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

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Judgement reserved on 09.03.2022

Judgement pronounced on 08.08.2022

+ **W.P.(C) 9764/2019, CM APPLs. 40366/2019 and 11726/2022**

UNION OF INDIA AND ORS.

..... Petitioners

Through: Mr Ruchir Mishra with Mr Sanjiv K. Saxena, Mr Mukesh K. Tiwari and Mr Ramneek Mishra, Advocates.

versus

SH. MAHABIR DIXIT AND ORS.

..... Respondents

Through: Mr S.K. Gupta, Advocate.

+ **W.P.(C) 11338/2019**

UNION OF INDIA AND ORS.

..... Petitioners

Through: Mr Ruchir Mishra with Mr Sanjiv K. Saxena, Mr Mukesh K. Tiwari and Mr Ramneek Mishra, Advocates.

versus

SH. RAJ KUMAR AND ANR.

..... Respondents

Through: Mr S.K. Gupta, Advocate.

+ **W.P.(C) 9857/2019 and CM APPL. 11721/2022**

UNION OF INDIA AND ORS.

..... Petitioners

Through: Mr Ruchir Mishra with Mr Sanjiv K. Saxena, Mr Mukesh K. Tiwari and Mr Ramneek Mishra, Advocates.

versus

SH. R. K. MATHUR AND ORS.

..... Respondents

Through: Mr S.K. Gupta, Advocate.

+ **W.P.(C) 9858/2019**

UNION OF INDIA AND ORS.

..... Petitioners

Through: Mr Ruchir Mishra with Mr Sanjiv K. Saxena, Mr Mukesh K. Tiwari and



Mr Ramneek Mishra, Advocates.

versus

DR. N.P. HONKANADAVAR

..... Respondent

Through: Mr S.K. Gupta, Advocate.

+ **W.P.(C) 1478/2020 and CM APPL. 11729/2022**

UNION OF INDIA AND ORS.

..... Petitioners

Through: Mr Ruchir Mishra with Mr Sanjiv K. Saxena, Mr Mukesh K. Tiwari and Mr Ramneek Mishra, Advocates.

versus

PANKAJ SHARMA

..... Respondent

Through: Mr S.K. Gupta, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE JASMEET SINGH

[Physical Court hearing/ Hybrid hearing (as per request)]

RAJIV SHAKDHER, J. :

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Preface:

1. The above-captioned writ petitions raise common issues for consideration, although the orders passed by the Central Administrative Tribunal [hereafter referred to as 'the Tribunal'] have been passed in separate Original Applications (OAs). For the sake of brevity, the details concerning orders passed in various OAs, which have been assailed in the above-captioned writ petitions, are set forth hereafter:



W.P.(C) No.	Order impugned in W.P.(C)	OA in which the impugned order is passed	Private respondents arrayed in the concerned writ petition
9764/2019	14.11.2018	4063/2013	Shri Mahabir Dixit, Dr Manish Gupta, Shri Hari Dev, Shri U.S. Vidyarthi and Shri N. Kumar Vel
1478/2020	11.07.2019	1324/2014	Shri Pankaj Sharma
9857/2019	14.11.2018	535/2014	Shri R.K. Mathur, Shri G.K.Vijh and Shri N.V. Mahure
9858/2019	15.11.2018	4059/2013	Dr N.P. Honkanadavar
11338/2019	08.02.2019	1306/2014	Shri Raj Kumar and Shri Prit Pal Singh

2. The private respondents arrayed as parties in each of these writ petitions had approached the Tribunal when they were holding the post of either Senior Research Officer (Scientist ‘C’) [hereafter referred to as “Scientist C”] or Chief Research Officer (Scientist ‘D’) [hereafter referred to as “Scientist D”] in the Central Soil and Material Research Station [CSMRS]; a scientific organization functioning under the administrative control of Ministry of Water Resources, New Delhi.

