieved by that order, the appellant filed the above referred writ petition No. 4369/2010. Learned Single Judge of the High Court who heard the matter allowed that writ petition. He held that the time bound promotion granted to the appellant eleven years earlier was not because of any fault or fraudulent act on the part of the appellant, and therefore could not be cancelled. The Learned Single Judge allowed that writ petition and set aside the order of cancelling his promotion. It is also relevant to note that the appellant had passed

the required examination in the meantime in 2007 and had retired on 31st May, 2009.

5. Being aggrieved by that order, respondents herein, filed an appeal which has been allowed by the Division Bench. The Division Bench found that the promotion was not approved by the competent authority and passing of the Accounts examination was condition precedent and therefore the decision of the Government to cancel his promotion was a proper one. Being aggrieved by this judgment, the present special leave petition has been filed.

6. Mr. Rai, learned senior counsel for the appellant points out that there was no fraud or misrepresentation on the part of the appellant. The appellant was given a time bound promotion by the concerned Department. If at all the examination was required to be passed, he had passed it subsequently in 2007 much before the cancellation orders were issued in 2009. Mr. Rai relied upon two judgments of this Court in case of Bihar State Electricity Board and Another vs. Bijay Bhadur and Another reported in (2000) 10 SCC 99 and Purushottam Lal Das and Others vs. State of Bihar and Others reported in (2006) 11 SCC 492 wherein it has been held that recovery can be permitted only in such cases where the employee concerned is guilty of producing forged certificate for the appointment or got the benefit due to misrepresentation.

7. The learned counsel for the State of Bihar submitted that under the relevant rules passing of this examination was necessary. He referred us to the counter affidavit of the respondent No.1 wherein a plea has been taken that under the particular Government Circular dated 26.12.1985 the amounts in excess are permitted to be recovered. He relied upon clause (j) of the Government Circular dated 1st April, 1980 to the same effect.

8. Mr. Jain, learned Additional Solicitor General appearing for the Accountant General drew our attention to another judgment of this Court in *Chandi Prasad Uniyal and Others vs. State of Uttrakhand and Others* reported in (2012) 8 SCC 417 and particularly paragraph 14 thereof which states that there could be situations where both the payer and the payee could be at fault and where mistake is mutual then in that case such amounts could be recovered.

9. In our view, the facts of the present case are clearly covered under the two judgments referred to and relied upon by Mr. Rai. The appellant was not at all in any way at fault. It was a time bound promotion which was given to him and some eleven years thereafter, the Authorities of the Bihar Government woke up and according to them the time bound promotion was wrongly given and then the relevant rules are being relied upon and that too after the appellant had passed the required examination.

10. In our view, this approach was totally unjustified. Learned Single Judge was right in the order that he has passed. There was no reason for the Division Bench to interfere. The appeal is therefore allowed. The judgment of the Division Bench is set aside. The writ petition filed by the appellant will stand decreed as granted by the Learned Single Judge. The parties will bear their own costs.

.....J.

(H.L. GOKHALE)

.....J.

(J. CHELAMESWAR)

NEW DELHI;

AUGUST 5, 2013.

5. Thereafter, the applicant relies on one more judgement *Sushil Kumar Singhal vs. Pramukh Sachiv Irrigation Department &*

others dated 17.4.2014 which we quote:-

“NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5262 OF 2008

SUSHIL KUMAR SINGHAL ...APPELLANT

VERSUS

PRAMUKH SACHIV IRRIGATION

DEPARTMENT & OTHERSRESPONDENTS

J U D G M E N T

ANIL R. DAVE, J.

1. Being aggrieved by the judgment delivered in Writ Petition No.95 of 2005 by the High Court of Uttarakhand at Nainital on 14th November, 2006, this appeal has been filed by the appellant-employee, from whom excess amount of salary, which had been paid by mistake is sought to be recovered and whose pension is also sought to be reduced.

2. The appellant retired on 31st December, 2003 as an Assistant Engineer and on the basis of his last salary drawn, his pension had been fixed. At the time of his retirement, his salary was Rs.11,625/- and on the basis of the said salary, his pension had been fixed.

3. After a few years of his retirement, it was found by the respondent-employer that salary of the appellant had been wrongly fixed in 1986 and therefore, his salary had been re-fixed by an order dated 23.03.2005. On the basis of the re-fixed salary a sum of Rs.99,522/- was sought to be recovered and for that purpose a notice had been issued to the appellant on 23.04.2005. In pursuance of the incorrect fixation of his salary in 1986, his salary at the time of his retirement had also been reduced from Rs.11625/- to Rs.10,975/- and therefore,

his pension had also been reduced.

4. The aforestated action of the respondent-employer had been challenged by the appellant by filing the aforestated Writ Petition before the High Court. The High Court was pleased to reject the petition as it had come to the conclusion that the pay of the appellant had been wrongly fixed and therefore, the impugned action of the respondent-employer with regard to recovery of the excess salary paid and reduction in the pension was justified.

5. It had been submitted by the learned counsel appearing for the appellant employee that the impugned judgment delivered by the High Court is incorrect for the reason that the High Court did not consider the G.O. Dated 16.1.2007 bearing No.S-3-35/10-07-101(6)/2005 which reads as under:

“[1]. Pension Fixation Authority shall inquire into emoluments of only last 10 months prior to retirement and for that examine the records of only two years prior thereto i.e. only the records of 34 months would be examined for the purpose of grant of pension, as has been provided in the aforesaid Government order dated 13.12.1977.

