

**Maj (Retd.) Umesh Chandra Naik Vs. National Technical Research Organization Through the Chairman and Others**

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**Court :** Central Administrative Tribunal CAT Principal Bench New Delhi

**Decided On :** Jan-03-2013

**Judge :** SYED RAFAT ALAM, CHAIRMAN & THE HONOURABLE DR. RAMESH CHANDRA PANDA, MEMBER (A)

**Appeal No. :** O.A. No. 614 of 2012

**Appellant :** Maj (Retd.) Umesh Chandra Naik

**Respondent :** National Technical Research Organization Through the Chairman and Others

**Judgement :**

Dr. Ramesh Chandra Panda, Member (A):

1. The applicant - retired Major Umesh Chandra Naik, who is presently working as Scientist D with the first respondent, has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following relief(s):-

(a) Call for the original file(s)/record(s) of the respondents dealing with the appointment/promotion of the applicant and other as Scientist D/Scientist E from the year 2005 to till date.

(b) Declare the Memorandum No.V (B)Gp.A/19137-PC-1-13093 dated December, 2011 (Annexure impugned) to the extent the same has held the applicant entitled for promotion/upgradation to Scientist E, however, has not granted the benefit thereof in spite of the fact that the applicant fulfills all the requirements of benefits of FCS as illegal and arbitrary;

(c) Declare the action of the respondent No.1 in not considering him for promotion to the post of Scientist - E; along with his batchmates viz., respondent No. 2 to 4 herein as illegal and arbitrary;

(d) Declare that the applicant has been eligible for being considered for promotion to the post of Scientist E from the date the respondents No. 2 to 4 herein have been promoted as Scientist E in terms of the FCS Scheme with all consequential benefits.

2. We have heard Shri R.N. Singh, learned counsel for the applicant and Shri Krishan Kumar, learned senior Central Government counsel appearing on behalf of the first respondent. Despite service of notice on three Private Respondents, neither they have filed the counter/reply affidavit nor have been represented by any counsel during the hearing.

3. It is stated that the applicant worked with Indian Army as Commissioned Officer for 17 years and 5 months and during this tenure he was twice awarded Chief of Army Staffs Commendation Card i.e. in 1994 and 1999 as recognition to his sincerity and hard work. It is the case of the applicant that he gained sufficient experience on both Analog and Digital Image Processing and Analysis, particularly Imagery Intelligence

Report Generation related to strategic and tactical operational planning while in Army. It is further the case of the applicant that immediately after his premature release on 08.11.2000 as Major, he, based on his experience in the field of Image Processing and Analysis (both Analog and Digital), was selected to the post of Assistant Director (IA) with Aviation Research Centre (ACR in short), Cabinet Secretariat w.e.f. 09.11.2000. It is further the case of the applicant that the Government had formed a new Organization namely National Technical Research Organization (NTRO in brief) in 2004 pooling the expert personnel and equipments of ARC i.e. the employer of the applicant. Subsequently, vide internal circular, applications were invited for filling up the posts of Image Analyst as Scientists in NTRO purely on the basis of experience in the field of Image Analysis. The performance during the interview before the Selection Committee in absence of the recruitment rules was the basis for selection. However, eligibility, qualification, experience and number of vacancies were formulated vide Memorandum dated 01.02.2005 (Annexure A-1). The relevant portion of the aforesaid Memorandum relating to the post in question reads thus:-

Name of the post: Scientist E

Number of vacancies: 2

Pay Scale:Rs.14300-400-18300

The Qualifications for the posts are as under:-

Essential Qualification

M.Sc. in Physical Sciences subjects or Bachelor of Engineering/Technology degree in the field of Civil, Mechanical, Computer, Information Technology, Electrical and Electronics and Communication Engineering from a recognized university, or equivalent.

At least 10 years of research or design or development or operational or project implementation experience in the required area out of which 2 years in a managerial/directing capacity.

Desirable Qualification

Ph.D degree in Physical Sciences subjects or Master of Engineering/Technology degree in the field of Civil, Mechanical, Computer, Information Technology, Electrical and Electronics and Communication Engineering from a recognized university, or equivalent.

Candidates having undergone relevant specialized courses may be preferred.

