

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 326 OF 2003

New Delhi, this the ^h3rd day of December, 2003

HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

1. Dr. S.K.Murti,
S/o Late Sh. Bhaskaranand,
working as Scientist-D in
Botanical Survey of India,
Under M/o Environment & Forests and
presently posted at Dehradun (Uttaranchal) and
R/o 265 Vasant Vihar, Phase-2,
Dehradun (Uttaranchal)
2. Dr. J.R.Sharma,
S/o Sh. Jeet Ram Sharma,
working as Scientist-D in
Botanical Survey of India,
Under M/o Environment & Forests and
presently posted at Dehradun (Uttaranchal) and
R/o 192, Kaulayari Road,
Dehradun (Uttaranchal)
3. Dr. K.P.Singh,
S/o Late Sh. D.S.Singh,
working as Scientist-E in
Botanical Survey of India,
Under M/o Environment & Forests and
presently posted at Allahabad (UP) and
R/o 10, Chatham Lines,
Allahabad (UP)
4. Dr. K.K.Khanna,
S/o Sh. J.N.Khanna,
working as Scientist-D in
Botanical Survey of India,
Under M/o Environment & Forests and
presently posted at Allahabad (UP) and
R/o 10, Chatham Lines,
Allahabad (UP)
5. Dr. H.J.Chowdhery,
S/o Sh. K.C.Chowdhery,
working as Scientist-E in
Botanical Survey of India,
Under M/o Environment & Forests and
presently posted at Central National
Herbarium, Howrah and
R/o D-22, 2nd M.S. Hostel Building Nizam
Palace,
A.J.C.Bose Road,
Kolkata (W.B).
6. Dr. S.L.Abbas,
S/o Late Sh. Syed Hassan Abbas,
working as Scientist-C in
Botanical Survey of India,
Under M/o Environment & Forests and
presently posted at Shillong

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(Meghalaya) and
R/o Lower New Colony, Laitumkhrah,
Shilong (Meghalaya).

7. Dr. Anis Ahmed Ansari,
S/o Late Sh. Aziz A. Ansari,
working as Scientist-E in
Botanical Survey of India,
Under M/o Environment & Forests and
presently posted at Indian Botanic Garden,
Howrah and
R/o Botanic Garden, Sibpore,
Howrah (WB).
8. Dr. H.S. Pandey,
S/o Late Sh. R.S. Pandey,
working as Scientist-C in
Botanical Survey of India,
Under M/o Environment & Forests and
presently posted at Indian Botanic Garden,
Howrah and R/o Botanic Garden, Sibpore,
Howrah (WB)
9. Dr. S. Kumar,
S/o Late Sh. Shiv Charan Lal Govil,
working as Scientist-E in
Botanical Survey of India,
Under M/o Environment & Forests and
presently posted at Dehradun (Uttaranchal) and
R/o 192, Kaulagarh Road,
Dehradun (Uttaranchal)
10. Dr. P. Daniel,
S/o Late Sh. G. Pitchai,
working as Scientist-E in
Botanical Survey of India,
Under M/o Environment & Forests and
presently posted at Coimbatore and
R/o T.N.A.U Campus, Lawley Road,
Coimbatore (Tamil Nadu)
11. Dr. A.S. Chauhan,
S/o Late Sh. Raghuraj Singh,
working as Scientist-E in
Botanical Survey of India,
Under M/o Environment & Forests and
presently posted at Gangtok, Sikkim and
R/o Chief Justice Road,
Gangtok (Sikkim)
Dehradun (Uttaranchal)
Dehradun (Uttaranchal)

....Applicants.

(By Advocate : Shri S.S. Tiwari)

Versus

1. Union of India,
through Secretary,
M/o Environment and Forests,
Parayavaran Bhawan,
C.G.O. Complex,
Lodhi Road,
New Delhi-110001

ccn 3/7/95M

2. Secretary,
M/o Personnel, Public Grievances &
Pensioner's Welfare,
Dept. of Personnel & Training (DOPT),
North Block,
New Delhi.

.....Respondents

(By Advocate : Shri R.P. Agarwal)

ORDER (17/11)

SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER:-

This application under section 19 of the Administrative Tribunals Act, 1985 has been filed by 11 applicants claiming the following reliefs:

"(i) Direct the respondents to revise the effective date of promotion of the applicants from the due date in terms of Para 51.25 of 5th CPC i.e. as if the DRC has considered their case in terms of Rule 8.2 in the year in which they had become eligible.

(ii) Direct the respondents to implement the relief (i) within a specified time.

(iii) Direct the respondents to give the applicants all consequential benefits following from grant of reliefs (i) and (ii) including arrears of pay, increments and seniority.

(iv) Award costs and

(v) Pass any other order/direction as may be deemed just and proper in the facts and circumstances of the case."

