

Nakul Dev and Another Vs. Union of India and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Mar-05-2012

Judge : V.K. Bali, Chairman & the Honourable Dr. Ramesh Chandra Panda, Member (a)

Appeal No. : OA No.1861 of 2010

Appellant : Nakul Dev and Another

Respondent : Union of India and Others

Advocate for Pet/Ap. : For the Applicants: Sachin Chauhan, Advocate. For the Respondents: H.K. Gangwani, Mrs. B. Rana, Advocates.

Judgement :

DR. RAMESH CHANDRA PANDA, MEMBER (A)

1. Three applicants have joined together in filing the present OA and are seeking the following relief (s) under Section 19 of the Administrative Tribunals Act, 1985:-

“(A) Direct the Respondents to hold the Assessment Board to assess the Applicants for the grade of Joint Director, under the Flexible Complementing Scheme (of in-situ promotion), at the earliest,

(B) Assess the Applicants for the grade of Joint Director-even if they superannuate;

(C) Pass such other and further order or orders direction or directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances to meet the ends of justice.”

2. Brief factual matrix of the case would disclose that the applicants were initially appointed as Research Officer (Engineering) in the office of Central Soil and Material Research Station (CSMRS) and they joined in February/June 1985. The next higher post being Senior Research Officer and the relevant Rules governing the promotion to the said post is CSMRS (Group-A) Recruitment Rules, 1983 and the post under the said Rules having been treated as Scientific and Technological post, the Flexible Complementing Scheme (FCS) in-situ promotion in Scientific Department and Organisations issued by the Respondent Department dated 22.11.1983 would be applicable to the applicants for their future promotion. Though they were granted promotion to the Senior Research Officer (SRO) w.e.f. 10.01.1994 they agitated against the said order before this Tribunal in OA No.1715/1995 and OA No.1716/1995. The OA No.1715/1995 was decided on 14.10.1999 directing the respondents to extend the benefits of the promotion to the SRO Grade w.e.f. the date of their eligibility i.e. June, 1990. Similar judgment was passed in case of applicants in OA No.1716/1995 vide order dated 18.01.2000. Against the said judgments of the Tribunal, respondents moved the Hon'ble High Court of Delhi in Civil Writ Petition No.2456/2000 and 12484/2000 which were dismissed at the admission stage vide orders dated 19.07.2000. Respondent-Union of India moved Special Leave to Appeal (Civil) No.19111-12/2000 in the Hon'ble Supreme Court of India which was decided on 30.07.2001, wherein, the prayer for stay was dismissed vide order dated 1.02.2002. As the stay was refused by the Hon'ble Supreme Court, the applicants moved Contempt Petition in the Tribunal (CP No.681/2001) praying for a direction to the respondents to implement the directions of the Tribunal. The orders in the CP were passed on March 18, 2002. Though the applicants were promoted in April, 2002 to the grade of Senior Research Officer but were not granted arrears of pay. Hence, applicants filed Contempt Petition in the Tribunal again. In the meantime, pursuant to the directions of the Tribunal, the respondent-Union of India vide order dated 15.04.2002 granted the applicants promotion to the grade of Senior Research Officer w.e.f. the date of eligibility (February/June 1990) and were

granted arrears of pay and allowances. The next higher post for the applicants was Chief Research Officer (CRO). The applicants were promoted to the post of CRO w.e.f. 11.10.2006. However, being aggrieved by the said order, they approached the Tribunal in OA No.1810/2007 which was decided on 9.07.2009 directing the respondents to promote them w.e.f. the date they became eligible for promotion to the post of CRO in 1995 under the FCS by in-situ promotion. The respondents moved MA No.1930/2009 in the said OA seeking extension of time to implement the decision and the said MA was dismissed by the Tribunal. A Contempt Petition was filed by the applicants (CP No.533/2009) and respondents took time to promote the applicants to the grade of CRO w.e.f. February/June 1995 vide the order dated 17.02.2010. After antedating the promotion of the applicant to the grade of CRO they became senior to Dr. Rajbal Singh and Mr. S. K. Babbar who were working as CROs. It is the case of the applicants that Dr. Rajbal and Shri Babbar were promoted under FCS in-situ promotion to the grade of Joint Director w.e.f. 12.02.2007 and the said promotion stipulated that the promotion of officers would be subject to the final outcome of the Civil Appeal No.4973-74/2001 pending in the Hon'ble Supreme Court. The said Civil Appeal was decided in favour of the applicants vide order dated 14.11.2007. Despite repeated reminders by the applicants to hold the assessment for the grade of Joint Director as they have completed required eligibility criteria of five years besides they have put in more than 15 years of service in the Group-A and their juniors have already been promoted to the grade of Joint Director, the respondents did not act on their representations and the 1st and 2nd applicants retired in June and December, 2010 respectively. It is appropriate at present to note that both the applicants along with third applicant challenged inaction of the respondents in promoting them to the grade of Joint Director under FCS, filed the present OA on 1.06.2010 just before the retirement of one of the applicants.