2.1 In the OAs filed before the Tribunal, the challenge was laid to the order dated 28.05.2013 passed by CSMRS, Government of India, whereby the representation made for grant of promotion from the date when the private respondents were eligible for promotion to the grade of Scientist ‘C’/ Scientist ‘D’ under the CSMRS, New Delhi (Group A) posts Recruitment Rules, 1983 [hereafter referred to as ‘1983 Rules’], was declined. The reason conveyed for rejecting the private respondents’ representation *via* separate orders of even date i.e., 28.05.2013, was that they had been promoted under the Ministry of Water Resources, CSMRS, New Delhi, Group ‘A’ posts Recruitment Rules, 2010 [hereafter referred to as ‘2010 Rules’], which specifically forbade retrospective promotion. In this context,



the said order alluded to Rule 6(9) of the 2010 Rules.

2.2 Thus, the heart of the controversy obtaining between the contesting parties veers around the issue as to whether the private respondents in respect of their *in situ* promotions to the grade of Scientist 'C'/Scientist 'D' would be governed by the 2010 Rules as contended by the writ petitioner i.e., the Union of India [hereafter referred to as 'UOI'] or by the 1983 Rules, as is the case set up by the private respondents and accepted by the Tribunal.

2.3. While examining the issue, one would have to bear in mind the well-established principle, which is, that *in situ* promotions result in an employee being upgraded from the existing pay scale to a higher pay scale, even while the employee's designation, responsibility and seniority remain unchanged. In that sense, *in situ* promotion is qualitatively different from a promotion where an employee moves to a higher post.

3. It was, thus, the contention of the private respondents before the Tribunal as well as this Court, that the UOI/CSMRS was required to convene a Board of Assessment [in short 'BOA'] based on the vacancies arising in each year and thereafter, consider for promotion eligible officers, having regard to their respective merit and ability, as discernible from their Annual Confidential Reports (ACRs).

4. The Tribunal *vide* order dated 14.11.2018 passed in O.A.Nos.4063/2013 and 535/2014 accepted this contention raised by the private respondents. This decision was followed by the Tribunal while disposing of other OAs.

5. Being aggrieved, the UOI has preferred, as noticed at the very outset, the above-captioned writ petitions. The details concerning the orders passed in various OAs, which are assailed in the five writ petitions, are outlined in



paragraph 1 above.

Background:

6. Before we proceed further, it may be relevant to give a brief backdrop which has led to the eruption of the dispute between the contesting parties.

6.1. It appears that a Flexible Complementing Scheme (FCS) was framed, in the first instance, in and about 1983, pursuant to recommendations made by the Third Central Pay Commission [hereafter referred to as “3rd CPC”].

6.2. In the same year, the 1983 Rules were notified. The notification was issued on 29.10.1983. The 1983 Rules, broadly, provided for fixation of *inter se* seniority amongst officers as well as provisions for their promotion to higher grades subject to the eligibility criteria contained therein.

6.3. Since CSMRS was a scientific organization which was covered under the FCS, the scientists who came within the purview of the said scheme were entitled to *in situ* promotion to the next higher grade based on the length of service in the lower grade and the evaluation of their merit by the BOA.

6.4. Thus, the promotional avenues available to the officers of CSMRS, in ascending order, are as follows:

- (i) Research Officer (Scientist ‘B’)
- (ii) Senior Research Officer (Scientist ‘C’)
- (iii) Chief Research Officer (Scientist ‘D’)
- (iv) Joint Director (Scientist ‘E’) [hereafter referred to as Scientist ‘E’]

6.5. Pertinently, Rule 5(3) of the 1983 Rules provided a ceiling limit of 30% as regards promotion to the grade of Scientist ‘D’ and Scientist ‘E’.

6.6. Furthermore, Rule 5(4) of the 1983 Rules *inter alia* provided that for promotion to the next higher grade, the concerned officer, as noticed above,



had to serve a minimum of five [5] years in the lower grade and had to be recommended for promotion by the BOA.

6.7. Likewise, as adverted to hereinabove, the FCS which was operable in CSMRS, had a provision in that behalf (including for *in situ* promotion) made in Rule 5(2) of the 1983 Rules.

