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

OA No.192/2018

Dated this Friday the 7th day of June, 2019

**Coram: R. Vijaykumar, Member (A).
Ravinder Kaur, Member (J).**

1. Dr. G. R. Tripathy,
Age 60 years,
Son of Indramani Tripathi,
Working as Scientist-C in the
office of The Director,
Central Water and Power Research
Station, Khadakwasla,
Pune-411024, residing at
F-5, Samarth Park,
Sinhgad Road, Anand Nagar,
Pune-411 051.
2. Sh. V. N. Deshpande,
Age 59 years,
Son of Vasant Deshpande,
Working as Scientist-C in the
office of The Director,
Central Water and Power Research
Station, Khadakwasla,
Pune-411024, residing at
102 Silver Fern Society,
Survey No.1, Kothrud,
Pune-411 038.
3. Sh. M. S. Choudhari,
Age 59 years, Son of
Sitaram Choudhari,
Working as Scientist-C in the
office of The Director,
Central Water and Power Research
Station, Khadakwasla,
Pune-411024, residing at
517/15 Jaymala Nagar,
Lane No.3, Old Sangvi,
Pune-411 027.
4. Sh. K. K. Gupta,
Age 59 years, son of
Suresh Gupta,
Working as Scientist-C in the
office of The Director,
Central Water and Power Research

Station, Khadakwasla,
Pune-411024, residing at
E-106, Asawari, Nanded City,
Sinhagad Road,
Pune-411 041.

5. Dr. C. Ramesh,
Age 59 years,
Son of Srinivas Rao,
Working as Scientist-C in the
office of The Director,
Central Water and Power Research
Station, Khadakwasla,
Pune-411024, residing at
1/1B Sangampark,
Maharshi Nagar, Pune-411 037.

...Applicant.

(By Advocate Shri S. V. Marne).

Versus

1. Union of India,
Through Secretary,
Ministry of Water Resources,
River Development & Ganga
Rejuvenation, Shram Shakti
Bhawan, Rafi Marg,
New Delhi-110001.

2. The Director,
Central Water and Power
Research Station,
Khadakwasla,
Pune-411 024.

3. The Secretary,
UPSC, Dholpur House,
Shahjahan Road,
New Delhi-110069.

... Respondents.

(By Advocate Shri V. B. Joshi and Shri V. Narayanan).

O R D E R (O R A L)

Per : R. Vijaykumar, Member (Administrative)

1. Today when the case is called out, Sh. S. V. Marne, learned counsel appeared for the applicant and Sh. V. B. Joshi along with Sh. K. B. Rajan, proxy

counsel appeared for Sh. V. Narayanan, learned counsel for the respondents.

2. This OA has been filed on 16.02.2018 under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs:

"(a) this Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, hold and declare that, the Applicants are entitled to be granted promotion to the post of Scientist 'D' in the CWPRS from the date of eligibility for the post i.e. 04.11.2014, 08.11.2014, 21.06.2014 and 07.03.2017.

(b) This Hon'ble Tribunal may further be pleased to direct the Respondents to hold the assessment of Scientist-C under MFCS and promote the Applicants to the post of Scientist-D from 01.11.2014 for Applicant No.1, from 08.11.2014 for Applicant No.2, from 21.06.2014 for Applicant No.3 and from 07.03.2017 for Applicant No.4 and 5.

(c) In the event one or all Applicants superannuate before facing the Assessment to Scientist-D, this Hon'ble Tribunal be pleased to direct the respondents to conduct review assessment Board of the Applicants with effect from the year in which they were eligible and to assess the Applicants on the basis of APARs without holding interview and if found suitable, Applicants be granted promotion in the grade of Scientist-D with effect from 01.11.2014 for Applicant No.1, from 08.11.2014 for Applicant No.2, from 21.06.2014 for Applicant No.3 and from 07.03.2017 for Applicant No.4 and 5 with all consequential benefits including interest @ 12% per annum on the arrears of pay and pension.

(d) To pass any other appropriate orders this may be considered necessary in facts and circumstances of case.

(e) To award the cost of original application."

3. The applicants are Group-A officers who were working as Scientist 'C' in the Central Water and Power Research Station of the respondent no.2 and have superannuated since filing this OA in February-August, 2018. The applicants were scheduled to be considered for promotion to the grade of Scientist 'B' in notice for Board of Assessment (BOA) on 27.07.2017 at New Delhi and included all the present applicants. However, in OA No.414/2017, applicants with a different set of grievances sought relief by inclusion in this BOA and this Tribunal had given Interim directions to the respondents in orders dated 21.07.2017 and these interim directions continue till date and their OA remains pending for disposal.

