

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00952/2015
With
MA/050/00095/2016

Reserved on : 02.03.2020
Pronounced on: 06.03.2020



C O R A M
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Pushpanayak, S/o Late Badri Narayan Sinha, resident of Village & P.O.- Manihari, PS- Manihari, District- Katihar.

.... Applicant.

By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India through the Secretary, Indian Council of Agricultural Research, Ministry of Agriculture, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi- 110001.
2. The Director General, Indian Council of Agricultural Research, Krishi Bhawan, Dr. Rajendra Prasad Road, new Delhi- 110001.
3. The Secretary, Department of Personnel & Training (DoP&T), North Block, New Delhi- 110001.
4. The Secretary, Department of Expenditure, Ministry of Finance, North Block, New Delhi- 110001.
5. The Under Secretary (Administration), ICAR, Krishi Bhawan, Dr. Rajendra Prasad Road, new Delhi- 110001.
6. The Director (Administration), ICAR, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi- 110001.
7. The Director, Indian Council of Agricultural Research Complex for Eastern region, ICAR Parisar, P.O.- Bihar Veterinary College, Patna- 800014.

.... Respondents.

By Advocate(s) : - Mr. Ram Kinker Choubey
Mr. S.N. Pathak.

ORDER

Per Dinesh Sharma, A.M:- In the instant OA, the applicant has prayed for the following reliefs:-



"(A) Office Memorandum No. AB.14017/38/90-Estt (RR) dated 23rd May, 1990, issued by the Department of Personnel and Training (DoP&T), Government of India, stipulating that all isolated/ex-cadre Group 'A' civil posts in Ministries and their attached & sub-ordinate offices should be encadred into Organised Group 'A' Services, may retrospectively be implemented mutatis mutandis in ICAR, with effect from at least 1.1.2006, if not 01.01.1996, to encadre the Group 'A' Service of "Combined Cadre of Administrative Officers" in ICAR, in accordance with the ICAR Bye-law 30.(a), and , in the same manner as already undertaken for the Group 'B' cadres of Assistants and Personal Assistants in ICAR by retrospectively implementing mutatis mutandis the respective CSS & CSSS service conditions of Government of India, with effect from 01.01.1996.

(B) Office Memorandum No. 14017/64/2008-Estt. (RR) dated 24.04.2009, issued by the Department of Personnel and Training, Government of India, --- thereby granting to the Officers of "Organised Group 'A' Services" in PB-3 and PB-4, not yet promoted to a particular grade in their own cadre and belonging to a batch two years senior to the batch of the IAS Officer first posted in that very grade at the Centre, the Non-Functional Upgradation (NFU) to that grade with effect from the date of posting of that IAS Officer at the Centre,--- may retrospectively be implemented mutatis mutandis in ICAR, with effect from 1.1.2006, to accordingly grant the same Non-Functional Upgradation (NFU) to the members of " Combined Cadre of Administrative officers" in ICAR, in accordance with the ICAR

Bye-law 30.(a), and, in the same manner as already undertaken for the Group 'B' cadres of Assistants and Personal Assistants in ICAR by retrospectively implementing mutatis mutandis the grant of Non-Functional Junior Time-Scale applicable in the respective CSS & CSSS service conditions of Government of India, with effect from 1.1.1996, with the continuing perpetuation of non-implementation of NFU to Combined Cadre of AOs in ICAR, being wholly unjustified, erroneous and not tenable in the eye of law.



(C) The Hon'ble Tribunal may please to retrospectively grant to this Applicant, the consequential benefit of the following three overdue Non-Functional Upgradations:-

- a. Non-Functional Upgradation (NFU) to Junior Administrative Grade (in PB-3 with Grade Pay of Rs. 7,600), with retrospective effect from the 5th April, 2007;
- b. Non-Functional Upgradation (NFU), to Non-Functional Selection Grade (in PB-4 with Grade Pay of Rs. 8,700), with retrospective effect from the 1st July, 2011.
- c. Non-Functional Upgradation (NFU) to Senior Administrative Grade (in PB-4 with Grade Pay of Rs. 10,000), with retrospective effect from the 1st April, 2015.

D. Any other Relief/Reliefs, as the applicant is entitled and Your Lordships may deem fit and proper in the ends of justice."

