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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 6 July 2026
Pronounced on: 15 October 2026

\# **CNR No: DLHC010219952025**

\+ W.P.(C) 5071/2025, CM APPLs. 23239/2025 & 23242/2025

UNION OF INDIA & ANR. .....Petitioners

Through: Mr. Balendu Shekhar, CGSC with Mr. Krishna Chaitanya and Mr. Divyansh Singh Dev, Advs.

versus

OM PRAKASH .....Respondent

Through: Mr. Sudarshan Rajan, Mr. Hitain Bajaj and Ms. Ria Setiya, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

% 15.10.2026

C. HARI SHANKAR, J.

A. The Controversy

1. The respondent was working as Scientist B in the Ministry of Environment, Forest and Climate Change[1]. He was granted *in situ*

[1] "MOEFCC" hereinafter

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promotion as Scientist C under the Flexible Complementing Scheme[2] with effect from 2 July 2007. He superannuated as Scientist C on 30 June 2013.

2. The respondent approached the Central Administrative Tribunal[3] by way of OA 2701/2015, claiming that he was entitled to *in situ* promotion under the FCS, as Scientist C with effect from 1 January 2006 and as Scientist D with effect from 1 January 2010. He, therefore, sought ante-dating of his *in situ* promotion as Scientist C with effect from 1 January 2006 and grant of *in situ* promotion as Scientist D with effect from 1 January 2010. He relied, for this purpose, on judgment dated 5 March 2012, passed by the Tribunal in OA 1861/2010[4], which had been upheld by this Court in writ proceedings.

3. The Tribunal has, by judgment dated 29 January 2024, allowed the OA filed by the respondent. The Tribunal observes that there was no dispute regarding the eligibility or entitlement of the respondent for *in situ* promotion as Scientist C with effect from 1 January 2006 and as Scientist D with effect from 1 January 2010. For this purpose, the Tribunal has placed reliance on an Office Memorandum[5] issued by the MOEFCC on 13 August 2013 which annexed a list of Scientists, both working and retired, in the MOEFCC, who were entitled to ante-dating of their *in situ* promotion to various grades. In respect of the respondent, the OM provided thus:

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[2] "FCS" hereinafter
[3] "the Tribunal" hereinafter
[4] **Nakul Dev v. Union of India**
[5] "OM" hereinafter

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"F. No. A-32012/1/2013-P.I
Government of India
Ministry of Environment & Forests

Paryavaran Bhawan,
CGO Complex, Lodi Road,
New Delhi-110003

Dated 13th August, 2013

OFFICE MEMORANDUM

Sub: Grant of in situ promotions under FCS – ante dating of dates of promotion – regarding.

The undersigned is directed to enclose herewith a list of Scientists (working/retired) in the Ministry of Environment & Forests for uploading on the Website of MoEF. All Scientists are required to go through the list and discrepancy, if any, may be brought to the notice of P-I Section within one week from the date of uploading of this Office Memorandum along with some documentary evidence of the requested correction.

This may please be treated as urgent.

(Vazir Singh)
Under Secy. to the Govt. of India

Encl:- As above:

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Details of Scientists (Retired) of the Ministry of Environment and Forests (Proper) being considered for Ante-dating of their in situ promotions w.e.f. 1/1/99 onwards in various of Scientific posts as per O.M. No. 09/12/2012-P-III dated 24/5/2013

S. No.	Name and designation (Sh./Smt./ Km./Dr.)	Grade for which due/ being consi-dered	Due date/eligi i-bility date as on 1-1-1999 for in-situ promotio n in the grade	Date of actual in situ promotion granted in the grade	Date on which due for ante-dating of in situ promotion in the grade	Remarks/Reasons for non-consideration for *in situ* promotion like screened out/not recommended deferred/reputation/study leave etc.
*****						
42	Om	B to C	1/1/2006	2/7/2007	1/1/2006	Joined Scientist 'B' on

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	Prakash Scientist 'C'					20.11.2002 through promotion from Research Officers
		C to D	1/1/2010	Not Assessed	1/1/2010	Retired on 30/6/2013"

4. The Tribunal holds that, while the MOEFCC thus clearly recognised the entitlement of the respondent for ante-dating of his *in situ* promotion as Scientist C with effect from 1 January 2006, as well as his entitlement for consideration for *in situ* promotion as Scientist D with effect from 1 January 2010, the Department of Personnel and Training[6], *vide* its communications dated 27 November 2014, restrained the MOEFCC from implementing the decision to ante-date *in situ* promotions in terms of the OM dated 13 August 2013 without the prior approval of the Appointments Committee of the Cabinet[7], which was the competent authority in the matter of *in situ* promotions under the FCS. In these circumstances, the Tribunal has held that the acknowledged right of the respondent to *in situ* promotion under the FCS could not be scuttled merely because the ACC had yet to arrive at a decision thereon. Following this reasoning, the Tribunal has, by its judgment dated 29 January 2024, directed (i) amendment of the order dated 13 July 2007, by which the respondent was granted *in situ* promotion under the FCS to the grade of Scientist C by ante-dating the promotion to 1 January 2006 and (ii) issuance of orders with respect to the respondents *in situ* promotion to the grade of Scientist D with effect from 1 January 2010. The Tribunal has also directed grant of consequential benefits, including arrears of pay.