6.8. In and about January 1997, the Fifth CPC [hereafter referred to as “5th CPC”] submitted its report concerning various aspects. In Chapter 51 of its report, the 5th CPC made several recommendations for modifying the FCS, which was in operation at that point in time, *qua* scientific and technological departments concerning *in situ* promotion of scientists/technical personnel to remove the shortcomings and/or inadequacies which had come to its notice. Some of the recommendations made by the 5th CPC were accepted by the Government of India (GOI), Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training (DoPT), *via* office memorandum dated 09.11.1998 [‘1998 Memorandum’].

6.9. *Inter alia*, the 1998 Memorandum [Annexure I] lists out the beneficiaries of modified FCS both in terms of scientific and technical institutions and eligible scientists. The benefit was extended to those scientists who held scientific posts and were involved in scientific and technical activities. Besides this, the 1998 Memorandum also nudged various ministries and its departments where FCS was in operation to carry out a review of the subsisting FCS and to amend the relevant recruitment rules [hereafter referred to as “RRs”] in conformity with the decisions/guidelines being conveyed *via* the said memorandum. [See para 6 of the 1998 Memorandum.]

6.10. Although, the language of paragraph 6 of the 1998 memorandum



appears to convey that the direction was directory and not mandatory since much store has been laid by UOI in the said paragraph, the same is extracted hereafter for a better appreciation of this aspect of the matter:

“6. It is requested that all the Ministries/Departments, where the Flexible Complementing Scheme is in operation, may initiate action for [sic: to] review of the provisions of the Flexible Complementing Scheme and amend the provisions of the relevant recruitment rules so that the scheme is brought in conformity with the decisions/guidelines being conveyed vide this Office Memorandum. Results of the review may also be conveyed to the Department of Science & Technology, the nodal department for [the] operation of the Flexible Complementing Scheme. Action for extension of the Flexible Complementing Scheme to other scientific organisations, where the same is not in operation at present, may be taken in accordance with the decision contained in para 5 of this Office Memorandum.”.[Emphasis is ours.]

6.11. Suffice it to state, as is evident from what has been noted hereinabove, that amendment to the RRs was not brought about for the next 12 years. The 2010 Rules were framed and notified on 23.11.2010 and were brought into force w.e.f. 01.01.2011.

6.12. At this juncture, it would be relevant to note that the BOA for granting *in situ* promotions under the FCS for the grade of Scientist ‘C’ and Scientist ‘D’ convened only in the following years i.e., 1996, 2006 and 2012; an aspect which emerges upon perusal of the Minutes of the Meeting of the Screening Committee dated 11.03.2006.

6.13. In other words, although, the 1983 Rules were operable till 31.12.2010, the BOA was not convened until 2012. It is an admitted position that the BOA was required to be convened every year to grant *in situ* promotion to the eligible officers to the next higher grade based on the



vacancy position, which obtained in the concerned year.

7. The assertion of the private respondents in each of the OAs is that even though they became eligible for promotion to the next higher grade in an earlier year, they were granted promotion much later, only because the BOA was not convened in time. The details, concerning the same, are set forth hereafter:

W.P.(C.) No.	Name of the applicant	Date of eligibility (as per the applicants)	Date of eligibility (as per UOI) ¹	Feeder Grade	Grade promoted to	Date of promotion order	Effective date of promotion
9764/2019	Shri Mahabir Dixit	30.07.2005	2007	Scientist 'C'	Scientist 'D'	01.04.2013	28.03.2013
9764/2019	Dr Manish Gupta	30.07.2005	2007	Scientist 'C'	Scientist 'D'	01.04.2013	28.03.2013
9764/2019	Shri Hari Dev	30.07.2005	2007	Scientist 'C'	Scientist 'D'	01.04.2013	28.03.2013
9764/2019	Shri U.S. Vidyarthi	30.03.2006	2008	Scientist 'C'	Scientist 'D'	01.04.2013	28.03.2013
9764/2019	Shri N. Kumar Vel	16.04.2006	2008	Scientist 'C'	Scientist 'D'	01.04.2013	28.03.2013
1478/2020	Shri Pankaj Sharma	2010	-	Scientist 'B'	Scientist 'C'	12.11.2012	12.11.2012
9857/2019	Shri R.K. Mathur	2008	2008-2009	Scientist 'C'	Scientist 'D'	01.04.2013	28.03.2013
9857/2019	Shri G.K. Vijn	2007	2008-2009	Scientist 'C'	Scientist 'D'	01.04.2013	28.03.2013
9857/2019	Shri N.V. Mahure	2008	2008-2009	Scientist 'C'	Scientist 'D'	01.04.2013	28.03.2013
9858/2019	Dr N.P. Honkanadavar	28.12.2001 ²	-	Scientist 'C'	Scientist 'D'	01.04.2013	28.03.2013
11338/2019	Shri Raj Kumar	21.12.2005	-	Scientist 'B'	Scientist 'C'	12.11.2012	12.11.2012
11338/2019	Shri Prit Pal Singh	2005	-	Scientist 'B'	Scientist 'C'	12.11.2012	12.11.2012

