

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 14916/2020

Dr. S.K. Gupta S/o Late Shri Lakhpatt Rai Aggrawal, aged about 63 Years, R/o House No. 53/166, V.T. Road, Mansarovar, Jaipur-302020 (Rajasthan) (Earlier posted as Scientist-D at Central Ground Water Board, Jaipur). -----Petitioner

Versus

1. Union of India through its Secretary, Ministry of Water Resources, River Development & Ganga Rejuvenation, Shram Shakti Bhawan, Rafi Marg, New Delhi- 110001. Now Ministry of Jal Shakti Department of water resources.
2. The Chairman, Central Ground Water Board, Bhujal Bhawan, NH IV, Faridabad, Haryana.
3. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi
4. Shri Sunil Kumar, Regional Director, National Ground Water Training Institute, Second Floor, Block A1, Pujari Chamber, Pachepedi Naka, Raipur-492001 (Chhatisgarh). Now member CGWD, Gurjar Bhavan, NH-4, Faridabad.
5. Shri Utpal Gogai, Regional Director, Central Ground Water Board, North Eastern Region Bhujal Bhawan (Opp. ISBT), Betkuchi, Guhati-761035 (Assam). Now member CGWD, Gurjar Bhavan, NH-4, Faridabad.
6. Dr (Mrs.) Uma Kapoor, Regional Director, Central Ground Water Board, 18/11, Jam Nagar House, Man Singh Road, New Delhi- 110011.
7. Shri Y.B. Kaushik, Regional Director, Central Ground Water Board, Northern Region, Bhujal Bhawan, Sector B, Sitapur Road Yojna, Ram Bank Chauraha, Lucknow- 226021. (Now Retired) through The Chairman, Central Ground Water Board, Bhujal Bhawan, NH IV, Faridabad, Haryana.

-----Respondents

For Petitioner(s)	:	Mr. Amit Mathur & Ms. Mahima Upadhyay
For Respondent(s)	:	Mr. Chandra Shekhar Sinha, Mr. Dev Yadav

HON'BLE MR. JUSTICE SUDESH BANSAL
HON'BLE MR. JUSTICE RAVI CHIRANIA
Order

01/05/2026

Per Hon'ble Ravi Chirania, J.

1. The petitioner Dr. SK Gupta, now retired and aged about 69 years, has approached this Court by way of present writ petition filed under Article 226 & 227 of the Constitution of India to challenge the impugned order dated 02.12.2020 passed by learned Central Administrative Tribunal Jaipur Bench, Jaipur (hereinafter referred to as "learned Tribunal"), in Original Application No. 750/2015.

2. The grievance of the petitioner is that he approached learned Tribunal by way of above O.A. stating that the act of respondents by conducting the meeting of Departmental Promotion Committee for the post of Regional Director without updating/revising the seniority list, is in violation/ignorance of the order dated 13.07.2015. While praying for quashing of the action of the respondents, the petitioner further prayed that respondents be directed to issue the revised/updated seniority list for the post of Scientist-D considering his antedated promotion, as made by Office Order No. 520/2015 dated 13.07.2015 and then conduct the Review DPC for the post of Regional Director in terms of the judgment passed in the case of ***Union of India V. Sambasiva Rao and Ors.*** decided on 10.9.2008 by Hon'ble Andhra Pradesh High Court reported in **2008 SCC OnLine AP 507**, with all consequential benefits.

2. The learned Tribunal did not find the grievance of the petitioner to be genuine and consequently dismissed the O.A. vide order dated 02.12.2020.

