

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 3510/2014

This the 10th day of October, 2019

**Hon'ble Mr. S.N. Terdal, Member(J)
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Shri A.K. Varshney
Age 60 years
S/o Late Shri G.P. Varshney
R/o 383, K.P. Thakker Block
Khel Gaon, New Delhi
Presently working as Scientist 'F'
Ministry of New and Renewable Energy
B-14, CGO Complex, Lodhi Road
New Delhi – 110003.

...Applicant

(In person)

Versus

1. Union of India
Through Ministry of New and Renewable Energy
Ministry of New and Renewable Energy
B-14, CGO Complex, Lodhi Road
New Delhi – 110003.
Through its Secretary
2. The Secretary Govt. of India
Department of Personnel and Training
North Block, New Delhi.

...Respondents

(By Advocate : Dr. Ch. Shamsuddin Khan)

ORDER (ORAL)

Mr. S.N. Terdal :

Heard both parties.

2. We have gone through the order dated 02.08.2013 which was passed allegedly in compliance of the order passed by this Tribunal on 25.09.2012 in OA No. 3206/2012. In the said order of this Tribunal, it was categorically stated that the respondents have to keep in mind the order dated 02.05.2011 passed by the Hon'ble Apex Court in **SLP No. 6864/2011** in the case of **Union of India & Anr. vs. S.K. Murti.**

The operative portion of Tribunal's order dated 25.09.2012 is extracted below :-

"In view of the above submissions of the learned counsel of the applicant, we direct the respondents to examine the case of the applicant in the light of the aforesaid judgment of the Hon'ble Apex Court and take appropriate decision in the matter under intimation to him within a period of two months from the date of receipt of a copy of this order. While considering his case, they may also take into consideration this OA as an additional representation on his behalf. The Registry is directed to send a copy of this OA also along with a certified copy of this order to the respondents. Accordingly, this OA is disposed of. There shall be no order as to costs."

3. We have perused the order 02.08.2013. In the said order the respondents have not taken into account the law laid down by the Hon'ble Supreme Court regarding promotion of the applicants under Flexible Complementing Scheme (FCS) under which promotion has to be effected from the date of acquiring eligibility irrespective of the date when the DPC proceedings are held. The entire order of the Hon'ble Supreme Court is extracted below :

"Upon hearing counsel the Court made the following

O R D E R

The delay of 55 days in filing the special leave petition is condoned.

This petition is directed against order dated 5.10.2010 passed by the Division Bench of the Delhi High Court whereby the writ petition filed by the respondent against the order passed by the Principal Bench of the Central Administrative Tribunal (for short, 'the Tribunal') dismissing the original application filed by him for issue of a direction to the petitioners herein to promote him under the Flexible Complementing Scheme (FCS) with effect from the date of eligibility was allowed.

We have heard Smt. Indira Swahney, learned counsel for the petitioners and Mr. Jitendra Mohan Sharma, learned counsel for the petitioners and Mr. Jitendra Mohan Sharma, learned counsel for the respondent, who has entered on caveat and carefully perused the record.

The respondent, who was working as Scientist Grade-D in the Botanical Survey of India became eligible for promotion under FCS with effect from 1.1.1999. However, on account of delayed convening of the Departmental Review Committee/Selection Committee, his promotion was delayed and by an order dated 20.10.2000, he was promoted with effect from 19.9.2000.

The respondent and 10 other Scientists of Botanical Survey of India filed Original Application No. 826/203 for directing the petitioners to promote them with effect from the date of eligibility, i.e. 1.1.1999. The Tribunal dismissed the original application and held that in view of the clarification given in O.M. Dated 10.11.1998, the applicants were not entitled to promotion with retrospective effect. The review petition filed by the respondent was dismissed by the Tribunal vide order dated 14.1.2004. However, Write Petition (C) No. 14263/2004 filed by the respondent was allowed by the Division Bench of the High Court and the petitioners were directed to give him all the benefits on the basis of deemed promotion with effect from 1.1.1999.

In our view, reasons assigned by the High Court for directing the petitioners to promote the respondent with effect from the date of acquiring the eligibility are legally correct and the impugned order does not suffer from any legal error warranting interference under Article 136 of the Constitution.

It is not in dispute that vacancies existed when the Departmental Review Committee considered the case of the respondent and other similarly situated persons for promotion. It is also not in dispute that in terms of paragraph 51.25 of the Vth Pay Commission Recommendations, the Departmental Review Committee/Assessment Board was required to meet every six months, i.e. in January and July and the promotions were to be made effective from the date of eligibility. Therefore, it is not possible to find any flaw in the direction given by the High Court.

The special leave petition is accordingly dismissed.

Since the time fixed by the High Court for compliance of the direction given by it has already expired, we direct the petitioners to do the needful within four weeks from today. Similar order shall be passed for all similarly situated persons despite the fact that they may not have approached the High Court questioning the order passed by the Tribunal. This direction is being given to avoid further litigation in the matter."

(Emphasis supplied)

4. As in the impugned order this aspect has not been considered, we are of the view that the order is arbitrary and, hence, we allow the

OA by setting aside the order dated 02.08.2013 and direct the respondents to pass afresh reasoned and speaking order in the case of the applicant within two months from the date of receipt of certified copy of this order taking into account the law laid down by Hon'ble Supreme Court extracted above. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(S.N. Terdal)
Member (J)

/anjali/