2. The case of the applicant is that he joined the Group 'A' service of "Combined Cadre of Administrative Officers" under the Indian Council of Agricultural Research (ICAR) as an Administrative Officer (AO) in the Junior Time Scale of Rs. 2200-4000/- at the ICAR unit of Central Rice Research Institute, Cuttack on 14.06.1995. He was subsequently promoted as Senior Administrative Officer on 23.01.2003 and later as

Chief Administrative Officer (CAO) in the Junior Administrative Grade (JAG) carrying a Grade Pay of Rs. 7600/- in the Pay Band 3 (Rs. 15,600-39,000) w.e.f. 07.09.2010. The applicant has been working as CAO at ICAR, Research Complex for Eastern Region, Patna since 24.05.2012. In this OA, the applicant is seeking parity with the Organized Group 'A' Central Services (hereinafter referred to as OGAS) for the Group 'A' service of "Combined Cadre of Administrative Officers" constituted to serve the ICAR under the Secretary, ICAR. The OA gives detailed history of the ICAR and has put the claim for recognizing it as an OGAS mainly on ground of the decision of the Government of India contained in the OM No. AB-14017/38/90-Estt. (RR) dated 23.05.1990 issued by DoP&T. This OM (Annexure A/4) issued guidelines for encadring the isolated Group 'A' Civil post into OGAS and all the Departments/Ministries were guided by cadre constitution-cum-cadre review guidelines issued by the Central Government from time to time. The applicant has claimed that the Group 'A' service of Combined Cadre of Administrative Officers under the ICAR fulfills all the necessary conditions prescribed under these guidelines. He claims that the officers including himself are one of the ablest and most efficient (Director, Administration) in the ICAR and they have held sufficiently senior responsible posts which makes them eligible for claiming parity with the other OGAS. The applicant has also claimed that following decisions of the CAT and the Hon'ble High Court/Supreme Court, the Government of India has already given parity to the Group B officers of the ICAR with the Central Secretariat Services and Central



Secretariat Stenographer Services Cadre under the GOI and thus parity has been brought in the service conditions of ICAR Group B employees and Central Government employees. The applicant has stated that this is in accordance with the Bye- laws of the ICAR and the rules of ICAR Society and according to the decision of the Hon'ble Supreme Court (P.K. Ramachandra Iyer Vs. UOI & Ors.), ICAR has already been accepted as an instrumentality of the State. The ICAR also has service rules for the Group A service of combined cadre of Administrative Officer. The applicant has also cited the judgment of the Hon'ble High Court in WP (Civil) No. 4377/2003 (K.N. Noatay Vs Union of India & Ors.) whereby Administrative Officers Cadre of Border Road Organisation has been directed to be treated as an OGAS. For all these reasons, the applicant has prayed for declaring the Combine cadre of Administrative Officers as OGAS with retrospective effect and, consequently, for granting benefits available to the OGAS (such as Non- Functional Upgradation with a gap of two years with the respective batch of the IAS etc.).

3. An MA (No. 95/2016) was filed by the applicant (for condonation of delay) stating about the history of the Institution (ICAR) and also that the ICAR has been accepted as an instrumentality of the Central Government. It is stated that overall the implementation of the DoP&T's OM dated 23.05.1990 has remained only partial in the ICAR, limited to the extent of merging of various ex-cadre Group-A Post into the Group A "Combined Cadre of AOs" but not extending to the extent of



mutatis mutandis granting parity with the OGAS. The applicant, who was recruited in the year 1995, had submitted his application on 29.07.2005 for implementing the OGAS conditions and consequent to the applicant's request the Council upgraded 4 JAG grade posts of Chief Administrative officer/Dy. Secretary to Joint Direction (Admn.) in NFSG grade by ICAR office order dated 11.03.2006. Subsequent to this, the applicant has again (by his letter dated 07.04.2006) represented for implementing the OGAS service conditions. Following this, the Council constituted a Cadre Review Committee and based on the Committee's recommendation upgraded a number of Group A administrative posts vide ICAR Office Order dated 03.08.2010. The applicant was subsequently promoted to the JAG grade post of Chief Administrative Officer w.e.f. 07.09.2010. The applicant has again submitted a fresh application dated 10.12.2010 for upgradation of a number of Group A posts to the combined cadre of administrative officers. The M.A. gives details of how the Ministry constituted a committee to look into this matter and also sought help of the applicant in this subject matter of improvement in the service conditions of Group A services. This matter could not reach finality due to various reasons including that of filing of an OA by 4 Under Secretaries before the Principal Bench of CAT (OA 70/2012) in which the applicant too was named as one of the 18 private respondents. Though that OA was later withdrawn after an out of court settlement another OA was filed by another Senior Administrative Officer (belonging to Group A Combined Cadre of AOs – OA 946/2012 before CAT, Ernakulam Bench)