3. Brief facts of the case are that the petitioner was appointed by the respondents on the post of Assistant Hydro Geologist, after he qualified the examination in the year 1981. Thereafter, the petitioner was promoted from the post of Hydro Geologist to the post of Scientist-B w.e.f. 01.10.1988. He was further given promotion to the post of Scientist-C w.e.f. 01.01.1993 and lastly promoted to the post of Scientist-D w.e.f. 01.01.1998. The petitioner was granted three promotions to the post of Scientist-B, Scientist-C and Scientist-D strictly in accordance with law and on the basis of his merit. The petitioner approached learned Tribunal for the reason that Hon'ble High Court of Andhra Pradesh decided the issue of promotion in the Scientist Cadre of the respondent-Department, which was *sub judice* before the Court since year 1999, vide judgment dated 10.09.2008, whereby the Hon'ble Court dismissed the petition filed by the Union of India titled as **V. Sambasiva Rao and Ors.** (supra). Vide order dated 10.09.2008, Hon'ble High Court directed Union of India to implement the Office Memorandum dated 02.05.1986 and consequent Office Memorandum dated 09.11.1998 and take further action to implement the **Flexible Complementing Scheme (FCS)** in respect of the eligible Scientists. In compliance with the order passed in the case of **V. Sambasiva Rao and Ors. (Supra)**, the respondents issued the orders antedated of the promotions of the petitioner Dr. S.K. Gupta and other people for the post of

Scientist-B from 01.10.1988 to 28.05.1986, for the post of Scientist-C from 01.01.1993 to 01.01.1992 and for the post of Scientist-D from 01.01.1998 to 01.01.1997 by the orders dated 19.02.2013, 03.02.2014 and 13.07.2015. The petitioner is seriously aggrieved by the action of the respondents in issuing the combined seniority list of Scientist D on 01.01.2013 and without revising his seniority list in light of his antedated promotion to the post of Scientist D proceeding to make promotions to the post of Regional Director based on unrevised/outdated seniority list. Learned counsel for the petitioner submitted that in compliance of the judgment passed in the case of **V. Sambasiva Rao and Ors. (supra)**, once the respondents had corrected the year of promotion of the petitioner, they were legally bound to issue a corrected/revised seniority list in the changed circumstances before effecting promotion to the post of Regional Director.

4. Since the grievance of the petitioner remained unaddressed at the level of the respondents, he approached learned Tribunal with the following prayer: -

"It is, therefore, respectfully prayed that this Original Application may kindly be accepted and allowed and by an appropriate order or direction,

(a) *The action-omission of the respondents in conducting DPC recently for the post of Regional Director on the basis of un-updated/unrevised seniority list which is in ignorance of the order dated 13.07.2015 may be quashed and set aside and any order if passed on the basis of such DPC may also be quashed and set aside, in the interest of justice.*

(b) *The complete record pertaining to the present case may be called and the respondents may be directed to revise the seniority list of Scientist D while considering the antedated promotions of Scientist D made vide office order 520 of 2015*

dated 13.07.2015 before convening any DPC for the post of Regional Director.

- (c)** *The respondents may be directed to convene the review DPC for all the promotions for Regional Director, as per the judgment of V. Sambasiva Rao and Ors. Vs. Union of India and on the basis of the updated/revised Seniority list of Scientist D and accordingly to make promotion of the applicant on the basis of recommendations of the DPC as on the back date along with all consequential benefits arising from such ante dated promotions.*
- (d)** *Any other relief or reliefs as may be deemed fit by this Hon'ble Tribunal and proper under the circumstances of the case."*

5. Learned Tribunal issued notices to the respondents, who thereafter filed their reply, to which the petitioner filed a rejoinder. Learned counsel for the petitioner, Mr. Amit Mathur, submitted that the respondents, in their reply to the OA, stated that the promotion orders as issued in compliance of the judgment passed in the case of **Union of India V. Sambasiva Rao and Ors. (Supra)** were not regular promotions rather they were **in-situ promotions under Flexible Complementing Scheme (FCS)** and these promotions were in respect of individuals on personal basis. Learned Counsel further submitted that the respondents by the reply tried to justify their action by stating that for making in-situ promotion under FCS they were not required to prepare any merit list as these promotions were just financial upgradation as mentioned in the last promotion order of the petitioner dated 13.07.2015.

