

By Speed Post

File No. MoES/29/136/2016-RTI

Government of India

Ministry of Earth Sciences

Prithvi Bhawan, IMD Campus

Lodhi Road, New Delhi.

Dated – 21/11/2016.

To

Dr M Satyakumar,
H. No.6-3-565, Flat No. 301,
Akshaya Apartment, Somajiguda
Hyderabad, Pin-110096

Subject:-Information sought by Dr. M Satyakumar, H. No.6-3-565, Flat No. 301, Akshaya Apartment, Somajiguda Hyderabad, Pin-110096 through on line (Reg. No. MOOCD/R/2016/50094 dated 01/10/2016) & u/s 6(3) of RTI Act. 2005.

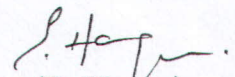
Kindly refer to your on line RTI application on the above mentioned subject.

2. The reply provided by the concerned officer vide MoES ID Note No. MoES/29/80/2016-Estt. dated 18/11/2016 is enclosed herewith.

3. An appeal, if any, against this reply may be made to the Appellate Authority of the Ministry, at the following address within 30 days of the receipt of the letter.

Shri Vivek Misra, Director /FAA.
Ministry of Earth Sciences, Prithvi Bhawan,
IMD Campus, Lodhi Road, New Delhi-110003.
Encl. As above

Yours faithfully,


(E. Haque)

Scientist 'C' & Central Public Information Officer
Tel. No. 24669521.

Copy for information to:-

1. Director, (ICC) & FAA MoES, New Delhi.
2. Dr. N. Khare, Sct. 'F' & Transparency Officer, MoES, New Delhi.
3. US (Estt) for information.

4. In charge, IT section for u.s.

Ministry of Earth Sciences
(Estt. Section)

Subject:- Information sought by Dr. M. Satyakumar, Hyderabad Telangana through online (Reg. No. MOOCD/R/261650094 dated 1.10.2016 under RTI Act. 2005.

In continuation of Estt. Section ID Note of even No. dated 20.10.2016 and CPIO , MoES O.M. No. 29/136/2016-RTI dated 08.11.2016 on the subject cited above. The information in respect of Ministry of Earth Sciences is as under:-

Information under RTI act. 2005	Information
Action taken by India Meteorological Department and Ministry of Earth Sciences on the judgment/ direction given by the Hon'ble CAT (Principle Bench) in O.A. No. 3192/2015 dated 12/5/2016 may be provided to me along with all copies of file noting and correspondence with ministry/department.	The relevant information consists of 6 pages 1 to 6 and is endorsed. <i>enclosed</i>

K. Chand
18/11/16
(Kailash Chand)

Under Secretary to the Government of India

Encl: as above

Shri E. Haque, CPIO & Scientist-C, MoES
MoES. ID. Note No. MoES/29/80/2016-Estt 18.11.2016

541/RTI/2016
18/11/16

Pls forward the Applicant
Smt S. Devi

Shreyas
18/11/16

-2/n-

Ref.: pre-page

Sh. AK Shukla had filed an OA No.3192/2015 before Hon'ble CAT, PB, New Delhi seeking reliefs to grant him in-situ promotion under FCS from the date he was eligible and to pay him arrears also.

2. In this regard, Sh. Shukla had represented first with supporting of some judgments passed in similar cases to consider his case also to grant promotion from the date he was eligible under FCS and to pay arrear also. His representation was rejected conveying that his representation may not be equated with other cases. Aggrieved Sh. Shukla filed the said OA.

3. Hon'ble CAT in this OA has viewed that since the matter for ante-dating in promotion of applicants is under active consideration, therefore the respondents have been directed to consider the claim of those who have made representations but not yet considered for in-situ promotion under FCS in IMD. Such consideration shall be accorded within a period of three months from the date of receipt of a copy of this order. In the event the claim of the applicant is declined the same shall be by a reasoned and speaking order. The Judgement dated 12.05.2016 may be perused in entirety at **pp:191-192/c**.

4. Now IMD is referencing some judgements in the similar matters and requesting Administrative Ministry to consider the case of Sh. AK Shukla and Ors for ante-dating in promotion from the date they were eligible.

