

Central Administrative Tribunal
Principal Bench

O.A.No.478/98

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 6 day of ^{October} September, 1998

Dr. K.Swaminathan
c/o G.K.Aggarwal,
Advocate
G-82, Ashok Vihar-I
Delhi - 110 052. ... Applicant

(By Shri G.K.Aggarwal, Advocate)

Vs.

1. Indian Council for Agricultural
Research through its Secretary
Krishi Bhawan
New Delhi - 1.
2. Agricultural Scientists Recruitment
Board through its Secretary
Krishi Anusandhan Bhawan
Pusa
New Delhi - 110 012. ... Respondents

(By Shri V.K.Rao, Advocate)

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant while serving as a Scientist Grade-III with the respondents, ICAR was compulsorily retired in 1981. Aggrieved by this order he came before this Tribunal in TA-4/89 which was disposed of by an order dated 15.5.1990. On the basis of that order the applicant was deemed to have been superannuated on 31.5.1988 on attaining the age of 60 years. He was also considered for promotion from the due date by the Assessment Committee of the ICAR which interviewed the applicant on 6.6.1995. Aggrieved by the decision of the respondents that he was not found fit for promotion, he came again before the Tribunal in OA No.1840/95. The same was disposed of by the order dated 4.4.1997 directing the grant of TA/DA to him for appearing before

or

the Assessment Committee. As regards his submission in respect of the Assessment Committee, the following order was passed:

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"In so far as applicant's challenge in the composition of the Assessment Committee is concerned, both sides agree that in the first instance the respondents should dispose of the applicant's representation dated 20.7.1995 by passing a detailed speaking and reasoned orders thereon, in accordance with law, under intimation to the applicant within two months from the date of receipt of a certificate copy of this order with liberty given to the applicant that in case any grievance still survives thereafter it will be open to him to agitate the same through appropriate original proceedings in accordance with law, if so advised."

2. The respondents have rejected the representation vide their letter dated 20.6.1997, Annexure A1. The present OA has been filed against that decision and also against the conclusion of the respondents that the applicant is not entitled as per rules to TA/DA for appearing before the Assessment Committee on 6.6.1995 as he was no longer in service on that date.

3. In so far as the payment of TA/DA is concerned, the respondents point out that the orders of this Tribunal dated 4.4.1997 in OA No.1840/95 were "to pay the applicant TA/DA claim in accordance with rules". We reject the contention of the respondents that since the applicant had already retired, the TA/DA rules were not applicable to him. The order of the Tribunal was in the context of the expenses incurred by the applicant for appearing before the Assessment Committee which was convened after his superannuation only because the applicant had been wrongly retired from service in 1981; Reference to the "Rules", was obviously in respect of the quantum of payment and not in regard to the entitlement to payment per se. Accordingly, we find that the

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applicant is entitled to payment of TA/DA at the same rates as are applicable to a Scientist Grade-III officer for travel in the course of his official duty.

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4. In regard to the composition of the Assessment Committee, the contention of the respondents is that it was as per Rules. They submit that Assessment Committee was to consist of external members (including retired ICAR Scientists) only with Chairman, ASRB or his nominee as its Chairman. The Committee was to be constituted for "each professional subject/discipline and or related field and eminent Scientists belonging to that particular discipline will be its members." According to the respondents the Committee, constituted to interview the applicant who belonged to the specialisation of Soil Chemistry had as its members a Soil Conservation specialist and a Soil Physicist and both these were eminent scientists belonging to the related field of soil chemistry. Therefore, there was no violation of the Rules in the constitution of the Assessment Committee. We are unable to accept this contention also.

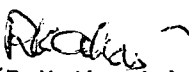
5. It has been claimed by the applicant that there was no rebuttal of his contention that soil chemistry is a specialisation by itself and that experts for this field are available. At the same time the respondents themselves state that Rules provide for "eminent Scientists belonging to that particular discipline" (Emphasis supplied). As the respondents have not taken the stand that experts in soil chemistry were not available, or that soil chemistry is a part of soil physics or of Soil Conservation and is not a separate discipline the composition of the Assessment Committee on

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the face of it was not according to the Rules. The applicant had a right to be judged by peers of his own discipline but for unexplained reasons this opportunity was denied to him.

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6. In the result the OA is allowed. In the normal course, we would have directed that the respondents should re-constitute the Assessment Committee and arrange another interview for the applicant. Even though the learned counsel for the applicant states that the applicant is willing to face the Assessment Committee we however note that the applicant has been out of service since 1981 and was treated as superannuated in 1988. In these circumstances, an Assessment Committee interview conducted as of date would not be fair to the applicant who has been kept out of service and deprived of the opportunity to be considered for promotion by the wrong actions of the respondents. We therefore direct that the respondents will treat the applicant as promoted to the next higher grade from the relevant date and revise his pay accordingly and on that basis also re-fix his retiral benefits. In the particular facts and circumstances of the case, the applicant further will be entitled to difference of arrears of pay for the intervening period as well as arrears of retiral benefits consequent to the re-fixation of his pay. These directions, including the payment of TA/DA, would be complied ^{with} within a period of four months from the date of receipt of a copy of this order. No costs.


(R.K. Ahooja)
Member(A)

/rao/


(Smt. Lakshmi Swaminathan)
Member(J)