[2]. Pension Allowing Authority shall not be entitled to correct the mistake in determining the pay during service tenure beyond the period prescribed in para (1) above. Mistakes in pay determination of an employee can be effectively removed through the process of general inquiry/audit

only when the employee is still in service.”

6. *It had been submitted by the learned counsel that the appellant had retired on 31st December, 2003 and somewhere in the month of March, 2005 it was revealed that a mistake had been committed while fixing pay of the appellant in 1986. It had been further submitted that by virtue of the aforestated G.O. dated 16th January, 2007, the mistake committed in pay fixation beyond period of 34 months prior to retirement of the appellant could not have been taken into account by the respondent employer and therefore, neither any recovery could have been sought by the respondents nor there could have been any reduction in the pension on the basis of reduction of salary.*

7. *Upon perusal of the aforestated G.O. and the submission made by the learned counsel appearing for the appellant, it is not in dispute that the appellant had retired on 31st December, 2003 and at the time of his retirement his salary was Rs.11,625/- and on the basis of the said salary his pension had been fixed as Rs.9000/-. Admittedly, if any mistake had been committed in pay fixation, the mistake had been committed in 1986, i.e. much prior to the retirement of the appellant and therefore, by virtue of the aforestated G.O. dated 16th January, 2007, neither any salary paid by mistake to the appellant could have been recovered nor pension of the appellant could have been reduced.*

8. *The learned counsel appearing for the respondent employer could not deny any of the facts stated herein above.*

9. *In the aforestated circumstances, the High Court was not correct while permitting the respondent authorities to reduce the pension payable to the appellant by not setting aside the order whereby excess amount of salary paid to the appellant was sought to be recovered.*

10. *For the aforestated reasons, we quash the impugned judgment delivered by the High Court and direct the respondents not to recover*

any amount of salary which had been paid to the appellant in pursuance of some mistake committed in pay fixation in 1986. The amount of pension shall also not be reduced and the appellant shall be paid pension as fixed earlier at the time of his retirement. It is pertinent to note that the Government had framed such a policy under its G.O. dated 16th January, 2007 and therefore, the respondent authorities could not have taken a different view in the matter of re-fixing pension of the appellant.

11. The submission made on behalf of the learned counsel appearing for the respondent that the appellant would be getting more amount than what he was entitled to cannot be accepted in view of the policy laid down by the Government in G.O. dated 16th January, 2007. If the Government feels that mistakes are committed very often, it would be open to the Government to change its policy but as far as the G.O. dated 16th January, 2007 is in force, the respondent-employer could not have passed any order for recovery of the excess salary paid to the appellant or for reducing pension of the appellant.

12. For the reasons recorded herein above, we quash and set aside the impugned judgment as well as the order dated 23.03.2005 whereby salary of the appellant was re-fixed and order dated 23.04.2005 whereby recovery of excess amount of Rs.99,522/- was ordered to be recovered from the appellant. The appellant shall be paid pension which had been determined at the time of his retirement, i.e. immediately after 31st December, 2003. The appeal is disposed of as allowed with no order as to costs.

.....J.

(ANIL R. DAVE)

.....J.

(VIKRAMAJIT SEN)

New Delhi

April 17, 2014.”

6. In this case also the Hon'ble Apex Court had cancelled the re-fixation on the ground that “[1]. **Pension Fixation Authority shall inquire into emoluments of only last 10 months prior to retirement and for that examine the records of only two years prior thereto i.e. only the records of 34 months would be examined for the purpose of grant of pension, as has been provided in the aforesaid Government order dated 13.12.1977. [2]. Pension Allowing Authority shall not be entitled to correct the mistake in determining the pay during service tenure beyond the period prescribed in para (1) above. Mistakes in pay determination of an employee can be effectively removed through the process of general inquiry/audit only when the employee is still in service.**”

7. We quote from Annexure-R-9.

“F.No.25012/54/1999-Silk

Government of India
Ministry of Textiles

Udyog Bhavan, New Delhi
January 24, 2007

TO

Dr.H.Basker,
The Member Secretary,
Central Silk Board,
Bangalore

Sir,

Please refer to this office letter of even number dated 30th August, 2006 through which this Ministry had conveyed the approval of the Government of India for extension of Flexible Complementing Scheme (FCS) to the Scientists of the Central Silk Board at the level on Scientist-B (Rs. 8000-13500). Scientist-C (10000 – 15200) and Scientist-D (12000-16500).