4. In response to the above Circular, the applicant, who was stated to be fulfilling the eligibility criteria, applied on 24.11.2004 for the post of Joint Deputy Director (IA)/Scientist E (Image Analyst) in the pay scale of Rs.14300-18300. Vide letter dated 10.12.2004, the applicant was called for interview scheduled on 22.12.2004 and he accordingly attended. It is the case of the applicant that he has been selected for the said post as communicated to him telephonically in February, 2005. Accordingly, the applicant resigned from ARC to join new assignment in NTRO, which could be approved by the ARC on 05.01.2006. It is the case of the applicant that although he was eligible for the post of Scientist E, yet he was offered the post of Scientist D in the pay scale of Rs.12000-16500 vide Memorandum dated 14.02.2006. Therefore, on compelling circumstances he joined the said lower post on 23.02.2006. However, the service conditions and career prospects/promotion/upgradation of the applicant is covered by the Flexible Complementing Scheme (FCS) introduced by the Government vide Memorandum dated 28.05.1986 and modified vide Memorandum dated 09.11.1998 and further modified vide Memorandum dated 10.09.2010. It is submitted that for grant of in situ promotion under the FCS to a Scientist D for the post of Scientist E, four years residency period and screening is required to be done on the basis of the ACRs of the candidate concerned. According to the applicant, after his selection as Scientist D, he performed his duties to the utmost satisfaction of all concerned, and in recognition of his excellent track record in Image Analysis/interpretation, he was awarded Scientist of the

year (Senior)-2007-08 award by NTRO in 2009, whereas none of the Analysts (Scientist), including respondent nos. 2 to 4, has been given this kind of award. As far as residency period of four years is concerned, according to him, he has completed the same on 13.02.2010 having been selected on 14.02.2006, and became eligible to be considered for in situ promotion as Scientist E under FCS. However, the applicant has been ignored whereas respondent nos.2 to 4, who are having lesser qualification and experience, have been accorded the said promotion under FCS to Scientist E and the applicant is stagnating as Scientist D. Feeling aggrieved, the applicant met the competent authority personally and submitted several representations but having no response from the respondents, the applicant approached the Tribunal by filing OA No.3111/2011. Since the learned counsel for the applicant limited his prayer to issue appropriate direction to the respondents to dispose of the last representation of the applicant i.e. dated 14.03.2011, the OA No. 3111/2011 was disposed of on 30.08.2011 and further clarified vide order dated 12.10.2011 in MA No.2684/2011 with the following direction:-

In this view of the matter, we dispose of this Original Application directing the respondents to deal with the last representation of the applicant i.e. 14.03.2011 and pass orders thereon in accordance with law as expeditiously as possible and preferably within a period of two months from the date of receipt of certified copy of this order. If on consideration of the applicant others are likely to be adversely affected, they may also be heard.

5. Pursuant to the above directions of the Tribunal, the respondents vide Memorandum No.V(B)Gp.A/19137-PC-1-13093 dated December, 2011 (Annexure A) rejected the representation of the applicant on two counts viz. (i) that the applicant does not possess essential qualification; and (ii) that promotions in the Scientific Cadre, which are vacancy based, are considered in terms of rules and regulations stipulated in the Flexible Complementing Scheme (FCS) issued by DoPandT from time to time and, therefore, promotion under FCS and direct recruitment are not inter-related. Impugning the aforesaid Memorandum the applicant has instituted the present OA praying to declare the Memorandum as illegal and arbitrary to the extent it has not granted him the benefit of promotion to Scientist E.

6. Pursuant to notice issued by the Tribunal, the respondent no.1-NTRO has entered appearance and filed the counter affidavit on 05.07.2012, inter alia, praying for dismissal of the OA on the following grounds. Firstly, being not maintainable as the applicant in his representation dated 14.03.2011, which has been decided by the respondents in December, 2011 pursuant to the direction of the Tribunal in his earlier OA No.3111/2011, has requested for appointment under direct recruitment whereas in the present OA he is asking for in situ promotion as Scientist E under FCS but both the direct recruitment and promotion under FCS are not inter-related. Secondly, being premature as the applicant has not exhausted the available remedies before approaching the Tribunal. Thirdly, he was not meeting the educational qualifications for promotion, and accordingly he was not promoted and none of his legal rights were violated.

