

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 290/98

New Delhi, this the 4th day of May 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

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1. Shri S.P. Sanwal,
s/o Shri Kanwal Singh
r/o 4/16, Lodhi Colony,
New Delhi.
2. Shri S.K. Behera,
s/o late Shri K.C. Behera,
r/o 2162 Lodi Road Complex,
New Delhi.
3. Shri Rajiv Maheshwari,
s/o Shri R.S. Maheshwari,
r/o A-257, Surya Nagar,
Ghaziabad (UP) Applicants

(By Advocate: Shri J.P. Singh)

versus

1. Director General, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
2. Indian Council of Agricultural Research,
through its Secretary,
Krishi Bhawan, New Delhi.
3. Agricultural Scientist Recruitment Board,
through its Chairman, Krishi Anusandhan Bhawan,
PUSA, New Delhi.
4. Union of India, through
Secretary,
Department of Personnel & Training,
North Block, New Delhi. Official Respondents

(By Advocate: Shri A.K. Sikri, Shri V.K. Rao and
Ms Geetanjali Goel)

5. Shri Bhagwan Sharma,
Secretary, Staff Side, Head Quarter,
Joint Council, ICAR, Krishi Bhawan,
New Delhi.
6. Shri S.C. Bhatia,
s/o Sh. D.R. Bhatia,
R/o P-109, Sector IV,
M.B. Road, Saket,
New Delhi.

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7. Shri A.S. Aggarwal,
s/o Late Bhuru Mal,
R/o H.No. 247, Ward No. 16,
Mandothi Gali, Gandhi Chowk,
Bahadur Garh (Haryana).
8. Mrs. Asha Sharma w/o Shri B.B. Sharma.
R/o 45-B, MIG Flat, Pocket 'C'
Phase III, Ashok Vihar, Delhi.
9. Shri Madan Sarup,
s/o Shri Bal Mukund,
R/o H.No. 123, VIII Kirari,
P.O. Nangloi,
Delhi-41.
10. Shri P.K. Dutt s/o Late Sh. I.B. Dutt.
R/o C-16, Aryanagar Apartments,
91, I P Extension, Patpur Ganj,
Delhi - 92. Private respondents/
Intervenor

(By Advocate: Shri M.M. Sudan)

11. Shri S.B. Kaushik
s/o Late Bharat Singh.
R/o B-6, Raksha Kunj,
Paschim Vihar. Private respondent/
New Delhi- 110 063. Intervenor

(By Advocate: Shri R. Donaiswami)

12. Kanhiya Chaudhary
s/o Late Shri Shankar Chaudhary.
R/o A-17, Krishi Vihar, Masjid Moth,
New Delhi. Private Respondents/
Intervenor.

(By Advocate: Shri B.B. Raval)

JUDGEMENT

Hon'ble Shri T.N. Bhat, Member (J)

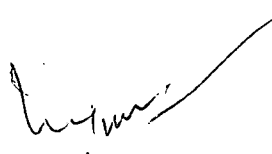
The applicants, three in number, are all directly recruited Section Officers working in the Indian Council of Agricultural Research (ICAR, for short) which is admittedly an instrumentality of the State though the conditions of service of its employees ^{are} ~~is~~ governed by separate Bye-Laws. The ICAR is also a Society over which by a notification the jurisdiction of this Tribunal has been extended.

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2. The service and financial rules framed or orders issued by the Govt. of India from time to time are applicable mutatis mutandis to ICAR's employee except in regard to those matters for which specific provisions have been made by ICAR in its Rules or Bye-Laws. According to the applicants there being no such specific provisions made by the society in respect of the service conditions, more particularly on the question of seniority of its employees, the rules and instructions issued from time to time by the Department of Personnel & Training (DOPT, for short) are applicable, which would include the instructions issued by circulars dated 4.11.92 and 3.7.36, as at Annexure A-V. It is further averred by the applicants that when the seniority list of Section Officers was issued (Annexure A-VI dated 12.7.1989) the names of the applicants figured at Serial Nos. 25.42 and 46 and that promotions to the post of Under Secretary were being made as per that list.

3. The grievance of the applicants is that when some posts of Under Secretary became available and the DPC was scheduled to meet in July 1997 for making selection the respondents, under pressure from some "vested interests", postponed the meeting of the DPC, and the applicants also came to know that there was some move to disturb their seniority. They also came to know that revision of seniority was being contemplated by giving effect to an award of the Board of Arbitrators which had been constituted by respondents 1 & 2 in the year 1991. The applicants, therefore, made representation against the contemplated action.