7.1. The UOI, on its part, has contended that after the 1998 Memorandum,

¹ UOI does not furnish any reasons as to why the date of eligibility given by the private respondents is not correct.

² Mr Honkanadavar was considered for promotion in 2006 but could not qualify.



the 1983 Rules became ‘dysfunctional’ and therefore, the private respondents were considered for grant of *in situ* promotions to the relevant higher grade only when the amended RRs were brought into force i.e., after 01.01.2011.

8. As is evident from the narration of facts set forth above, the BOA convened after a lapse of two years from the time when the 2010 Rules were brought into force. Therefore, in effect, the private respondents were deprived of *in situ* promotion, although, they were concededly eligible for nearly 13-14 years resulting in grave detriment to them, including deprivation of financial benefits.

8.1. It is this situation which impelled the private respondents to approach the Tribunal *via* various OAs. The Tribunal, as noticed above, in each of the OAs ruled in favour of the private respondents.

8.2. Given this backdrop, UOI took recourse to the above-captioned writ petitions.

9. On 12.09.2019 notice was issued in W.P.(C) No.9764/2019 wherein, as alluded to above, a challenge is laid to the order dated 14.11.2018 passed in O.A.No.4063/2013. The Court on that date, while issuing notice, stayed the operation of the order dated 14.11.2018.

9.1. A perusal of the record concerning W.P.(C)No.9764/2019 would show that on 15.07.2021, when the said writ petition was listed along with the other four writ petitions, a direction was issued, with the consent of the counsel for the contesting parties, that W.P.(C)No.9764/2019 would be the lead case. Accordingly, as agreed by the counsel for the parties, it was observed that the result which was obtained in W.P.(C)No.9764/2019 would apply to the remaining writ petitions.



9.2. Based on this approach, as agreed to by counsel for the contesting parties, the interim order dated 12.09.2019 passed in W.P.(C)No.9764/2019 was made absolute during the pendency of the writ petition. Likewise, interim orders passed in the other four writ petitions, as referred to in paragraph 5.1 of the order dated 15.07.2021, were made absolute, *albeit*, during the pendency of the writ petitions.

9.3. We may point out that although the Union Public Services Commission (UPSC) was arrayed as one of the petitioners in the above-captioned writ petitions; however, *via* order dated 03.09.2021 passed in CM No.28522/2021 preferred in W.P.(C) 9764/2019, UPSC was deleted as petitioner no.3 on account of the position taken by it, that the issue involved in the matter falls in the domain of Ministry of Jal Shakti, Department of Water Resources [MoJS].

9.4. Resultantly, liberty was given to array MoJS as a proforma respondent. Accordingly, permission was granted in W.P.(C.) No.9858/2019 to take on record the amended memo of parties. Although such an application ought to have been filed in other writ petitions as well, this is a minor infraction which does not affect the merits of the remaining writ petitions.

10. It is in this setting that arguments on behalf of UOI were addressed by Mr Ruchir Mishra, while submissions on behalf of the private respondents were advanced by Mr S.K. Gupta.