7. It is the case of the respondents that a Selection Committee was duly constituted and it interviewed 9 candidates on 22.12.2004. Based on the candidates qualification, specialized experience, training and performance in the interview, the Committee recommended following 6 candidates including the applicant and respondent nos. 2 to 4 in the order of merit for appointment to the posts mentioned against the name of each candidate:-

1.	Sh. Suresh Chandra	Scientist E
2.	Sh. Arun Kumar	Scientist D
3.	Sh. P. Kulshrestha	Scientist D
4.	Sh. Anil Chandla	Scientist D
5.	Sh. S.S. Joshi	Scientist D
6.	Sh. U.C. Naik	Scientist D

Though the Committee also found them not fulfilling the requisite educational and other qualifications,

however, taking into consideration their extensive domain knowledge, specialized training and courses undergone by them relevant to the requirement of NTRO, the Competent Authority approved that treated them to be deemed to have fulfilled the minimum requirements of the post and accordingly offers of appointment were issued to S/Shri Anil Chandla, P. Kulshrestha and Anil Kumar, who joined NTRO as Scientist D on 21.03.2005, 21.03.2005 and 28.06.2005 respectively.

8. It is the case of the respondents that the applicant, after getting his resignation accepted on 05.01.2006 (AN), was initially taken on contract basis in NTRO on 13.01.2006 and later on was given offer of appointment for the post of Scientist D in the pay scale of Rs.12000-16500 on re-employment basis, which on acceptance he joined duty w.e.f. 14.02.2006 (FN). Therefore, he became junior to respondent nos. 2 to 4 by virtue of their date of joining. The respondent nos. 2 to 4 completed the requisite four years residency period in the year 2009 and became eligible for consideration to be promoted to the next higher grade. While processing their case for promotion, it was observed that they were not meeting the educational qualifications for promotion as prescribed under FCS, therefore, a Standing Committee was constituted to consider their case for relaxation of the qualification required and the Committee taking into consideration their vast experience and domain knowledge especially in the field of imaginary analysis/photo interpretation, recommended relaxation of educational qualification, which was approved by the Competent Authority, and thereafter accordingly they were promoted to the post of Scientist E. But, since the applicant did not complete the requisite four years residency period in the year 2009, his case was not considered for promotion. However, he was considered under the category of Meritorious Scientist by the Internal Screening Committee and the said Committee found that he had not consistently scored 90% or above marks and accordingly did not clear him for evaluation by the Assessment Board. It is the case of the respondents that since the applicant completed requisite four years of residency period in 2010, his case was placed before the Committee for the year 2010 and the Internal Screening Committee in its meeting held on 27.10.2011 scrutinized his ACRs and recommended him for consideration by the Assessment Board. As he was not meeting the educational qualification as prescribed under FCS, again a committee was constituted to consider, inter alia, relaxation of educational qualification in view of his experience. Meanwhile, recruitment rules came to be approved on 30.03.2012 and the case of the applicant for promotion along with others is being processed accordingly.

9. Having heard the learned counsel for the parties, with their assistance perused the records of the case.

10. The main controversy involved in the present case for our determination is two-fold. (i) Whether the applicant was fulfilling the requisite educational qualifications and experience and meeting the benchmark for promotion to the post of Scientist E under FCS and if so for which periods he was eligible? (ii) Whether respondent nos. 2 to 4, who were promoted to the Scientist-E grade, were junior to the applicant?

11. During the course of arguments on 21.11.2012, the learned counsel for the respondents vehemently stated that the Screening Committee considered the claim of the applicant for promotion under FCS but as he could not achieve the benchmark of 90%, the Screening Committee did not recommend him for promotion. Since the learned counsel for the respondents was not in a position to substantiate his above statement, as directed by the Bench, he produced the relevant original records for our perusal. On perusal of the original records, we find that the case of the applicant has been considered by the Screening Committee, which did not recommend the applicant for promotion.

12. We may consider the first issue. It is an admitted fact that the applicant being in the Scientist-D grade, the FCS for in situ promotion is applicable to him for his career advancement.

