

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 11.11.2014

% **Judgment delivered on: 21.01.2015**

+ **W.P.(C) 5151/2011**

RAMASHRAY PRASAD

..... Petitioner

Through: Petitioner in person

versus

UNION OF INDIA & ANR

..... Respondent

Through: Mr. R.V. Sinha, Mr. R.N. Singh and
Mr. A.S.Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to assail the order passed by the Central Administrative Tribunal (CAT/ Tribunal) in O.A. No.2260/2008 dated 29.10.2010, and the order passed in R.A. No.2/2011 dated 07.01.2011. By the first order, the OA of the petitioner/applicant was dismissed, wherein the petitioner challenged the denial of promotion to him as Scientist Grade-F under the Flexible Complementing Scheme (FCS), and sought review by the Selection Committee to consider his case under the FCS for promotion as

Scientist Grade-F and further as Scientist Grade-G. By the subsequent order, the review preferred by the petitioner was dismissed by the Tribunal.

2. The petitioner joined the Department of Electronics as Scientist Grade-B on 10.09.1984. He was empanelled for promotion from Scientist Grade-B to Scientist Grade-C in 1996, but he was not promoted as a criminal case was pending against him. However, he was later promoted to Scientist Grade-C vide appointment order issued on 01.01.1992 due to revocation of his suspension in 1987. He was granted notional promotion with effect from 23.02.1987.

3. The petitioner was recommended for further promotion as Scientist Grade-D under the FCS with effect from 01.01.1994. The said date of promotion was preponed to 01.01.1992 in terms of the directions of the Tribunal issued in O.A. No.148/2001 on 03.04.2002. As a consequential benefit, the petitioner's claim for promotion as Scientist Grade-E was considered by the Screening Committee with effect from 01.01.1996. However, the Screening Committee did not recommend him for interview. Later on, he was considered for review promotion with effect from 01.01.1997, but the Screening Committee did not find him fit for interview.

4. In the third review held for promotion on 01.01.1998, the petitioner was recommended and was promoted to the Scientist Grade-E with effect from 01.01.1998 vide notification dated 08.10.2002. The petitioner became eligible for promotion to the Scientist Grade-F with effect from 01.01.2003 after completion of minimum residency period of five years in Scientist Grade-E. However, during the year 2003, no meeting of the Selection

Committee was held. A review took place for the eligible officers as on 01.01.2004. The Selection Committee did not recommend the petitioner's name for promotion. Subsequently, during the review held in the years 2004, 2005, 2006, 2007 and 2008, the successive Selection Committees did not recommend the petitioner for promotion to the Scientist Grade-F. The petitioner represented for his promotion under the FCS as Scientist Grade-F on 03.12.2003, and again on 04.05.2005. The petitioner also sought to place reliance on the OM dated 03.10.2000 issued by the DOPT on the subject of reservation and promotion – prescription of lower qualifying marks/lesser standard of evaluation. We may note that the petitioner is a reserved category employee.

5. The respondent sent a reply on 27.06.2005, refuting the allegations made by the petitioner. On the basis that the complaint against the petitioner had been closed, he again represented to the respondent on 19.11.2007. By representation dated 16.06.2008, the petitioner requested for payment of arrears for the period 23.02.1987 to 31.12.1991. A reply was sent by the respondent to this representation on 04.08.2008 which, inter alia, conveyed the observations of the DOPT to the effect that the criminal case was still pending against the petitioner and it would be premature to decide the question of arrears of pay and allowances for the period of notional promotion keeping in view the directions of the Supreme Court in ***Union of India v. K.V. Jankiraman***, AIR 1991 SC 2010. It was informed that the Department could consider the question of payment of arrears after finalization of the criminal case pending against the petitioner.

6. The petitioner thereafter conveyed on 14.08.2008 that he had been acquitted by the Trial Court at Meerut in the criminal case, and he again requested to expedite the payment of arrears for the post of Scientist Grade-D. Since the relief was not granted to him, he approached the Tribunal by filing the aforesaid O.A.

7. The respondents opposed the application. It was, *inter alia*, claimed that the petitioner was not considered fit for promotion to Scientist Grade-F under the FCS successively, year after year, for the years 2004 to 2008, as he did not secure the minimum percentage of marks in his assessment. The respondent also refuted the charges of malafide leveled against respondent no.1. The claim made by the petitioner for reservation in promotion was refuted on the basis that the FCS is not exactly a promotion scheme, as promotions could take place against any available vacancies, whereas grant of FCS is not dependent on existence of vacancies. The respondent also stated that FCS does not provide any guidelines for the promotion of SC/ST category, and it also does not provide for application of relaxed norms to the said categories of employees.

8. The Tribunal framed the following issues for its consideration:

- i) Whether the DOPT OM No.36012/23/96-Estt (Res.) Vol.II dated 03.10.2000 issued on the basis of Article 335 of the Constitution of India would be applicable in this case for promotion under FCS to Scientist Grade-F?

