

(2005) 05 DEL CK 0007

In the Delhi High Court

Case No : Writ Petition (C) No. 6372 of 2003

Shri S.K. Rahi

APPELLANT

Vs

Bureau of Indian Standards (BIS)

RESPONDENT

Date of Decision : 31-05-2005

Acts Referred:

Bureau of Indian Standards (Recruitment to Scientific Cadre) Regulations, 1988 — Regulation 9

Citation : (2005) 121 DLT 187

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : J.P. Singh, for the Appellant; B.K. Sood, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—In this batch of Petitions it has been prayed that appropriate writs/orders may issue to the Respondent directing them to promote the Petitioners to the post of Scientist-D (Joint Director) in the pay-scale of Rs.12,000-375-16,500/- from the date the same became due after the Petitioners had rendered 5 years of service in the post of Scientist-D in accordance with the Flexible Complementing Scheme (hereinafter referred to as 'the FCS') on that date, being Department of Science and Technology's O.M.No.A.42014/2/86-Admn.1(A) dated 28.5.1986.

2. Regulation 9 of Bureau of Indian Standards (Recruitment to Scientific Cadre) Regulation, 1988, which has been relied upon by the Petitioner read thus:

"9. Promotion to the Posts up to System Scientist-E [Director (selection Grade)]
" (1) The selection for promotions shall be made from amongst the scientific cadre officers serving in the next lower grade by the standing staff committee of Selection Committee 'A' as the case may be, on the recommendations of the Assessment Committee appointed by the Director General under sub-regulation (3). Selection of officers for promotion shall be made on the basis of assessment

procedure as laid down by the Executive Committee which shall take into account qualifications performance, merit, seniority, potential, annual confidential reports for previous five years and interview.

(2) The promotion of Selected officers to next higher grade up to the System Scientist-E shall be made in the same manner as laid down in the Scheme of Flexible Complementing formulated from time to time by the Department of Science and Technology for promotion of Scientists in scientific organizations under the Central Government and shall be effective from the date of eligibility.

3. It is the admitted case that the recommendations of the Vth Pay Commission was adopted by the Bureau of Indian Standards (`BIS" in short), the Respondent herein, with effect from 1st January, 1996, by implementing FCS which envisaged as under:

Minimum	Pay	Residency	period	Scales	of	Designation
				linked	to	performance

a) Rs.8000-13500	Scientist B	3 years	b) Rs.10000-15200	Scientist C	4 years	c) Rs.12000-16500
Scientist D	4 years	d) Rs.14300-18300	Scientist E	5 years	e) Rs.16400-20000	Scientist F
Scientist F	5 years	f) Rs.18400-22400	Scientist G			

4. The Petitioners were receiving their emoluments in the pay-scale of Rs.10,000-15,200/-, namely, Scientist-C, with effect from 10.3.1994 and would have progressed to the next scale, viz. Group-D, after five years in 1999. This, however, eventually transpired as late as in March, 2003, albeit with effect from March, 2001 for the reason that a change in the Service Regulations appears to have been in contemplation. Changes were introduced into the FCS by Office Memorandum dated 9th November, 1998 which modified the eligibility for benefits of the FCS linked to the Annual Confidential Reports of the person concerned. Thereafter, by Notification dated 3rd May, 2002, in exercise of the powers conferred by Section 38 of the Bureau of Indian Standards Act, 1986 and in supersession of the Bureau of Indian Standards (Recruitment to Scientific Cadre) Regulations, 1988, Regulation 9 was amended to read as follows:

"9.Promotion to the Posts up to Scientist-G " (1) The selection for promotions shall be made from amongst the Scientific Cadre officers serving in the next lower grade by the Assessment Committee appointed by the Director General under sub-regulation (2) Selection of officers for promotion shall be made in the same manner as laid down in the Scheme of Flexible Complementing formulated from time to time by the Central Government for promotion of scientists in Scientific Organizations under the Central Government and shall be effective from the date of eligibility. The Scheme of Flexible Complementing as formulated by the Central Government vide OM No.2/41/PIC-97 dated the 9th November, 1998 would be effective for Scientific Cadre Officers up to dated the 9th November, 1998 would be effective for Scientific Cadre Officers up to and

inclusive of the level of Scientific-E from 9th November, 1998 and for the levels of Scientist-F and Scientist-G, the date of promotion would be effective from the date of Gazette Notification of this revised regulation."