6. Learned counsel for the petition submitted that there is nothing like regular promotion as the services of the Scientist in the department are governed by **Central Ground Water board**

and Scientist (Group A post) Recruitment Rules, 1995

(hereinafter referred to as **Rules of 1995** for short). The Rule 6, 7 (2) and 10 of the Rules of 1995 provides for promotion under FCS for which the criteria under which the promotions are made based on seniority, qualification, merit etc.. Rule 6, 7 (2) and 10 of the Rules of 1995 are reproduced as under:-

"6. Method of recruitment, age-limit and other qualifications-

The method of recruitment to the said posts, age limit, qualifications and other matters relating thereto shall be as specified in columns (5) to (14) of the Schedule.

7. Future maintenance- (1) The assessment Board as specified in the Schedule to the various posts shall meet at least once a year and shall consider the cases of all departmental officers, who have rendered the requisite qualifying service in the respective grade on the 1st January of the year following the year to which the departmental officers have become eligible for in situ promotion wherever applicable, to assess their suitability for promotion to the next higher grade.

(2) The system of flexible complementing and "in situ" promotions shall be followed in the matter of promotion of departmental offices in the grades of Scientist "B", Scientist "C" and Scientist "D" to the respective higher grades, namely, Scientist "C" and Scientist "D" subject to the following conditions, namely:-

(a) The total number of officers taken together shall not exceed the total number posts in the grades of Scientist "B", Scientist "C" and Scientist "D" at any given point of time but there shall be complete flexibility in the number of posts in relation to the respective grades.

(b) The departmental officers who have rendered in the respective grade the requisite regular service specified in column (12) of the Schedule may be recommended by the Board of Assessment comprising the officers specified in column (13) of the Schedule for promotion to the next higher grade. While evaluating the suitability of the officers for promotion, the Assessment Board shall take into consideration their qualifications, performance, merit and seniority. The selection shall be on basis of confidential reports and interview. However, the Assessment Board, may at their discretion, consider in absentia the candidature of such officer who is unable to present himself for the interview. The assessment Board shall draw up a list of officers who are assessed as fit for promotion to the next higher

grade. In so far as persons undergoing training in India abroad (under F.R. 51) are concerned, they shall be promoted to the next higher grade with effect from the date they would have been so promoted had they not proceeded on training subject to the following conditions being fulfilled:-

- (i) the period of such training is treated as duty under F.R. 9(6)(b).*
- (ii) they have been approved for promotion to the next higher grade.*
- (iii) all their seniors, except those regarded as unfit for promotion to the particular grade, available have been promoted to that grade*

10. Seniority- *(1) The relative seniority of members of the Service appointed to a grade respective sub-cadres at the time of initial constitution of the service under Rule 5, shall be as obtaining on the date of commencement of these Rules:-*

Provided, that if the seniority of such member had not been specifically determined on the said date, the same shall be determined on the basis of rules governing the fixation of seniority as were applicable to the members of the service prior to the commencement of these rules.

(2) The seniority of persons recruited to the Service after the initial constitution shall be determined in accordance with the general orders and instructions issued by the Government in this behalf from time to time.

(3) The seniority of any person, not covered by sub-rules (1) and (2), shall be determined by the Controlling Authority in consultation with the Commission."

7. Learned counsel Mr. Mathur submitted that Rule 7 (2) provides for in-situ promotion under FCS for the officers in the grade of B, C and D subject to the condition as mentioned in the Rules of 1995. Counsel further submitted that while making promotion under the Rules of 1995 the respondents were required to consider the merit and seniority of the eligible candidates. He pointed out that Rule 10 of the Rules of 1995 specifically provides that for promotion relative seniority of the members of the service appointed to the respective grade at the time of initial entry

into service of the institution shall be maintained. He further submitted that as the petitioner was appointed on 11.11.1982 and therefore, while making in situ promotion under FCS, in terms of the Rules of 1995 the respondents were duty bound to issue the revised/ updated seniority list on the basis of the last antedated promotion order dated 13.07.2015 by which promotion was made to the post of Scientist D whereby the date of the promotion was changed from 1.01.1998 to 1.01.1997. Based on this change, consequential promotion was required to be done compulsorily by the respondents. Therefore, the complete action of the respondents is illegal and bad in law which respondents failed to justify even by their reply before tribunal.