2. *It was also mentioned that the Scheme would be effective from the date of issue of the above mentioned letter and is subject to the Recruitment Rules being amended in accordance with the residency period and other conditions quoted in the DOP & T's guidelines dated 09.11.1998 read with O.M. Dated 21.11.2005 and the Scheme would be implemented strictly in conformity with the guidelines/conditions of the schemes conveyed by the DOP&T vide their communication No.2/41/97/PIC dated 09.11.98 read with DOP&T's O.M. No. AB-14017/31/2004-Estt. (RR) dated 21.11.2005. However, after a gap of 3 months, CSB had sent amendments of the Central Silk Board (Consolidated) Recruitment Rules 1989 for notification by the Ministry through their letter dated 20.12.06.*

3. *You are, therefore, again directed to implement the FCS as per the conditions laid by this Ministry's letter dated 30.8.2006 by 15.2.2007 and intimate this Ministry of the action taken.*

4. *It is further clarified that since CSB is implementing FCS for its Scientific cadre for the first time the rules for promotion of Scientist-B, C & D as approved by DOP&T under FCS need to be added in the existing CSB Recruitment Rules, 1989 and there is no need for*

amending the existing rules for officers other than the Scientific cadre.

Yours faithfully

Sd/-

(B.V.Uma Devi)

Director”

This indicates that at the time when an approval was given by Annexure-R-9 in January 24, 2007 the promotion for Scientists from D to E was also within the competence of the concerned officials. Therefore, there is no meaning in the contention now raised by the respondents.

8. *Across the Bar Shri S.Sugumaran, learned counsel produces a letter No. 25012/54/1999-Silk dated 30.8.2006 which we quote:-*

“F.No.25012/54/1999-Silk

Government of India

Ministry of Textiles

Udyog Bhavan, New Delhi

Date: 30th August, 2006

TO

The Member Secretary,

Central Silk Board,

Bangalore

(Karnataka).

Subject: Introduction of Flexible Complementing Scheme in

Central Silk Board- reg.

Sir,

I am directed to convey the approval of the Government of India for extension of Flexible Complementing Scheme (FCS) to the Scientists of the Central Silk Board at the level on Scientist-B (Rs. 8000-13500). Scientist-C (10000 – 15200) and Scientist-D (12000-16500).

2. The Scheme would be effective from the date of issue of this letter and is subject to the recruitment rules being amended in accordance with the residency period and other conditions quoted in the DOP & T's guidelines dated 09.11.1998 read with O.M. Dated 21.11.2005.

3. The Scheme would be implemented strictly in conformity with the guidelines/conditions of the scheme conveyed by the DOP&t vide their communication No.2/41/97/PIC dated 09.11.98 read with DOP&T's O.M. No. AB-14017/31/2004-Estt. (RR) dated 21.11.2005.

4. The expenditure involved in the implementation of the scheme will be met by the Central Silk Board out of their approved budget and no additional funds will be provided for the purpose.

5. This issues with the approval of the DOP&T and Department of Expenditure as conveyed vide their ID Note No. MP-14017/7/2004-Estt (RR) dated 26.04.2006 and No.7(36)/E-III dated 31.07.2006 respectively. This also has the approval of the Ministry's IFW as communicated vide Dy.No.18240, dated 25.08.2006.

Yours faithfully

Sd/-

(B.V.Uma Devi)

Director”

This was issued with the approval of the DoPT at the level of Scientists B against it says that it conveys the approval of the Government of India for extension of Flexible Complementary Scheme promotion to Scientists in Central Silk Board at the level of Scientist B, Scientist C, Scientist D . This can only mean one thing a Scientist B can aspire to be Scientist C and Scientist C can aspire to be Scientist D and Scientist D can aspire to Scientist E, for which approval has already been granted. Therefore, there is no meaning in the present contention of the Ministry.

9. *At this point of time Shri S.Sugumaran, learned counsel submits that Annexure-R-11 may also be looked into where in line 5, the residency period for promotion from Scientist D to Scientist E was not given. As such the matter was examined in consultation with the Integrated Finance Wing of the Ministry and the Ministry vide their letter dated 30.8.2006 had approved the proposal for granting Flexible Complementing Scheme to CSB Scientists at the level of Scientist B to Scientist D i.e., granting the benefit of in-situ promotion till Scientist D level. Accordingly the benefit of in-situ promotion under FCS would have to be confined to following scales. But then, there may be contradictory and conflicting views inside the Ministry. But the issue raised is that if it has been a continuing process no amount of letters from the Ministry can improve the position of the rule. If the Flexible Complementing Scheme had been adopted for Scientists all over India then it has to be adopted in full, not piece meal by piece meal operation of the rule going by the size of the organization and this will*

defeat the purpose and purport of Article 14 & 16. Therefore, annexure-R-11 has only a limited application, as it is dated 11.8.2008 whereas the other letter which is quoted above is 30.8.2006. This sudden change of the Ministry is submerged in the Pension Rules as stated by the Hon'ble Apex Court in the case mentioned above. Therefore the attempt of the Ministry is illegal and unsustainable. There is no relevancy, no juncture and no legality in the contention raised by the Ministry and it is quite arbitrary and all impugned orders are hereby quashed. OA is allowed. No order as to costs."

and OA.No.766/2018 dated 31.7.2019 which we quote:-

"The factual matrix of the case are as follows:

The applicant is a Scientist-C working in the Institute of Wood Science and Technology(IWST), Bangalore since April 2004. IWST is one of the constituent research institutes of the Indian Council of Forestry Research and Education(ICFRE), Dehra Dun. The 1st respondent vide job advertisement(Annexure-A1) had invited applications from qualified candidates for filling up of 8 vacant Scientists-B(Computer Application) in different institutes of the ICFRE in the year 2003 prescribing the educational qualifications of MCA/M.Sc in Physics/Maths/Statistics with PG Diploma in Computer from Institute/University recognised by GOI/B.E/B.Tech(Computer Science) with first class or minimum 60% aggregate. The applicant had applied for Scientist-B as he has the First Class M.Sc.(Mathematics) vide Annexure-A3 and first class in M.Tech(Computer Application)(Annexure-A4). After due verification of the educational qualifications of the applicant, the 1st respondent had selected the applicant for Scientist-B and appointed him at the IWST, Bangalore vide order dtd.3.4.2004(Annexure-A5). The applicant was given in-situ promotion to Scientist-C under Flexible Complementary

Scheme(FCS) in the year 2009. The 3rd respondent vide order dtd.10.9.2010(Annexure-A6) had modified the existing FCS promotion for all the scientists working in different ministries and research institutes of GOI stating that the Scientists who have Master degree in Natural Science/Agricultural Sciences or Bachelor's degree in Engineering Technology/Medicines are only eligible for promotion to higher categories under the MFCS and directed all the Ministries/Departments to implement the OM of Assessments of Scientists from 1.1.2011 onwards. The 3rd respondent had further clarified to the FAQ vide order dtd.23.9.2011(Annexure-A7) that the educational qualifications viz., MCA, M.Sc(Information Technology), M.Sc(Statistics), M.Sc (Mathematics), MA(Operational Research) and M.Sc(Total Quality Management) are not covered under the MFCS for higher promotions of the Scientists. The 1st respondent had brought out new RRs in 2011 vide order dtd.24.8.2011(Annexure-A8) prescribing educational qualifications. In the meantime, the M/o Electronics and Information Technology had moved R3 to include M.Sc(Electronics) and M.Sc(Applied Electronics) degrees for the promotions of its scientists under the MFCS and the 3rd respondent had included such degrees for promotion of scientists vide order dtd.5.9.2013(Annexure-A9).

2. The applicant submits that he was due for promotion from Scientist-C to Scientist-D in the year 2013 but the 1st respondent had not included his name in the list of eligible scientists for promotion in spite of the applicant having the required educational qualifications and the satisfactory service. When the 1st respondent had not given opportunity of being heard, the applicant filed representation in the year 2014 to which the 1st respondent had replied vide order dtd.22.9.2014(Annexure-A10) informing that necessary clarification

with regard to the eligibility for promotion in respect of scientists possessing the qualification of M.Tech(Computer Science) was sought from the Secretary, ICFRE and on receipt of clarification further action would be taken. Later 1st respondent vide order dtd.4.11.2015(Annexure-A11) had informed that the educational qualification of the applicant viz., M.Tech(Computer Application) does not come under extant rules/guidelines laid down by the 3rd respondent and hence the request of the applicant could not be considered at that stage. Some autonomous research bodies viz., the Indian Plywood Industries Research and Training Institute (IPIRTI), Bangalore and the G.B.Pant National Institute of Himalayan Environment & Sustainable Development (GBPNIHESD) Almora working under the 2nd respondent had similar problems for their scientists and represented the grievances of their scientists to the 2nd respondent who had accorded his sanction to include the degrees excluded by the 3rd respondent. Similarly the Board of Governors of the ICFRE in its meeting held on 5.2.2016 had passed a resolution dtd.5.2.2016(Annexure-A12) to include the excluded degrees for promotion of its scientists to higher grades under the MFCS but the 2nd respondent as ex-officio Chairman of the Board of Governors of the ICFRE has not yet approved the said resolution. Consequently, the 1st respondent is unable to promote the scientists with the excluded educational degrees. Then the applicant had sent a representation dtd.21.8.2017(Annexure-A13) along with another representation dtd.27.12.2017 (Annexure-A14) to consider his case for promotion.

3.The applicant further submits that the 1st respondent had brought out new RRs in the year 2018 vide order dtd.24.1.2018(Annexure-A15) prescribing the educational qualifications of First class Master's degree

in Natural Science/Agriculture Sciences and a Ph.D degree in the relevant subject/discipline or First Class Master's degree in Engineering or Technology for promotion of scientists. Even though the applicant is eligible for promotion as per RR 2011 and RR 2018, the 1st respondent did not include his name in the eligibility list of scientists dtd.17.4.2018(Annexure-A16) for promotion from Scientist-C to D from the year 2013 onwards and from Scientist-D to Scientist-E in the year 2017 onwards. Being aggrieved by the same, the applicant has filed the present OA with the following relief:

- a. To quash the Annexure-A11 dtd.4.11.2015 and*
- b. To modify the Annexure-A16 dtd.17.4.2018 so as to include the name of the applicant in the list of eligible scientists for promotion from Scientist-C to Scientist-D.*
- c. The Respondent No.1 may be directed to apply his mind in this case and take necessary actions to promote the applicant from Scientist-C to D as on 1.7.2013 and from D to E as on 1.7.2017 with all financial benefits within three months from the date of receipt of the order of the Hon'ble Tribunal.*
- d. The respondent No.2 may be directed to take an appropriate decision on the resolution vide the Annexure-A12 dtd.5.2.2016.*
- e. To invalidate/quash the definition of Scientists and Engineers given by the respondent No.3 in the Annexure-II of the Annexure-A6 dtd.10.9.2010 issued by the respondent No.3.*

4. The applicant submits that he is being denied promotion since 2013 in spite of having the essential qualification for promotion. Promotion is a condition of service of an employee. When the 1st respondent decides to alter the conditions of promotion of the applicant, he has to give an opportunity of being heard to the applicant. Failure to do so is violation of natural justice and the Hon'ble Supreme Court in the case of Grid Corporation of Orissa and Ors vs.