Submissions on behalf of the petitioners

11. Mr Ruchir Mishra, broadly, advanced the following submissions:

11.1. Firstly, the modified FCS, which was the subject matter of the 1998 Memorandum, introduced a revised assessment procedure, as reflected in



Annexure-II appended thereto. The modified FCS introduced a concept of minimum residency, which was linked to the performance of the concerned officer. The objective of the modified FCS was that only those scientists should be recommended for promotion who had, to their credit “demonstrable” achievements or had achieved a higher level of technical merit.

11.2. Secondly, the modified FCS introduced 100% flexibility in promotion i.e., did away with the ceiling limit.

11.3 Thirdly, the 1998 Memorandum exhorted all ministries/departments of GOI to make necessary amendments to the RRs to bring them in conformity with the decisions conveyed *via* the said memorandum. [In this context, see paragraph 6 of the 1998 Memorandum.]

11.4. Fourthly, since the process of amending the 1983 Rules had commenced pursuant to the issuance of the 1998 Memorandum, the said rules became "dysfunctional". In particular, the vacancy-based system of promotion obtaining under the 1983 Rules ceased to exist with the advent of the modified FCS.

11.5 Fifthly, Rule 6(9) of the 2010 Rules, in no uncertain terms, barred retrospective promotion. Accordingly, once the 2010 Rules were brought into force on 01.01.2011, BOAs were convened, and promotion orders were issued to the private respondents in 2012/2013.

11.6 Sixthly, because there was a delay in the finalization of the amended RRs, the Ministry of Water Resources, in and about November 2005, approached the UPSC for granting promotion to the grade of Scientist ‘D’ under the then subsisting RRs i.e., 1983 Rules. Accordingly, UPSC *via* communication dated 10.11.2005 granted approval for filling up six posts of



Scientist 'D' in CSMRS, pending amendment of the 1983 Rules. Since the modified FCS had kicked in which provided for 100% flexibility in respect of promotion and, thus, in effect, ended the linkage between promotion and vacancies, the UPSC issued a corrigendum *via* its communication dated 06.02.2006 to its earlier letter dated 10.11.2005. Consequently, nine Senior Research Officers [i.e., Scientist 'C'] were promoted to the grade of Scientist 'D' w.e.f. the date from which they took charge i.e., 11.10.2006. Admittedly, at this juncture, the private respondents [in W.P.(C.) Nos.9764/2019 and 9857/2019] were not eligible for being promoted to the grade of Scientist 'D'. These private respondents attained eligibility for being promoted to the said grade of Scientist 'D' only in 2007-2009.

11.7 Lastly, given the aforesaid contentions, the impugned orders passed by the Tribunal in the above referred OAs directing issuance of promotion orders in favour of the private respondents having regard to the 1983 Rules, are untenable in law.

11.8. In support of his submissions, Mr Mishra relied upon the following judgments:

- (i) Judgment dated 04.08.2016 rendered by the coordinate bench in W.P.(C)Nos.19087-91/2006, titled ***Pradeep Kumar & Ors. vs. Govt. of NCT of Delhi & Ors.***
- (ii) Judgment dated 08.12.2016 rendered by the coordinate bench in W.P.(C) 244/2002, titled ***Union of India & Anr. vs. The Defence Marine Engineering Technical Staff Welfare Association & Ors.***

Submissions on behalf of the respondents

12. Mr Gupta in rebuttal, broadly, put forth the following submissions:

12.1 The 1983 Rules were in operation till 31.12.2010. Therefore, the



private respondents were, in law, entitled to be considered for promotion to the higher grade under the regime that prevailed at the point in time when the vacancies arose.

12.2 The 1983 Rules have a statutory flavour, as they were framed in the exercise of powers conferred under Article 309 of the Constitution. These rules cannot be upended by executive instructions such as the 1998 Memorandum.

12.3 The UOI cannot take the benefit of its own wrong and, thus, deprive the private respondents of benefits that would have accrued to them had the BOAs been convened in time.

12.4 Concededly, vacancies were available in the grade of Scientist 'D'/Scientist 'E' and even though the private respondents had attained eligibility much prior in point in time, they were granted *in situ* promotions only in 2012-2013.

