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Central Administrative Tribunal, Principal Bench

Original Application No.16 of 1995

New Delhi, this the 19th day of November, 1999

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. R.K. Ahooja, Member (Admnv)

Dr. D.P. Handa son of Late Sri G.P. Handa,
939, Civil Lines, Jhansi. - Applicant

(By Advocate - Shri S.S. Tiwari)

Versus

1. Union of India, through its Secretary/
Director General, Department of
Agricultural Research Education, Krishi
Bhawan, New Delhi.

2. I.C.A.R. (Indian Council of
Agriculture Research) through its
President, Krishi Bhawan, New Delhi.

3. Director (Personnel), Union Council of
Agricultural Research Institute, Krishi
Bhawan, New Delhi.

4. Director, Indian Grassland and Fodder
Research Institute (I.G.F.R.E.),
District Jhansi. - Respondents

(By Advocate Shri R.S. Aggarwal)

O R D E R (Oral)

By Mr. R.K. Ahooja, Member (Admnv) -

The applicant joined the service of Indian Council of Agricultural Research (for short 'ICAR') in 1964. On 10.11.1972 he was appointed as a Scientist, Junior Class-I at Jhansi in one of the Institute under the ICAR. The Agriculture Research Service Rules (for short 'ARS') were notified in 1975. According to these rules the applicant became entitled for promotion from Scientist Grade-I to Scientist Grade-II on completion of five years service. He was, however, not found fit for promotion in the assessment in the year 1978 and thereafter till 1983. In the meantime certain Scientists, who were aggrieved by the fact that persons coming from Class-II stream were given benefit of

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counting their Class-II Service for qualifying period for promotion, ~~had~~ approached the Delhi High Court in Civil Writ Petition No.1192 of 1984, Dr. M.L.Lodha and others Vs. Union of India and others, which was decided by an order dated 5.3.1987 in the following terms :

"For the aforesaid reasons, the writ petition is allowed. A writ of mandamus is issued directing the Respondents to extend its decision contained in the letter dated 24th August, 1977 to the case of the petitioners and to relax rule 19(2) in favour of the petitioners and other erstwhile Junior Class-I scientists who had been absorbed in Grade S.1 with effect from 1st October, 1975 and further to give effect to the said relaxation to the case of eligible S.1 scientists for promotion with effect from 1st July, 1976 and they shall also be entitled to all consequential benefits ensuing therefrom. The petitioners will be entitled to costs. Counsel's fee Rs.1,000/-"

A review petition against that order was filed before the Delhi High Court which was thereafter transferred to the CAT on its coming into being. The Review Petition which was designated as T-8/1990 was decided on 28.1.1992. The order of the Tribunal which has been reported at 1993 (1)SLJ (CAT) 343 Dr.M.L.Lodha and others Vs. Union of India and others gives the following directions :

"27. We do not, however, consider it appropriate to strike down Note 2 to Rule 22 or the action taken by the respondents, including the appointment of respondent Nos. 3 to 22 and those similarly situated or the appointment of the applicants and those similarly situated to the next higher grade S-2 in the pay scale of Rs.1100-1600 with effect from 1.7.1976 by Office Order dated 27.12.1988, in relaxation of Rule 19(2) of the 1975 Rules. The material on record is not sufficient to issue more positive directions to the respondents. We are also of the opinion that the entire scheme of merit promotion should again be referred to a High Powered Committee consisting of Experts in the field in the light of distortions which have come to the fore in the instant case with a view to suggest measures to remove them. The Committee should invite representations from all

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concerned, and consider them before arriving at its conclusions and recommendations. Necessary amendments should be made in the 1975 Rules in the light of the recommendations of such a committee. The respondents shall comply with the above directions as expeditiously as possible, but in no event later than 31.7.1992. Pending this, we direct that the respondents shall consider the case of the applicants for further promotion to Grade of S-3 on the basis of their appointment to S-2 Grade by Office Order dated 27.12.1988 along with the others. The promotions so made will, however, be subject to review in the light of the recommendations of the High Powered Committee. The application and CMP 1118/89 are disposed of accordingly."

2. The case of the applicant is that the requisite relaxation under Rule 19(2) of ARS Rules as directed in the aforesaid order of the High Court has not been applied in his case and if it would have been done, it would have certainly involved a review of his suitability for promotion from 1976. The respondents in the reply have stated that in compliance with the directions of the High Court and the subsequent order of the CAT, they have ante dated the promotion of those who had earlier been found fit for promotion to the extent that it had gone beyond 1.10.1975, the date from which Class-I ARS service was formed. Since the applicant had not been found fit in the first place till 1983, he was given antedated seniority of two years and his promotion was antedated to 1.7.1981. Similarly, the dates of advance increments granted to him were also antedated by two years, since the applicant had completed his five years in 1977 but under the relaxation he should have been considered from 1975. The respondents say that they had asked for representations against this order within 45 days but the applicant had not filed his

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representation within the prescribed period and had done so only in 1990 - one and half years after the date of the order.

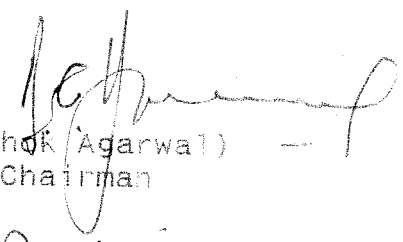
3. We have heard the counsel. It is contended by the applicant that he was not in a position to file the application within the prescribed period because at that time he was on study leave at Delhi. He says that as soon as he heard about it, he made a representation. His explanation, however, for late submission was not accepted. He had also made a further representation on 4.6.1992 (Annexure-VI) in response to an order of respondent no.3 (Annexure-V) which was also not considered.


4. Having considered the matter carefully we find that the explanation given by the applicant that he was not aware of the orders of the respondents because he was on study leave stands to reason. The explanation given by the applicant was also endorsed by the Director of his parent institution to the Director, ICAR. We also find that the Office Order issued by the ICAR on 2.7.1989 (Annexure-I) also does not prescribe any time limit. All that it states is that if any of the Scientists is not satisfied with the grant of assessment benefit as indicated, he will have a right to seek another review by ASRB. In view of the explanation given by the applicant as also because no specific time limit was prescribed in the Office Order dated 7.2.1989, the representation of the applicant should have been considered. We also find from the reply of the respondents that the committee which was set up by the

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respondents in compliance with the directions of this Tribunal has also since given its recommendations in regard to the anomalies which had arisen on account of the operation of Note-II under Rule 19 of the ARS Rules and the same is under process with the respondents.

5. In the light of the above discussion we consider it appropriate that the respondents should in the first instance decide the representations of the applicant dated 2.8.1990 and 4.6.1992 on merit and thereafter if his case is covered, review his case for promotion from the post of Scientist-I to Scientist-II with effect 1.7.1976. This may be done within a period of 4 months from the date of receipt of a copy of this order. The OA is accordingly disposed of. No costs.


(Ashok Agarwal)
Chairman


(R.K. Ahuja)
Member (Admin)