- ii) Whether the recommendation of the Selection Committee assessing him “Unfit” for the assessment years 2004 onwards is legally sustainable?
- iii) Whether the respondents need to be directed to consider the case of the applicant for the post of Scientist-F for the year 2003?
- iv) Whether the impugned letter dated 4.8.2008 needs to be quashed?
- v) Has the applicant established malafide against the respondent no.1?

9. The Tribunal while dealing with the first issue, i.e. with regard to grant of reservation/application of relaxed standards for SC/ST candidates held as follows:

“16. The FCS introduced vide DOPT OM dated 28.5.1996 was continued in the 5th CPC and a detailed guideline was issued vide DOPT OM dated 9.11.1998. The FCS does not envisage normal vacancy based promotion, it provided in situ promotion based on merit and prescribed residency period in a grade and fulfilling minimum qualifying percentage in the screening and interview as well and FCS is not linked to vacancies. Thus, promotion under FCS is merit based no reservation for SC and ST has been prescribed. The FCS guidelines do not provide any relaxation of standards of evaluation for any class of Scientists. It does not envisage promotion of SC and ST Scientists by way of lower qualifying marks in the interview. In view of the above reasons, there is logic and rationality in the argument of the Counsel of the Respondents.

17. The guidelines on the Flexible Complementing Scheme does not attract the provisions for relaxation of qualifying marks or evaluation standards in the case of Scientists to be considered for promotion from one grade to another grade. All these promotions under FCS being in situ promotion and not against the vacancies such promotions do not attract the relaxation for reserved candidates belonging to Scheduled Castes and Scheduled Tribes”.

10. On the second issue, the Tribunal observed that the assessment of officers under the FCS has to pass through – (i) Screening by Screening Committee on the basis of performance as reflected in the ACR; (ii) By interview conducted by the Selection Committee, and; (iii) Third stage of review by the Departmental Peer Review Committee (DPRC), which was introduced in 2006 to review the recommendations of the Selection Committee. The Tribunal observed that in terms of DOPT's OM No.2/41/97/PIC dated 09.11.1998, the officers' ACRs are assessed on a ten point scale. The Tribunal also takes note of the clarifications issued by DOPT vide OMs dated 15.11.2000 and 29.11.2002. On the directions of the Tribunal, the files relating to review promotion of Grade-A S&T Officers in the grade of Scientist E to F for the years 2004 to 2010 were produced before the Tribunal. The said files were perused and in respect of each of the years, the reason for the petitioner being declared “unfit” was noted. A perusal of the impugned order shows that the petitioner failed to achieve the qualifying percentage of marks in each of the years.

11. The gist of marks awarded to the petitioner in each of the relevant years is as follows:

Sl No.	Due date for consideration	Residency period (in years)	Qualifying percentage of marks as per the residency period	Percentage of marks obtained in the interview	Recommendations of Selection Committee
1	2	3	4	5	6
1.	01.01.2003	No review took place in the Department in the year 2003.			
2.	01.01.2004	6	80	60	Not Fit
3.	01.01.2005	7	75	71	Not Fit
4.	01.01.2006	8	70	60	Not Fit
5.	01.01.2007	9	70	56	Not Fit
6.	01.01.2008	10	70	50	Not Fit
7.	01.01.2009	11	70	60	Not Fit
8.	01.01.2010	12	70	60	Not Fit

12. Consequently, the Tribunal held that the unanimous decision of the Selection Committee on each of the occasions did not call for interference. The Tribunal also records that it did not find any procedural infirmity. The finding returned by the Tribunal in the aforesaid issue reads as follows:

“30. From the above factual analysis of the assessments made by the Selection Committee the Applicant has been systematically been found below the minimum qualifying percentage of marks to be obtained in the interview. It is well settled position in law that the Selection Committee is competent to devise its interview procedure to assess the

competing Scientists. It is their performance in the interview by which they secure the marks. We do not find any difference of opinion among the members of the Selection Committee in so far as awarding the Applicant percentage of marks in all the interviews. There is unanimity amongst them. Moreover, on our perusal of the relevant files we find there is no procedural infirmity and as such decisions taken by the respective Selection Committees are found to be maintainable in the eyes of law”.

13. So far as the issue with regard to payment of arrears is concerned, though the petitioner had claimed that he had been acquitted in the criminal case by the Trial Court at Meerut, the respondent claimed that a copy of the judgment had not been received. The Tribunal, therefore, directed the petitioner to provide a copy of the judgment within four weeks, on receipt whereof, the respondent no.1 was directed to decide the issue of arrears of pay within four weeks. So far as the allegation of malafide was concerned, the Tribunal held that the petitioner had not impleaded any officer in person against whom allegations of malifides were made. A perusal of the files produced by the respondent did not make out a case of malafides. The plea was consequently rejected.