2. It is claimed that all the applicants were working as Scientists in different scales in the Botanical Survey of India under the administrative control of Respondent No.1. It is further claimed that all of them are eligible to be considered for promotion under the modified Flexible Complementing Scheme (FCS for short) as notified by the Govt. in pursuance of the recommendations of the 5th Central Pay Commission (CPC). It has been pointed out that the applicants No.1 to 5 were due for promotion w.e.f. 1.1.99. Necessary details were sent to the competent

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authority but the Departmental Review Committee (DRC) did not take place. The DRC ultimately met on 13.9.2000 and recommended the applicants for promotion. Accordingly, they have been promoted w.e.f. 19.9.2000 instead of due date i.e. 1.1.99. Similarly, the applicants No.7 to 10 are stated to be due for promotion w.e.f 1.1.2000 and applicant No.11 was due for promotion w.e.f. 1.7.2000 under the FCS. These applicants were also promoted w.e.f. 31.8.2001 instead of from the due dates. The applicants claim that the delay in holding DRC cannot postpone the due date of promotion of the applicants. As a matter of fact, the Assessment Board should meet regularly every six months in January and July and the date of effect of promotion should be the date of eligibility. The applicants have also referred to the case of Indian Council of Forest Research and Education (ICFRE), Dehradun wherein the effective date of promotion has been given from the due date instead of from a later date. In the Defence Research and Development Organisation (DRDO) also the FCS has been allowed from the due dates. The applicants have contended that the reliance placed on DOPT's Circular dated 17.7.2002 (Annexure-G) is uncalled for. This O.M. states that "promotions are made effective from a prospective date after the competent authority has approved the same. This is the general principle followed in promotions and this principle is applicable in the case of in situ promotions under FCS as well". It has been stressed by the applicants that even if this O.M. was to be followed, this could not have applied to the cases of the applicants where the promotion was due before issue of this Circular dated 17.7.2002. It has

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further been pointed out that even this circular requires the competent authority to hold committee meeting twice in a year. If they do not do so, the applicants should not be made to suffer.

3. The prayers of the applicants have been opposed by the respondents. The respondents have stated that Department of PT's OM dated 29.4.89 provides as follows:

"The undersigned is directed to say that wherever promotions involve assumption of posts in a higher scale involving higher responsibilities, such promotions can only take prospectively. The procedure followed in such cases is that promotion is made effective from the date of assumption of higher post by the officer concerned on the basis of an order issued after obtaining the approval of the competent authority".

4. The same principle of promotion from prospective date has been further clarified by OM dated 17.7.2002 as follows:-

"From a number of references received in this Department, it appears that an element of confusion exists in some scientific departments on the date from which in situ promotions under FCS are to be given effect. Promotions are made effective from a prospective date after the competent authority has approved the same. This is the general principle followed in promotions and this principle is applicable in the case of in situ promotions under FCS as well".

5. It has also been stated by the learned counsel of the respondents that if there is any vacancy, it is for administration side whether to fill up the vacancy or not. Placing reliance on decision of Union of India Vs K.K.Vadera & Others 1989 Suppl. 2 SCC 625, the respondents have stated that any promotion made will have only prospective effect if the vacancies relate to earlier years. The respondents have stated

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that ICFRE is an autonomous body and their scientists (excepting the Govt. optees) are governed neither by the Ministry's rules nor by the modified FCS Rules of the DOP & T. Therefore, any decision in these cases will not be applicable in the case of the applicants.

6. We have heard the learned counsel of the parties and have perused the materials available on record carefully.

7. There is no dispute that the vacancies existed when the DRC considered the cases of the applicants for FCS. The sole question for determination is whether the applicants could be given benefits of such promotions under the FCS from the date when they became eligible for such promotions. In this connection, we may refer to the basic OM dated 10.11.98 which contains the provisions relating to FCS for scientists in various scientific departments. It provides that "it has been decided that the FCS should, as per its original objective, be made applicable only to scientists and technologists holding scientific posts in scientific and technology departments and who are engaged in scientific activities and services. It has also been decided that assessment norms for promotions under the FCS should be rigorous with due emphasis on evaluation of scientific and technical knowledge so that only the scientists who have to their credit demonstrable achievements or higher level of technical merit are recommended for promotion under the FCS". In order to achieve the objectives, the revised FCS procedure has been prescribed in Annexure-II to the Scheme. This

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provides that all the officers will be first screened on the basis of gradings in the Annual Confidential Reports (ACRs) for consideration for promotion. In order to achieve the objectives, an external member has to be co-opted initially. It has further been provided that all the officers who are screened-in will be called for an interview. The performance in the interview will also be graded similarly on the same norms as for ACR. The minimum length of service has also been prescribed for the purpose. It is also noticed that the OM dated 17.7.2002 is only a clarification and not a new decision which could be enforced prospectively as has been claimed by the applicants. A reference could also be made to the judgment dated 23.10.2001 by the Full Bench of this Tribunal in the case of All India Postal Officers (Accounts) Association through the General Secretary & others Vs. UOI & Ors. in OA No. 702/1997 & connected case wherein it has been held that the promotions made subsequent to the holding of DPC would take effect only from the date of holding of DPC. The applicants have placed reliance on the decision of the Hon'ble Supreme Court in State of Bihar Vs. Dr. Braj Kumar Mishra & Others (1999) 9 SCC 546 which is based on its own facts and it has been made clear that the decision in that case will not be made a precedent for others. Therefore, that can also not help the applicants. As has been pointed out earlier, the promotions of the applicants depended on their being found suitable and not only on the basis of record reflected in ACRs but also on the basis of qualifying in the interview. Unless the applicants are so screened and found suitable, they could not be held

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eligible for holding the post to which they have been promoted from a date prior to the date of such DPC/selection. We hold accordingly.

6. It may also be mentioned that the applicants in their rejoinder have stated that "there has been delay in time bound promotions after successfully qualifying the interview". Though this aspect was not fully argued at the time of hearing but it is held that the applicants were entitled for notional promotion from the date of their being declared successful by the DPC/Selection Committee. The applicants could have made such prayer. Therefore, the respondents as a modal employer are directed to look into the matter in view of the law stated earlier.

9. Subject to the remarks as in the preceding paragraph and for the reasons discussed above, this OA is disposed of without any order as to costs.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER



(SHANKER RAJU)
JUDICIAL MEMBER

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*Essemd 29 26/11 for
Clarification*