



Serial No. 03
Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 101 of 2024

Date of CAV : 25.11.2024

Date of pronouncement : 16.12.2024

1. Union of India through the Secretary,
Ministry of Environment, Forest & Climate Change,
Government of India, Indira Paryavaran Bhawan, New Delhi-3
2. The Secretary,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel & Training, Government of India,
New Delhi.

.....Petitioners

- Versus -

Shri. Nripemo Odyuo
S/o E. Ramongo Odyuo
Botanical Survey of India, Eastern Regional Centre,
Shillong, Meghalaya

.....Respondent

Coram:

Hon'ble Mr. Justice I.P. Mukerji, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioners : Dr. N. Mozika, DSGI with
Ms. N.A.U. Sogra, Adv.

For the Respondent : Mr. N. Zubemo Lotha, Adv.

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| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | Yes/No |



J U D G M E N T

(Delivered by the Hon'ble, the Chief Justice)

This is a writ petition by the Central Government. It is aggrieved by a judgment and order dated 10th January, 2024 of the Central Administrative Tribunal, Guwahati Bench in an Original Application made by the respondent Nripemo Odyuo.

Nripemo, is a Scientist working with the said government and posted at the Botanical Survey of India, Eastern Regional Centre, Shillong, Meghalaya. The impugned order of the tribunal quashed a government Order dated 20th June 2022. It directed the petitioners to grant promotion to the respondent from Scientist Grade-C to Scientist Grade-D from his “due dates of eligibility and further consequential promotions with other benefits.”

The facts of the case are these.

On 16th December 2002 the respondent was appointed Scientist in Grade- B. During his time of appointment, the Flexible Complementing Scheme (FCS) as modified on the recommendation of the Fifth Central Pay Commission had been introduced by the petitioners. Under it, promotion was to be granted to the next higher Grade upon completion of the prescribed residency period. A Table showing the designation and residency period is inserted below:-



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Sl. No.	Designation	Residency period
a	Scientist B	3 years
b	Scientist C	4 years
c	Scientist D	4 years
d	Scientist E	5 years
e	Scientist F	5 years
f	Scientist G	-----

”

The respondent's Annual Confidential Grading had been outstanding and very good in three years. His case was that his next promotion to the higher Grade-C ought to have been with effect from 1st January 2006. He was not so promoted. He was promoted only on 7th March 2008, with effect from 1st January 2006.

The respondent is aggrieved by this. According to the above Scheme and Table, his next promotion to Grade - D was due w.e.f. 1st January, 2010. However, the promotion was effected on 4th February 2015.

If the petitioner authorities gave his promotion from the alleged date i.e. 1st January, 2010, then the respondent would have attained Grade-E w.e.f 1st January 2014. The respondent was promoted to Grade-E only on 2nd March 2020.

The main contention of the petitioners as made by Dr. N. Mozika, learned DSGI was that the respondent's entitlement to promotion arose



out of Ministry of Environment, Forests and Climate Change, “Scientific Group A posts recruitment Rules, 2015” notified on 23rd January, 2015, wherein inter alia, it was stated that in-situ promotions under the Flexible Complementing Scheme would be applicable for promotion upon completion of the prescribed residency period in grades B, C, D, E, F and G. He contended that the respondent could not claim retrospective operation of this notification to get promotion.

We think he is completely wrong.

The Office Memorandum of the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India dated 9th November, 1998, is absolutely plain that the government was implementing the recommendation of the Fifth Central Pay Commission in relation to the Flexible Complementing Scheme for scientists. In fact the government was immediately implementing those recommendations as would appear from paragraphs 3, 4 and 5 of the said office memorandum which are inserted below:

“3. The recommendations of the Pay Commission that the existing disparities in the operation of Flexible Complementing Scheme in various scientific and technical departments in the matter of designation of posts, the number of pay scales and the residency period should be removed and there should be uniformity in this regard has been accepted. Accordingly, all the posts covered under the Flexible Complementing Scheme shall carry the following uniform scales of pay, designations and the minimum residency period linked to performances:-



Scales of pay	Designation	Minimum Period linked to performance	Residency linked to
(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		

In order to give immediate effect to the decision contained in this para, an umbrella Notification has been issued vide G.S.R. No. 660(E) dated 9.11.1998.

