

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

OP.No. 22691 of 1997 (S)

AGAINST THE ORDER IN OA 886/1996 of CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH DATED 14-08-1997

PETITIONERS:

1. UNION OF INDIA, REPRESENTED BY SECRETARY TO GOVERNMENT,
GOVERNMENT OF INDIA, MINISTRY OF WATER RESOURCES,
SHRAMSAKTHI BHAVAN, NEW DELHI.
2. THE CHAIRMAN, CENTRAL GROUND WATER BOARD,
NH-IV, FARIDABAD.
3. THE DIRECTOR, CENTRAL GROUND WATER BOARD,
KERALA REGION, KESAVADASAPURAM, TRIVANDRUM.

BY ADVS. SRI. P. S. SREEDHARAN PILLAI, SCGSC
SRI. K. RAMAKUMAR
SRI. K. R. RAJKUMAR, ADDL. CGSC
SRI. N. NAGARESH, ASSISTANT SOLICITOR GENERAL

RESPONDENTS:

1. THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH ERNAKULAM.
2. G. SWAMINATHA MENON, JUNIOR HYDROLOGIST,
CENTRAL GROUND WATER BOARD, MINISTRY OF WATER RESOURCES,
TRIVANDRUM-11, RESIDING AT 95-A,
ULLUR GARDENS, TRIVANDRUM-11.

R1 ASGI N. NAGARESH
R2 BY SRI. M. R. HARIRAJ
ADV. SRI. M. R. RAJENDRAN NAIR
ADV. SRI. M. R. SUDHEENDRAN
BY ADV. SRI. JAGDEESH LAKSHMAN, ADDL. CGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13.10.2014, THE
COURT ON 23-01-2015, DELIVERED THE FOLLOWING:

APPENDIX IN OP.NO.22691/97

PETITIONERS' EXTS:

EXT.P1: COPY OF FLEXIBLE COMPLEMENTARY SCHEME INTRODUCED IN THE GAZETTE OF INDIA DT.6.6.87.

EXT.P2: COPY OF NOTIFICATION DT.28.6.95.

EXT.P3: COPY OF REPLY STATEMENT FILED IN OA.NO886/96 BY THE PETITIONERS.

EXT.P4: COPY OF LETTER DT.21.10.97 SENT BY THE FIRST RESPONDENT TO THE SECRETARY, UNION PUBLIC SERVICE COMMISSION, NEW DELHI.

EXT.P5: COPY OF LETTER DT.6.1.94 SENT BY THE FIRST RESPONDENT TO THE SECRETARY, UNION PUBLIC SERVICE COMMISSION, NEW DELHI.

EXT.P6: COPY OF RELEVANT PORTION OF THE REPORT OF THE V CENTRAL PAY COMMISSION.

EXT.P7: COPY OF ORDER IN OA.886/96 DT.14.8.97 OF THE FIRST RESPONDENT.

RESPONDENTS' EXTS:

EXT.R2(A): COPY OF FINAL ORDER IN OA.753/87 DT.29.6.89 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH.

EXT.R2(B): COPY OF THE OFFICE MEMORANDUM DT.28.5.89 NO.A-42014/2/A6-ADMN.1(A) ISSUED BY THE JOINT SECRETARY TO GOVT. OF INDIA, MINISTRY OF SCIENCE AND TECHNOLOGY, DEPARTMENT OF SCIENCE AND TECHNOLOGY.

ET.R2(C): COPY OF THE OFFICE ORDER (NO.265 OF 1998) NO.14-1/96-CH(ESTT) ISSUED BY THE 3RD PETITIONER.

TRUE COPY

P.S.TO JUDGE

dsn

ANTONY DOMINIC & ANIL K.NARENDRAN, JJ.

O.P.No.22691 of 1997

Dated this the 23rd day of January, 2015

JUDGMENT

ANIL K.NARENDRAN, J.