4. It is submitted that in letter dated 26.07.2017, the BOA meeting was postponed at the request of the Ministry and no further meeting has been held subsequently. Further, with the retirement of the applicants in the present case, the interview (personal talk) that was part of the assessment process ceases to have relevance. The applicants have referred to an order of the Principal Bench in OA No.1861/2010 decided on 05.03.2012, in Nakul Devi and Another Vs. U.O.I. and Another, where the applicants who had filed their OA in 2010 had retired in the

same year and this Tribunal in Principal Bench recorded the following order:

"12. For this type of unique case, we have to consider special remedy. We note that the Assessment Board cannot conduct interview for the applicants now as they have retired. However, we can suggest some alternative methods for the respondents to follow. On consideration of the above facts and circumstances of the case, we direct the respondents to conduct review Assessment Board to consider the case of applicants w.e.f. the year in which they would be eligible to be considered as per the FCS and the relevant Recruitment Rules for the post of Joint Directorate may be from the year 2001. The review Assessment Board would consider ACRs of the applicants only. No interview would be necessary. This method, we are aware, would be deviation from the FCS guidelines. Therefore, the above method is qua the applicants only, and cannot be treated as judicial precedent for any other case. As two of the applicants have already retired and 3rd applicant may have retired or may be in service. If they are found suitable from any specific date for in-situ promotion to the rank to the rank of Joint Director, the same shall be granted to them w.e.f. The respective date notionally but as the two applicants have retired, their pension would undergo revision and they shall be granted revised pension and other retirement benefits according to the admissible rules. In case of the 3rd applicant, same procedure can be adopted if he has retired but if he is still in service he would be granted all the benefits except the back wages as he has not acted in the higher post of the Joint Director but he would get notional increments w.e.f. The date of his in situ promotion to the post of Joint Director under FCS and actual salary of the higher post be paid w.e.f. The date of issue of the promotion order."

5. The learned counsel for the applicant emphasises the need to apply the same principle to the present case given the identical circumstances although that case has been decided only in respect of those applicants and it was held not to serve as a judicial precedent for any other cases.

6. The learned counsel for the respondents was heard on the issue whether the innovative solution in OA No.1861/2010 of the Principal Bench could be applied especially since it was not to be precedent for the present case. The learned counsel concedes that the present case is unique in respect of the facts that the applicants were eligible for consideration and were at the stage of being considered by the Board of Assessment at New Delhi, July 2017 but that for no fault of theirs, consideration was deferred even till date and in the meantime, the applicants have superannuated in the year 2018.

7. The learned counsel for the applicant further reiterates that the circumstances of non-consideration of promotion of the applicants is purely on account of administrative delay and the applicants cannot be held at fault nor can they be made to suffer as they have suffered as a consequence of postponement of the meeting of the Board of

Assessment.

8. The learned counsel for the applicants and respondents have been heard and pleadings on record have been carefully examined.

9. As observed above, the circumstances of the present case are unique and even more restrictive than the case decided by the Principal Bench in OA No.1861/2010. The present applicants were quite eligible for consideration by the Board of Assessment when they were called for interview on 27.07.2017 but because of extraneous considerations which comprised of an intervention by this Tribunal in a different matter and the challenge raised in that proceedings, the entire Board of Assessment proceedings were adjourned. As a result of this adjournment which had turned out to be of an indefinite nature, the applicants have retired and for no fault of theirs, have been denied promotion and benefits.

10. In these circumstances, it would be appropriate that the respondents develop a scheme for considering such exceptional cases after due consultation and consider providing appropriate reliefs to the applicants. The applicants will, of course, continue to have the right to agitate the denial of any fair consideration upon the receipt of decision of the respondents in this matter.

11. This OA is accordingly allowed partly with directions to the respondents to consider the unique circumstances of the applicant and to formulate a suitable scheme to consider their assessment and after considering the circumstances in which the very same department granted relief to Sh. Nakul Dev and Sh. M. L. Soni in their order no.6/3/2013-Admn dated 26.08.2014 as indicated above. The applicants shall have a liberty to agitate the matter once the respondents communicate their decision in this regard. There shall be no order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

v.

JD
VKB