5. When we go through the directions of Hon'ble CAT in the operative parts for respondents, it may be found that Hon'ble CAT has directed the respondents to expedite in the matter and to grant promotions to the eligible and if not found even that case a speaking order with the reasoned has to be issued.

6. It may be pertinent to mention that promotion under FCS/MFCS are granted when the concerned fulfill all fixed parameters on the date of assessment either on 01st January or 01st July every year. If anyone of parameters are not fulfilled by the concerned, his/her assessment for promotion is then done by the next assessment board. It is standing directions of Hon'ble Supreme Court or DoPT that no promotion is allowed from retrospective dates.

7. Ministry may also take a view in this matter that when Dr. VS Chintala Rao and Ors filed OA two times before Hon'ble CAT, PB, New Delhi for ante-dating in their promotions, every time Hon'ble CAT disposed off the OAs observing that the applicants had not completed their parameters on the date of assessment therefore no delay on the part of this Ministry and hence Hon'ble CAT has not given any reliefs to the applicants.



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8. IMD has also submitted in their counter reply before the Hon'ble CAT that the demand/seeking reliefs by Sh. Shukla is not in order in terms of extant rules and therefore prayed for dismissal of the application with heavy costs in the interest of justice pg.179/c.

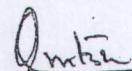
9. In view of foregoing facts, file may be returned to IMD with request to examine the matter within the stipulated period for complying of Hon'ble CAT order for the following:

- i. whether Sh. AK Shukla fulfilled all the parameters fixed under FCS/MFCS Schemes on the date of assessment,
- ii. under which rule, promotion may be granted to the concerned from retrospective date in terms of FCS/MFCS Scheme,
- iii. opinion of Government Counsel/Dept. of Legal Affairs kindly place on file that this is not a fit case for challenge before higher court.

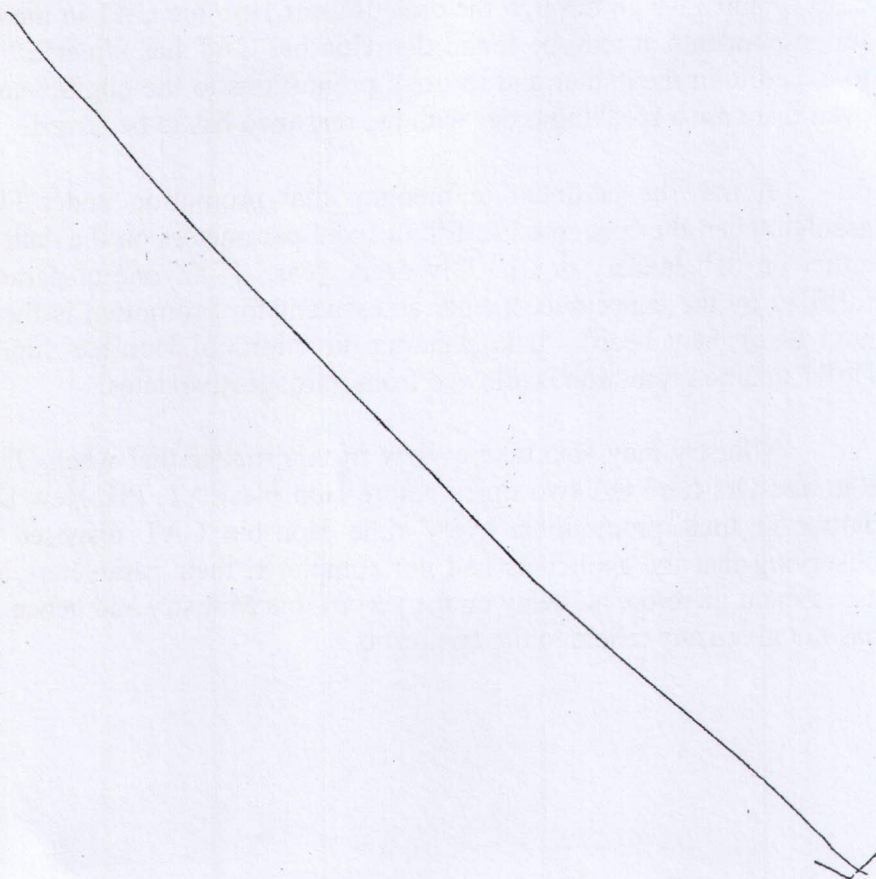
Submitted please.


