

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.170/01522-1525/2018

DATED THIS THE 13TH DAY OF JUNE 2019

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

HON'BLE SHRI CV.SANKAR MEMBER (A)

1. Dr. Veeraiah T.M.  
S/o late Panchaksharaiah, T.M.  
Aged: 69years  
R/o No. 02, First Main,  
Basaveshwara Housing Layout5,  
Behind Subbanna Garden,  
Vijayanagar,  
Bangalore 560 040

2.Dr. Mohammed Ashraf Khan,  
S/o Kh. Ali Mohammed Khan,  
Aged 67 years,  
Retired Director,  
In Central Sericultural Research and Training  
Institute, Central Silk Board,  
Pampore (J & K),  
Now R/at 677, 5<sup>th</sup> Cross,  
Ashok Nagar,  
Banashankari I Stage,  
Bangalore 560 050.

3.Shri. Prabodh Kumar Das,  
S/o late Budhindra Nath Das,  
Aged 68 years,  
Retired Scientist – E,  
Muga Silkworm Seed Organisation  
Central Silk Board,  
Banplood Nagar Path,  
P.O. Assam Sachiwalaya,  
Guwahati, Now R/at 677,

5<sup>th</sup> Cross, Ashok Nagar,  
Banashankari I Stage,  
Bangalore 560 050.

4.Dr. H.K. Kalappa  
S/o late Kalappa,,H.P.  
Aged: 70 years  
R/o No. 1064, First Stage,  
2<sup>nd</sup> Main, 2<sup>nd</sup> Cross,  
Manasanagara,  
Nagarbhavi,  
Bangalore 560 072.

.... Applicants

(By Shri Ranganath S. Jois..... Advocate)

vs.

1.The Union of India,  
rep by its Secretary,  
Ministry of Textiles,  
Udyog Bhawan,  
New Delhi - 110 001

2. The Central Silk Board,  
PSB Complex, BTM Layout,  
Madiwala,  
Bangalore – 560 006  
rep by its Member Secretary

...Respondents

(By Shri S.Sugumaran...ACGSC for R-1)  
(By Shri Vishnu Bhat.. Senior Panel Counsel for R-2)

### ORDER (ORAL)

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

1. Heard. The matter seems to be covered by OA.No.1442-1445/2018 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: 18<sup>th</sup> 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.*

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*Madam,*

*In continuation of this Ministry's letter of even number dated 13<sup>th</sup>  
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 17<sup>th</sup> 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 É – regarding.*

*\*\*\*\**

*Kindly refer to Ministry's letter No.25012/02/2015-Silk dated 14<sup>th</sup> 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 7<sup>th</sup> October, 2015, after receipt of Ministry's letter No,25012/54/99-silk dated 11<sup>th</sup> August, 2008, the issue was discussed with Shri Manish Kumar Gupta, then Director (Silk), Ministry of textiles when he came to Bangalore on 26<sup>th</sup> August 2008 and as per his suggestion, a reply clarifying the position was furnished to the Ministry vide letter dated 29<sup>th</sup> 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 13<sup>th</sup> 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 29<sup>th</sup> 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 & OTHERS ....RESPONDENTS  
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 31<sup>st</sup> 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 30<sup>th</sup> 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: 30<sup>th</sup> 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."*

2. To this learned counsel for the respondents points out that there may be one distinction. He points out to letter No.CSB-3(1)/79-ES-II Vol VI dated 16.9.1999 which we quote:-

“ CENTRAL SILK BOARD  
(Ministry of Textiles – Govt. of India),  
CSB Complex, BTM Layout,  
Madiwala,  
Bangalore – 560 068

No.CSB-3(1)/79-ES .II VOL.VI 16.09.1999

Mrs.Rukmani Haldea,  
Joint Secretary (Silk),  
Ministry of Textiles,  
Government of India,  
'Udyog Bhavan',  
Maulana Azad Road,  
NEW DELHI-110 011.

Madam,  
Sub: Extension of Flexible Complementing Scheme for  
Scientists of Central Silk Board-regarding.

Kindly refer to Ministry's letter No.25012/73/87-Silk dated 16<sup>th</sup> June, 1999 conveying approval for revision of pay scales of CSB Scientists. Order have already been issued placing the eligible scientists in the revised pay scales. The pay scale revision was confined only to 3 cadres viz. SRA, Joint Director and Director. There was no revision in respect of pay scales of SRO and Deputy Director.