[6] "DOPT" hereinafter
[7] "ACC" hereinafter

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5. The MOEFCC and DOPT have jointly filed the present writ petition, challenging the decision of the Tribunal.

B. Rival Contentions

6. We have heard Mr. Balendu Shekhar, learned CGSC for the petitioners and Mr. Sudarshan Rajan, learned Counsel for the respondent, at length. Learned Counsel have also filed written submissions.

B.I Submissions of Mr. Balendu Shekhar

7. Mr. Balendu Shekhar submits that, in directing retrospective *in situ* promotion of the respondent, the Tribunal ruled contrary to the applicable rules, recruitment rules and executive instructions governing the FCS. He has placed reliance, in this context, on Rule 8.4[8] of the Department of Environment, Forests and Wildlife Scientific Group A Posts Rules, 1987[9] and Rule 12(15)[10] of the Ministry of Environment, Forests and Climate Change Scientific Group A Posts Recruitment Rules, 2015[11]. Mr. Balendu Shekhar also relies on the following OMs dated 9 November 1998 and 17 July 2002 issued by the DOPT:

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[8] 8. Recruitment, review and promotion.

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8.4 There shall be no retrospective promotion.

[9] "1987 Rules" hereinafter

[10] 12. In-situ Promotion under Flexible Complementing Scheme

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(15) There shall be no retrospective in-situ promotion.

[11] "2015 RRs" hereinafter

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"OM dated 9 November 1998

No.2/41/97-PIC
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, dated 9th Nov., 1998

OFFICE MEMORANDUN

Sub: Flexible Complementing Scheme for Scientists in recommendations of various scientific departments the Fifth Central Pay Commission for modification of the Scheme regarding.

The undersigned is directed to say that in Chapter a 51 of its report, the Fifth Central Pay Commission has made number of recommendations for modifying the existing Flexible Complementing Scheme in operation in Scientific & Technological Departments for in-situ promotion of scientists/technical personnel, with a view to removing the shortcomings/inadequacies in the Scheme highlighted by the Commission. The recommendations of the Fifth Central Pay Commission in this regard have been examined in consultation with the Secretaries of the Department of Science & Technology and some other major scientific Departments and the following decisions have been taken:

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2. The recommendation of the Pay Commission to define "scientific administrators" and to exclude them from the benefit in-situ promotions under Flexible Complementing Scheme and to bring them under the ambit of "Assured Career Progression Scheme" formulated by the Pay Commission has not been accepted. However, it has been decided that the Flexible Complementing Scheme should, as per its original objective, be made applicable only to scientists and technologists holding scientific posts in scientific and technology departments and who are engaged in scientific activities and services. *It has also been decided that assessment norms for promotions under the Flexible Complementing Scheme should be rigorous with due emphasis on evaluation of scientific and technical knowledge so that only the scientists who have to their credit demonstrable achievements or higher level of technical merit are recommended for promotion*

under the Flexible Complementing Scheme. For achieving these objectives, the following decisions have been taken:

a) The identifying criteria for as scientific institutions/organisations technological institutions and as well as for defining scientific activities and services, scientists and engineers and the scientific posts shall be as prescribed in Annexure I to this Office Memorandum. The FCS shall not be applicable where the criteria specified vide this Office Memorandum are not fully met.

b) A revised assessment procedure as prescribed in Annexure II to this Office Memorandum shall henceforth be followed by all scientific Ministries/Departments for considering advancement under FCS.

3. The recommendations of the Pay Commission that the existing disparities in the operation of Flexible Complementing Scheme in various scientific and technical departments in the matter of designation of posts, the number of pay scales and the residency period should be removed and there should be uniformity in this regard has been accepted. Accordingly, all the posts covered under the Flexible Complementing Scheme shall carry the following uniform scales of pay, designations and the minimum residency period linked to performance:

Scales of pay	Designation	Minimum Residency Period 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	5 years.
(f) Rs.18400-22400	Scientist G	

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In order to give immediate effect to the decision contained in this para, an umbrella Notification has been issued vide G.S.R. No. 660(E).

4. The recommendation of the Fifth Central Pay Commission for introducing a 'cooling off period of 3 years before an officer is considered for the Flexible Complementing Scheme on the second occasion at the same level has not been accepted. The recommendation for disqualification of the candidate permanently from the FCS in case of failure to qualify thrice at the same level, etc., has also not been accepted. Therefore, the existing system of assessing the officer every year would continue.