14. The petitioner's reliance on the judgment of the Orissa High Court in W.P.(C.) No.7080/2008 in **Dr (Mrs.) Manjurani Routray v. Union of India & Ors.** decided on 26.09.2008 was negated by reference to the interim orders passed by the Supreme Court on 17.07.2009, which permitted the respondent to continue the promotion process under the FCS as per past practice, i.e. prior to the judgment dated 26.09.2008. Since the Special Leave Petition (SLP) of the Union of India was still pending before the Supreme Court, and the interim orders were prevailing, the Tribunal

observed that its order would be subject to the decision of the Supreme Court in the SLP.

15. The petitioner, who appears in person, has sought to once again place reliance on the judgment of the Orissa High Court. He submits that the SLP (C) No.7100/2009 had been withdrawn by respondent no.1 on 07.02.2013 and, consequently, the judgment of the Orissa High Court had attained finality. The petitioner submits that he had been acquitted in the criminal case on 20.12.1999 – yet he has not been paid the arrears.

16. The petitioner has not placed on record the order of the Supreme Court stated to have been passed in S.L.P. (Civil) No.7100/2009 dated 07.02.2013. Consequently, we got a search done on the website of the Supreme Court with a view to obtain a copy of the said order. We are surprised to note that on 07.02.2013, the said Special Leave Petition was listed after conversion in Civil Appeal No.2299/2010 before the Registrar Mr. Sunil Thomas, when the following order was passed:

“

ORDER

*Both sides have filed their respective statement of case.
It is submitted by both sides that no further steps are required.
Hence, place the matter before the Hon'ble Court, as per
Rule.”*

17. In fact, S.L.P. (Civil) No.7100/2009 was listed before the Supreme Court on 25.02.2010, when the Supreme Court granted special leave. The said order reads as follows:

“

ORDER

Leave granted.

Interim order limited to the question shall continue.

Hearing expedited”

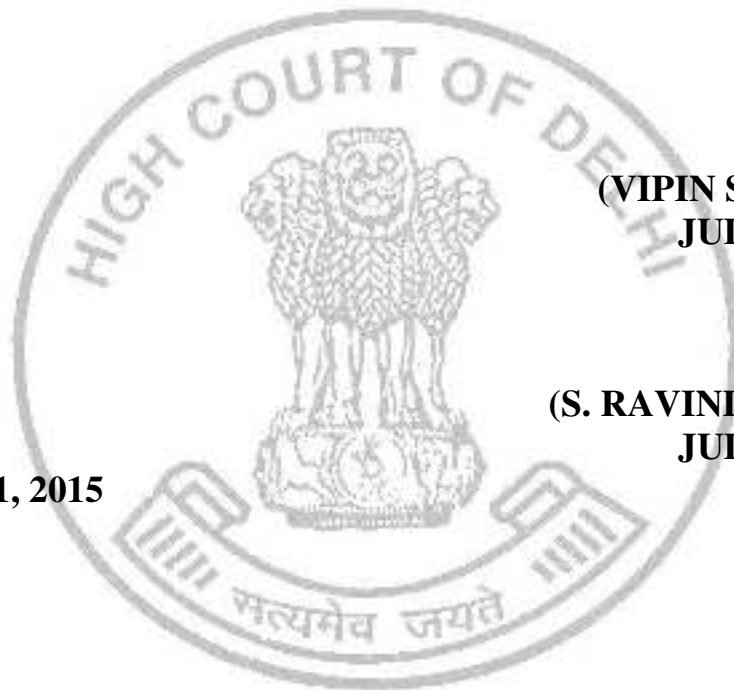
18. Therefore, the petitioner appears to have made a wrong statement. Normally, this conduct by the petitioner, by itself, would have been sufficient to dismiss the present writ petition, however, since the petitioner appears in person, we are willing to give him benefit of doubt as it is possible that he may have claimed that the aforesaid Special Leave Petition was dismissed as withdrawn on 07.02.2013 on a misunderstanding of the Court proceedings.

19. Since the aforesaid Civil Appeal in the case of ***Union of India & Others Vs. Manjurani Routray & Another*** still appears to be pending the operation of the judgment of the Orissa High Court was stayed by the Supreme Court. Reliance placed by the petitioner on the judgment of the Orissa High Court in ***Dr (Mrs.) Manjurani Routray*** (supra) would be of no avail.

20. On the aspect of payment of arrears claimed by the petitioner, we find that the Tribunal has adequately addressed the grievance of the petitioner. The Tribunal had granted time to the petitioner to produce a copy of the Trial Court judgment relied upon by him to claim that he had been acquitted in the criminal trial at Meerut and the respondent No.1 was directed to decide the issue of arrears of pay within four weeks. In case the petitioner has any surviving grievance on account of non-compliance of the said

direction by the respondents, his remedy lies in preferring a contempt proceeding, however, if the respondents have decided not to make payment of arrears of pay claimed by the petitioner and communicated their decision in this regard, that could give a fresh cause of action to the petitioner, which he must agitate independently.

21. For the aforesaid reasons, we find no merit in the present petition and dismiss the same leaving the parties to bear their respective costs.



(VIPIN SANGHI)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

JANUARY 21, 2015
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