4. The recommendation of the Fifth Central Pay Commission for introducing a 'cooling off' period of 3 years before an officer is considered for the Flexible Complementing Scheme on the second occasion at the same level has not been accepted. The recommendation for disqualification of the candidate permanently from the FCS in case of failure to qualify thrice at the same level, etc., has also not been accepted. Therefore, the existing system of assessing the officer every year would continue.

5. It has further been decided that in order to extend the benefit of in-situ promotions under the Flexible Complementing Scheme to other Scientific Organisations that are demanding the extension of FCS in their case, the administrative Ministry of such institutions 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 the Annexure I to this Office Memorandum and make its recommendations to the Department of Science & Technology. On receipt of such a request the Department of Science & Technology shall set up a Committee, including the representatives of the Department of Personnel and Training and of the Department or experience as well as eminent scientists relevant to the discipline, for examining the proposal referred by the administrative Ministry concerned. A final decision on the proposal of an administrative Ministry for extension of FCS to other scientific organisations shall be taken based on the recommendations of this Committee. Since it



is not necessary that all the pay scales under the Flexible Complementing Scheme should be applicable in all the scientific organisations, as the size of the organisations may not justify introduction of the entire group of scales, the Committee, while making its recommendations, would take a specific view as to the number of scales that should be operated in the organization as well as the appropriate residency period for ensuring an even pace of promotion. However, the progression under Flexible Complementing Scheme will only be as per scales indicated in para 3 of this Office Memorandum.”

The fact that the Government was implementing the Flexible Complementing Scheme (FCS) modified according to the Fifth Central Pay Commission, 1998, recommendation and incorporated in the Office Memorandum dated 9th November 1998 of the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension would be evident from the fact that on 14th February, 2014, the petitioners gave retrospective effect from 1st January, 2006 to the promotion of the respondent from Scientist Grade - B to Scientist Grade - C made on 7th March, 2008. This was on the representation by the respondent, that having been appointed Scientist Grade-B on 16th December 2002, his next promotion to Scientist Grade-C under the above Scheme was due from 1st January, 2006.

In fact, the Office Memorandum by the Personnel Department dated 17th July, 2002, very plainly indicated that the Scheme was being carried out. This Office Memorandum is inserted below:-



“New Delhi- 110001
July 17, 2002

OFFICE MEMORANDUM

Subject: Flexible Complementing Scheme for scientists in Scientific
and Technological Departments – Date of effect of promotions.

The recommendations made by the fifth Central Pay Commission for modifying the Flexible Complementing Scheme (FCS) in operation in scientific and technological departments for in situ promotion of scientific/technical personnel with a view to removing the shortcomings/inadequacies in the scheme had been examined some time back and this Department in O.M.No. 2/41/97-PIC dated 9.11.1998 had issued detailed guidelines modifying the then existing FCS. 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.

2. As a matter of fact, no occasion requiring application of promotion with retrospective effect should arise in FCS cases, as it is provided in the rules for scientific posts that the Assessment Boards shall meet at least once a year to consider cases of in situ promotions. Rules notified for scientific posts also contain a provision for review of promotion by the Selection Committee/Assessment Board twice a year - before 1st January and 1st July of every year – and the Selection Committee/Assessment Board is required to make its recommendation on promotions keeping in view these crucial dates of 1st January and 1st July. The competent authority, which has to take a final view based on these recommendations, shall ensure that no promotion is granted with retrospective effect.

3. Hindi version will follow.

Sd/-
(ALOK SAXENA)

DEPUTY SECRETARY TO THE GOVERNMENT OF INDIA”



Hence, the respondent was absolutely right in contending that his next promotion under the said Scheme was due by 1st January 2010 which was effected only on 4th February, 2015. Likewise, the promotion to Grade-E was due by 1st January, 2014. He was promoted to Grade-E only on 2nd March, 2020.

There is no dispute that the respondent's Gradings in the Annual Confidential Reports were always "*outstanding and very good*". Therefore, there was no reason to deny him promotion.

In the case of a Scientist of the Botanical Survey of India where the facts were quite similar Union of India and another vs SK Mutti, the Supreme Court vide Judgment and Order decided on 2nd May 2011, affirmed the order of the High Court directing the Ministry to promote the Scientist "*from the date of acquiring the eligibility under the Flexible Complementing Scheme (FCS)*".

For the above reasons, we find no infirmity in the impugned judgment and order of the Tribunal. We affirm the same and dismiss this writ petition. No Order as to costs.

(W. Diengdoh)
Judge

(I.P. Mukerji)
Chief Justice