12.5. Despite UOI's assertion to the contrary, the record would show that promotions were granted by taking recourse to the 1983 Rules in the case of Nakul Dev, M.L. Soni and Hasan Abdullah.

12.6. Therefore, the contention advanced on behalf of UOI that once the modified FCS had kicked in on 09.11.1998, the 1983 Rules had become "dysfunctional" cannot be accepted. All three officers were granted *in situ* promotion in the grade of Scientist 'D' from the year in which they first attained eligibility i.e., 1995. [In this context, reference was made to the office order dated 17.02.2010 issued by GOI.] It was thus emphasized that GOI had accepted the decision of the Tribunal dated 09.07.2009, passed in O.A.No.1810/2007, pursuant to the filing of C.P.No.533/2009.

12.7. The discriminatory approach adopted by UOI becomes evident if



regard is had to the order dated 23.05.2011 (as modified by the order dated 01.06.2011) issued by it, in the case of another person i.e., one Mr N. Siva Kumar who was promoted to the grade of Scientist 'D' in CSMRS w.e.f. 27.06.1995, *albeit*, subject to the final outcome in O.A.No.641/2011 [filed by Dr Rajbal Singh, Scientist 'E', CSMRS vs. UOI & Ors.]. In OA No.1435/2010 [preferred by Mr N. Siva Kumar], the Tribunal had, apparently, issued an order dated 24.02.2011 during the pendency of the said OA which led to the issuance of the office order dated 23.05.2011.

12.8. More particularly, UOI's inconsistent approach attains egregious proportions if one were to peruse the office order dated 21.08.2014 whereby Nakul Dev, M.L. Soni and Hasan Abdullah were promoted to the grade of Scientist 'E' w.e.f. from the date of occurrence of vacancies for the panel year shown against their names pursuant to order dated 05.03.2012 passed in O.A.No.1861/2010.

Name of the Candidate	Year/Date of vacancy against which recommended
Nakul Dev	2002 (18.09.2002)
M.L. Soni	2007 (01.08.2007)
Hasan Abdullah	2007 (01.08.2007)

12.9. A similar office order dated 07.03.2013 was issued, concerning the following four officers who were promoted to the grade of Scientist 'D' with effect from the date of occurrence of vacancies for the panel year shown against their names:

Name of the Candidate	Year/Date of vacancy against which recommended
Aabi Binju	1998
S.L. Gupta	2002
Rajeev Kumar	2002
P.K. Jha	2002



12.10. The aforesaid four officers were granted promotions to the higher grade with all consequential benefits including seniority and arrears of pay and allowances. This order was, however, made subject to the final outcome in W.P.(C) No.2726/2012, preferred qua OA No.1076/2007.

12.11. In support of his submissions, Mr Gupta relied upon:

- (i) Judgment dated 05.10.2010 passed by the coordinate bench in W.P.(C) No.14263/2004, titled ***S.K. Murti v. Union of India & Ors.*** read with the decision of the Supreme Court dated 02.05.2011 in Special Leave Petition (C) No.6864/2011, preferred in the same case.
- (ii) ***Y.V. Rangaiah v. J. Sreenivasa Rao***, (1983) 3 SCC 284
- (iii) Judgment dated 25.08.2021, rendered by the Supreme Court in Civil Appeal No.6359/2016, titled ***Union of India & Ors. v. Vinay Kumar.***
- (iv) ***Union of India & Ors. v. N.R. Banerjee & Ors.*** (1997) 9 SCC 287

Analysis and Reasons

13. Having perused the record and heard the learned counsel for the parties, what emerges is as follows:

13.1. The 1983 Rules continued to remain in force till 31.12.2010. These rules were amended with the advent of the 2010 Rules, which were notified on 23.11.2010 and brought into force on 01.01.2011.

13.2. The 1983 Rules provided for *in situ* promotions to higher grades, as per the FCS which was in existence at that point in time. *Inter alia*, in granting promotions, regard had to be had to sub-rules 2 to 4 of Rule 5 of the 1983 Rules. For the sake of convenience, the same are extracted hereafter:

“5...(2)The system of flexible complimenting and in situ promotion shall be followed in the matter of promotion of departmental officers in the grades of Research Officer, Senior Research Officer and Chief Research Officer to the respective



higher grades, namely, Senior Research Officer, Chief Research Officer and Joint Director.