which was dismissed by order dated 21.08.2015. On these grounds, the applicant has prayed for condonation of delay.

4. A written statement has been filed by the respondents in which a preliminary objection is raised about impleading Director (Administration) on ground that nobody is holding the post of Director (Administration). The reply is filed on behalf of the Secretary, ICAR, Secretary, DOPT, Secretary, Department of Expenditure and Director, ICAR Research Complex for Eastern Region. It is stated that combined Cadre of Administrative Officers in ICAR is neither a Central Group A service nor has organized status and as such the DOPT's OM dated 24.04.2009 is not applicable in the case of applicant. The procedure for grant of organized service requires that the administrative ministry prepares a proposal and refers the same in the form of a COS Note to DOPT with approval of Ministry I/C and Integrated Finance Division. The proposal is examined in DOPT with the approval of Secretary, Personnel and after approval of Secretary, Expenditure it is placed for approval of the Cadre Review Committee (CRC) headed by the Cabinet Secretary. Once the recommendations of the CRC are approved by Ministry of State (PP) and Finance Ministry, the approval of Cabinet has to be obtained by the administrative ministry. It is stated that there are various Central Group A services which are not getting the benefit of NFU as they have not been granted the status of Organized Group A Services. The Services like IRPS and IDES mentioned in the OA are already listed in the OGAS by



the DOPT since 1982, i.e. much prior to the issuance of guidelines of NFU in 2009. The DOPT frames personal policies for the Central Government Civil Servant and Posts. These are not automatically applicable to autonomous bodies, PSUs, Trusts, Banks which are governed by regulations instructions under Statutes, acts of parliament by which they are created. Hence, the DOPT's guidelines are not automatically applicable to ICAR being a Society registered under Societies Registration Act, 1860. The Written Statement accepts the existence of service rules for the combined cadre of administrative officers and also the existence of independent recruitment body. However, it denies the claim of the applicant for giving parity with OGAS only on these grounds. Regarding the argument of the applicant about grant of parity with the Section Officers and Private Secretaries, it is stated that the non- functional pay scales at par with CSS/CSSS were granted to Group B officers, on the basis of a judgment of CAT and this cannot be a reason for grant of benefit of OGAS to Group A officers. On all these grounds, the respondents have prayed for rejecting the claim of the applicant.

5. A four hundred page rejoinder has been filed by the applicant in which, besides reiterating his earlier claims, he has denied the averments of the written statement which are in contradiction of his averments. The applicant has also annexed (Annexure A/47) a judgment of the Hon'ble Apex Court in Civil Appeal No. 1474/2019 by which OGAS status has been granted to the RPF. The rejoinder also states that



combined cadre of Administrative Officers fulfills almost all the attributes required for being designated as OGAS as evidenced by the existence of proper procedure for recruitment, service rules, designated ladders of promotions equivalent to the existing organized services etc. The applicant has also stated that autonomy of ICAR which has been cited for non-automatic application of the rules of the DOPT is not correct since this appears "more like a curse than a reward" for the stellar contribution of ICAR in ushering the green revolution in the country.