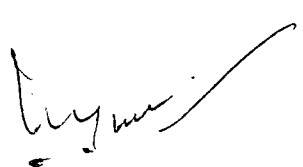


4. The contention of the applicants is that the constitution of the Board of Arbitration and even the initial reference of the matter relating to the question of inter se seniority of the employees of ICAR was bad as the Joint Council Scheme (JCS), under which the reference to arbitration was made could not apply to the question of seniority and also because Clause 28 of the JCS itself is void and illegal as it provides for referring disputes to arbitration relating to matters such as pay and allowances, weekly hours of work, leave and service conditions of a class or grade of employees.

5. According to the applicants there was no disagreement between the 'staff side' on the one hand and the 'official side' on the other which alone could under Clause 28 form the basis for reference to the Board of Arbitration, but that the dispute was inter se between promotee Officers and direct recruits. It is alleged by the applicants that since the number of promotees in the cadre of Section Officers is much larger than direct recruits the representatives in the staff side were all from the officials belonging to the promotee quota and that they put pressure upon the official side to make a reference to the Board of Arbitration.

6. The terms of reference before the Board of Arbitration was as follows:-

"What criteria should (be) applied for determination of seniority of various staff in Administrative cadre in the Indian Council of Agricultural Research."



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The Board of Arbitration gave the following award:-

"Looking to the circumstances of the disputed cases in the interest of equity and fairness, the Board is of the view to correct the distortions in the seniority list of Section Officers and Assistants in the ICAR Headquarters, the same should be drawn up afresh applying the principles contained in the DOPT OM dated 7.2.86 starting from the date from which different modes of recruitment were prescribed under the recruitment rules."

As regards the other grades the Board stated that detailed facts and circumstances relating to the other grades not having been made available no final view could be expressed by it.

7 We notice that the main ground on the basis of which the Board expressed its view in regard to the Section Officers and Assistants was that the quota rule had broken down and therefore the rule of rotation could not be applied.

8. The applicants have taken the plea that the award of the Board of Arbitration is clearly beyond the scope of reference and is also liable to be set aside on the ground that the persons belonging to direct recruitment quota were never made a party in the

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arbitration proceedings. It is further averred that formal approval of the Governing Body of ICAR was not obtained before making reference to arbitration, nor was any clearance sought from the DOPT.

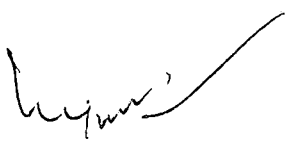
9. Lastly, it is contended that the award not having been filed in Court for being made a rule of the court the same is rendered invalid and inoperative, especially so when the prescribed period of limitation has expired long ago. the award having been given on 19.8.92.

10. The applicants have in this OA. filed on 2.2.96. prayed for the following reliefs:-

"(i) To quash the decision of respondent no. 1 and 2 to implement the award of Board of Arbitration given on 19.8.1992 holding the same as illegal, invalid, beyond the terms of reference and not binding on the parties.

"(ii) Prohibit the respondents from disturbing the seniority of the applicants already determined in accordance with the instructions of the DOPT and which has become final.

"(iii) Direct the respondent to adhere to the rules/instructions framed by DOPT in letter and spirit.



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"(iv) Hold clause 28 of the Central Joint Council Scheme as void and illegal in its present form.

"(v) Allow costs in favour of the applicants".

11. The respondents have in their detailed counter taken the plea that the arbitration in question was not governed by the Arbitration Act. It is further averred that the Board of Arbitration was validly constituted and it gave the award according to the terms of reference, after considering the rival contentions including the one raised now by the applicants in this OA which was the contention of the official side before the Board of Arbitration. The question of bar of limitation has also been raised, as according to the respondents, the award having been made on 17.8.92 this OA filed in February, 1998 would be hit by limitation.

12. A further plea taken by the respondents is that there was a dispute between the official side and the staff side as the official side were of the view that seniority should be fixed according to the rota-quota rule while the staff side held the view that the quota rule had broken down: and therefore a reference to arbitration in terms of the JCS was perfectly in order. It is also contended that the award has been accepted by the competent authority and that regular promotions would be made after inter se seniority is rectified and finalised. The decision has, according to the respondents, been taken on 20.2.98 after due consultation with the Ministry of Law

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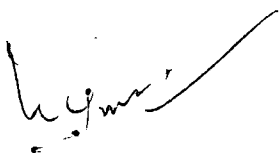
and Justice as well as the Ministry of Personnel & Training. The respondents have emphatically denied that the award in question is illegal or that it is not binding without being made a rule of the Court.