The petitioners are the respondents in O.A.No.886/1996 on the file of the Central Administrative Tribunal, Ernakulam Bench. The said original application was filed by the 2nd respondent herein seeking a direction to the petitioners to upgrade the Group B posts of Jr.Hydrologist as Group A with retrospective effect from 1/6/1987 and to bring the category of Jr.Hydrologist also within the purview of Flexible Complementing Scheme and to consider the 2nd respondent for promotion as Scientist C in the Flexible Complementing Scheme. The Tribunal by Exhibit P7 order dated 14/8/1997 allowed the original application directing the petitioners to work out the benefits that would accrue to the 2nd respondent had the hydrology discipline been included in the Flexible Complementing Scheme with effect from the date on which Annexure A1 came into effect, i.e., 6/6/1987 and had the post of Jr.Hydrologist been included in the Flexible Complementing Scheme

on 6/6/1987 in accordance with the Office Memorandum of the Department of Science and Technology dated 28/5/1986, and to grant the 2nd respondent those benefits within a period of 4 months from the date of the order. It is aggrieved by Exhibit P7 order passed by the Tribunal, the petitioners are before us in this original petition.

2. We heard the arguments of the learned Assistant Solicitor General appearing for the petitioners and also the learned counsel for the 2nd respondent.

3. The 2nd respondent is a Jr.Hydrologist in the Central Ground Water Board (hereinafter referred to as 'the Board'). He joined service in the Board as Senior Technical Assistant (Hydrology). He was appointed as Jr.Hydrologist (Group B) with effect from 21/11/1983. In the year 1987, a policy decision was taken to implement a scheme called the Flexible Complementing Scheme (hereinafter referred to as 'the scheme') by which an officer in the scientific wing can be promoted from one grade to the next higher grade after the prescribed period of service irrespective of the availability of vacancies in the next higher

grade. The said scheme in Exhibit P1 was made applicable only to Group A posts.

4. The various disciplines available in the Board are Hydro Materiology, Hydrology, Hydrology (main discipline), Geophysics, Hydro Chemistry, etc. In all the disciplines except Hydrology, there are Jr. Time Scale Group A posts carrying a pay scale of ₹2200-4000/- (pre-revised). But in Hydrology discipline alone there is a post designated as Jr.Hydrologist, which has been kept as a Group B Gazetted post with a pay scale of ₹2000-3500. The promotional channel in all the disciplines except Hydrology is to the post of Senior Group A cadre like Sr Hydrologist, Sr Geophysicist, Sr Chemist, etc., but in the Hydrology discipline, the promotional channel is direct from Group B Jr.Hydrologist to Sr Hydrologist, which is a Senior Group A cadre post. When the scheme was introduced in the Department in the year 1987, vide Exhibit P1 notification, this anomaly posed problems in implementing the scheme fairly to all the scientists, in the Hydrology discipline.

5. A Senior Hydrologist in the Board had approached the

Hyderabad Bench of the Central Administrative Tribunal, by filing O.A.No.753/1987, claiming the coverage of the scheme. By Exhibit R2(a) order dated 29/6/1988, the Tribunal disposed of the said original application, directing the petitioners herein to take a decision expeditiously and to extend the scheme to the Hydrologists also, within a period of 8 months from the date of receipt of a copy of the order. Subsequent to Exhibit R2(a) order passed by the Tribunal, the petitioners issued Exhibit P2 notification dated 28/6/1995, by which Hydrology discipline was also included in the scheme. A reading of Exhibit R2(a) order in O.A.No.753/1987 would show that, the stand taken by the Department before the Hyderabad Bench of the Tribunal was that, the Hydrologists working in the Board are also Scientists and that, the Department has already taken up the matter to bring the Hydrologists within the purview of the scheme and the only hurdle in applying the scheme to Hydrologists was that, Jr.Hydrologists are in Group B Posts and until the proposal is approved for upgrading these posts as Group A posts, the scheme cannot be applied as the scheme was applicable only to

Group A posts. In the counter affidavit filed in O.A.No.753/1987, it was made clear that, the proposal would be approved after the ban orders are lifted. It was in these circumstances, the Tribunal in Exhibit R2(a) order came to the conclusion that, the administration is not opposed to giving the benefit to the applicant therein, but it was only a matter of time which was inevitable for administrative reasons.