6. We have gone through the pleadings and heard the arguments of learned counsel for both the parties. The learned counsel for the applicant mainly argued on ground of the Department's responsibility to implement their own guidelines prescribed through DOPT OM dated 23.05.1990. He also brought to our attention the decision of the Hon'ble Apex Court by which BROs have been brought under OGAS earlier and now the Central Armed Paramilitary Forces, e.g. RPF has now been directed by the Hon'ble Apex Court to be included under OGAS. Our attention has also been drawn to the decision of the Hon'ble Apex Court under which the State is bound to follow its own policy guidelines. The learned counsel for the respondents, on the contrary, argued that the policy guidelines issued under the OM dated 23.05.1990 does not create any entitlement in favour of any employee to get himself or his service included as part of OGAS. It was also argued that the presence of service rules and independent recruitment agency,

though necessary conditions for an organized service, are not sufficient to get every such service recognized as OGAS.

7. After going through the pleadings and hearing the arguments, we find that there are the following two issues which need to be examined for deciding this matter:-



- (i) Whether the Combined Group A Administrative Officers in ICAR should be treated as OGAS since, as alleged by the applicant, it fulfils all the required attributes of the OGAS, and the ICAR, being an instrumentality of the State, is bound to follow its own guidelines.
- (ii) If so, whether the benefits of NFU etc. granted to the members of such OGAS following the recommendations of the 6th Pay Commission, can be granted to the applicant with retrospective effect.

8. The claim of the applicant is mainly based on : a) the organized nature of the cadre to which he belongs, b) the DoP&T Office Memorandum dated 23.05.1990, c) the grant of such status to organizations like BRO, CAPF, and d) the grant of parity with central staff for Group B services in the ICAR. The respondents have, however, countered these claims by stating that there are a number of organizations and services which may be similar but are still not given the status of OGAS for various reasons. There is an established

procedure for grant of this status which has not been followed in the case of ICAR. We have gone through the OM dated 23.05.1990 on which the claim of the applicant is primarily based. The most relevant portion is extracted below:-

“ 2. All Ministries/Departments are accordingly requested to conduct a review of the isolated posts existing in the Ministry/Department proper and in the attached and subordinate offices under their control and take necessary action accordingly. The result of such review may be intimated to this Department by 31.12.1990.”



This OM is clearly an instruction to Ministries/Department for conducting a review of isolated posts and finding out whether such isolated posts could be encadred in any of the existing organized services. We do not find any direction of a mandatory nature, in this OM of 1990, which may make it obligatory for all the Government Departments and bodies under them to make each and every post encadred in any of the existing organized services. The Office Memorandum is, apparently, an exercise to streamline the recruitment and service conditions under various Departments wherever possible. The clamour for grant of organized service status has obviously arisen mainly due to the grant of benefit of the NFU vis-à-vis 2 year senior batches of the IAS, which was introduced by the implementation of the Sixth Pay Commission. The applicant's claim, to have the guidelines of the year 1990 implemented in the current year, with retrospective effect (from 5th April, 2007, 1st July, 2011 and 1st April, 2015 to grant three retrospective promotions on the

basis of the 6th Pay Commission) is obviously stretching the principle of implementation of one's own the guidelines too far (since the framers of the guidelines could not have envisaged these implications, when the OM was issued). We have also gone through the judgments of the Hon'ble Apex Court by which the status of OGAS was directed to be given to the BRO and later to RPF. The judgment in favour of the BRO was mainly for reasons of lack of promotion opportunity in that organization and also because the Hon'ble Apex Court found the reasons given by the Government in that case (of treating Engineers more favourably than the Administrative staff) as a non-relevant and unacceptable explanation for not granting OGAS. In the recent decision (granting OGAS to RPF) the Hon'ble Apex Court has gone into great details and found that the Government had already taken in-principle decision to grant OGAS to RPF (as early as in 2003) and delay in conferring the status was mainly due to procedural matters. We find that in the present case there has been no recommendation from the concerned Department for grant of OGAS to the combined Group A service in the ICAR and the matter has not gone beyond constituting a Committee. The applicant has also admitted to have promotions at various stages and therefore there appears to be no stagnation of the type which was argued in favour of grant of OGAS status in the case of BRO. In the aforementioned circumstances, the prayer of the applicant for granting Organised Service status to Combined Group A Service of ICAR and, consequentially for granting three promotions to the applicant with retrospective effect,



cannot be accepted. Hence, while allowing the MA for condonation of delay, the OA is dismissed due to lack of merit. No order as to costs.

[Dinesh Sharma]
Administrative Member
Sr. Ct.

[J.V. Bhairavia]
Judicial Member