Rasanand Das reported in (2003) 10 SCC 297 held that the conditions of service could not be altered to the disadvantage of the employees. In The Council of Scientific and Industrial Research vs. K.G.S.Bhat (AIR 1989 SC 72), the Hon'ble Apex Court held that every management must provide realistic opportunities for promising employees to move forward. It is further held that it was necessary to provide suitable promotional avenues to the employees in their career. When the Board of Governors of the ICFRE in its 53rd Meeting had passed a resolution to include the excluded degrees for the promotion of scientists, the 2nd respondent had not approved it even though he had approved it for other research institutes. Consequently 1st respondent is unable to promote the applicant and other similarly placed scientists. The inordinate delay of the 2nd respondent is causing anguish and hardship to the applicant. Not treating the equals equally is against the principles of equality as enshrined in the Constitution and violations of it is ultra vires the Constitution. The action of the 3rd respondent in prescribing different educational qualifications than entry level qualification for promotion is bad in service jurisprudence and is ultra vires the constitution. The Hon'ble CAT, Allahabad Bench vide order dtd.5.5.2016(Annexure-A17) in Dr.Harish Kumar of ICFRE vs. UOI held that prescribing different educational qualifications other than the entry level qualification is not correct. The 3rd respondent has no competency to exclude the degrees viz., Master of Science in Mathematics and other pure science subjects, by administrative guidelines to deny the promotional opportunities for those scientists who have such degrees. The definition of scientists given by the 3rd respondent in Annexure-A6 order dtd.10.9.2010 is ultra vires the constitution for the reason that it

is a class quasi-legislation and it discriminates and differentiates the equally placed scientists in many organisations. The applicants has quoted the orders of Hon'ble High Court of Delhi in D.P.Singh vs. UOI & Ors. in WP(C).No.4351/2010 & WP(C) No.4886/2010 and in S.K.Murti vs. UOI & Ors in WP(C).No.14263/2004 in support of his contentions.

5. *The respondents, on the other hand, have submitted in their reply statement that as per DoPT OM dtd.10.9.2010 and further clarification issued by DoPT vide FAQ that M.Sc.(Mathematics) and M.Tech (Computer Application) is not eligible for promotion under Flexible Complementing Scheme(FCS). The FCS is applicable in all the scientific organisations under the Ministry. These organisations are required to amend the provisions of the relevant recruitments so that FCS is brought in conformity with the decisions/guidelines of DoPT on the subject. The autonomous organisations such as the Indian Plywood Industries Research and Training Institute (IPIRTI), Bangalore and the G.B.Pant National Institute of Himalayan Environment & Sustainable Development (GBPNIHESD) Almora under the Ministry of Environment, Forest and Climate Change are required to place the scheme before their respective Governing bodies. Assessment of Scientist from 1st January 2011 is required to be done as per modified FCS. The IPIRTI has confirmed that for promotion under FCS of its Scientist (B to G), IPIRTI follows 'recruitment and promotion rules for the Scientific Group 'A' post of IPIRTI and also that no Scientist in their organisation has been considered for FCS having academic qualifications excluded by DoPT in their OMs. The GBPNIHESD follows DoPT extant instructions/guidelines regarding MFCS but with partial deviation. However, this deviation with regard to implementation of FCS in GBPNIHESD is not as per guidelines issued by the*

DoPT. The Board of Governors(BoG) of Indian Council of Forestry Research and Education(ICFRE) in its 53rd meeting had considered the proposal regarding the scientists for MFCS having qualification of MCA, M.Sc(IT), M.Sc(Statistics), M.Sc(Mathematics), MA(Operational Research) and M.Sc(Total Quality Management) and approved the same for sending it to the Ministry for further necessary action. The proposal was examined by the Ministry in the light of DoPT instructions contained in OM dtd.10.9.2010 and FAQ dtd.23.9.2011 for promotion under MFCS and vide letter dtd.29.3.2017 advised ICFRE to devise the draft Rules. Then ICFRE notified 'Indian Council of Forestry Research and Education Group 'A' (Scientific Posts) Rules 2018' in place of existing ICFRE Group 'A' (Scientific Posts) Rules 2011 and according to which the applicant is not eligible to be considered for in-situ promotion under MFCS as he does not possess the required academic qualification. But he will continue to get at least 3 financial upgradations as per provisions of MACP Scheme prescribed by DoPT. In the offer of appointment of the applicant for the post of Scientist B, in para 2 of sub-para V , it is stated that 'all other terms and conditions of the service will be governed by the relevant rules and order of the Council in force from time to time'. There is no change in the service conditions of the applicant as claimed by the applicant. The in-situ promotion of applicant is governed by the guidelines issued by DoPT on FCS.