5. The position is clear from the Explanatory Memorandum contained in the Notification itself which is reproduced for facility of reference:

The Scheme of Flexible Complementing (FCS) was earlier introduced based on the guidelines issued by the Department of Science and Technology (DST) in November, 1983 for all Scientific and Technical Organizations/Institutions of the Government of India, which was later modified vide Department of Science & Technology's OM No.A.42014/2/86-Admn.1(A) dated the 28th May, 1986. According to this scheme, the promotion of an officer in scientific service from one grade to the next higher grade would take place after a prescribed period of five years residency service on the basis of assessment procedure as laid down by individual organization. Promotions made under this scheme would be insitute and with effect from the date of their eligibility as per the residency period and personal to the officer concerned irrespective of the occurrence of the vacancy in the higher grade. Accordingly, in Bureau of Indian Standards, all Scientific Cadre Officers were considered eligible for promotion from one grade to the next higher grade after they had put in 5 years of residency service in that grade. Thereafter, based on the assessment procedure as laid down by the Executive Committee of Bureau of Indian Standards, which shall take into account qualifications, performance, merit, seniority, potential, annual confidential reports for previous five years and interview by the Assessment Committee appointed by the Director General, the officers would be promoted to the next higher grade as per their date of eligibility.

6. During the pendency of these Petitions, Notification dated 12th August, 2004 came to be published in the Gazette of India. By means of this Notification the Regulation 9 was once again amended. The Explanatory Memorandum clarifies the need for the change. It states that bids Regulations, 2002 adopted the FCS formulated by the Central Government and its benefits were to be given to employees with effect from 9th November, 1998. It was, however, felt that the bids did not possess powers to implement the Scheme retrospectively. The policy of the Central Government was that the FCS should apply to the Scientific Cadre Officers of the bids only prospectively. Therefore, inadvertently since the FCS was to be applied to the Scientific Cadre in the extant manner the purpose of the Notification were to rectify this mistake. Regulation 9 now reads as follows:

"9.Promotion to the Posts up to Scientist-G " (1) The selection for promotions shall be made from amongst the Scientific Cadre officers serving in the next lower grade by the Assessment Committee appointed by the Director General under sub-regulation (2) Selection of officers for promotion shall be made in the same manner as laid down in the Scheme of Flexible Complementing formulated from time to time by the Central Government for promotion of scientists in Scientific Organizations under the Central Government subject to the condition

that the said Scheme shall be applicable to the Scientific Cadre Officers of the Bureau from the date of commencement of the Bureau of Indian Standards (Recruitment of Scientific Cadre) Amendment Regulations, 2004.

7. It has also been contended that in respect of Shri H.J.S.Pasricha, Smt.D.G. dustydar, Shri G.Bhaskar, Shri Bijender Kumar Jain, Shri Jayanta Roy Chowdhury and Smt. Mala Ayyappan, they have been given the benefit of automatic 'promotion' to Class-D in December, 1998 although by that time the proposed changes had already formulated. It has been explained by Mr.Sood, learned counsel for the bids that the proposal to promote these six officers had already commenced before changes were contemplated and Therefore, benefits were extended to them.