5. It has further been decided that in order to extend the benefit of in-situ promotions under the Flexible Complementing Scheme to other Scientific Organisations that are demanding the extension of FCS in their case, the administrative Ministry of such institutions shall satisfy itself that such institutions are scientific and technical institutions and the officers are scientists a holding scientific posts and are involved in scientific and technical acivities as defined in the Annexure I to this Office Memorandum and make its recommendations to the Department of Science & Technology. On receipt of 'such request the Department of Science & Technology shall set up a Committee, including the representatives of the Department of Personnel & Training and of the Department of Expenditure as well as eminent scientists relevant to the discipline, for examining the proposal referred by the administrative Ministry concerned. A final decision on the proposal an administrative Ministry for extension of FCS to other scientific organisations shall be taken based on the recommendations of this Committee. Since it is not necessary that all the pay scales under the Flexible Complementing Scheme should be applicable in all the scientific organisations, as the size of the organisation may not justify introduction of the entire group of scales, the Committee, while making its recommendation, would take a specific view as to the number of scales that should be operated in the organisation as well as the appropriate residency period for ensuring an even pace of promotion. However, the progression under Flexible Complementing Scheme will only be as per scales indicated in para 3 of this Office Memorandum.

6. It all the is requested that Ministries/Departments, where the Flexible Complementing Scheme is in operation, may initiate action for review of the provisions of the Flexible Complementing Scheme and amend the provisions of the relevant recruitment rules so that the scheme is brought in conformity with the decisions/guidelines being conveyed vide this Office

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Memorandum. Results of the review may also be conveyed to the Department of Science & Technology, the nodal department for operation of the Flexible Complementing Scheme. Action for extension the Flexible Complementing Scheme to other scientific organisations, where the same is not in operation at present, may be taken in accordance with the decision contained in para 5 of this Office Memorandum.

7. The relevant provisions of Department of Science & Technology office Memorandum No.A.42014/2/86-Admn.1(A) dated the 28th May, 1986 stand amended to the extent the provisions of this Office Memorandum are at variance with the provisions of the said Office Memorandum.

Sd/-
(Smt. Bhavani Thyagarajan)
Director

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OM dated 17 July 2002

"No.AB-14017/32/2002-Estt (RR)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

New Delhi-110001
July 17, 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 shortcoming/inadequacies in the scheme had been examined some time back and this Department in OM.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

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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 modified 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 dales 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"

8. DOPT OM dated 9 November 1998 deals with "flexible complimenting scheme for scientists in various scientific departments – recommendations of the 5th Central Pay Commission for modification of the scheme – regarding". From this, Mr. Balendu Shekhar draws specific attention to para 2, which reads as under:

"2. The recommendation of the Pay Commission to define "scientific administrators" and to exclude them from the benefit in-situ promotions under Flexible Complementing Scheme and to bring them under the ambit of "Assured Career Progression Scheme" formulated by the Pay Commission has not been accepted. However, it has been decided that the Flexible Complementing Scheme should, as per its original objective, be made applicable only to scientists and technologists holding scientific posts in scientific and technology departments and who are engaged in scientific activities and services. It has also been decided that assessment norms for promotions under the Flexible Complementing Scheme should be rigorous with due emphasis on

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evaluation of scientific and technical knowledge so that only the scientists who have to their credit demonstrable achievements or higher level of technical merit are recommended for promotion under the Flexible Complementing Scheme. For achieving these objectives, the following decisions have been taken:

a) The identifying criteria for as scientific institutions/organisations technological institutions and as well as for defining scientific activities and services, scientists and engineers and the scientific posts shall be as prescribed in Annexure I to this Office Memorandum. The FCS shall not be applicable where the criteria specified vide this Office Memorandum are not fully met.

b) A revised assessment procedure as prescribed in Annexure II to this Office Memorandum shall henceforth be followed by all scientific Ministries/Departments for considering advancement under FCS."

Annexure II to the OM, to which para 2(b) refers, is titled "criteria for considering promotions under flexible complimenting scheme", and reads as under:

"CRITERIA FOR CONSIDERING PROMOTIONS UNDER FLEXIBLE COMPLEMENTING SCHEME

(a) All officers will be first screened on the basis of gradings in the Annual Confidential Reports (ACRs) for consideration for promotion; the ACRs should be assessed on a 10 point scale giving 10 marks for "outstanding", 8 marks for "very good", 6 marks for "good", 4 marks for "average" and 0 for "poor" and only those officers who satisfy the minimum residency period linked to their performance as indicated in the table below be screened in.

	Number of years in the grade					
	3	4	5	6	7	8
	Minimum percentage for eligibility					
Scientist B to Scientist C	90%	80%	70%	65%	60%	…
Scientist C to Scientist D	…	90%	80%	75%	70%	60%
Scientist D to Scientist E	…	90%	80%	75%	70%	60%
Scientist E to	…	…	90%	80%	75%	70%

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Scientist F						
Scientist F to Scientist G	…	…	90%	80%	75%	70%

Exceptionally meritorious candidates with all outstanding gradings may be granted relaxation in the residency period, the relaxation being not more than one year on any single occasion. Such a relaxation will be limited to a maximum of two occasions in their entire career.

(b) As the procedure adopted for assessment of CRs in various Scientific Departments differ at present, it has been decided that an external member, from Departments of Atomic Energy, Space or DRDO who have developed over the years a fine tuned system of screening in meritorious Scientists may be co-opted in the selection process, till such time a system gets established in other Scientific Departments. The position will, however, be reviewed after 5 years from the date of issue of this office Memorandum.

