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

% Judgment delivered on: 08.01.2024

+ W.P.(C) 13716/2009
KULDEEP SIROHI

(9)

+ W.P.(C) 13882/2009
PRAKASH BACHANNI AND ORS

(10)

+ W.P.(C) 14055/2009
BUREAU OF INDIAN STANDARDS OFFICERS
ASSOCIATION(REGD)

(11)

+ W.P.(C) 531/2010
SHRI R.K.JHA & ORS.

..... Petitioners

versus

BUREAU OF INDIAN STANDARDS

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Sumita Hazarika and Mr. Lal Goulen
Kipgen, Advocates

For the Respondents : Mr. B. K. Sood and Mr. Harish Gaur,
Advocates

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

(The proceeding has been conducted through Hybrid Mode)



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W.P. (C) 13716/2009 & W.P. (C) 13882/2009

1. The petitioner in the writ petition bearing no. W.P. (C) 13716/2009 seeks the following prayers:-

*“(a) Issue an appropriate writ, direction or order directing the Respondent to take into consideration/ giving effect to the Petitioner's all ACRs since the last promotion including the ACRs for the period from 1999-2000 to 2002-2003 for his promotion from Scientist-D to Scientist E; and
(b) pass any further order/orders as this Hon'ble Court deems fit and proper in the interests of justice.”*

2. The petitioners in the writ petition bearing no. W.P. (C) 13882/2009 sought the following prayers:-

*“(a) Issue an appropriate writ, direction or order directing the Respondent to take into consideration/ giving effect to the Petitioners' all ACRs since the last promotion including the ACRs for the period from the effective dates of their promotion to 2002-2003 for their promotions from Scientist-E to Scientist F;
(b) Issue an appropriate writ, direction or order directing the Respondent to comply with the DOPT Guidelines as contained in the OM dated 14th May 2009 and
(c) pass any further order/orders as this Hon'ble Court deems fit and proper in the interests of justice.”*

3. The petitioners were employed as Scientist Grade 'C' and by way of the Flexible Complimentary Scheme (hereinafter referred to as 'FCS') of the respondent/BIS, were considered for in-situ promotion to the post of Scientist Grade 'D' w.e.f. 10.03.1999 *vide* the order dated 19.02.2003.

4. The dispute in the present case is as to whether the ACRs of the period w.e.f. 1999 till 2003, when the petitioners were granted retrospective in-situ promotion to the post of Scientist Grade 'D', could be counted for promotion to the post of Scientist Grade 'E', particularly



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when the Rules prescribed for consideration of ACRs of 5 years regular service as Scientist Grade 'D'.

5. According to learned counsel for the petitioners, the promotion of the petitioners with retrospective effect from 10.03.1999 ought to have been counted as a period of eligibility for the purposes of promotion to the post of Scientist Grade 'E', particularly when the respondents had not only granted retrospective promotion but also given the scale of pay and other emoluments accruing from it, retrospectively. It was also submitted that in FCS, there is no vacancy which is either created or filled up. Nor is there any substantial change in the nature of work. It was argued that therefore, the ACRs of the petitioners as Scientist Grade 'C' could be considered as valid ACRs covered by years 1999-2003, particularly when the nature of work, on which such ACRs would be noted, is identical, for the purpose of promotion from Scientist Grade 'D' to Scientist Grade 'E'.

6. The case of the respondent so far as the eligibility of the petitioners for the purposes of promotion to the post of Scientist Grade 'E' is concerned, is that the ACRs of the feeder grade in which the officers were working should alone be considered for being assessed for the promotion under the FCS Scheme. The said decision of the Executive Committee of the respondent was taken on 03.05.2005. According to the learned counsel for the respondent, considering the decision taken by the respondent, the petitioners who were actually promoted in the year 2003 as Scientist Grade 'D' could not be stated to have completed 5 years of residency period for the purposes of being promoted to the post of Scientist Grade 'E' in the year 2005.