6. Exhibits P4 and P5 are official communications dated 21/10/1993 and 6/1/1994 made by the Deputy Secretary, Ministry of Water Resources, addressed to the Secretary, Union Public Service Commission. Exhibit P4 categorically states that, the most important change proposed in the scheme relates of inclusion Hydrology discipline, which was left out inadvertently while formulating the scheme in 1987. Exhibit P4 further states that, it was proposed to give retrospective effect for inclusion of Hydrology discipline from the original date of notification, i.e., 6/6/1987 and also to give notional promotion to the officers in Hydrology discipline who were eligible as on 1/1/1988 for promotion to the grade of Scientist C with effect from the date on

which the last officer assumed charge on the recommendation of the Assessment Board held in 1988. Exhibit P5 would show that, the Department of Science and Technology, vide office memorandum dated 28/5/1986 extended the Flexible Complementing Scheme to the lower level pay scale of ₹650-1200/- (pre-revised) where it also served as a direct recruitment grade. The said office memorandum dated 28/5/1986 did not come to the notice of the Ministry of Water Resources before the notification of the scheme for the Scientific officers of the Board, in 1987. As a result, Group A officers belonging to the discipline Hydrology were placed at a disadvantageous position in comparison to Group A officers of other scientific disciplines on account of the fact that they were denied the promotional prospects available to similarly placed officers in other scientific disciplines.

7. Exhibits P4 and P5 categorically state that, the amendments proposed in the scheme were meant to redress the inadvertent mistake of omitting Hydrology discipline in the scheme due to an oversight by the Ministry of Water Resources in

noticing office memorandum dated 28/5/1986 of the Department of Science and Technology. Exhibit P5 further states that, if Hydrology discipline had been included in the scheme in the year 1987 itself, Group A officers belonging to that discipline would not have lost their service and seniority in that grade. Further, if Hydrology discipline is to be included without giving retrospective effect, the officers of Hydrology discipline will become many years junior in the scientific grade in the scheme and their future promotional prospects will also be adversely affected. It was therefore, proposed in Exhibit P5 that, the inclusion of Hydrology discipline be given retrospective effect from the day the original notification bringing other scientific disciplines in the scheme. Subsequently, the petitioners issued Exhibit P2 notification dated 28/6/1995, by which Hydrology discipline was also included in the scheme.

8. The documents on record make it abundantly clear that, the discipline Hydrology was inadvertently omitted from the scheme due to an oversight by the Ministry of Water Resources in noticing office memorandum dated 28/5/1986 of the Department

of Science and Technology. A reading of Exhibit R2(a) order of the Tribunal in O.A.No.753/1987 would show that, the stand taken by the Department before the Hyderabad Bench of the Tribunal was that, the Department had already taken up the matter to bring the Hydrologists within the purview of the scheme and the only hurdle in applying the scheme to Hydrologists was that, Jr.Hydrologists were in Group B Posts and until the proposal is approved for upgrading these posts as Group A posts, the scheme cannot be applied as the scheme is applicable only to Group A posts. As we have already noticed, the promotional channel in all the disciplines except Hydrology is to the post of Senior Group A cadre like Sr Geophysicist, Sr Chemist, etc., but in the Hydrology discipline, the promotional channel is direct from Group B Jr.Hydrologist to Sr Hydrologist, which is a Senior Group A cadre post. When the scheme was introduced in the Department in the year 1987, vide Exhibit P1 notification, this anomaly posed problems in implementing the scheme fairly to all the scientists, in the Hydrology discipline. As evident from Exhibit P5 official communication, at the time of

introduction of the scheme in the Board, when the concurrence of the UPSC was sought, the Commission did not agree to the inclusion of Hydrology discipline on the ground that there was no post at the entry level (Junior Time Scale) of Group A. Therefore, the Commission in consultation with the Department of Science and Technology suggested that, the Board may take up the case for upgradation of the post of Jr.Hydrologist at the entry level, from the pay scale of ₹650-1200/- (pre-revised) to ₹700-1300/- (pre-revised) for bringing that discipline under the purview of the scheme.