8. In CW No.4555/2001 entitled as Mr.N.C.Jain & Ors Versus New Delhi Municipal Council & Ors., dated September 16, 2003, the question that had arisen was whether the Petitioners, having become eligible for promotion as per extant Rules should nonetheless be governed by Rules which had subsequently come into effect and were detrimental to the Petitioners interest. My learned brother Hon'ble Mr. Justice Vijender Jain applied the ratio established in State of Andhra Pradesh & Ors. Versus Sreenivasa Rao & Ors. 1993 (3) SCC 285. He relied on the following paragraph from that judgment:

"Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September, Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub -Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, Therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

He also noted that similar opinions had been expressed in P. Mahendran and others Vs. State of Karnataka and others, and P. Murugesan and Others Vs. State of Tamil Nadu and Others, . My learned brother Jain, J. issued directions to the Respondents to fill up the existing vacancies in accordance with the old Rules.

9. Per contra Mr.Sood, learned counsel appearing for the Respondent has relied on the pronouncement of Dr. Ramulu and another, etc. Vs. Dr. S. Suryaprakash Rao and others, and in particular to the following paragraph:

The same ratio was reiterated in Union of India and others Vs. K.V. Vijesh, .

Thus, it could be seen that for reasons germane to the decision, the Government is entitled to take a decision not to fill up the existing vacancies as on the relevant date. Shri H.S. Gururaja Rao, contends that this Court in *Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others*, had held that the existing vacancies were required to be filled up as per law prior to the date of the amended Rules. The mere fact that Rules came to be amended subsequently does not empower the Government not to consider the persons who are eligible prior to the date of appointment. It is seen that the case related to the amendment of the Rules prior to the amendment of the Rules. Two sources were available for appointment as sub-Registrar, namely, UDCs and LDCs. Subsequently, Rules came to be amended taking away the right of the LDCs for appointment as sub-Registrar. When the vacancies were not being filled up in accordance with the existing Rules, this court had pointed out that prior to the amendment of the Rules, the vacancies were existing and that the eligible candidates were required to be considered in accordance with the prevailing Rules. Therefore, the mere fact of subsequent amendment does not take away the right to be considered in accordance with the existing Rules. As proposition of law, there is no dispute and cannot be disputed. But the question is: whether the ratio in *Rangaiah's* case would apply to the facts of this case? The Government therein merely amended the Rules, applied amended Rules without taking any conscious decision not to fill up the existing vacancies pending amendment of the Rules on the date the new Rules came into force. It is true, as contended by Mr. H.S. Gururaja Rao, that this Court has followed the ratio therein in many a decision and those cited by him are *P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others*, , *P.Mahendranath v. State of Karnataka* : (1990)ILLJ337SC . *A.A. Calton Vs. Director of Education and Another*, , *Bhagel Singh Vs. Swaran Singh and others*, , *Ramesh Kumar Choudha and Others Vs. State of M.P. and Others*, . In none of these decisions, situation which has arisen in the present case had come up for consideration. Even Rule 3 of the General Rules is not of any help to the respondent for the reason that Rule 3 contemplates making of an appointment in accordance with the existing Rules.

The general principle reiterated by the Hon'ble Supreme Court militates against the argument proffered by Mr. Sood. This principle, which has been highlighted in the extracted passage, is clearly in favor of the Petitioners; it was found to be inapplicable in the facts and circumstances that the Apex Court had to consider. Furthermore, in my view *Dr.K.Ramulu's* case dealt with appointments in contradistinction to promotion under the Flexible Complementing Scheme.

10. In 1999 the Petitioners had become entitled to 'promotion' to Group-D and at that time Rules to the contrary did not exist. The then prevailing FCS ought to have Therefore been implemented in 1999 itself, and had this been so done the Petitioners would have been promoted to Group-D after the expiry of five years service in Group-C. It should also not be overlooked that the effect of the Notification of 12th August, 2004 was to return to the regime which entitled the Petitioner to automatic progression to Group-D on their completing five years in

Group-C.

11. In these circumstances, the Writ Petitions are allowed and the Respondents are directed to promote the Petitioners to the post of Scientist-D in the pay-scale of Rs.12,000-375-16,500/- as soon as each of the Petitioners had rendered five years service in the post of Scientist-C as per the Flexible Complementing Scheme applicable on the said date.

12. Parties to bear their respective costs.