

Court No. - 39

Case :- WRIT - A No. - 18314 of 2023

Petitioner :- Union Of India And Another

Respondent :- Dr. K.P. Singh

Counsel for Petitioner :- Vivek Kumar Singh

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Mr. Vivek Kumar Singh, learned counsel for the petitioner-Union of India and perused the record.

2. This writ petition has been filed against the order of the Central Administrative Tribunal, Allahabad Bench, Allahabad dated 9th February, 2023 passed in Original Application No. 498 of 2012 (Dr. K.P. Singh Vs. Union of India & Another).

3. The operative portion of that order reads as below:

"7. In similar facts and circumstances, Hyderabad bench of this Tribunal in O.A. No.626 of 2012 (Dr. S.Z.Siddiqui Vs. Union of India and others decided on 24.7.2015) directed the respondents to promote the applicant from the post of Scientist C to Scientist D w.e.f. 29.1.2006 and from Scientist D to Scientist E w.e.f. 29.1.2010 with all consequential benefits. It is admitted fact that applicant was given promotion as Scientist E w.e.f. 1.1.1999, his next promotion as Scientist F was due on 1.1.2004 and further next promotion as Scientist G was due on 1.1.2009 but the same was not given to him. Judgment of the Hon'ble Supreme Court never said that only one promotion will be given w.e.f. 1.1.1999. Once a promotion is given w.e.f. 1.1.1999, his next promotion is due after completion of residency period of 5 years. Case laws relied upon by the learned counsel for the applicant fully supports the case of the applicant. Hence, the court is of the view that O.A. is liable to be allowed.

8. Accordingly, O.A. is allowed. Respondents are directed to consider the case of applicant for promotion to Scientist F w.e.f. 1.1.2004 instead of 1.2.2008 and next promotion of Scientist G w.e.f. 1.1.2009 which has not been given to the applicant due to retirement of applicant on 28.2.2010 and grant all the consequential benefits to the applicant. This exercise shall be completed within a period of 3 months from the date of receipt of certified copy of this order."

4. Submission of learned counsel for the petitioner-Union of India is, under the Flexible Complementing Scheme (for short

"FCS"), by virtue of clause-viii, only three upgradation under the FCS scheme were permissible. During the pendency of the above original application, the respondent was granted promotion under FCS scheme w.e.f. 1st January, 2004, by virtue of the order dated 14th February, 2014 passed by the Scientist "E" & Head Office, Head Quarters, in-situ from Scientist-D to E.

5. For ready reference, Clause viii of FCS scheme of which reliance has been placed is quoted below:

"viii.

"If a scientist gets three up-gradations under the FCS scheme, there would be no claim for any further up-gradation under MACPS as the MACP scheme by only allows three financial up-gradation in the hierarchy of Pay bands and grade pay on completion of 10, 20 and 30 years of service respectively."

6. Therefore, the Central Administrative Tribunal has erred in granting further promotion under FCS scheme to the respondent on the post Scientist from Scientist-G, upon completion of 5 years of service by the respondent on the post of Scientist-F, prior to his attaining the age of superannuation on 28th February, 2010.

7. Having considered the submissions made by the learned counsel for the petitioner-Union of India and having gone through the record, we find no good ground to interfere with the impugned order of the Central Administrative Tribunal.

8. In principle, it cannot be denied that only three in-situ promotion may have been granted under FCS. There does exist embargo against fourth such promotion. At the same time, that principle is not shown to be applicable to the case of the present respondent, inasmuch as the respondents have themselves granted in-situ promotion to the respondent under FCS scheme under the order dated 14th February, 2014 passed by the Scientist "E" & Head Office, Head Quarters (as noted above w.e.f. 1st January, 2004) from Scientist E to Scientist F.

9. On query made, learned counsel for the petitioner-Union of India fairly states that such fact had neither been pleaded before the Central Administrative Tribunal nor any evidence was led.

10. In view of such fact, it is too late in the day to allow the petitioner-Union of India to raise fresh objection in that regard. Whatever may have been the correct facts, in peculiar facts of the present case, we find no ground existing to entertain such objection being raised belatedly.

11. Accordingly, the petition is found to be lacking in merit and is accordingly **dismissed**.

12. There shall be no order as to costs.

(Shiv Shanker Prasad, J.)

(Saumitra Dayal Singh, J.)

Order Date :- 8.11.2023

Sushil/-