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7. Learned counsel also invites attention of this Court to page 68 which is the notification dated 15/17.07.2009 of the DoPT, particularly to para 2 which is extracted hereunder:-

“2. The matter has been re-examined in this Department. In terms of this Department's guidelines of 17.7.2002, no promotion should be granted with retrospective effect under FCS. Though the provision allowing for retrospective promotion has been withdrawn in BIS, some of the officers have already had the benefit of retrospective promotion. It would however, not be in order if the period of service covered by such retrospective promotion and the ACRs for this period of retrospective promotion are taken into account while considering their cases for promotion to the next grade. This would amount to giving them double benefits.”

8. Learned counsel also invites attention of this Court to page 67 which is the extract of the proceedings of 66th meeting of the Executive Committee held on 03.05.2005. The same is extracted hereunder:-

“Item 2.11 Promotion of Scientific Cadre Officers -Having considered item 2.11 of the agenda, EC DECIDED that only ACRs of the feeder grade in which officers are working should alone be considered / assessed for promotion to the next higher grade.”

9. On the basis of the aforesaid two letters/ orders, learned counsel for the respondent submits that the ACRs for the period of five years for consideration for promotion to the post of Scientist Grade ‘E’ would be governed by the department guidelines dated 15/17.07.2009 as also the extract of the proceedings of 66th meeting of the Executive Committee dated 03.05.2005. Reading all together, it would be clear that the ACRs for the period of five years are clearly not made out by any of the petitioners in the present petitions. In that, according to learned counsel, the petitioners were having ACRs in respect of Scientist Grade ‘D’ w.e.f. 2003 only and therefore, so far as the promotions of the year 2005 are



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concerned, the petitioners lack in the eligibility criteria. On that basis, learned counsel submits that the present writ petitions ought to be dismissed.

10. On rebuttal, Ms. Hazarika, learned counsel for the petitioner refers to page 65 which is the extract from the agenda of the same meeting of 03.05.2005, particularly to para 2.11.3, and is extracted hereunder:-

"2.11.3 While scrutinizing the ACRs of the officers, one of the issues given as followed was discussed during the Screening Committee meeting. The same issued was also raised in the Screening Committee held last year in year 2004

"whether the ACRs for the grade in which officers are working should alone be considered/assessed for promotion to the higher grade or the ACRs of the lower grade may also be included for assessment to complete the minimum period of residency"

Last year, the matter was referred to Ministry for clarification/advice on the recommendation of Screening Committee and approval of EC in its 65th meeting held on 4 Nov 2004 (relevant extracts of EC meeting given in Annex XL, p. 196). On examining the issues raised by BIS, the Ministry has given the following directions:

"With regard to the ACRs required to be considered for promotion to the higher grade, the Ministry has opined that the relevant Selection Committee considering the promotion under FCS may use its discretion to decide the period for which the ACRs of a particular officers should be considered."

In accordance with the Govt decision, the Competent Authority had decided that the Screening Committee may consider and decide about this matter."

(Quoted as it is)

11. Learned counsel also refers to the explanatory memorandum at page 38 to the FCS Scheme to submit that the condition which is relevant



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to be considered by this Court is the date of eligibility. Ms. Hazarika submits that it is an admitted fact that the respondent had granted retrospective promotion to the petitioners w.e.f. 10.03.1999 *vide* the order dated 19.02.2003. She submits that the pay scales etc. were also revised and granted to the petitioners w.e.f. 10.03.1999. She submits that having regard to the fact that the petitioners were given retrospective promotion, there was no reason why the ACRS, pertaining to the period prior to 2003 and right up till the year 1999, could not have been taken for consideration for the promotion to the post of Scientist Grade 'E'.

12. Ms. Hazarika relies upon the judgment of the Supreme Court in Civil Appeal No. 6359/2016, captioned as ***Union of India & Ors. vs. Vinay Kumar.***, and the judgement of learned Division Bench of this Court in ***S.K. Murti vs. Union of India & Others*** reported in **2010 SCC OnLine Del 4779**, the SLP against which was dismissed *vide* order dated 02.05.2011 passed in SLP (C) 13133/2011.