(c) All Officers who are screened-in will be called for an interview. The performance in the interview will also be graded similarly on a 10 point scale and the eligibility for promotion will be based on the same norms as in the above Table.

(d) Field experience in research and development and/or experience in implementation of such scientific projects is compulsory for promotion of scientists recruited to the posts in the Secretariat of the Scientific Ministries/Departments to higher grades under FCS. Field experience of atleast 2 years and 5 years respectively will be essential for promotion to Scientist F and Scientist G grades respectively. However, during the transitional period, Committee may relax this requirement in case of meritorious candidate."

9. Mr. Balendu Shekhar submits that, therefore, assessment for *in situ* promotion under the FCS is strictly merit based, involving, first, screening on the basis of gradings in the Annual Confidential Reports[12], involving assessment on a ten point scale with 10 marks being awarded for "outstanding", 8 marks for "very good", 6 marks

[12] "ACRs" hereinafter

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for "good", 4 marks for "average" and 0 marks for "poor", followed by interview, which would also be graded on a ten point scale, followed further by vigilance clearance and assessment by the DRC/DPRC, after which the proposal has to be approved by the competent authority. This exercise, in the case of the respondent, had been conducted only for assessing his entitlement to *in situ* promotion from Scientist B to Scientist C, pursuant to which he had been granted *in situ* promotion as Scientist C with effect from 2 July 2007. His entitlement for *in situ* promotion from Scientist C to Scientist D was never assessed. In such circumstances, Mr. Balendu Shekhar submits that the Tribunal could not have by-passed the envisaged assessment procedure and directed automatic promotion of the respondent under the FCS from Scientist C to Scientist D.

10. Mr. Balendu Shekhar further submits that the Tribunal is in error in observing that the respondent had been granted retrospective promotion as Scientist C by a period of 11 days, as the promotion was with effect from 2 July 2007, but was granted *vide* Notification dated 13 July 2007. He submits that the notification dated 13 July 2007 merely communicated the approval already granted, on 2 July 2007 itself, for grant of *in situ* promotion to the respondent with effect from that date, as Scientist C. Similarly, Mr. Balendu Shekhar submits that the reliance on the MOEFCC OM dated 13 August 2013 was also misconceived, as the OM merely reflected a provisional administrative exercise for examining cases of ante-dating, which never attained finality. As was subsequently clarified by the DOPT *vide* its communication dated 27 November 2014, *in situ* promotion

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under the FCS could not be granted without approval of the ACC which, in the present case, was never received.

11. The judgment of the Supreme Court in ***Union of India v. S.K. Murti***[13], submits Mr. Balendu Shekhar, was clearly distinguishable, as the Scientists in that case had already undergone the requisite assessment process before any relief was granted to them. In the case of the respondent, as he stood retired on 30 June 2013, the procedure which was required to be followed before grant of *in situ* promotion under the FCS could not be followed.

12. Mr. Balendu Shekhar submits that the impugned judgment of the Tribunal fundamentally alters the very nature of the FCS, which was conceived as a rigorous merit-evaluation mechanism intended to reward scientific merit, technical competence and demonstrable achievements through structured assessment and review. The impugned judgment converts this into an automatic time bound promotion mechanism.

13. Mr. Balendu Shekhar places reliance, to support his submissions, on paras 18 to 23 of the judgment of the Supreme Court in ***Bureau of Indian Standards v. S.K. Kanojia***[14] and para 44 of the judgment of this Court in ***A.K. Varshney v. Union of India***[15].

[13] **2011 SCC OnLine SC 1655**
[14] **(2007) 8 SCC 636**
[15] **2024 SCC OnLine Del 7063**

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B. II Submissions of Mr. Sudarshan Rajan

14. While adopting and commending for acceptance the reasoning contained in the impugned judgment of the Tribunal, Mr. Rajan submits that the MOEFCC cannot seek to take advantage of its own wrong in delaying consideration of the respondent for *in situ* promotion under the FCS, though he was eligible for *in situ* promotion as Scientist D on 1 January 2010. He places reliance, in this context, on para 6 of the judgment of a Division Bench of this Court in ***Union of India v. Sobhana Bhaskaran***[16]. He also relies on the judgment of the Supreme Court in ***S.K. Murti*** which, in his submission, holds that the date of promotion under the FCS must be the date of eligibility, not the date of assessment. Mr. Rajan submits that this Court has further held, in ***Nakul Dev***, that, if *in situ* promotion under the FCS is delayed due to administrative reasons, it has to be granted from the date of initial eligibility. The issue of ante-dating of *in situ* promotions under the FCS is, therefore, he submits, no longer *res integra.*

15. Mr. Rajan points out that, though the respondent became eligible for *in situ* promotion under the FCS with effect from 1 January 2006, the holding of interview was delayed till 2007 owing to administrative lapses. The delay in holding the Departmental Review Committee[17], he submits, constitutes an administrative failure, for which his client cannot be penalised. The prohibition against retrospective promotion, contained in the RRs, cannot be employed by

[16] **2016 SCC OnLine Del 4826 (DB)**
[17] "DRC" hereinafter

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the MOEFCC to its advantage, as the MOEFCC was itself responsible for failure to conduct timely assessments on 1 January and 1 July every year. Mr. Rajan points out that ante-dated and retrospective promotions had earlier been granted to other similarly situated scientists.