(3) Subject to the condition that at any given point of time, the number of posts in the grade of Joint Director and Chief Research Officer shall not exceed 30 per cent of the total number of posts in the grade of Research officer, Senior Research Officer, Chief Research Officer and Joint Director put together and provided further that the number of posts in the grade of Joint Director shall not exceed 30% of the total number of posts in the grade of Joint Director and Chief Research Officer put together and to the condition that the total number of posts taken together shall not be exceeded, there shall be complete flexibility in the number of posts in relation to the respective grades. [In the OA, the quote reflects 31st December as the date for consideration, however, no such mention is found in the rules]

(4) The departmental officers who have rendered, in the respective grade, regular service of not less than 5 years may be recommended by the Board of Assessment for promotion to the next higher grade on the basis of the assessment of the record of service and also an interview for evaluating their scientific contribution and achievements.”

14. Pursuant to the issuance of the 1998 Memorandum, some of the recommendations of the 5th CPC were accepted, insofar as scientific institutions and scientists working therein were concerned. The parameters that the scientific institutions/organizations and the scientists had to fulfil to come within the scope and ambit of the modified FCS, were provided in Annexure-I appended to the 1998 Memorandum.

14.1. Apart from other aspects, paragraph 6 of the 1998 Memorandum stated that the ministries/departments where FCS was in operation, 'may initiate action' for review of the provisions of the said scheme and accordingly, amend the provisions of the relevant RRs so that the same are aligned with the 'decisions/guidelines' conveyed *via* the said memorandum.



14.2. Clearly, paragraph 6 of the 1998 Memorandum, upon which emphasis is laid by Mr Mishra, merely exhorted various ministries and departments of GOI to review the subsisting FCS which was in operation at the relevant point in time and to amend the then subsisting RRs, to align it with the decisions/guidelines issued *via* 1998 Memorandum. A plain reading of paragraph 6 left it to the discretion of the concerned ministry/department as to whether or not the subsisting RRs were required to be amended. Concededly, for 12 years, no steps were taken by UOI to amend the 1983 Rules.

15. Admittedly, in November 2005, the Ministry of Water Resources had to approach the UPSC to approve the filling-up of six posts in the grade of Scientist 'D' in CSMRS. These promotions could not have taken place if the 1983 Rules were not in operation. Although much has sought to be made out by Mr Mishra of the contents of the corrigendum dated 06.02.2006 issued by the UPSC whereby reference to six posts of Scientist 'D' in UPSC's order dated 10.11.2005 was deleted, the fact remains that the 1983 Rules were operable and that the said promotions could only have been made under the said rules.

16. It has also not been disputed before us that in 2007-2010, the private respondents became eligible under the 1983 Rules for promotion to the next higher grade i.e., Scientist 'C'/Scientist 'D'. Furthermore, it has also not been disputed before us that in these years, the private respondents were not granted their respective promotions, because BOA was not convened. Thus, had the BOAs been convened, the private respondents would have been granted their respective promotions since they were otherwise, undisputedly, eligible for promotion under the 1983 Rules.



17. In the instant case, the only reason furnished [and as articulated by Mr Mishra] for not granting promotion to the private respondents in their respective grades is that pursuant to the issuance of the 1998 Memorandum, the 1983 Rules became 'dysfunctional'. One is unable to fathom, how statutory rules can become dysfunctional merely because a general/omnibus memorandum i.e., the 1998 Memorandum was issued bringing about modifications in the then subsisting FCS.

17.1. As noticed above, the 1998 notification only nudged various ministries and departments of GOI to initiate action for review of subsisting FCS and to amend the existing RRs to bring them in line with the decisions/guidelines issued *via* the 1998 Memorandum. It is no one's case that the 1983 Rules were not in operation till 31.12.2010. Therefore, as correctly contended on behalf of the private respondents, they were entitled to be considered for promotion to the higher grade w.e.f. the date on which they became eligible.