13. Ms. Hazarika relies upon the judgment of the learned Division Bench of this Court in the case of ***S.K. Murti (supra)*** to submit that the Court had disagreed with the directions contained in the DoPT Office Memorandum dated 17.07.2002 regarding the denial of retrospective promotions under FCS, to hold that the retrospective promotion in respect of in-situ promotions cannot be denied to the persons who are eligible as on the date when the Departmental Assessment Board (hereinafter referred to as 'DAB') was constituted, and as such, making the same ratio applicable to the present case, would entitle the ACRs of the petitioners in respect of the years commencing 1999 through till 2003 to be considered for the purposes of promotion to the post of Scientist Grade 'E'.



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14. This Court has heard the arguments and considered the judgements relied upon by the learned counsel for the petitioner as also for the respondent.

15. There is no dispute that the issue in respect of the in-situ promotions is to be considered on a different footing than regular promotions in the other departments of the government. In that, according to the judgments of the Supreme Court as also the learned Division Bench of this Court, it is incumbent upon the respondents to hold the DAB every year without fail and the persons who become eligible ought to be considered and promoted in accordance thereto. It is trite that when the Assessment Boards are not convened and held in time, the incumbents who become eligible as on that date, would necessarily have to be given retrospective promotions. The judgment of the Supreme Court in the case of *Vinay Kumar (supra)* as also of this Court in *S.K. Murti (supra)* is to the aforesaid effect. The said judgment of the Supreme Court has been followed by learned Division Bench of this Court in *Union of India and Another Vs. Dr. Anjum N. Rizvi* reported in 2022 SCC OnLine Del 2629.

16. Though no doubt that the aforesaid judgments did not hold the proposition that the ACRs of the grade, the post which forms the feeder grade to the promotional post, have also to be taken into consideration for the promotion to the next higher post, however, keeping in view the fact that the promotions are given retrospectively, not due to the delay attributable to the petitioners, rather the delay being squarely attributable to the respondent, there is no reason why the ACRs of the period covered by the retrospective promotion ought not to be covered for consideration



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to the promotional post. In other words, the ACRs of the period between 10.03.1999 to 2003 as Scientist Grade 'C' ought to also be considered.

17. The retrospective promotion from Scientist Grade 'C' to Scientist Grade 'D' was given under the FCS, and implemented by the department with the purpose of introducing a merit based in-situ promotion scheme applicable to the benefit of Scientists. Though in the letter of the DoPT dated 15/17.07.2009, it is clarified that no promotion should be granted with retrospective effect under FCS, no action was undertaken by the respondent to reverse the retrospective promotion already given to the employees. Thus, it was a conscious decision of the respondent department to not reverse the effect of retrospective promotion already granted to the petitioners.

18. Once the promotion has been given with a retrospective effect, all benefits flowing from it would accrue in favor of the petitioners. For this reason, the pay scales, other emoluments and all the consequential benefits were granted to the petitioner. Nothing comes on record to suggest anything contrary to such position.

19. So far as the amended scheme of FCS is concerned, there are gradings according to the ACRs and the criteria for being considered for promotion under FCS which have been laid down:-

“(a) All officers will be first screened on the basis of gradings in the annual confidential reports (ACRs) for consideration for promotion; the ACRs should be assessed on a 10 point scale giving 10 marks for ‘outstanding’, 8 marks for ‘very good’, 6 marks for ‘good’, 4 marks for ‘average’ and 0 for ‘poor’ and only those officers who satisfy the minimum residency period linked to their performance as:

Number of years in the grade					
3	4	5	6	7	8



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	<i>Minimum percentage for eligibility</i>					
<i>Scientist B to Scientist C</i>	90%	80%	70%	65%	60%	...
<i>Scientist C to Scientist D</i>	...	90%	80%	75%	70%	60%
<i>Scientist D to Scientist E</i>	...	90%	80%	75%	70%	60%
<i>Scientist E to Scientist F</i>	...	...	90%	80%	75%	70%
<i>Scientist F to Scientist G</i>	...	...	90%	80%	75%	70%

Exceptionally meritorious candidates with all outstanding gradings may be granted relaxation in the residency period, the relaxation being not more than one year on any single occasion. Such a relaxation will be limited to a maximum of two occasions in their entire career.”