3. Shri Sachin Chauhan, learned Counsel appearing on behalf of the applicants, would contend that non promotion of the applicants to the grade of Joint Director when their juniors have been promoted in-situ under FCS to the said grade, being wholly illegal, would violate Article 14 and 16 of the Constitution. He submits that as against the required period of five years eligibility in the grade of CRO, the applicants have put in more than 15 years of service in the Group-A and

considering the antedating of their promotion to February/June 1995, they would be deemed to have completed 5 years with grade of CRO. Therefore, not taking their assessment for the grade of Joint Director was invidious discrimination. He submits that FCS in-situ promotion provides consideration of the eligible candidates in the grade of CRO to be considered ever half year for promotion and having not done so for the applicants they have been denied their due promotion. Thus, he urges that the respondents should be directed suitably.

4. Referring to the assessments through interviews indicated in the guidelines by FCS, Shri Chauhan would submit that it was the fault of the respondents for not conducting Assessment Board interviews twice a year as envisaged in the DOPT Circular dated 17.07.2002. Therefore, he urges that the OA should be allowed and the applicants should be granted in-situ promotion to the grade of Joint Director under the FCS from the date they were eligible, with further directions to grant them arrears of pay and allowances and the revised pensionary benefits.

5. Per contra, the respondents have filed their reply affidavit through Shri H. K. Gangwani, learned Senior Central Government Counsel on 8.12.2010 and have opposed the contentions taken by the applicants. The principal ground taken by the respondents indicates that applicant's promotion to the rank of CRO was antedated from 2006 to 1995 pursuant to the directions of this Tribunal vide its order dated 9.07.2009 in OA No.1810/2007. The applicants do not have requisite qualifying regular service for a period of five years in the rank of CRO for their consideration for in-situ promotion to Joint Director. His contention is that as per the existing Recruitment Rules, 1993, 5 years of regular service in the grade of CRO is required for consideration for promotion to the higher grade. The applicants having assumed the charge of CRO w.e.f 11.10.2006 they would be completing 5 years of requisite service only on 10.10.2011 but the applicants having retired in June/December, 2010. Hence, he submitted that they would not be fit enough to be considered for promotion to the rank of Joint Director. He further submits that even if the Tribunal directs to consider their case for promotion to the grade of Joint Director, they, having retired, it would not be possible to conduct interview for them as the method of interview prescribed under the FCS for Assessment Board would not be possible. He drew our attention to the

respondent's order dated 11.10.2006 (Annexure-A2) to say that the benefit of higher post can be assumed only from the date one assumed the charge of higher grade. The judgment of the Tribunal having been passed on 9.07.2009, the applicants have been promoted retrospectively but the next promotion can only be considered from the date of assumption of the charge as CRO. Shri Gangwani, therefore, argues that there is no merit in the OA and the same should be dismissed.

6. Mrs. B. Rana, learned counsel representing the 4th respondent i.e. Union Public Service Commission submits that the role of UPSC is only to conduct the DPC and Board of Assessment Meeting in accordance with the Guidelines/Instructions issued by the Government of India, DOPT vide their OM dated 1.04.1989 after receipt of such proposals from the concerned Ministry which will inter alia include the inputs like Seniority Lists, ACRs, Integrity Certificate, Vigilance Clearance of Feeder Category Officers etc. She would, therefore, submits that for in-situ promotion for the post of Joint Director under FCS, no proposal has been received from the Ministry of Water Resources to hold the Assessment Board and, as such, it would not be appropriate for the UPSC to comment anything beyond what has been stated in the counter affidavit.

7. The applicants have also responded to the reply affidavit filed by the respondents and have stated that Shri S. K. Babbar was CRO w.e.f. August, 1996 and has been promoted to the rank of Joint Director under FCS in the year 2007. He is admittedly junior to the applicants as they have been promoted retrospectively w.e.f. 1995 to the post of CRO and have, therefore, submitted that their promotion should at least be made w.e.f. 2007 to the rank of Joint Director.

8. Having heard the rival contentions, we have very carefully perused the pleadings. It is a case of pure facts and available Recruitment Rules of the Respondent Department. Consideration for us in the present OA is to find out whether the applicants who have been retrospectively promoted w.e.f. 1995 should be considered for further in-situ promotion to the grade of Joint Director as per the Flexible Complementing Scheme.

