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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 10.01.2024*

+ W.P.(C) 10236/2016
CHAIRMAN, CENTRAL POLLUTION CONTROL BOARD &
ANR Petitioners

Through: Mr. Saqib Ali, Adv.

versus

R.K. RUSTAGI & ANR Respondents

Through: Mr. T.D.Yadav

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present petition under Articles 226 & 227 of the Constitution of India seeks to assail the order dated 23.07.2016 passed by the learned Central Administrative Tribunal (Tribunal) in O.A. No.2077/2013. Vide the impugned order, the learned Tribunal has allowed the respondent's O.A. by accepting his plea that as per the regulations as applicable in March, 2013, interview could not be made a part of the selection process for promotion from the post of Scientist 'B' to Scientist 'C' under the Flexible Complementing Scheme (FCS).

2. Learned counsel for the petitioner submits that the learned Tribunal has failed to appreciate that even though as per regulation 9(2), dealing with interview, stood deleted by way of the amendment of the regulations on 13.10.2011, interview remained an integral part of the selection process for



the aforesaid promotion in terms of regulation 8 as applicable in March, 2013, when the respondent was considered for promotion to the post of Scientist 'C'. He, therefore, prays that the impugned order, wherein it has been erroneously held that there was no basis for conducting an interview for promotion to the post of Scientist 'C' be set aside.

3. On the other hand, Mr.T.D.Yadav, learned counsel for the respondent supports the impugned order by contending that the learned Tribunal has correctly appreciated the effect of deletion of regulation 9(2) by way of the amendment on 13.10.2011, as a consequence whereof, the provision for interview as a part of the selection process for promotion to the post of Scientist 'C', was done away with. He, therefore, contends that the interview of the petitioner held on 15.03.2013 for considering him for promotion was in itself illegal and has rightly been set aside by the learned Tribunal.

4. In order to appreciate the aforesaid rival submissions of the parties, it would be apposite to first note the relevant extracts of the impugned order as contained in para nos. 7 & 8 thereof. The same read as under:

7. The substituted Regulation 9 does not prescribe any kind of interview and, thus, on what basis the interview was conducted by the authorities in the year 2013 .and how, the marks for interview were allocated is not forthcoming from the record. Learned counsel appearing for the respondents has also not been able to assist us on this count. Thus, we are of the opinion that in second consideration in the year 2013, there was no provision for interview and even the 60% marks earmarked for the interview does not seem to be in accordance with the Regulations. The applicant having secured 'Good' grading in his ACRs and his scientific 'work was required to be assessed by competent Board for his consideration for promotion from Scientist 'B' to Scientist 'C in the year 2013. We find that the consideration of the applicant in. the year 2013 was not according to the prescribed



criteria/norms. The learned counsel for applicant has placed on record a copy of order dated 18.07.2014, whereby, Scientists 'B' have been promoted as Scientists 'C' in the Central Pollution Control Board w.e.f. 16.07.2014 and the applicant's name finds mention at SI. No.1. Presently, the applicant has, thus, earned promotion as Scientist 'C' w.e.f. 16.07.2014. Since the applicant's consideration for promotion in March, 2013 was not according to the substituted/amended Regulation 9, denial of promotion to him in the said consideration is, thus, absolutely unwarranted and illegal.

8. In the above circumstances, this Application is disposed of with the following directions

(i) The competent authority shall consider the applicant for promotion afresh as Scientist 'C' with effect from the date his juniors were promoted in the year 2013.

(ii) His consideration shall be in accordance with substituted/amended Regulation 9 and, if on such consideration, he is found to have made the grade, he shall be so promoted with effect from the date his juniors were promoted as Scientist 'C' in the year 2013.

5. Upon a perusal of the aforesaid extract of the impugned judgment, it is evident that the learned Tribunal has proceeded only on the basis of regulation 9 as it stood in March, 2013. Since it is the petitioner's case that interview was a necessary component of the selection process for promotion to the post of Scientist 'C', for which purpose reliance has been placed on regulation 8, it would be necessary to examine the said regulation as well as was in place pursuant to the amendments made to the regulations on 13.10.2011. The relevant extract thereof reads as under:

2. Regulation 8 relating to 'Recruitment, Review and Promotion' shall be substituted by the following, namely:-

Recruitment, Review and promotion:-

(1) There shall be two levels of assessment for Flexible



Complementing Scheme (FCS). The first one would be at internal level for screening purpose and next level assessment should have majority of external members.