17.2. This is also the view of the coordinate bench of this court in *S.K. Murti's* case which received the imprimatur of the Supreme Court *via* judgment dated 02.05.2011 passed in SLP(C) No.6864/2011. The relevant observations made therein are extracted hereafter:

"7.... "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 [the] 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.826/2003 for directing the petitions 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 14.01.2004.

However, Writ 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."

[Emphasis is ours.]

18. If there was any doubt about this line of reasoning, the same, in our view, stood removed by yet another decision of the Supreme Court rendered in **Vinay Kumar**, which followed its decision in **S.K. Murti's** case.

18.1. In our view, Mr Gupta is right that the approach adopted by UOI vis-à-vis the private respondents is not even-handed. In this context, Mr Gupta has rightly drawn our attention to orders passed in the case of Mr Nakul Dev, M.L. Soni, Hasan Abdullah and N. Siva Kumar. [See paragraphs 12.6, 12.7. and 12.8. above.]



18.2. A perusal of the promotion orders passed in these cases would show that they were passed under the 1983 Rules, even after the 2010 Rules had kicked in, as they related to periods prior to 01.01.2011. The arguments advanced by Mr Mishra based on the provisions of the modified FCS and 2010 Rules, in our opinion, have no relevance once it is accepted that *in situ* promotions granted to the private respondents were governed by the 1983 Rules.

19. Therefore, as rightly observed by the Tribunal in paragraph 10 of its judgment dated 14.11.2018, the private respondents will be considered for promotion to the next higher grade *qua* vacancies which existed before 01.01.2011 under the 1983 Rules which would include the parameters stipulated therein, concerning eligibility and ceiling limit.

19.1. In this context, it must be said that the reliance placed by the Tribunal on *Y.V. Rangaiah's* case was not appropriate. [See judgement dated 20.05.2022, titled *State of HP v Raj Kumar and Ors.*, in Civil Appeal No. 9746/2011.]

19.2. *Y.V. Rangaiah* was not a case concerning *in situ* promotions under the FCS but was a case where the appellants had approached the Supreme Court for redressal of their grievance for being considered for appointment to a higher post i.e., that of Sub-Registrars (Grade II) from the feeder post i.e., lower-division clerk, as per the rules obtaining before the amendment of the subject rules. With the amendment made in the rules, the promotion or transfer to the higher post was to be made from amongst upper-division clerks employed in the registration and stamps department. Thus, the appellants argued that, had the panel been prepared in time, they could have been considered for promotion.



19.3. In the instant case, the private respondents, if recommended, move to a higher grade. The failure to consider them, despite having secured the requisite eligibility, resulted in their being denied the benefits on a specious ground that the rules had to be amended, although they were in force and were being applied both before and after the issuance of the 1998 memorandum and the enactment of the 2010 rules.

19.4. Therefore, while the Tribunal got its conclusions right, as indicated in paragraph 10 of the judgement dated 14.11.2018, its reliance on *Y.V. Rangaiah's* case may not be apposite.

19.5. The decision which would have been relevant given the facts of the instant case, to our minds, would be the judgements of the Supreme Court in *SK Murti's* case which was cited with approval in *Vinay Kumar's* case.

20. That apart, since the Tribunal had concluded that the applicable rules would be the 1983 Rules, it found it unnecessary to make any observations about Rule 6(9) of the 2010 Rules, which prohibited the grant of retrospective promotions.

20.1. We concur with the aforesaid view of the Tribunal save and except to the extent stated hereinabove. Since the private respondents, in our opinion, were governed by the 1983 Rules concerning vacancies arising before 01.01.2011, the reliance on 2010 Rules including Rule 6(9), was misconceived.

Conclusion

21. Thus, for the foregoing reasons, we are inclined to agree with the private respondents.

22. Accordingly, the above-captioned writ petitions are dismissed.



Resultantly, the interim orders passed in the above-captioned writ petitions are vacated.

23. There shall, however, be no order as to costs.

RAJIV SHAKDHER, J

JASMEET SINGH, J

AUGUST 8, 2022/aj

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