8. Learned counsel Mr. Mathur submitted that the learned Tribunal without considering the submissions and the grounds raised in the OA dismissed the OA on the ground that after so many years the change as desired in the seniority list and to give consequent promotion to the petitioner, cannot be made, therefore, denied the relief as prayed in OA. Learned Counsel further submitted that the impugned order as passed by the learned Tribunal dated 02.11.2020 is in violation/contrary to the order passed in the case of **V. Sambasiva Rao and Ors. (Supra)** and therefore, the order of the learned Tribunal being perverse deserves to be quashed and set aside and the writ petition deserves to be allowed. Further the respondents need to be

directed to promote the petitioner on the post of Regional Director by first revising/updating seniority list of the post of Scientist D and then convene the review DPC and give consequential promotion on the post of Regional Director.

9. **Per contra**, learned Counsel for respondents Mr. C S Sinha strongly opposed the submissions as made by the learned Counsel for the petitioner and supported the order dated 02.12.2020 passed by the learned Tribunal. Counsel submitted that the petitioner under misconception and misinterpretation and also by concealment and misrepresentation of facts in OA approached the learned Tribunal for unsettling the promotions made long back on the post of Scientist B, C and D and respective seniority list as drawn at that time, in which the petitioner was twice superseded by person junior to him. Because of the fact that twice persons junior to him superseded as he was not found suitable by the DPC, therefore, those junior persons marched over him way back in the year 1988, 1993 and 1998. By misinterpreting the judgment passed in the case of **V. Sambasiva Rao and Ors. (Supra)**, petitioner is praying for unsettling the settled position of the persons promoted long back on various subsequent post namely scientist B, C and D as per their merit and respective seniority and last after promotion the post of Regional Director they have also retired thereafter.

10. learned Counsel further submitted that petitioner seriously failed to correctly examine and then understand

the order dated 13.07.2015, by which his date of promotion to the post of Scientist D was changed from 01.01.1998 to 01.01.1997. In the order dated 13.07.2015 it was specifically mentioned that in-situ promotions were made to the post of Scientist D under FCS w.e.f. respective date of eligibility. It was specifically mentioned in the order dated **“that this order was issued in the absence of seniority list and officers have been promoted without any order of merit”**. Counsel further submitted that in the order it was further mentioned that the officer to the grade of Scientist D have been granted in-situ promotions and are personal to the officers concerned and will not result in specific vacancy of on that account. It was also mentioned that since there is no change in the place of posting in respect of the officers on their retrospective in-situ promotion therefore, they were not entitled for TA/DA and joining as per Rules. The abovementioned specific facts leaves on doubt about the fact that the antedated promotion dated 13.07.2015 was not based on any seniority and merit and therefore, the claim of the petitioner that on the basis of order dated 13.7.2015 respondents should revise the seniority list of Scientist D is baseless and illogical, having no foundation.

11. As the complete exercise done by the respondents, by which antedated promotion orders were issued, is in strict compliance of the judgment passed in the case of **V. Sambasiva Rao and Ors. (Supra)**, and this was

specifically mentioned in the order itself. Therefore, there is no illegality, error or mistake in issuing the antedating promotion orders and no legal requirement to issue revised/ updated seniority list of Scientist D for consequent promotion to the post of Regional Director.

12. According to learned Counsel for respondents, learned Tribunal committed no mistake in dismissing the OA by passing a reasoned and speaking order dated 02.12.2020. Therefore, the present writ petition being devoid of merit deserves to be dismissed in the facts and circumstances of the case.