13. At this stage, we may refer to the Flexible Complementing Scheme (FCS) which has been in operation in the Government of India for promotion of the Scientists in different grades and the guidelines have been issued by the Department of Personnel and Training (DOPT) which are applicable for all the Departments and more so in the NTRO. These provide in situ promotion. With a view to remove shortcomings and inadequacies in the Scheme, a detailed Office Memorandum dated 9.11.1998 was issued by the DOPT. The OM outlines the

procedure to be adopted for in situ promotion under FCS from Grade-A to Grade-G. From time to time the DOPandT has issued clarifications. Both the parties in support of their respective contentions relied on the Department of Personnel and Training (DOPT) OM. Counsel for the applicants referred to the OM to submit that the Respondents have violated the said DOPT OM as the applicant was not considered as on 1st January and 1st July of the relevant years. On the contrary, Counsel for the Respondents contended that the OM was meant to avoid retrospective promotions. In this context, the OM dated 17.7.2002 is very relevant for adjudication of the issue of retrospective promotion under FCS. The said OM reads as follows:-

No.AB-14017/32/2002-Estt(RR)

Government of India

Ministry of Personnel, Public Grievances and Pensions

(Department of Personnel and Training)

Dated 17.07.2002

OFFICE MEMORANDUM

Subject:- Flexible Complementing Scheme for scientists in Scientific and Technological Departments-Date of effect of promotions.

The recommendations made by the Fifth Central Pay Commission for modifying the Flexible Complementing Scheme (FCS) in operation in scientific and technological departments for in situ promotion of scientific/technical personnel with a view to removing the shortcomings/inadequacies in the scheme had been examined some time back and this Department in O.M. No.2/41/97-PIC dated 9.11.1998 had issued detailed guidelines modifying the then existing FCS. From a number of references received in this Department, it appears that an element of confusion exists in some scientific departments on the date from which in situ promotions under FCS are to be given effect. Promotions are made effective from a prospective date after the competent authority has approved the same. This is the general principle followed in promotions and this principle is applicable in the case of in situ promotions under FCS as well.

2. As a matter of fact, no occasion requiring application of promotion with retrospective effect should arise in FCS cases, as it is provided in the rules for scientific posts that the Assessment Boards shall meet at least once a year to consider cases of in situ promotions. Rules notified for scientific posts also contain a provision for review of promotion by the Selection Committee/Assessment Board twice a year-before 1st January and 1st July of every year- and the Selection Committee/Assessment Board is required to make its recommendation on promotions keeping in view these crucial dates of 1st January and 1st July. The competent authority, which has to take a final view based on these recommendations, shall ensure that no promotion is granted with retrospective effect.

3. Hindi version will follow.

/sd/

(ALOK SAXENA)

DEPUTY SECRETARY TO THE GOVERNMENT OF INDIA

14. As per the Government of India guidelines on the FCS, minimum of 3 years and maximum of 8 years of residency are required for in situ promotion to various grades of Scientists under FCS. It also prescribes the procedure to be followed for in situ promotion through (i) Departmental Screening Committee (DCS) and (ii) Departmental Review Committee (DRC). The salient features of the FCS are as follows:-

The ACR would be the basis for assessment on a 10 point scale for screening of each case.

Number of years of residency in the feeder grade of Scientist for promotion to higher level of Scientist is prescribed as against the minimum percentage to be achieved by the candidates for meeting the eligibility criteria, which is as follows:

Grade Number of years in the grade 3 4 5 6 7 8 Minimum percentage of marks for eligibility

Scientist B to Scientist C	85%	80%	70%	65%	60%	-
Scientist C to Scientist D	-	85%	80%	75%	70%	60%
Scientist D to Scientist E	-	85%	80%	75%	70%	60%
Scientist E to Scientist F	-	-	85%	80%	75%	70%
Scientist F to Scientist G	-	-	85%	80%	75%	70%

Once the officers become eligible for consideration by the DSC, they are called for interview and are assessed in 10 point scale by the DRC. The eligibility for promotion would be based on the norms of percentage given in the above table.

The period of residency is relaxable up to one year in case of exceptionally meritorious Scientist.