6. *The respondents submit that the applicant has mis-quoted the order dtd.5.5.2016 of Hon'ble CAT, Allahabad Bench passed in OA.No.39/2015. In compliance of the said order, the DG, ICFRE issued an order dtd.24.10.2016 stating that as per provisions of DoPT/ FCS, Dr.Harish Kumar, the applicant in that OA cannot be*

granted in-situ promotion under FCS scheme. Being aggrieved, Dr.Harish Kumar filed CP.125/2017 wherein the 1st respondent has filed compliance report dtd.23.8.2018(Annexure-R1) stating that the Dr.Harish Kumar does not fulfil the criteria laid down in MFCS for in-situ promotion from Scientist E to Scientist F and therefore, he cannot be promoted under MFCS. Then the Allahabad Bench of CAT dismissed the CP vide order dtd.24.9.2018(Annexure-R2) stating that no wilful contempt is made out on part of the respondents. The instructions issued by DoPT on FCS needs to be adopted without changing the basic feature of the FCS. However, the educational qualification prescribed for FCS which is based on policy decision cannot be modified or relaxed even for the autonomous organisation. Further, DoPT has stated that the post requiring qualification of MCA cannot be considered as scientific post as per guidelines on FCS. The ICFRE is bound by the instructions and guidelines issued by GOI from time to time. Therefore, the OA is liable to be dismissed.

7. The applicant has filed rejoinder reiterating the submissions already made in the OA and submits that the respondents have overlooked the different educational qualifications covered under the FCS as has been explained in Sl.No.4 of Annexure-A8, one of the qualification is Bachelor's degree in Technology. The applicant has a first class M.Tech in Computer Application which is higher than the Bachelor's degree in technology. He meets the educational qualifications prescribed in both RR 2011 of the Council and the DoPT's instructions and clarifications. Non considering of his case by the 1st respondent is arbitrary and discriminatory. The contention of the respondents that the applicant is not eligible for promotion with regard to the nature of his post is not correct as he has not been considered for promotion not based on the

nature of his post but on his educational qualification i.e. M.Tech in Computer Application. When the respondents say that autonomous organisations are required to follow the FCS as per guidelines of the DoPT, many scientists were denied their promotions and the ministries had sent their representations to the DoPT who relented and authorised them to follow their own recruitment policies to frame the rules to help them in their promotions. Accordingly, the autonomous organisations working under the M/o Environment(G B Pant Institute) and the M/o Electronics and Information had modified their different recruitment and promotion rules for the promotion of their scientists vide order dtd.19.9.2016(Annexure-A20). Respondents say that the G B Pant Institute follows the DoPT guidelines but with partial deviation. But in the year 2013, the Institute had promoted three scientists having the excluded educational qualifications in Mathematics, Computer Science, Computer Application and Library Science vide order dtd. 11.8.2014 (Annexure-A19). It shows that the instructions and guidelines of the DoPT are not rigid and it can be modified by the autonomous organisations to suit their policies of promoting their scientists. The statement of the respondents that the Council has brought in RR 2018 after the approval of the Board of Governors of the Council is not disputed. But it does not include the recommendations of the Board of Governors to include the excluded degrees for the promotion of its scientists. On the contention of the respondents that the applicant will continue to get at least three financial upgradations under MACP, he submits that those scientists who have no good performance and if they fail to get promotion continuously three times will automatically get into MACP for financial upgradation. The financial upgradations under MACP is not attractive as in the FCS and hence, he is declining

to be considered under the MACP and asserts that he is eligible for promotion under the MFCS. The respondents' contention that there is no change in the service conditions of the applicant is incorrect as there is a categorical change in the educational qualifications for the promotion of different categories of the scientists of the Council as is evident in the RRs 2001, 2011 and 2018. Promotion is one of the conditions of service. Any change in the eligibility criterion for promotion is a change in the conditions of service. The Hon'ble Apex Court in the case of Grid Corporation of Orissa (2003)10 SCC 297 held that conditions of service cannot be altered to the disadvantage of the employees. On the contention that the instructions of DoPT on FCS cannot be modified or relaxed even for the autonomous organisations, the applicant submits that there are different autonomous organisations and ministries which had already modified the basic feature of the FCS with the concurrence of the DoPT.

8. *The applicant further contends that the submission of the respondents that he has misquoted the order of the CAT, Allahabad Bench in OA.39/2015 is incorrect as the applicant in that case Dr.Harish Kumar has moved to the Hon'ble High Court of Uttarakhand against the rejection of his contempt application. The case has not attained the finality and so the order passed in OA.39/2015 holds good until it is stayed by the appellate courts. On the contention that DoPT has stated that the post requiring qualification of MCA cannot be considered as scientific post as per the guidelines on FCS, the applicant submits that he has first class M.Tech degree in Computer Application and not MCA which is different from M.Tech degree. Equating MCA with M.Tech is erroneous in nature. Therefore, he shall be considered for promotion under the FCS.*