16. Mr. Rajan further submits that fresh assessment of interview of the respondent was not justified, as he has already successfully performed, outstandingly, the duties and responsibilities of Scientist D, E and F. Moreover, he points out that it has been held, by this Court, in ***Nakul Dev***, that, in the case of employees who had reached superannuation, the requirement of a regular interview/assessment was waived. In any event, submits Mr. Rajan, having included the name of the respondent in the OMs issued by, as deserving of ante-dating of his *in situ* promotion, the MOEFCC cannot seek to content that his *in situ* promotion cannot be agitated for want of any adjustment. In other words, submits Mr. Rajan, the MOEFCC would be estopped from taking such a stand.

17. Mr. Rajan contest the stand of the MOEFCC and the DOPT that approval of the ACC is required for ante-dating the *in situ* promotion of the respondent under the FCS to the grade of Scientist C or for his consideration for *in situ* promotion as Scientist D. He submits that approval from the ACC is required only for promotion to the grade of Scientist G.

C. Consideration and Analysis

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18. Though Mr. Balendu Shekhar's submissions are undoubtedly persuasive and weighty, identical submissions were advanced, both before the Tribunal as well as before this Court in the case of ***Nakul Dev***, and were negatived. The facts in ***Nakul Dev*** practically mirror those in the case before us. It is necessary, therefore, at the very outset, to examine the decision in ***Nakul Dev***.

19. As has already been noticed, the FCS was introduced by the OM dated 9 November 1998 issued by the DOPT.

20. ***Nakul Dev***

20.1 Judgment of the Tribunal

20.1.1 Nakul Dev and M.L. Soni[18], the applicants before the Tribunal in this case, were appointed as Research Officer (Engineering)[19] in the Central Soil and Material Research Station. The next promotional post was that of Senior Research Officer[20], to which the FCS applied. They were promoted as SRO with effect from 10 January 1994. They filed OAs before the Tribunal, claiming that they were entitled to ante-dating of their promotion as SRO with effect from June 1990, when they became eligible for such promotion under the FCS. The Tribunal allowed their OAs and directed ante-dating of their promotion as SRO

[18] "the applicants" hereinafter
[19] "RO" hereinafter
[20] "SRO" hereinafter

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from June 1990. Writ petitions, preferred thereagainst by the Department, were dismissed by this Court. Following this, by order dated 15 April 2002, the Department promoted the applicants as SRO with effect from their respective dates of eligibility as per the FCS, i.e., February/June 1990, and also granted them arrears of pay and allowances.

20.1.2 The next higher promotional post, from SRO, was Chief Research Officer[21] . The applicants were promoted as CRO with effect from 11 October 2006. Claiming that they had become eligible for promotion as CRO under the FCS in 1995, the applicants re-approached the Tribunal. The Tribunal, vide order dated 9 July 2009, allowed their OA and directed that they be promoted as CRO under the FCS with effect from 1995, when they became eligible for such promotion. By order dated 17 February 2010, the Department implemented the judgment.

20.1.3 By virtue of such promotion, the applicants became senior to one Dr. Rajbal Singh[22] and one Mr S.K. Babbar[23], who were working as CRO and had been granted *in situ* promotion under the FCS to the next higher post of Joint Director with effect from 12 February 2007. The promotion of Rajbal and Babbar as Joint Director was, however, subject to the outcome of Civil Appeal 4973-74/2001 pending before the Supreme Court, which was decided in favour of the applicants.

[21] "CRO" hereinafter
[22] "Rajbal" hereinafter
[23] "Babbar" hereinafter

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20.1.4 The applicants, in the circumstances, represented to the Department seeking *in situ* promotion as Joint Director under the FCS. However, before any positive response or decision on the representation could be taken, the applicants superannuated in June 2010 and December 2010. Immediately prior thereto, the applicants approached the Tribunal, yet again, by way of OA 1861/2010, seeking *in situ* promotion as Joint Director under the FCS with effect from the date when they became eligible therefor.

20.1.5 The applicants contended, before the Tribunal, that it would be illegal not to promote them as Joint Director when Rajbal and Babbar, who were their juniors as CRO, already stood promoted to that grade. The requisite residency period of 5 years in the grade of CRO, they submitted, would have to be computed from February/June 1995, with effect from which date they had been granted ante-dated *in situ* promotion, by the Tribunal, as CRO. The applicants also stressed the fact that DOPT OM dated 17 July 2002 required candidates to be considered for *in situ* promotion under the FCS twice every year and submitted that, had this been done, they would have been so promoted as Joint Director before their superannuation.