(AK Verma)

ASO/18.07.16


17/7/16

~~USLEX~~



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-2/n-

Ref.: pre-page

P-2463

Sh. AK Shukla had filed an OA No.3192/2015 before Hon'ble CAT, PB, New Delhi seeking reliefs to grant him in-situ promotion under FCS from the date he was eligible and to pay him arrears also.

2. In this regard, Sh. Shukla had represented first with supporting of some judgments passed in similar cases to consider his case also to grant promotion from the date he was eligible under FCS and to pay arrear also. His representation was rejected conveying that his representation may not be equated with other cases. Aggrieved Sh. Shukla filed the said OA.

3. Hon'ble CAT in this OA has viewed that since the matter for ante-dating in promotion of applicants is under active consideration, therefore the respondents have been directed to consider the claim of those who have made representations but not yet considered for in-situ promotion under FCS in IMD. Such consideration shall be accorded within a period of three months from the date of receipt of a copy of this order. In the event the claim of the applicant is declined the same shall be by a reasoned and speaking order. The Judgement dated 12.05.2016 may be perused in entirety at **pp:191-192/c**.

4. Now IMD is referencing some judgements in the similar matters and requesting Administrative Ministry to consider the case of Sh. AK Shukla and Ors for ante-dating in promotion from the date they were eligible.

5. When we go through the directions of Hon'ble CAT in the operative parts for respondents, it may be found that Hon'ble CAT has directed the respondents to expedite in the matter and to grant promotions to the eligible and if not found even that case a speaking order with the reasoned has to be issued.

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7. Ministry may also take a view in this matter that when Dr. VS Chintala Rao and Ors filed OA two times before Hon'ble CAT, PB, New Delhi for ante-dating in their promotions, every time Hon'ble CAT disposed off the OAs observing that the applicants had not completed their parameters on the date of assessment therefore no delay on the part of this Ministry and hence Hon'ble CAT has not given any reliefs to the applicants.

Ref. preceding notes.

IMD has forwarded judgement dated 26.05.2016 passed by Hon'ble CAT, Principal Bench, New Delhi in OA No.3192/2015 titled A.K. Shukla & Others vs. UoI & Others inter alia requesting to comply with judgement and to consider the case of applicants for in situ promotion under FCS. The judgement has been received in the Ministry on 08.06.2016 and was forwarded to IMD for further action vide letter dated 13.06.16.

2. The judgement passed by the Hon'ble CAT in aforesaid OA may please be perused in entirety at pp.182-192/c. The Hon'ble CAT in their judgement has observed that

“in response to some of representations, the respondents have issued letters dated 17.09.2015 (may be read as 17.03.2015) and 01.12.2014 (Annexure A1) in the aforesaid letters, respondents have communicated to the Applicant No.34 V. Subramaniam that the case regarding antedating in situ promotion is under process with the administration Ministry and the decision of the Competent Authority as and when received will be duly informed. However, in some of the cases consideration is declined on the ground that they are not party in the court orders” (Para 1 of Judgement).

“We have heard learned council for the parties. The issue regarding granting in situ promotion under FCS in IMD for consideration is under process in the Administration Ministry. On enquiry from the learned council for the respondent he is unable to inform whether the process for consideration is completed or not” (Para 2 of Judgement).

3. The operative part of judgement reads as under:

“In view of above circumstances, the OA is disposed of with the direction that the respondents would consider the claim of those who have made representations but not yet considered for in situ promotion under FCS in IMD. Such consideration shall be accorded within a period of three months from the date of receipt of a copy of this order. In the event the claim of the applicant is declined the same shall be by a reasoned and speaking order” (Part 3 of Judgement).