20. Again in Clause 3, it has been stated as follows:

“... 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 performance:

<i>Scales of pay</i>	<i>Designation</i>	<i>Minimum residency period linked to performance</i>
<i>(a) Rs 8000-13,500</i>	<i>Scientist B</i>	<i>3 years</i>
<i>(b) Rs 10,000-15,200</i>	<i>Scientist C</i>	<i>4 years</i>
<i>(c) Rs 12,000-16,500</i>	<i>Scientist D</i>	<i>4 years</i>
<i>(d) Rs 14,300-18,300</i>	<i>Scientist E</i>	<i>5 years</i>
<i>(e) Rs 16,400-20,000</i>	<i>Scientist F</i>	<i>5 years</i>
<i>(f) Rs 18,400-22,400</i>	<i>Scientist G</i>	<i>Not available</i>

In order to give immediate effect to the decision contained in this para an umbrella notification has been issued vide GSR No. 660(E) dated 9-11-1998.”

It can be seen that the method, manner and mode of evaluation for the purposes of drawing up the ACRs, for consideration of the eligibility of the cases for promotion of Scientists, specifically from Scientist Grade



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‘C’ to Scientist Grade ‘D’ is akin to Scientist Grade ‘D’ to Scientist Grade ‘E’.

Apart from that, the benchmark for consideration, which is minimum percentage for eligibility required during particular number of residency period/years of service in a particular Grade is also similar, rather identical for promotion from Scientist Grade ‘C’ to Scientist Grade ‘D’ & Scientist Grade ‘D’ to Scientist Grade ‘E’.

21. Equally, the nature of work performed or the duties discharged etc., based whereon, the ACRs are drawn up also do not undergo any substantial change. Thus, the ACRs of the so called feeder cadre would not be assessed and drawn up on substantially different parameters and as such, could be considered in cases such as the present one. This conclusion is in respect of the factual situation obtaining in the present case.

22. The in-situ promotions in respect of the scientists are to be considered on a different context. In that, there is no vacancy which is either filled or any vacancy which gets created on such promotion.

23. The judgment of the Supreme Court in ***Bureau of Indian Standards Vs. S. K. Kanojia*** reported in **2007 (8) SCC 636** relied upon by the learned counsel for the respondent, in the respectful consideration of this Court, shall not be applicable to the facts of the case inasmuch as in ***S.K. Kanojia’s*** case, the Supreme Court was dealing with a situation where the BIS had granted retrospective promotion to the respondent therein w.e.f. 2001, who in turn was seeking his retrospective promotion w.e.f. 1999. In the present case, it is not disputed that the petitioners were given retrospective promotion w.e.f. 1999 and never reverted back and in



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fact, agreed to by the respondent to maintain as such. The prayer in the present case is not to claim retrospective effect to the promotion rather the petitioners are seeking consideration of the ACRs for that period, for promotion to the next grade. Thus, the facts are quite distinguishable.

24. Keeping in view the aforesaid, this Court is of the considered opinion that the respondent department could not have held the petitioners to be disentitled from the ACRs of the period 1999 to 2003 being considered for promotion to the post of Scientist Grade 'E'.

25. Learned counsel for the respondent also seriously raised the issue of delay and laches in filing of the present petitions. According to learned counsel, the petitions have been filed with at least a delay of four years and as such, ought not to be entertained by this Court. This Court has considered the arguments of learned counsel for the respondent in respect of the delay and laches. It cannot be heard to say that the petition suffers from delay and laches for the reason that the logical consequence of granting promotion with retrospective effect and not reverting the petitioners to their original grade in order to rectify the retrospective effect so given, would be that the denial of consideration of such ACRs as held above, is attributable to the respondent itself. In any case, the delay in granting promotion to the petitioners in 1999 itself is also attributed to the respondent. It is trite that where the Courts under Article 226 of the Constitution of India find that there is a manifest error in application of rules or regulations or the law as laid down by the Constitutional Courts, the delay and laches, particularly in such cases, need not be a bar to entertainment of such writ petitions. As such, the aforesaid argument is rejected.