A copy of the Office order dated 20.2.98 granting approval to the implementation of the award, subject to the decision of the Tribunal in the instant OA has been annexed to the counter as Annexure-1.

13. The intervenors, who were later added as party-respondents, have also filed separate counter replies in which they have raised pleas identical to those taken by the official respondents. The applicants have filed rejoinders to the counter replies filed by the official respondents as well as the intervenors. We may mention here that all the intervenors are promotee Section Officers.

14. We have heard the learned counsel for the parties at length and have perused the material on record. We have also examined the relevant departmental record furnished by Mr. A.K. Sikri, the learned Sr. counsel for the official respondents.

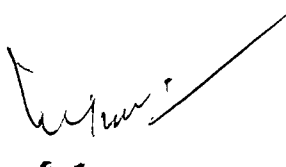
15. Let us first address ourselves to the question as to whether clause 28 of the Joint Council Scheme of the ICAR envisages the reference of the dispute relating to the inter-se seniority of two groups of employees to Arbitration. Clause 28 reads as follows:-



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"28. All matters relating to pay and allowances, weekly hours of work, leave and service condition as class or grade of employees may be referable to arbitration of a Board of Arbitration consisting of three persons, one each representing 'staff' and 'official' side and the third an independent persons as Chairman. if there is disagreement between 'official side' of the Central Joint Council and that a request to this effect has been made in writing to the Chairman of the Central Joint Council. Both the official side and the staff side shall submit a list of five names each of their side to function as arbitrators to the President. Indian Council of Agricultural Research who shall besides nomination a Chairman, will also nominate one person from each panel to function as arbitrator on the Board of Arbitrations. The award of the Board of Arbitration shall be final and binding on the parties and shall become enforceable on the expiry of 30 days from the date of its pronouncement provided that the award, if referred to the Standing Finance Committee/Governing Body for their concurrence within 30 days for making the award shall not become enforceable till the expiry of 90 days of making the award".

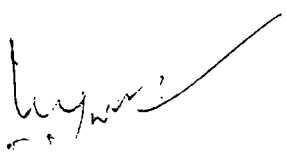
[Reproduced word-for-word from the copy of the JCS annexed to the O.A. by applicants.]



(3A)

A bare reading of the aforesaid clause makes it abundantly clear that all matters relating to service conditions "as a class or grade of employees" is referable to Arbitration if there is any disagreement between staff side and the official side. In the instant case the official side was of the view that inter-se seniority of the two groups of employees, namely, promotees and direct recruits (or examinees) should be determined according to the quota-rota rule while the staff side held the view that rota-quota rule having broken down, inter-se seniority should be determined according to the date of continuous officiation. There does not appear to be any substance in the contention of the applicants that since they were not represented in the staff side for the reason that the majority of the employees are from the promotee cadre, the reference to arbitration could not have been made. The official side were holding a view beneficial to the persons belonging to the group of employees to which the applicants belong and therefore the applicants' interest was adequately safeguarded by the official side. It may be that the representatives from the staff side were from the promotee quota but that would not by itself be sufficient to hold that there was really no dispute which could have been referred to arbitration.

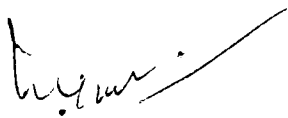
16. We also do not find any merit in the contention that clause 28 of the Joint Council Scheme is either ultra-vires or illegal. Arbitration is now a well recognized mode of resolving disputes between the staff side and the official side and Joint Consultative Machinery is made use of even in the departments of the



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Govt and decisions are being taken after going through the process of consultation between the staff side and the official side. The ICAR cannot be an exception, particularly so, when they have framed a Joint Council Scheme of their own with the object of "promoting harmonious relations and securing the greatest measure of cooperation in matters of common concern and with further object of increasing the efficiency of the service" in the Indian Council of Agricultural Research in its capacity as an employer and the general body of its employees. Para 4 of the J.C.S. describes the "scope of the Council" as including all matters relating to conditions of service and work, welfare of the employees and improvement of efficiency in standard of work in regard to "recruitment, promotion and discipline." The question of inter-se seniority certainly comes within the scope of the Scheme.