20.1.6 Contesting the applicants' claim, the Department submitted that the applicants would not be entitled to count their qualifying service for *in situ* promotion under the FCS to the grade of Joint Director with effect from 1995, even though they had been granted ante-dated promotion as CRO from that date by virtue of orders

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passed by the Tribunal. Five years' regular service as CRO was required for *in situ* promotion as Joint Director, and it was submitted that the applicants did not possess the requisite qualifying service. Inasmuch as they had assumed charge of the post of CRO only with effect from 11 October 2006, they would have completed 5 years as CRO only on 10 October 2011, prior to which they superannuated in June and December 2010. The Department submitted that, therefore, there was no error in not promoting them as Joint Director. It was further submitted that it was not possible to conduct any interview for them, as was required for *in situ* promotion under the FCS, as they already stood superannuated.

20.1.7 In these circumstances, the Tribunal identified the issue arising before it for consideration as "whether the applicants who have been retrospectively promoted with effect from 1995 should be considered for further *in situ* promotion to the grade of Joint Director as per the Flexible Complementing Scheme".

20.1.8 The Tribunal held that it was well-settled, in law, that the consequence of grant of retrospective promotion would be the entitlement to count seniority and regular service with effect from the date of such retrospective promotion. Applying this principle, the Tribunal held that the applicants would complete the requisite 5 years' qualifying residency period in the grade of CRO in February/June 2000, at which time they were in service, as they retired only in 2010. The Tribunal noted that, had the applicants been promoted CRO in

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1995, their case would have come up for consideration for further *in situ* promotion as Joint Director in 2000/2001. Even while so observing, the Tribunal also held that the Department could not be faulted for not having further promoted the applicants as Joint Director.

20.1.9 Observing that the case before it was unique, and that a "special remedy" had to be devised to deal with it, the Tribunal held as under, in conclusion:

> "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."
>
> (Emphasis supplied)

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20.1.10 Thus, in order to do complete justice, the Tribunal fashioned a special remedy for the applicants before it, by directing their consideration for *in situ* promotion under the FCS to the grade of Joint Director from the year 2001, but dispensing with the requirement of interview. Acknowledging the fact that this direction amounted to a deviation from the procedure to be followed for *in situ* promotion under the FCS, the Tribunal sought to overcome this difficulty by directing that its order would be applicable only to the applicants before it, and could not be cited as a judicial precedent for any other case.

20.2 Judgment of this Court

The Department once again urged, before this Court, in its challenge to the judgment of the Tribunal, the contention that the applicants did not have, to their credit, the requisite 5 years' regular service in the grade of CRO, as would render them eligible for *in situ* promotion as Joint Director under the FCS. This Court found the contention to be unacceptable, as the Department had itself granted regular promotion to the applicants as SRO and CRO with effect from the dates when they had completed the requisite residency period for *in situ* promotion to the said grades under the FCS. This Court held that, in such circumstances, the Department could not seek to contend that the applicants did not possess the requisite residency period of regular service as CRO, required for further *in situ* promotion as Joint Director. The conclusion of the Tribunal was found to be

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unexceptionable. This Court further observed that the Tribunal had taken due care to direct that the case of the applicants would not be treated as a judicial precedent in any other case.

20.3 Mr. Rajan submits that the present case is on all fours with ***Nakul Dev***. As against this, Mr. Balendu Shekhar points out that the Tribunal had, in ***Nakul Dev***, clearly observed that the decision was being rendered *in personam*, and was not to be cited as a precedent in any other case, and that this observation of the Tribunal stands upheld by this Court. He submits that, therefore, the respondent cannot seek to capitalise on the decision of the Tribunal, or of this Court, in ***Nakul Dev***.

21. *S.K. Murti*

21.1 The decision in ***S.K. Murti*** is also of significance.

21.2 Judgment of this Court

21.2.1 S.K. Murti[24] , the petitioner before this Court, was working as Scientist D in the Botanical Survey of India, and became eligible for promotion to the next grade, under the FCS, with effect from 1 January 1999. The holding of the Departmental Review Committee was, however, delayed, as a result of which, by order dated 20

[24] "Murti" hereinafter

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October 2000, Murti was promoted only with effect from 19 September 2000.

21.2.2 Murti, therefore, approached the Tribunal, seeking ante-dating of his promotion from 1 January 1999, as he had become eligible for *in situ* promotion under the FCS on that date. The Tribunal dismissed his OA, against which Murti approached this Court.

21.2.3 This Court allowed Murti's writ petition, reasoning thus:

> "5. Suffice would it be to state that the memorandum requires Flexible Complementing Scheme in situ promotions to be effected each year and for which the circular mandates that the assessments should be made well in advance keeping in view the crucial dates being 1st January and 1st July with effect wherefrom the Flexible Complementing Scheme in suit promotions have to be effected.
>
> 6. The last sentence of para 20 is relied upon by the respondents to urge that the office memorandum clearly states that no promotion should be granted with retrospective effect. To this the answer by the petitioner is that the preceding two sentences makes it very clear that the Assessment Boards have to be constituted well in advance keeping in view the fact that 1st January and 1st April of each year are crucial dates to effect promotions.
>
> 7. Now, nobody can take advantage of his own wrong. Nothing has been shown to us by the respondents to justify not constituting the Assessment Board/Selection Committee in time.
>
> 8. That apart, instant case of promotion is not one where promotion has to be effected upon a vacancy arising. Subject to being found suitable the petitioner was entitled to be promoted in situ. The situation would be akin to granting a selection scale to a person and the date of eligibility would be the date wherefrom the benefit has to be accorded.
>
> 9. Under the circumstances we hold in favour of the petitioner and direct that the benefit granted to the petitioner be reckoned

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with effect from 1.1.1999 instead of 19.9.2000. Arrears would be paid within 12 weeks from today but without any interest."