9. *The respondents have filed additional reply statement to the*

rejoinder and submit that the promotions of scientists in ICFRE are regulated by the criteria laid down by DoPT under FCS. As per the guidelines issued by DoPT vide OM dtd.10.9.2010 only such scientists would be eligible for promotion under the FCS who not only possess the requisite qualifications and are engaged in scientific and innovative activities as distinct from the mere application of technical knowledge. As the applicant does not possess first class Master's degree in Natural Science/Agriculture Sciences or first class Bachelor's degree in Engineering or Technology, he does not fulfil the criteria for eligibility laid down for consideration of in situ promotion from the Scientist C to Scientist D under MFCS. As per the clarification issued by DoPT vide FAQ that M.Sc(Mathematics) and M.Tech(Computer Application) which the applicant possessed is not eligible for promotion under FCS. The G B Pant National Institute of Himalayan Environment & Sustainable Development(GBPNIHESD) follows DoPT extant instructions/guidelines regarding MFCS but with partial deviation. However, this deviation with regard to implementation of FCS in GBPNIHESD is not as per guidelines issued by DoPT. Pendency of Writ Petition by Dr.Harish Kumar in the High Court of Uttarakhand is wrong and denied as they have not yet received any notice in that case.

10. *We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The applicant has filed written arguments note. The applicant in this case has the basic qualification of M.Sc.(Mathematics) based on which he got the appointment as Scientist-B vide Annexure-A5. He has also been subsequently promoted as Scientist-C in the year 2009. The recruitment rules for Group-A Scientific post in the respondents' institution ICFRE state very clearly that for the post of Scientist-C and*

above, Master's Degree in Engineering Technology including Computer Science/ equivalent is necessary for the post of Scientist-C. Apart from M.Sc. (Maths), the applicant has the Master of Technology in Computer Application which he passed in first class vide Annexure-A4. The issue at stake is created by the DoPT OM dtd.10.9.2010 at Annexure-A6 where the entire process is modified in the existing Flexible Complementing Scheme of Scientists based on the recommendations of 6th CPC. It is crucial to note that in the said OM, the DoPT had directed all the Ministries, departments to initiate action for review of the provisions of the existing FCS and amend the provisions of the relevant recruitment rules so that the scheme is brought in conformity with the decision/ guidelines being conveyed vide this OM. It also mandates that the assessment of the Scientists from 01.01.2011 shall be done accordingly. The Modified Scheme also considers the ACR/ APAR along annual work report to be submitted by the Scientists with the two levels of screening one internal and another external. What can be considered as scientific activity is also elaborated in Annexure-I of the said scheme. Vide Annexure-II, the scientific post is the one, the incumbent of which is a Scientist or Engineer and is engaged in creating new scientific knowledge or innovative engineering, technological or medical techniques or which is involved predominantly in professional research work and development. The guidelines reiterated that only such scientists would be eligible for promotion who not only possess the requisite qualifications and are engaged in scientific and innovative activities as distinct from the mere application of technical knowledge and further the functions discharged by them are relatable/ identifiable to their academic specialization. Subsequent to this, vide Annexure- A7, the respondents organisation has

incorporated the Modified FCS by amending the ICFRE GroupA(Scientific Posts) Rules 2001 in which the same essential qualifications for Scientist-C and above is mentioned vide Annexure-I. The problem has apparently has been created by Annexure-A8 wherein in the garb of Frequently Asked Questions(FAQs), a specific answer is given under Sl.No.4 relating to the qualifications to be covered under FCS where it is mentioned as Master's degree in Natural/Agricultural Sciences or Bachelor's Degree in Engineering/Technology/Medicine. In Sl.No.5, which created the problem for the applicant, the DoPT has clarified that the qualifications like MCA, M.Sc. (Statistics), M.Sc.(Mathematics) etc. are not covered under the FCS. The respondents have tightly held to this interpretation and have come to the conclusion that the applicant is not eligible for consideration under the Modified FCS. The applicant has pointed out that the DoPT itself vide Annexure-A9 has included the degrees of M.Sc.(Electronics) and M.Sc.(Applied Electronics) as subjects under Engineering equivalent to Bachelor's Degree in Engineering. In addition, he has also pointed out vide Annexure-A19 that G.B.Pant Institute of Himalayan Environment & Development, an institution under the same Ministry of Environment and Forests has covered all scientists including the scientists having qualification in Mathematics, Computer Science, Computer Application and Library Science to be considered for promotion to the next higher grades under the Modified FCS. He has given the instances of three scientists who have been promoted to the levels of Scientists-D & E with the qualifications of M.Sc. (Mathematics), MCA etc. The applicant has submitted Annexure-A12 wherein the respondents' institution had in fact recommended to the Ministry for considering the various other

qualifications also for the purpose of MFCS. The applicant has urged that promotions under any scheme is part of the service conditions for the employees and he having been selected with the requisite qualifications as Scientist-B and having been promoted as Scientist-C also in the year 2009, he is entitled for further promotions as Scientist-D in the year 2013 and Scientist-E in the year 2017. As the rules for the scientists in this organisation that existed in the year 2001 and 2011 have given the qualifications which he has, the respondents cannot deny him the benefit of promotion. As per the rules vide Annexure-A7, a first class or equivalent Master's degree in Engineering Technology including the Computer Science or equivalent is enough to consider for promotion under MFCS. The applicant has an M.Tech. in Computer Application and by no stretch of imagination can this be considered as not being an equivalent qualification prescribed as per the rules. The respondents cannot hide themselves behind the thin protection supposedly given by the FAQs at Annexure-A8 when the rules are very clear relating to the qualifications required for further promotions. As rightly contended by the applicant, the conditions of service cannot be altered to the disadvantage of the employees as ordered by the Hon'ble Apex Court in the case of Grid Corporation of Orissa and Ors vs. Rasanand Das reported in (2003) 10 SCC 297 in Civil Appeal No.5525/2000 & others decided on 26.9.2003. The applicant has also brought in a number of cases to buttress his point that treating any guidelines as sacrosanct as law by the respondents is not a correct legal approach. We have to accept the contention of the applicant that the rules amended as per Annexure-A7 dtd.24.8.2011 issued by the 1st respondent is the appropriate legal point to be considered by us. The applicant has also