17. Coming to the question as to whether the Board of Arbitration has travelled beyond the scope of reference in this case, we find ourselves in agreement with the contention of the learned counsel for the respondents that the terms of reference were strictly adhered to by the Board of Arbitration. As already mentioned, the terms of reference were as to what criteria should be applied for determination of seniority of various staff in administrative cadre and the Board held that so far as the Section Officers and Assistants in the ICAR Hqrs. are concerned their inter-se seniority should be drawn afresh applying the principles contained in DoP&T OM dated 7.2.1986 starting from the date from which different modes of recruitment were prescribed under the recruitment rules. We do not find anything in the Award

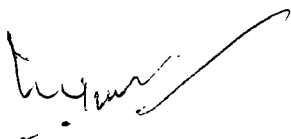


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which could be held to be outside the scope of the terms of reference. The fact that the Board of Arbitration did not give any award relating to the other sections of the administrative cadre cannot be a good ground for rendering the award as invalid. In this regard the Board has stated that detailed facts and circumstances relating to the other grades had not been made available and, therefore, no award in respect of those cadres could be given.

18. We may now take up the contention made by the applicants that the award cannot be implemented for the reason that it was not made a rule of the court. The learned counsel for the applicants relied upon the provisions contained in Sections 46 & 47 of the Indian Arbitration Act. A few judgements have also been cited by the learned counsel for the applicants to support the plea that without the award being made rule of the court it would not be binding upon the applicants. Section 46 of the Arbitration Act provides that the provisions of that Act shall apply to every arbitration under any other enactment for the time being in force as if the Arbitration were pursuant to an arbitration agreement, and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment. According to Section 47 the provisions of this Act shall apply to all arbitrations and to all proceedings thereunder.

19. The contention of the applicant is that even though the arbitration was under the Joint Council Scheme of the ICAR the provisions contained in the Arbitration Act, 1940 would apply and accordingly it was

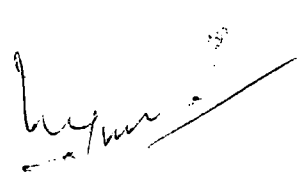


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incumbent on the parties to the arbitration agreement to file the award in the court and get it made a rule of the court, in the absence of which the award would not be binding.

20. In reply, the learned counsel for the respondents urges before us that the Arbitration Act would not apply in the instant case. In this regard, he has given the instances of arbitrations under the Industrial Disputes Act and the Indian Telegraph Act. Under Section 10-A (5) of the Industrial Disputes Act the provisions contained under Arbitration Act are not attracted in case of arbitration under the Industrial Disputes Act. Similar is the case with arbitrations under the Indian Telegraph Act.

21. We have given our careful consideration to the rival contentions and have perused the judgements cited by both the parties in support of their respective contentions. We are convinced that the arbitration under the Joint Council Scheme would not attract the application of the provisions contained in the Arbitration Act. Furthermore, the Apex Court in *Salish Kumar & Ors vs. Surender Kumar & Ors.* reported in A IR 1970 SC 833, held that although an award given under the Arbitration Act on a private reference would require registration under Section 17 of the Registration Act, the award would not be a mere waste paper but has some legal effect as it is final and binding on the parties. The Apex Court further held that in such cases it cannot be said that the award is a waste paper unless it is made a rule of the court. The Apex Court goes on to make a distinction between the

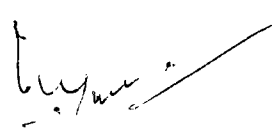


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creation of a right under an award and the enforceability of that right. It has been held that the award does create rights in property though those rights cannot be enforced unless the award is made a rule of the court. But as regards the question as to whether such an award would create a right the Apex Court has laid down the law that even if such an award is not made a rule of the court or is not registered under section 17 of the Registration Act it does create certain rights. Similarly the Patna High Court has in the judgement reported as AIR 1973 Patna 405 held that an award even if not made a rule of the court operates as a bar to the maintainability of a suit on the original cause of action. Therefore, even assuming that the provisions of Arbitration Act are attracted, the award in this case would be binding.

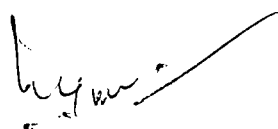
22. It is not disputed that in cases of statutory arbitration like those provided for in the Industrial Disputes Act and the Indian Telegraph Act the provisions contained in the Arbitration Act would not be attracted. We do not find any ground on the basis of which an arbitration under the Joint Council Scheme of the ICAR cannot be held to be such a statutory arbitration.