13. Heard both counsels and perused the record.

14. This Court noted that the complete issue as raised by the petitioner in the present case is based on the fact that Hon'ble High Court of Andhra Pradesh by passing the judgment in the case of **V. Sambasiva Rao and Ors. (Supra)** directed the respondents to implement the office memorandum dated 02.05.1986 and modified OM dated 09.11.1998. In compliance of the order dated 10.09.2008 passed in the case of **V. Sambasiva Rao and Ors. (Supra)** the respondents herein issued promotion orders antedating as mentioned in the factual paras above by which the year of promotion of the petitioner to the post of Scientist B, C and D were revised. By the last antedating promotion dated 13.07.2015 the date of promotion of petitioner to the post of Scientist D was changed/corrected from 01.01.1998 to 01.01.1997.

15. This Court while considering the arguments as raised by the Counsel for the Union of India carefully noted the language of the order dated 13.07.2015 is specific and clear.

The same is reproduced as under:-

"In pursuance to Ministry's office order No. 7/20/2014-CGWB dated 08.07.2015 and in compliance to the judgment dated 03.12.2010 of the Hon'ble High Court of Andhra Pradesh in CC No. 33/201 in WP no. 22349/1999 in the matter of Shri V. Samba Siva Rao & Others and other similar case in the subject, the in-situ promotion to the following Scientific officers from the grade of Scientist "C" in PB-3, Rs. 15600-39100/- plus Grade Pay of Rs. 6,600/ to the grade of Scientist "D" in PB-3, Rs. 15600-39100/- pls Grade Pay of Rs. 7,600/- under Flexible Complementing Scheme (FCS) in Central Ground Water Board have been granted with all consequent benefits with effect from their respective dates/years of eligibility as indicated against each. In the absence of Seniority List, the officers have been promoted without any order or merit..... The promotion of the above officers to the grade of Scientist "D" under the FCS will be in-situ and personal to the officers concerned and will not result in specific Vacancy in the lower grade of Scientist "C" on that account. The posts being currently held by the concerned officers will stand upgraded for the duration of their stay in the higher grade i.e., Scientist "D" and the posts shall stand downgraded to the original level once these officers vacate the higher posts.

In respect of those Officers who have left the CGWB and are still holding lien, their cases will be considered as per the guidelines issued by the DoP & T in this regard.

The promotions order above are subject to the outcome of the ongoing court cases(s) if any, CATs/Courts.

They may exercise their option within period of one month from the date of their taking over the charge in case they wish to get their pay fixed straightway in the promotional grade or from the date of their increment in the present grade.

Since there is no change in place of posting in respect of the officers mentioned above on their retrospective in-situ

promotion, they are not entitled for TA/DA and Joining as per Rules.

In case, any of the officers in on leave on the respective date of his/her promotion, he/she shall assume charge of the grade of Scientist "D" from the date, he/she had resumed duty."

16. The above quoted contents of the order dated 13.07.2015 clearly shows that **in-situ promotions as made under FCS were without any seniority list and without any order of merit.** When the order dated 13.7.2015 was not based on any seniority or merit then just on account of the change of year of promotion from 01.01.1998 to 01.01.1997 in terms of the judgment passed in the case of **V. Sambasiva Rao and Ors. (Supra)**, petitioner cannot claim for correction in the settled seniority of the officers, more so in disregard of the fact that **he was superseded in his two promotions on the post of Scientist B and C twice by the persons who were junior to him. Those supersessions were accepted, as promotions were made strictly per merit following the applicable rules, therefore, were not questioned by the petitioner at any point of time and in OA as well as this writ petition, he has not questioned those promotions. Rather he accepted and attained finality.** Based on the said three promotions made at the relevant time the seniority list was drawn and, on that basis, the subsequent promotions were made following the same. This court noted that no challenge to any of those seniority lists was ever made in the past by him.