Field experience of at least 5 years is essential for promotion under FCS to certain levels of Scientists.

All candidates who have completed prescribed period of residency shall be reviewed for promotion by the DRC twice a year i.e. before 1st January and 1st July.

Those candidates after consideration who do not qualify for promotion, are to be placed for consideration by the DSC after one year.

The effective date of promotion of those found eligible shall be the date on which the panel is approved by the competent authority.

15. The FCS was modified by the DoPandT on the basis of 6th Central Pay Commission recommendation vide OM No.AB-14017/37/2008-Estt(RR) dated 10.09.2010 which inter alia prescribed that the assessment of Scientist from 01.01.2011 would be as per the said OM. This envisages 4 years of the minimum residency period for Scientist-D to Scientist-E under FCS, and two level of assessment as prescribed in Annexure-I to the OM.

16. The applicant having joined NTRO on contract basis on 13.01.2006 in the Scientist-D grade, was appointed on regular re-employment basis on 14.02.2006 which he joined on the same date, he would complete mandated 4 years of residency period in the post under consideration of in situ promotion under FCS on or after 14.02.2010. Thus, he did not complete the requisite residency period of four years in the year 2009 but it was stated by the learned counsel for the respondents that he was considered under the category of meritorious Scientist by the Screening Committee and on scrutiny of his ACRs he was found to have scored

less than 90% and as such his case was not placed before the Assessment Board. Taking into account the FCS Guidelines, the above action of the official respondents cannot be faulted.

17. It is an admitted position that the applicants case was considered for the year 2010 (after he completed 4 years of residency period) in the Screening Committee meeting held on 27.01.2011 and recommended to the Assessment Board. Further, as he was not meeting the prescribed educational qualification under the FCS, a Committee was constituted to consider the relaxation of his educational qualification in view of his expertise and experience and his case is being processed for in situ promotion under FCS.

18. The question in this regard arises as to from which date his in situ promotion under FCS needs to be considered by the official respondents. As per the FCS being not based on the vacancies but on in situ, two crucial dates in a calendar year have been prescribed under FCS viz. 1st January and 1st July. On a careful consideration of the applicants case, we are of the views that his case for in situ promotion needs to be considered at the earliest as on 1st July, 2010 and if found fit needs to be promoted and the earlier FCS guidelines will be applicable. In case he is not found fit his case needs to be considered on four other crucial dates viz. 01.01.2011, 01.07.2011, 01.01.2012 and 01.07.2012. It must be noted that the OM dated 10.09.2010 in which the modified features of FCS were introduced would be applicable for the applicants case for the above four crucial dates. In view of the above, we are of the considered opinion that the applicant succeeds in the first issue in terms of our aforesaid views.

19. With regard to the second issue, we note that the 2nd, 3rd and 4th respondents as per the merit list find place at 2nd, 3rd and 4th place respectively whereas the applicant appears at 6th place. Hence, in the merit list applicant is junior to the private respondents. Further, the private respondents joined on various dates in the year 2005 whereas the applicant joined in the year 2006. Going by the dates of joining to determine the inter se seniority between the applicant and the private respondents, it is clear that the private respondents are senior to the applicant in their respective grades and having joined in the year 2005 were eligible to be considered under FCS for in situ promotion. Therefore, considering the claim of the applicant to get promoted with effect from the date the private respondents have been promoted does not have logic as the applicant did not even complete 4 years of prescribed residency period to become eligible to be considered as meritorious Scientist for in situ promotion under FCS from Scientist - D to Scientist - E grade. Therefore, from all these angles, the applicant fails to convince us to issue any direction in the second issue.

20. Taking into consideration the totality of facts and circumstances of the case and taking note of the FCS Guidelines and the admitted position of the respondents that applicants case for in situ promotion from Scientist-D to Scientist-E grade is under consideration for the year 2010, we would only direct the official respondents to expedite the same and take decision in the matter as ordained in paragraph 18 within as expeditiously as possible but positively within a period of three months from the date of receipt of a certified copy of this order.

21. Resultantly, the Application is allowed in terms of our directions within. In the peculiar nature of the case, we do not order any cost.

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