had lengthily described the superiority of the qualification he has vis-a-vis M.Tech(Computer Science) and as rightly noted by him that M.Tech Computer Application and B.Tech etc. are offered by the Engineering or Technology Institutes whereas the MCAs are offered by the science and other degree colleges. Further, vide Annexure-A14, he has also given the details of the research accomplishments done by him qualifying him for further promotion.

11. We also agree with the applicant that whatever policy which the department would like to introduce with respect to the new rules brought in the year 2018 will be applicable only prospectively and not otherwise. It is clear that the applicant should be considered for the benefit he has applied for and therefore, we quash Annexure-A11 and allow the applicant to be considered for assessment of Scientist for in-situ up-gradation under the Modified FCS for Scientist-C to D as well as from Scientist-D to E with respect to the years 2013 and 2017 based on the rules which are applicable to the applicant. The respondents are directed to issue necessary orders within a period of three(3) months from the date of issue of this order. 12. The OA is allowed with the above orders. No costs.”

2. Shri Vishnu Bhat points out one distinction to the matter. Even though the principle of equity may come in, he says that the principle of equality may not come in because the applicant is in a different genre. Apparently applicant is in the field of Social Sciences. She has produced before us the research of studies made by her on the Socio Economic front in the field of Seri Culture which had been funded by CSIR themselves. Apparently, it appears to us that it is an

inseparable component of fixing the modalities of Seri Culture in its ambit and parameters. It seems to be the word “**Science**” is understood in a very limited sense. The word “**Science**” means only that a deeper study which is exactly what the applicant was doing. It is integral part of the functioning of the concerned government authorities and they have apparently benefited from that study also. Therefore, applicant is a Scientist held to be so. OA is, therefore, allowed to the same extent as stated above.

3. Apparently, she was promoted as Scientist 'C' . But when the pending of the OA one more order seem to have been passed which we had directed her to be posted back in the earlier position . We now hold that applicant is eligible to be treated as Scientist and eligible for FCS and other consequences, as the case may be. 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.1387/2018

Annexure A1: Copy of the appointment letter dated 10.9.1991

Annexure A2: Copy of letter dated 9.11.1998

Annexure A3: Copy of letter dated May 2000

Annexure A4: Copy of letter dated 30.7.2001

Annexure A5: Copy of letter dated 30.8.2006

Annexure A6: Copy of letter dated 24.1.2007

Annexure A7: Copy of memorandum dated 15.5.2007

Annexure A8: Copy of order dated 13.1.2009

Annexure A9: Copy of High Court of Jharkhand order in WP.No.2503/2009 dated 27.3.2012

Annexure A10: Copy of the Hon'ble Supreme Court order dated 10.4.2013 SLP.No.11219/2012

Annexure A11: Copy of applicant's representation dated 22.4.2014

Annexure A12: Copy of letter dated 26.5.2014

Annexure A13: Copy of letter dated 5.7.2014

Annexure A14: Copy of letter dated 8.7.2014

Annexure A15: Copy of letter dated 19.10.2015

Annexure A16: Copy of representation dated 16.12.2016

Annexure A17: Copy of letter dated 10/11.3.2017

Annexure referred to by the Respondents in the reply

Annexure-R1: DoPT OM dtd.9.11.1998

Annexure-R2: DoPT OM dtd.10.9.2010

Annexure-R3: Min. of Textiles letter dtd.3.9.2001

Annexure-R4: CSB letter dtd.24.10.2001

Annexure-R5: CSB letter dtd.11.4.2005

Annexure-R6: Min. of Textiles letter dtd.16.6.1999

Annexure-R7: CSB intimation dtd.17.12.1999

Annexure-R8: CSB intimation dtd.29.10.2001

Annexure-R9: Draft recruitment rules dtd.30.11.2006

Annexure-R10: Order dtd.28.4.2007 Annexure-R11: Copy of the FAQ

Annexure-R12: Min. Of Textiles letter dtd.17.4.2012

Annexure-R13: Copy of the recruitment rules

Annexure-R14: Copy of the order dtd.20.5.2016

Annexure-R15: Copy of the show-cause notice

Annexure-R16: Copy of the final order

Annexure-R17: Copy of the judgment in OA.No.1469/2014
dtd.25.8.2016

Annexure-R18: Copy of the intimation dtd.27.3.2015

Annexure-R19: CSB letter dtd.11.7.2018

Annexure-R20: DoPT OM dtd.2.3.2016

Annexure-R21: Copy of order dtd.26.9.2012

Annexure-R22: DoPT OM dtd.17.7.2002

Annexure-R23: DoPT OM dtd.21.9.2012

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