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26. It is a fact that neither any specific challenge has ever been made to the DoPT letter dated 15/17.07.2009, nor the petitioner had ever approached anyone for redressal of his grievances anytime before 2009, i.e, year of filing of the present petition. However, in view of the observations so made, the same cannot prejudice the case of the petitioner as no special or extraordinary relief has been claimed by the petitioner through the present petition. For more clarity, the prayer clause of the present petition is reproduced as under:-

“1. Issue an appropriate writ, direction or order directing the Respondent to take into consideration/ giving effect to the Petitioner's all ACRs since the last promotion including the ACRs for the period from 1999-2000 to 2002-2003 for his promotion from Scientist-D to Scientist E”

27. This is so for the reason that, had the petitioners been granted their promotions in time i.e. 1999, as per the Regulations, as Scientist Grade 'D', the question of seeking consideration of ACRs of retrospective promotion for the years 1999-2003 would not have arisen. The need for the present petition would also not have arisen at all.

28. In that view of the matter, the writ petitions are allowed.

29. The respondents are directed to consider the ACRs of the period commencing 1999 to 2003 for the promotion of the petitioners from Scientist Grade 'D' to Scientist Grade 'E'.

30. Ms. Hazarika submits that under the interim orders of this Court, the petitioners were considered for promotion to the post of Scientist Grade 'E', however, the results were kept in a sealed cover.

31. It is directed that the sealed cover be opened now and consequential benefits be granted to all those petitioners in accordance with law who would fall within the aforesaid observations, within 8 weeks from today.



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32. As far as W.P.(C) 13882/2009 is concerned, Ms. Hazarika submits that in this case, the controversy is related to promotion to the post of Scientist Grade 'E' to Scientist Grade 'F', however the contentions raised by the petitioners are identical on the aforesaid issue.

33. The analysis, conclusions and decision given above shall be equally applicable to the case of the petitioners in W.P. (C) 13882/2009, except in the case of Mr. Prakash Bachani who had withdrawn his petition *vide* order dated 25.02.2014. The case of Mr. M.M. Bansal shall be considered w.e.f., 2001 only, in view of the fact that he was given retrospective promotion w.e.f., 26.03.2001.

34. The writ petitions are disposed of with no order as to costs.

W.P.(C) 14055/2009 & W.P. (C) 531/2010

35. The prayers in the W.P.(C) 14055/2009 are as follows:-

“(a) Issue an appropriate writ, direction or order directing the Respondent to call all the Group A officers, who qualify as per residency period in the feeder grade and taking into consideration all AORs since the last promotion including the ACRs for the period from 1998 - to 2002-2003, for interview for assessment for promotion to the next higher grade;

(b) Issue an appropriate writ, direction or order directing the Respondent to call all the officers who had not been short listed for the interview for assessment for promotion due for not taking into account their residency period and ACRs from the date of their effective promotion, and

(c) pass any further order/orders as this Hon'ble Court deems fit and proper in the interests of justice.”

36. The prayers in the W.P.(C) 531/2010 are as follows:-

“(a) Issue an appropriate writ, direction or order directing the Respondent to take into consideration/ give effect to all ACRs of the Petitioners since the last promotion, including the ACRs for the period from 1998-1999 to 2002-2003, in the promotion process from Scientist-E to Scientist - F; and



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(b) pass any further order/orders as this Hon'ble Court deems fit and proper in the interests of justice."

37. Since the petitioners in the aforesaid case had sought for prayers which are of wide encompassing nature and considering the cascading effect of the same on the promotions already effected and settled down, and, there being deficiency of details, clarity is necessitated.

38. The parties are directed to file the following requisite documents clarifying the position, within 4 weeks, with an advance copy to learned counsel for opposite parties, without fail :-

- (i) **Whether the petitioner Association is registered with the respondent as on the date of filing of the present petition?**
- (ii) **The Memorandum of Association, Articles of Association, and list of members of the petitioner Association as on the date of filing of the present petition.**
- (iii) **List of all Group-A Officers, specifically Scientists in respondent department, who were given the retrospective promotion under the FCS Scheme, with their date of promotion, alongwith Promotion orders. The current status of employability shall also be provided in that list.**

39. Accordingly, Court Notice be issued to the learned counsel for the parties without process fee.

40. List the W.P.(C) 14055/2009 and W.P.(C) 531/2010 on 27.03.2024 for further arguments.

TUSHAR RAO GEDELA, J

JANUARY 8, 2024
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