17. Much before the passing of the judgment in the case of **V. Sambasiva Rao and Ors. (Supra)** the persons junior to the

petitioner, who were promoted much prior to him, as per merit, got subsequent promotions and they were last granted promotion to the post of Regional Director strictly as per the merit. However, just on account of In-situ promotion under FCS made in compliance with the judgment passed in the case of **V. Sambasiva Rao and Ors. (Supra)** on account of which certain corrections in the year of eligibility was made and due to that antedating promotion orders were issued but same cannot be taken as a base to question the previous promotions as made by the respondents of the eligible officers to the post of Scientist B, C and D which attain finality, has never questioned by the petitioner in the past. Therefore, now, after so many years same cannot be questioned and allowed to be opened at a stage when petitioner and all those people have retired and any unsettling of the settled positions in any manner would create unnecessary and unimaginable complications.

18. This Court further noted in-situ promotions under FCS are not regular promotions as only financial upgradation is provided to the person eligible and therefore, those promotions were in person and not regular promotion. As far as regular promotion is concerned, the petitioner has already got 3 promotions as per his merit on the post of Scientist B, C and D.

This court further considered the reasoning as recorded by learned Tribunal in para 11 & 12 of the order dated 02.12.2020 which reads as under:-

11. In the absence of any specific direct rule or judicial pronouncement before us which mandates re-fixing of seniority on the basis of FCS promotions, we have no option

but to decide this matter before us on the basis of soundness of the logic behind the claims of the parties. There is no doubt that the applicant would have had no claim for promotion as Regional Director but for the antedating of promotion following the judgment of the Hon'ble Andhra Pradesh high Court. We have gone through the said judgment and found it that it is in the context of a request to extend the benefit of FCS already given to Group "A" employees, to Group "B" employees also. It cannot be read as an authority mandating revision of an already established seniority list to undo the effects of regular promotions of the post. The order granting FCS makes it clear that it is an in situ promotion. It also mentions that it is not in order of seniority. The Department is firm in their opinion that this promotion does not change the seniority and it does not create any right with the applicant to be considered for promotion against a substantive vacancy if he does not fall within the zone of consideration (based on a seniority list prepared without considering the dates of FCS promotions) while the respondents call the FCS as a scheme of financial upgradation personal to the persons upgraded, the applicant considers it as a scheme of recruitment (through promotion) to various levels of scientists. Even if we accept the argument of the applicant, it cannot, ipso facto, in the absence of any clear rule or judicial pronouncement, lead to an assumption that such promotion can upset the seniority list prepared on the basis of dates of regular promotions in the past. learned Counsel for the applicant would like us to believe that is the most natural meaning of the words "with effect from" when promotion is give from a back date. We do not agree with this proposition. The effects of promotion under FCS are clearly mentioned in the promotion order itself. The salary and the designation of the officers given FCS changed with effect from a past date, though they continued to do the same work. A consequential change in the seniority list, amongst similarly placed persons (amongst those who are found eligible for promotion under FCS), can still be thought of a logical consequence. However, it would be stretching the logic too far, if the effect of FCS promotion were interpreted to remove all other reasons (e.g. supersession in the past, as in the present case) which impact a person's position in the seniority list.

12. *We are, therefore, inclined to accept the reasons given by the respondents for not changing the seniority of the applicant based on the ante-dating of FCS promotion. Thus, the claim of the applicant, to be considered for the post of Regional Director, on the basis of such revision in the seniority list, fails. The OA is dismissed and our interim order in this regard is revoked. There would be no orders as to costs.*
13. *MA No. 920/2019, for clarification of or earlier order, thus, becomes infructuous and is disposed of accordingly."*

19. After considering the above reasoning, on the basis of above discussion, as recorded by the learned Tribunal and also the fact that in-situ promotions under FCS are not regular promotion rather they are made to give financial upgradation, this Court finds that learned Tribunal has not committed any mistake while refusing to undo the previous regular promotions as made by the respondents in accordance with the merits and Rules.

20. In view of the above discussion the Court finds no force in the present writ petition and same accordingly fails, consequently present petition stands dismissed.

21. There shall be no order as to cost.

22. Pending application, if any, also stands disposed of.

(RAVI CHIRANIA),J

(SUDESH BANSAL),J