9. Before, we proceed in the matter, it must be noted that the applicants have been getting their proper promotion to the grade of SRO and CRO after the judicial intervention. The respondents have not on their own granted them in-situ promotion to those grades under FCS. In the present OA, they are seeking intervention of the Tribunal to grant them in-situ promotion to the next higher post i.e. Joint Director under FCS. The claim of the applicants seems to be genuine. But, can the respondents be faulted for the applicant's non promotion to the Joint Director post? At this stage, we must note that the respondents could not have assessed them for in-situ promotion under FCS, as their promotion order to the post of CRO was initially issued only on 11.10.2006. Later on, due to the direction of the Tribunal CRO promotion was granted retrospectively from February/June 1995 vide order dated 17.02.2010. As per the initial order, they would complete 5 years only in June, 2011 by which time, they have retired. But, by antedating their promotion to 1995, they become eligible from 2000.

10. As per the seniority list, there is no dispute to the fact that the applicants are senior to Shri Babbar in the rank of CRO as the applicants have been promoted in the year 1995 though after they succeeded in the OA before the Tribunal and though the order of their promotion order has been passed later but ultimately they have got their seniority w.e.f. 1995. Shri Babbar has been promoted in the year 2007 and was granted in-situ promotion in the rank of CRO in the year 1996. We also find from the Office Order dated 19.02.2007 that the respondents after conducting the proper assessment have granted in-situ promotion to the Joint Director posts under FCS to three officers from the rank of CRO, namely, Sh. N. Chandrasekaran, Dr. Rajbal Singh and Sh. S. K. Babbar and have been granted the pay scale of Rs.14300-400-18300 w.e.f. 12.02.2007. It is further noticed from the Office Order dated 17.02.2010 that pursuant to the directions of the Tribunal dated 9.07.2009, the applicants were promoted from the date from which they were eligible to the rank of CRO in the year 1995 i.e. the 1st applicant was granted in-situ promotion as CRO w.e.f. 14.02.1995, 2nd applicant w.e.f. 5.06.1995 and 3rd applicant w.e.f. 28.06.1995. Considering their retrospective promotion their seniority would of course be fixed w.e.f. the dates they have been granted the rank of CRO. It is well settled position in law that once the retrospective promotion is granted, the seniority and regular service would be counted w.e.f. the date from

which they are being granted retrospective in-situ promotion. Thus, in the present context, the period of five years, the applicants would be completing in the grade of CRO in February/June 2000.

11. At that time the applicants were in service. They retired in the year 2010. It is also noticed that the FCS provides for two stage assessment. The 1st stage of assessment is by the Screening Committee considering the ACRs of the concerned officer and finding them suitable for in-situ promotion by which they are short listed and called for interview for assessment before the UPSC under FCS. They are interviewed in the Assessment Board after which concerned officers if found suitable are granted in situ promotion w.e.f. their respective dates of entitlement. But the case in hand is very unique. In the instant case, two of the applicants have already retired. The 3rd applicant may have retired in the meantime. The applicants having completed their eligibility period way back in the year 2000. Had they been granted promotion as CRO in 1995, their case would automatically come up before Screening Committee and thereafter before Assessment Board in the year 2001. They would normally be assessed twice a year with effect from 2001 to the date of their retirement. The respondents cannot be found fault with in the present case for not conducting the Screening Committee as well as Assessment Board interviews for applicants promotion to the rank of Joint Director, as the respondents acted on the orders of the Tribunal dated 9.07.2009 and passed the Office Order dated 17.02.2010.

12. For this type of unique case, we have to consider special remedy. We note that the Assessment Board cannot conduct interview for the applicants now as they have retired. However, we can suggest some alternative methods for the respondents to follow. On consideration of the above facts and circumstances of the case, we direct the respondents to conduct review Assessment Board to consider the case of the applicants w.e.f. the year in which they would be eligible to be considered as per the FCS and the relevant Recruitment Rules for the post of Joint Director may be from the year 2001. The review Assessment Board would consider ACRs of the applicants only. No interview would be necessary. This method, we are aware, would be deviation from the FCS guidelines. Therefore, the above method is qua the applicants only, and cannot be treated as judicial

precedent for any other case. As two of the applicants have already retired and 3rd applicant may have retired or may be in service. If they are found suitable from any specific date for in-situ promotion to the rank of Joint Director, the same shall be granted to them w.e.f. the respective date notionally but as the two applicants have already retired, their pension would undergo revision and they shall be granted revised pension and other retirement benefits according to the admissible rules. In case of the 3rd applicant, same procedure can be adopted if he has retired but if he is still in service he would be granted all the benefits except the back wages as he has not acted in the higher post of the Joint Director but he would get notional increments w.e.f. the date of his in situ promotion to the post of Joint Director under FCS and actual salary of the higher post be paid w.e.f. the date of issue of the promotion order.

13. Resultantly, finding merits in the case, the Original Application is allowed in terms of our above directions, leaving the parties to bear their respective costs.

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