(2) Board's Internal Screening Committee for level 1 screening (Internal):- There shall be constituted an appropriate Board's Internal Screening Committee for evaluation of annual work reports vis-a-vis the criteria for upgradation under the FCS, as follows, namely:

<i>Post</i>	<i>Composition of Board's Internal Screening Committee</i>	
	*	*
	*	*
	*	*
<i>Scientist D, Scientist C and Scientist B</i>	<i>Chairman, Central Pollution Control Board</i>	<i>Chairman</i>
	<i>One member from Central Pollution Control Board or outside member(to be nominated by the Chairman, CPCB)</i>	<i>Member</i>
	<i>Joint Secretary (dealing with CPCB matters in the MoEF) or his nominee</i>	<i>Member</i>
	<i>Member Secretary, CPCB</i>	<i>Member</i>

The Internal Screening Committee would report on the scientific content of work done by the Scientist in part C of the reporting format [Appendix-III] which would be made available to the Assessment Board of the CPCB for level 2 screening (External).

(2) Assessment Board of the CPCB for level 2 screening (External): There shall be constituted an appropriate Assessment Board of the CPCB for recruitment and for the assessment of the scientific content of the work of scientists



for their suitability for higher grade. The Assessment Board shall document specifically through one page summary, the specific content of the work done justifying the merit for consideration under PCS. The constitution of the Assessment Board shall be as follows, namely:-

<i>Post</i>	<i>Composition of Board's External Screening Committee</i>	
<i>Scientist D, Scientist C and Scientist B</i>	<i>Chairman, Central Pollution Control Board</i>	<i>Chairman</i>
	<i>One Board Member (to be nominated by the Chairman, Central Pollution Control Board)</i>	<i>Member</i>
	<i>Joint Secretary (dealing with CPCB matters in the MoEF) or his nominee</i>	<i>Member</i>
	<i>Three experts possessing expertise in the field (to be nominated by the Chairman CPCB)</i>	<i>Members</i>
	<i>Member Secretary, CPCB</i>	<i>Member</i>



Note:

(i) The members of the Board's Internal Screening Committee for level-1 screening and Assessment Board of the CPCB for level 2 screening shall be at least one level above the level for which the persons are to be considered for selection and promotion.

*(ii) The Committee/Board shall make their recommendations on the basis of the interview held, the evaluation of the past performance of the candidates and the Annual Work Report (Appendix-III).
(emphasis supplied)*

(iii)

(iv) The absence of a member of the Committee other than Chairman shall not invalidate the proceedings of the Committee.

(v)

(vi) The recommendations of the Committee shall be effective from the date on which the appointing authority approves the recommendations.

6. In the light of the aforesaid regulation 8, which categorically provides that an interview would be conducted by a 7-member committee headed by the Chairman of the Central Pollution Control Board for considering candidates for promotion from Scientist 'B' to Scientist 'C' under the FCS, we have no hesitation in accepting the petitioner's plea that interview was a



necessary part of the selection process for these promotions. Though, learned counsel for the respondent is right in urging that the provision for interview as contained in regulation 9(2) was deleted in terms of the amendment of the regulations on 13.10.2011, the fact remains that as per regulation 8 thereof, which was also simultaneously amended on 13.10.2011, interview was an integral part of the selection process in March, 2013, when the petitioner was considered for promotion to the post of Scientist 'C' under the FCS.

7. In the light of the aforesaid, it is clear that the learned Tribunal has overlooked regulation 8, which makes interview, an essential component of the selection process and has hastened to pass the impugned order by relying only on regulation 9. The learned Tribunal failed to appreciate that all the regulations were required to be read together and the selection process could not have been set aside by relying only on one of the regulations and ignoring the other applicable regulation.

8. For the aforesaid reasons, we are of the considered view that the impugned order is wholly unsustainable. The writ petition is, accordingly allowed by setting aside the impugned order.

REKHA PALLI, J

RAJNISH BHATNAGAR, J

JANUARY 10, 2024

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