21.3 Judgment of the Supreme Court

The *lis* was carried to the Supreme Court. The Supreme Court upheld, in its entirety, the judgement of this Court, thus:

> "5. In our view, reasons assigned by the High Court for directing the petitioners to promote the respondent with effect from the date of acquiring the eligibility are legally correct and the impugned order does not suffer from any legal error warranting interference under Article 136 of the Constitution.
>
> 6. It is not in dispute that vacancies existed when the Departmental Review Committee considered the case of the respondent and other similarly situated persons for promotion. It is also not in dispute that in terms of paragraph 51.25 of the Vth Pay Commission Recommendations, the Departmental Review Committee/Assessment Board was required to meet every six months, i.e. in January and July and the promotions were to be made effective from the date of eligibility. Therefore, it is not possible to find any flaw in the direction given by the High Court.
>
> 7. The special leave petition is accordingly dismissed."

21.4 Mr. Balendu Shekhar seeks to distinguish the decision in ***S.K. Murti*** on the ground that "the Scientists in ***S.K. Murti case*** had already undergone the prescribed assessment process before grant of relief". While the submission may be correct, apropos the respondent before us, insofar as his entitlement for *in situ* promotion under the FCS as Scientist D is concerned, it is clearly not correct insofar as his entitlement for promotion as Scientist C is concerned, as the

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respondent had been considered and in fact granted *in situ* promotion under the FCS as Scientist C with effect from 2 July 2007.

22. It is clear that, on facts as well as in law, the controversy at hand is covered by the aforesaid decisions in ***Nakul Dev*** and ***S.K. Murti***. We, are therefore, spared the exercise of reinventing the wheel.

23. Effect of the caveat in ***Nakul Dev*** that the decision "cannot be cited as a precedent"

23.1 At this juncture, it is also necessary to deal with the caveat, entered by the Tribunal in its judgement in ***Nakul Dev***, and approved by the High Court, that the judgment would not be cited as a precedent in any other case, especially as Dr. Hooda has laid great emphasis thereon.

23.2 Though it is often done, we have serious doubts as to whether any Court, other than the Supreme Court, is empowered to enter a caveat, having delivered a judicial decision, that the decision would not be cited as a precedent in any other case. It is altogether another thing to state that a decision is being rendered in the peculiar facts of the case before the Court. By so stating, the Court merely clarifies that, in the peculiar facts before it, it is rendering its decision and that, had the facts been otherwise, the decision might also have been different. It often happens that the Court is faced with peculiar facts,

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for which there is no reliable precedent in fact or in law, or where, to ensure that justice is done, remedies are required to be moulded. That does not empower any Court to grant a remedy which the law does not permit. The caveat that a decision is being rendered in the peculiar facts before the Court is only intended to obviate any confusion, and elucidate the factors which motivated the Court to hold as it did. Such an observation cannot operate as a proscription, even impliedly, against the decision being cited as a precedent in any other case.

23.3 The circumstances in which the Supreme Court is empowered to direct that its decision would not operate as a precedent have been tellingly underscored by the Supreme Court itself, in the following passage from ***NBCC (India) Ltd v. State of West Bengal***[25]:

> "55. In this context, it is also important to note that, as an institution, our Supreme Court performs the twin functions of *decision-making* and *precedent-making*. A substantial portion of our jurisdiction under Article 136 is reflective of regular appellate disposition of *decision-making*. Every judgment or order made by this Court in disposing of these appeals is not intended to be a binding precedent under Article 141. Though the arrival of a dispute for this Court's consideration, either for *decision-making* or *precedent-making* is at the same tarmac, every judgment or order which departs from this Court lands at the doorstep of the High Courts and the subordinate courts as a binding precedent. We are aware of the difficulties that the High Courts and the subordinate courts face in determining whether the judgment is in the process of *decision-making* or *precedent-making*, particularly when we have also declared that even an obiter of this Court must be treated as a binding precedent for the High Courts and the courts below. In the process of *decision-making*, this Court takes care to indicate the instances where the decision of the Supreme Court is not to be treated as precedent. It is therefore necessary to be cautious in our dispensation and state whether a particular decision is to resolve the dispute between the parties and provide finality or whether the

[25] **(2025) 3 SCC 440**

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judgment is intended to and in fact declares the law under Article 141."