4. A careful reading of Hon'ble CAT (PB) aforesaid judgement and Annexure A1 pg.137/c submitted by IMD, it is found that IMD has not contested the OA in true spirit. It is found that IMD in Annexure A1 pg.137/c submitted in the Hon'ble Court informed one of the applicants (V. Subramanyam) regarding his representation seeking ante-dating of promotion that “case regarding ante-dating of in situ promotion under FCS in IMD is under process with the Administrative Ministry. The decision of the Competent Authority, as and when received will be duly informed to you”. It is not clear how IMD responded in such a manner when no such issue was referred to the Ministry. Taking this Annexure (A1) into consideration, the Hon'ble Judge has

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remarked in his judgement that "On enquiry from the learned council for the respondent he is unable to inform whether the process for consideration is completed or not". (Para 2 of Judgement).

5. It is submitted here that M/Earth Sciences took an administrative decision in July, 2009 with the approval of then Secretary, MoES to implement the scheme of FCS in IMD beyond scientist D and up to scientist G. Earlier the benefit of FCS was extended to scientists of IMD up to Scientist D (Director level) and thereafter these scientists were considered for promotion to the posts of DDGM & ADGM beyond Scientist D on occurrence of vacancy in DPC mode.

6. As per aforesaid administrative decision of Ministry, all the Scientists of IMD who were in service in 2009 were considered and given the benefit of promotion (in situ) to the grade of Scientist E & F onwards under FCS. However, these promotions were effected as per the prevailing executive instructions on FCS issued by DoPT without incorporating them in the then existing RRs by making suitable amendments. The administrative decision of Ministry to implement FCS across the board in IMD from 2009 which was earlier limited to Scientist D (Director) by DST (then administrative ministry) without revising the RRs merely on change of Administrative Ministry from M/S&T to M/Earth Sciences has been held arbitrary by Hon'ble Court, Chandigarh Bench earlier also inter-alia directing the Ministry to consider the cases of applicants associated with that OA (572-HR-2011, 871-HR-2011 & MA No.535/11).

7. The Ministry then decided to implement the Hon'ble CAT, Chandigarh Judgement and accordingly consider the cases of applicants. The Ministry then constituted the Screening cum Peer Review Assessment Board and had all the cases of applicants examined in terms of FCS guidelines after seeking service records, ACRs from IMD. In that review around 17 applicants were there and Ministry had tough time to convene the re-assessment as the cases were very old and none of the applicants was found FIT by the Screening cum Assessment Board.

8. In the instant OA there are 45 applicants (scientists in various grades). Out of these 45 scientists 29 scientists are those who were promoted as Scientist E or Scientist F after 2009 i.e. subsequent to Ministry administrative decision to implement FCS beyond Scientist D (Director) in IMD. Out of these 29 applicants (scientists in various grades) only 02 applicants (scientists) namely, Dr. S.K. Peshin, Scientist G and Dr. P.K. Nandankar, Scientist F are in service and other have since retired. The rest of the 16 applicants (scientists in various grades) were retired before 2009 and had availed the benefit of approved FCS which was limited up to Scientist D.

9. Thus, it is seen that 29 applicants who were in service in 2009 had been granted the promotion/benefits under FCS as per the administrative decision from prospective effect, however, these scientists are now demanding review of their promotion from retrospective effect. The FCS guidelines provide promotion with prospective effects only after the approval of Competent Authority.

10. Thus, it may be perused that it is not practicable to implement the Hon'ble CAT PB Judgement especially in view of the fact that Court has been given to understand that Ministry is considering cases of retired scientists for in situ promotion which is not the case. Further, the administrative decision taken by the Ministry can be given prospective effect only.

11. In view of above, the file is submitted for kind consideration and further orders as to whether:

- i) IMD may be asked to seek the views of DOLA giving justification and seeking their approval to file an appeal in the High Court of Delhi against the judgment of CAT(PB);
- OR
- ii) IMD may be advised to implement the court directions by convening the meeting of Screening cum Peer Review Committee as was done in the past (CAT Chandigarh Bench order) to comply with the directions of CAT Principal Bench.

(A)

Submitted please.

K. Chand
26/7/16
(Kailash Chand)
Under Secretary

DSS/138
JS
26.07.16

Considering wider implications, may consider (A) above.

JS (ES)

JS

JS
27/11

Secy. MoES

Imd may please consider the option (i) and seek the views of DOLA and file an appeal in the High Court of Delhi.

ML
28/7/16

DGM, Imd