23. Apart from the above the learned counsel for the respondents has taken a valid objection regarding the maintainability of this OA. His contention is that the applicants not having assailed the orders issued by the respondents in pursuance to the Award the applicants cannot be heard to say that the Award itself was invalid on the ground that it had not been made a rule of the court. Here is a case where the respondents have taken a



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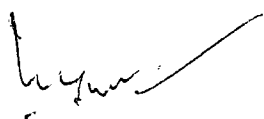
decision to re-cast the inter-se seniority of two groups of employees in the cadre of Section Officers and Assistants. The decision, though based upon some Award given by the Board of Arbitration in the year 1992, is all the same an order issued by the Competent Authority. It was, therefore, incumbent on the applicants to have specifically assailed that order/decision itself and only then could they be heard on the question as to whether the decision was correct or not. Assailing an Award after nearly seven years on the ground that the same had not been made a rule of the court and was, therefore, not binding, would disclose a clear case of laches on the part of the applicants, particularly so if they are claiming that the period of limitation would start from the date the order for implementation of the Award has been passed in the year 1997 and such order implementing the Award is not specifically challenged. As a matter of fact it would be the decision taken by the respondents implementing the award that would give the applicants the real cause of action. Although the applicants have in the OA sought to challenge some decision taken by the respondents in the month of January, 1998 by which the Award dated 19.8.1992 has been implemented the applicants have not agitated any grounds for assailing the order. We further notice that the order by which the Award has been implemented was issued by the respondents on 20.2.1998, as at Annexure-1 to the counter filed by the respondents, and not in the month of January, 1998 as mentioned by the applicants in para 1 of the OA. In the relief para also the applicants have not cared to give the date of the decision though they have sought quashment of "the decision of the respondents no. 1 & 2". It appears that when the OA was



AO

filed on 2.2.1998 no decision had been taken by the respondents nor any order was passed. It is only after the filing of the OA that the respondents passed the office order dated 20.2.1998. Although the official respondents made a specific mention about that order the applicants did not consider it necessary to specifically assail that order. In our considered view merely by challenging the Award of the Board of Arbitration that was given in the year 1992 the applicants in this OA would not gain anything. Quite clearly, the arbitration proceedings were initiated by the respondents to resolve the dispute between the two groups of employees. This would be like referring that dispute to a departmental committee. It would be the decision that was eventually taken by the competent authority that would be relevant so far as the grievance of the applicants is concerned.

24. Even assuming that this OA is directed against the order passed in February, 1998 issued by the respondents by which the award has been implemented, the applicants ought to have taken some plea relating to that order in the OA. On going through the OA we find that all the grounds agitated by the applicants relate to the award and not the merits of the order based thereon. In this regard we may further mention that the applicants have objected in particular to the retrospectivity of the award by making it effective "from the date from which different modes of recruitment were prescribed under the recruitment rules." According to the applicants the award could not have been given retrospective operation. We, however, notice that not a word has been mentioned in the OA about the contents of the final order passed by the respondents



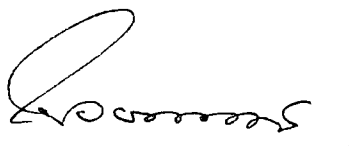
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In February, 1998. The applicants have also not cared to state as to whether the view expressed by the Board of Arbitration, and accepted by the competent authority, that the quota rule having failed giving seniority/promotion by rotation would neither be just nor possible was correct or not.

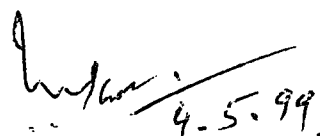
25. We also do not find any substance in the contention that the competent authorities were not consulted either before or after referring the matter to arbitration. We find from the records that at every stage the competent authorities including the DoP&T and the Department of Legal Affairs have been consulted.

26. In view of what has been held and discussed above, we do not find any merit in this OA which is accordingly dismissed. There shall be no order as to costs.

27. Before parting with the file we may mention that after the conclusion of the arguments in this case, an office order issued by the ICAR on 26.2.1999 was brought to our notice, a perusal of which shows that Shri S.P.Sanwal and two other persons have already been appointed on promotion to the post of Under Secretary in the ICAR in the pay scale of Rs. 10000-355-15200.


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