



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

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Date of decision: 18th December, 2023

+ W.P.(C) 16319/2023, CM APPLs. 65720/2023, 65721/2023 &
65722/2023

(55) UNION OF INDIA & ANR.

..... Petitioners

Through: Ms. Arunima Dwivedi, CGSC with
Ms. Pinky Pawar and Mr. Aakash
Pathak, Advs.

versus

RR BAKDE, RETD SCIENTIST C

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 65721/2023 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM APPL. 65722/2023

This is an application filed by the petitioners seeking permission to file additional documents on record.

For the reasons stated in the application, the same is allowed and the additional documents filed by the petitioners are taken on record.

The application is disposed of.



W.P.(C) 16319/2023, CM APPL. 65720/2023

1. This writ petition has been filed by the petitioners, i.e., Union of India and its functionaries challenging the judgment dated January 4, 2023, passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.2549/2015 ('OA', for short) whereby the Tribunal has allowed the OA filed by the respondent herein by stating in paragraphs 13 and 14 as under:

"13. The reliance on the decision of this Tribunal in RA No.157/2017 in OA No.2894/2012 in Union of India & Anr. v. Vinod Kumar Jain & Ors. (supra) by the respondents to contend that the decision of the Hon'ble Supreme Court is a judgment in personam and hence cannot be extended to all similarly placed persons, is of no help in view of the above decision of the Hon'ble Supreme Court where the Hon'ble Supreme Court has held the same as a judgment in rem. We are of the considered view that a decision of the Supreme Court is binding on all Courts/Tribunals. By Article 141 of the Constitution of India it is laid down that the law declared by the Supreme Court shall be binding on all courts within the territory of India.

14. In view of the dicta of the Hon'ble Supreme Court in Vinay Kumar (supra), and also for parity of reasons, we allow this O.A. and direct the respondents to ante date the award of promotion to the next grade to the applicant under the FCS from the date of eligibility keeping in view the decisions of this Tribunal in S.K. Murti (supra) as upheld by the Hon'ble Supreme Court. The applicant shall be entitled to all consequential benefits, including refixation of pay, pension and arrears thereof, in accordance with the relevant rules and law. These directions shall be complied with by the respondents within 12 weeks from the date of receipt of a copy of this order."



2. The case of the respondent before the Tribunal was the petitioners while passing order dated March 9, 2015, have not considered the directions of the Supreme Court in **SLP No.13133/2011** in the matter of **Union of India v. S.K. Murti**.

3. The respondent was working as a Scientist SC under the category of Scheduled Tribe having been selected through an All India Level Selection, joined the petitioner No.2 on May 17, 1993.

4. The petitioners introduced Flexible Complementary Scheme (FCS) in respect of Scientific cadre for consideration of promotion vide notification dated September 23, 1987, according to which the departmental review committee was to be constituted twice a year, i.e., 1st January and 1st July of every year for those who have completed five years service on the post. The effective date of promotion for those who are found eligible for promotion would be 1st January or 1st July of the subsequent year as the case may be.

5. It was the case of the respondent that the petitioner No.1 shall should have considered his case and recommended his *in-situ* promotion w.e.f. July 01, 1998 under the FCS vide letters dated January 15, 1999, October 15, 1999, November 16, 1999, March 21, 2000 and April 06, 2000. It was only after a gap of 18 months the respondent was asked to appear before the selection committee on June 19, 2000 without giving any reason for the delay.

6. It was his case that he was under the impression that despite the delay, he would be given *in-situ* promotion with retrospective date, i.e., July 1, 1998 as per the practice being followed by the petitioners. Unfortunately, he was given promotion on the basis of the modified



FCS issued vide office memorandum dated November 9, 1998, and not retrospectively but prospectively.

7. It was his case that the modified FCS is not applicable to him as his promotion is due from July, 1988. The respondent approached the petitioners personally and requested them to grant promotion from the due date, i.e., 1st July, 1998. He had relied upon the judgment of the Supreme Court in the case of *Union of India & Anr. v. S.K. Murti, SLP(C) No.CC6864/2011*, decided on May 2, 2011 wherein, according to him, the Supreme Court had directed the authorities / departments to give promotions to the similarly situated persons from the date of eligibility and also directed that the similarly situated persons shall get the relief irrespective of whether they have approached the High Court or not.

8. The case of the petitioners before the Tribunal was that the DoP&T had instructed that the Competent Authorities are required to ensure that no promotion under FCS / MFCS is granted with retrospective effect. It is also their case that vide OM dated May 24, 2013, the petitioner No.1 sought approval for grant of *in-situ* promotion in each grade(s) to the Scientists of the Ministry from their due date(s) / eligibility date(s) w.e.f. from January 01, 1999, onwards keeping in view the judgments delivered by various courts. But the DoP&T vide communication dated November 27, 2014, advised the Ministry not to implement the order without approval of the ACC, which is the Competent Authority for FCS.

9. Reliance was placed on the judgment of the Tribunal in RA No.157/2017 in OA No.2894/2012, decided on August 17, 2019,



wherein the Tribunal has allowed the review filed by the respondents and dismissed the OA filed by the original applicants.

10. Suffice to state, the Tribunal has allowed the OA on the basis of a direction given in paragraphs which we have already reproduced above.

11. The submissions of Ms. Arunima Dwivedi, learned CGSC appearing for the petitioners is also on similar lines that the respondent cannot be promoted retrospectively.

12. We are unable to agree with the submission for the reason that the respondent is holding a scientific post and the promotion is not subject to availability of any vacancy. So, in that sense, after completing the eligibility of five years, the incumbent is liable to be promoted.

13. There is no dispute that the respondent was eligible for promotion w.e.f. July 1, 1998. The reason for delay in holding the selection having been spelt out, shall not have any effect insofar as the claim of the respondent for promotion from a back date.

14. The judgment in the case of **S.K. Murti (supra)** covers the issue in favour of the respondent.

15. We are of the view that the Tribunal has rightly relied upon the judgment in the case of **S.K. Murti (supra)** wherein, the Supreme Court while dismissing the SLP has stated as under:

“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 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. 826/203 for directing the petitioners 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 14.1.2004. 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."

16. No interference is called for with the impugned order passed by the Tribunal. The writ petition being without any merit is dismissed.



2023:DHC:9109-DB



CM APPL. 65720/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

DECEMBER 18, 2023/aky