Thus, the distinction between decisions which operate merely as decisions and not as precedents, and those which operate as precedents, is unique to the appellate jurisdiction of the Supreme Court. It is in order to avoid confusion and difficulty which, otherwise, may be faced by Courts lower in the judicial hierarchy, when dealing with decisions of the Supreme Court, as to whether they are to be treated as binding precedents or otherwise, that the Supreme Court has, in certain cases, clarified that the decision is not to be treated as a precedent in any other case. This caveat is, therefore, unique to the Supreme Court, as its decisions are constitutionally binding by virtue of Article 141 of the Constitution of India. Even if, therefore, the facts of the case, as they present themselves before a Court lower in the judicial hierarchy, are similar to those which were before the Supreme Court in one of its decisions, it would not be possible to follow the decision as a binding precedent if, in that decision itself, the Supreme Court has clarified to the contrary. The application of Article 141 would, therefore, stand excepted.

23.4 If Courts, lower in the judicial hierarchy from the Supreme Court, also arrogate, to themselves, the authority to clarify that decisions rendered by them would not be treated as binding precedents, it could result in a situation in which litigants, who may be similarly circumstanced on facts, would receive different treatments from the Court. *Ex facie*, this would be impermissible.

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23.5 We see no reason, therefore, why the respondent before us should be treated differently from the respondents before this Court in ***Nakul Dev***.

23.6 In any case, a judgment of the Tribunal, as an authority lower in the judicial hierarchy, can never operate as a precedent for this Court. It can, at best, have precedential value for Single Benches of the Tribunal, or for Benches of co-equal jurisdiction. The observation, of the Tribunal, that its decision would not be cited as a precedent has, therefore, neither binding, or even precedential, significance for us. This Court, while upholding the judgment of the Tribunal, has merely endorsed the judgment.

23.7 When, therefore, we follow the course of action adopted by the Tribunal and approved by this Court in ***Nakul Dev***, we do so not because we are treating the decision of the Tribunal as a precedent, but because we do not see any reason why the respondent should not be accorded the same treatment as Nakul Dev and M.L. Soni, the applicants before the Tribunal.

24. Applying ***S.K. Murti*** and ***Nakul Dev*** to the facts before us

24.1 In so far as this entitlement for *in situ* promotion, under the FCS, as Scientist C is concerned, the respondent was in fact promoted as Scientist C, *in situ* under the FCS, with effect from 2 July 2007. The Tribunal has held him to be entitled to such promotion with effect from 1 January 2006. The grant of relief by the Tribunal, to the

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respondent, to this extent, is entirely covered by the judgment of the Supreme Court in ***S.K. Murti*** and of this Court in ***Nakul Dev***. No exception can, therefore, be taken to the said direction.

24.2 The decision in ***S.K. Murti*** would not, however, apply to the entitlement, of the respondent, to promotion to Scientist D *in situ* under the FCS, as he was never assessed in that regard. The requirement of assessment cannot be dispensed with, as it is a mandate of the FCS itself, as introduced by the DOPT OM dated 9 November 1998.

24.3 Significantly, the impugned judgment of the Tribunal is apparently conscious of this position, as it has not directed grant of *in situ* promotion, under the FCS, to the respondent, as Scientist D. It has restricted itself to a direction to the MOEFCC to issue orders with respect to the *in situ* promotion of the respondent as Scientist D, with effect from 1 January 2010.

24.4 This direction has, to our mind, to be understood meaningfully, and not as opposed to the entire exercise of assessment as envisaged for *in situ* promotion under the FCS, by the DOPT OM dated 9 November 1998. The Tribunal cannot be understood as having directed *ipso facto* or automatic promotion of the respondent as Scientist D, with effect from 1 January 2010, without any exercise of assessment under the FCS.

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24.5 At the same time, as Mr. Balendu Shekhar correctly points out, the respondent has superannuated in the meanwhile, and it is not possible to interview him for *in situ* promotion as Scientist D under the FCS. Equally, however, it would be wholly unjust, inequitable and unfair to deny the said benefit to the respondent, especially as the delay in consideration of the respondent for *in situ* promotion as Scientist D under the FCS is wholly attributable to the MOEFCC. As has been correctly held by this Court in ***S.K. Murti***, and upheld by the Supreme Court, allowing such a defence would amount to permitting the MOEFCC to capitalise on its own default.

24.6 We, therefore, are inclined to follow the same path as was chartered by the Tribunal, and upheld by this Court, in ***Nakul Dev***. As it is not possible to subject the respondent to an interview, the requirement of an interview would have to be dispensed with. In any event, the respondent himself had been interviewed and found suitable for *in situ* promotion under the FCS to the grade of Scientist C, a mere 4 years earlier. The claim of the respondent to *in situ* promotion as Scientist D, under the FCS cannot, therefore, be rejected solely because, owing to the delay on the part of the MOEFCC, the respondent has superannuated in the interregnum.

D. Conclusion

25. We, therefore, uphold the impugned judgment of the Tribunal, subject to the caveat that the *in situ* promotion of the respondent as

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Scientist D with effect from 1 January 2010 would be subject to his being found suitable for such promotion on the basis of the parameters envisaged for *in situ* promotion under the FCS in the DOPT OM dated 9 November 1998, except for holding of an interview.

26. The writ petition stands disposed of, in the above terms, with no orders as to costs.

C. HARI SHANKAR, J.

VINOD KUMAR, J.

OCTOBER 15, 2026/AR/AKY

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