The revised pay scales made applicable to CSB scientists from 1-1-96 are as under:-

| Cadre                      | Pay Scale      | Cadre Strength as on 31-8-99 | Remarks     |
|----------------------------|----------------|------------------------------|-------------|
| 1.SeniorResearch Assistant | Rs.6500-10500  | 220                          | Dying Cadre |
| 2.Senior Research Officer  | Rs.8000-13500  | 501                          |             |
| 3.Deputy Director          | Rs.10000-15200 | 106                          |             |
| 4. Joint Director          | Rs.12000-16500 | 39                           |             |

|                |                |   |
|----------------|----------------|---|
| 5. Director    | Rs.14300-18300 | 9 |
| 6. Sr.Director | Rs.16400-20000 | 1 |

*The cadre of SRA is being treated as a dying cadre and the existing SRAs as and when they complete 10 years service in the grade will be elevated to the rank of SRO and in future SRO will be the entry cadre.*

*As per the existing promotional policy, SROs have promotional channel to the post of Deputy Director and from Deputy Director to Joint Director and to the post of Direct (75% by departmental promotion and 25% by direct recruitment at all levels, except at Director level which is 50%). However, it has not been possible to ensure a time bound promotion for the scientists since the promotions in CSB are based on occurrence of vacancies. The CSB does not have a time bound promotional policy based on merit assessment at present and this has resulted in large scale stagnation at different levels which has led to frustration among the Scientists. Since CSB R&D Institutions qualify to be declared as S&T institutions, it is high time that a promotional system based on merit assessment is introduced for the CSB scientists with the twin objective of providing time bound promotions to these personnel on the one hand and to ensure that persons of outstanding merit and calibre only are elevated through a rigorous screening process and undeserving persons are not allowed to occupy higher positions.*

*As per the Flexible Complementing Scheme (FCS) notified by the Ministry of Personnel on 9<sup>th</sup> November 1998, the following organisations only are covered under this scheme (Copy enclosed):*

- 1. Ministry of Science and Technology (Dept. Of Science and Technology and Department of Scientific and Industrial Research)*
- 2. Department of Bio-technology*
- 3. Dept. Of Electronics and the National Informatics Centre, Planning Commission*
- 4. Ministry of Environment, Forests and Wild Life*
- 5. Ministry of Non-Conventional Energy Sources*
- 6. Department of Ocean Development*

*Some of the other scientific organisations are having their own*

*separate merit based promotion system.*

*The pay scales brought under the FCS in the above cited O.M are as under:-*

| Scales of Pay      | Designation | Minimum residency period linked to performance |
|--------------------|-------------|--|
| (a) Rs. 8000-13500 | Scientist B | 3 Years  |
| (b) Rs.10000-15200 | Scientist C | 4 years  |
| (c) Rs.12000-16500 | Scientist D | 4 years  |
| (d) Rs.14300-18300 | Scientist E | 5 years  |
| (e) Rs.16400-20000 | Scientist F | 5 years  |
| (f) Rs.18400-22400 | Scientist G |  |

*As per the scheme, it is not necessary that all the pay scales under the FCS indicated above should be applicable in all the scientific organisations as the size of the organisation may not justify introduction of entire group of scales. As far as CSB is concerned, the no. of scales that can be operated under the proposed FCS are as under:-*

| Scales of Pay      | Designation             | Minimum residency period linked to performance |
|--------------------|-------------------------|--|
| (a) Rs. 8000-13500 | Senior Research Officer | 3 Years  |
| (b) Rs.10000-15200 | Deputy Director         | 4 years  |
| (c) Rs.12000-16500 | Joint Director          |  |

*Since the Directors in the CSB head the Main Research Institutes, the no. of posts in this cadre will have to remain fixed and this scheme cannot be extended to this cadre. The FCS may therefore operate only within the 3 scales based on the residency period indicated against each.*

*The general guidelines of FCS are as under:*

- (a) The criteria for identifying institution/organisation as scientific and technological institution as well as for defining scientific activities and services, scientists and engineers and the scientific posts shall be as prescribed in Annexure –I to the*

*OM cited above. The FCS shall not be applicable where the criteria specified in Annexure-I are not fully met.*

- (b) The assessment procedure as prescribed in Annexure –II to the office Memorandum cited above shall be followed by all Scientific Ministries/Departments for considering advancement under FCS.*

*The minimum qualification prescribed for the Scientists in CSB is Master's Degree in Natural/Agricultural Sciences or Bachelor's Degree in Technology. The Recruitment Rules prescribed for various cadres in the scientific group in CSB is enclosed at Annex-X. The duties & responsibilities prescribed for the scientific cadres is enclosed at Annex – Y. A detailed note on the Research activities/achievements of CSB Research Institutes is enclosed. CSB fulfils all the criteria prescribed in Annexure-I of the O.M and the procedure prescribed in Annexure –II of the OM will be followed for considering advancement under FCS.*