9. Later, when the scheme was extended to Hydrology discipline by Exhibit P2 notification, consequent to Exhibit R2(b) order passed by the Hyderabad Bench of the Tribunal, it was extended to Hydrology discipline starting from the Senior Hydrologist (Group A Senior cadre) level only. Neither the post of Jr.Hydrologist was upgraded to Group A level nor the said post was included in the scheme, which was contrary to the suggestion made by the UPSC for inclusion of Hydrology discipline in the scheme and also Exhibit R2(b) office

memorandum of the Department of Science and Technology, bringing all Group B posts in the pay scale of ₹650-1200/- (pre-revised) under the scheme.

10. As noticed by the Tribunal, even after the scheme was extended to Hydrology discipline, the post of Jr.Hydrologist was excluded from the scheme for no good reason and the 2nd respondent was denied the benefit of the said scheme. It was in such circumstances, the 2nd respondent had approached the Tribunal in O.A.No.886/1996 praying for a direction to the petitioners to upgrade the Group B post of Jr.Hydrologist as a Group A post with retrospective effect from 1/6/1987; to bring the category of Jr.Hydrologist also within the purview of the scheme and to consider him for promotion as Scientist C under the said scheme. The Tribunal in Exhibit P7 order concluded that, the action of the petitioners in excluding the post of Jr.Hydrologist from the scheme is clearly arbitrary and cannot be sustained. The Tribunal held that, the 2nd respondent is entitled for the reliefs prayed for to the extent that, he is entitled to the benefits that would have accrued to him as a result of the

inclusion of the Hydrology discipline within the purview of the scheme retrospectively from 6/6/1987 and the post of Jr.Hydrologist included in the scheme retrospectively from 6/6/1987. Therefore, the Tribunal in Exhibit P7 order directed the petitioners to work out the benefits that would accrue to the 2nd respondent had the Hydrology discipline been included in the Flexible Complementing Scheme with effect from the date on which Exhibit P1 came into effect, i.e., 6/6/1987 and had the post of Jr.Hydrologist been included in the said scheme on 6/6/1987 in accordance with office memorandum of the Department of Science and Technology dated 28/5/1986, and to grant the 2nd respondent those benefits within a period of 4 months from the date of order. For the reasons as stated hereinabove, the reasoning of the Tribunal in Exhibit P7 order in O.A.No.886/1996 is neither arbitrary nor perverse, warranting any interference by this Court.

11. As we have already noticed, Exhibits P4 and P5 official communications deal with the amendments proposed in the scheme, which were meant to redress the inadvertent mistake of

omitting Hydrology discipline in the scheme due to an oversight by the Ministry of Water Resources in noticing office memorandum dated 28/5/1986 of the Department of Science and Technology. Therefore, the contention of the petitioners that, Exhibits P4 and P5 have nothing to do with the issue involved in the present case is absolutely untenable. As rightly noticed by the Tribunal in Exhibit P7 order, the contention of the petitioners that, the 5th Central Pay Commission is also considering the issue will not make any material difference on the application made by the 2nd respondent, since what was sought in the O.A. was a relief for the period from 1/6/1987, whereas, any recommendation made by the 5th Central pay commission will cover only the period commencing from 1/1/1996. The petitioners contended further that, it is the policy decision of the Government not to include Group B posts in the scheme. Had it been so, when the UPSC suggested for upgradation of the post of Jr.Hydrologist to Group A level, the Department could have declared then and there that it is the policy decision of the Government not to include Group B posts in the scheme. Having not done so, the

petitioners cannot now contend that, it is a matter of policy decision of the Government.

We find absolutely no illegality or irregularity in Exhibit P7 order passed by the Tribunal. In the result, the Original Petition fails and the same is dismissed. No order as to costs.

**Sd/-
ANTONY DOMINIC,
Judge**

**Sd/-
ANIL K. NARENDRA,
Judge**

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