*As per the scheme, the administrative Ministry of the Institution, which is demanding extension of FCS, shall satisfy itself that such institutions are scientific and technical Institutions and the Officers are scientists holding scientific posts and are involved in scientific and technical activities as defined in Annexure –I and make its recommendation to the Dept. of Science & Technology. On receipt of such a request, the Dept. Of Science & Technology shall set up a Committee including representatives of the Dept. Of Personnel & Training and of the Dept. of Expenditure as well as eminent Scientists relevant to the discipline for examining the proposal referred by the administrative Ministry concerned. The final decision on the proposal for extension of FCS shall be taken based on the recommendations of the Committee.*

*Ministry may kindly consider the proposal for extending FCS to CSB Scientists and take further action to move the Dept. of Science & Technology in this regard.*

*Yours faithfully,  
sd/-*

*[P.JOY OOMMEN]  
MEMBER SECRETARY*

*Encl: As above."*

3. He draws our attention to page 3 where it is held *“As per the scheme, it is not necessary that all the pay scales under the FCS indicated above should be applicable in all the scientific organisations as the size of the organisation may not justify introduction of entire group of scales. As far as CSB is concerned, the no. of scales that can be operated under the proposed FCS ”*

4 The indication is that the scales which are resultant on seniority and service should be limited within the gross structure of each institution. That will without any doubt deny Article 13 & 14. Because the right to be treated equally amongst all scientists exists among all scientists equally. That being the fundamental right, if it is denied to them, that right would be defeated under Article 13 also, besides being under Article 16, 15 & 19. Therefore, there is no merit in the contention raised through in their letter dated 16.9.1999. It is rejected.

5. OAs are allowed as shown in earlier cases also. Benefits to be made available within next 2 months. 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.1522-1525/2018**

Annexure A1: Copy of the promotion order of the 1<sup>st</sup> Applicant dated 8.11.1995

Annexure A2: Copy of the letter dated 30.8.2006

Annexure A3: Copy of the promotion were granted Sc.-D to E dated 28.2.2007

Annexure A4: Copy of the impugned order dated 14.8.2018

Annexure A5: Copy of the promotion order of the 2<sup>nd</sup> Applicant dated 10.6.1994

Annexure A6: Copy of the further promotion order dated 18.10.2007

Annexure A7:Copy of the impugned order dated 14.8.2018

Annexure A8: Copy of the impugned order dated 14.8.2018

Annexure A9: Copy of the promotion order of the 4<sup>th</sup> applicant dated 20.3.1991

Annexure A10: Copy of the impugned order dated 14.8.2018

Annexure A11: Copy of the representation dated 28.8.2018

Annexure A12:Copy of the representation dated 29.8.2018

Annexure A13:Copy of the representation dated 28.8.2018

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

Annexure: R-1.Copy of Gazette Notification dated 9.11.1998

Annexure: R-2.Copy of OM dated 30.7.2001

Annexure: R-3.Copy of letter dated 3.9.2001

Annexure: R-4.Copy of letter dated 24.10.2001

Annexure: R-5. Copy of letter dated 11.4.2005

Annexure: R-6.Copy of Minutes of 119 the meeting of CSB

Annexure: R-7.Copy of letter dated 30.11.2006

Annexure: R-8. Copy of letter dated 4.12.2006

Annexure: R-9. Copy of letter dated 24.1.2007

Annexure:R-10.Copy of letter dated 5.3.2007

Annexure:R-11.Copy of letter dated 11.8.2008  
Annexure:R-12.Copy of letter dated 29.8.2008  
Annexure:R-13.Copy of OM dated 10.9.2010  
Annexure:R-14.Copy of letter dated 29.4.2011  
Annexure:R-15.Copy of letter dated 13.5.2013  
Annexure:R-16.Copy of Notification dated 28.11.2013  
Annexure: R-17.Copy of Circular dated 23.5.2014  
Annexure:R-18.Copy of intimation dated 6.6.2014  
Annexure:R-19.Copy of intimation dated 9.9.2014  
Annexure: R-20.Copy of intimation dated 26.2.2015  
Annexure: R-21.Copy of letter dated 29.6.2015  
Annexure: R-22.Copy of letter dated 14.1.2018  
Annexure: R-23.Copy of letter dated 15.2.2018  
Annexure: R-24.Copy of letter dated 27.7.2018  
Annexure:R-25.Copy of OM dated 2.3.2016  
Annexure:R-26.Copy of letter dated 6.9.2018

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