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Central Administrative Tribunal, Principal Bench

Original Application No.1399 of 1995

New Delhi, this the 26th day of November, 1999

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

1. Dr. Rishendra Verma, aged 41 years, s/o late Shri Lakshmi Narain Verma, 363, Bari Bamanpuri, Bareilly, working as Scientist at IVRI, Izatnagar.
2. Dr. Satish Kumar, aged 38 years, s/o Shri Rama Kant Verma, 2/45, 2/99, Suresh Sharma Nagar, Bareilly, working as Scientist at IVRI, Izatnagar.
3. Dr. S.D. Singh, aged 40 years, s/o Shri Vindeshwari Singh, C-580, Rajendranagar, Bareilly, working as Scientist at IVRI, Izatnagar.
4. Dr. A.K. Sharma, aged 37 years, s/o Shri O.P. Sharma, 320, Adarsh Nagar, Janakpuri, Bareilly, working as Scientist at IVRI, Izatnagar.
5. Dr. S.K. Agarwal, aged 40 years, s/o Shri Omkar Nath Agrawal, Rajendranagar, Bareilly, working as Scientist at IVRI, Izatnagar.
6. Dr. Arvind Prasad, aged 38 years, s/o Shri Hari Narayan, B-104, Avas Vikas Colony, Rajendranagar, Bareilly, working as Scientist at IVRI, Izatnagar, U.P. - Applicants

(By Advocate - Shri S.S. Tiwari)

Versus

Indian Council of Agricultural Research (ICAR), New Delhi, through its Director General, ICAR, Krishi Bhavan, New Delhi. - Respondent

(By Advocate - Shri N.S. Dalal)

O R D E R

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

The applicants six in number joined as Scientists-S-1 in the Agriculture Research Scientist Service of Indian Council of Agricultural Research ('ICAR' for short) on various dates between 14.12.1981 and 18.5.1982. At that time the applicants were governed by the ARS 1975 Rules. According to these

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Rules, the applicants were to be considered for promotion from S-1 to S-2 after rendering five years' service. They were also entitled for study leave only after completing three years of service. The ICAR by a Notification dated 9.3.1989 accepted the UGC package for pay scales and designations with retrospective effect from 1.1.1986. The applicants claim that they did not give their option to the UGC pay scale notified on 9.3.1989. Subsequently, the ICAR also issued instructions under the heading of Career Advancement Scheme of ICAR Scientists vide letter dated 28.10.1991 (Annexure-D). According to this scheme the progression from S-1 to S-2 required 8 years' service subject to relaxation of 3 years for those with Ph.D. qualification. The grievance of the applicants is that as they did not have the Ph.D. qualification nor were given opportunity to acquire the same under the ARS 1975 Rules which laid down a qualifying service of three years before grant of study leave and also because they had not opted for the UGC pay scale, they were entitled to promotion from S-1 to S-2 on completion of five years service as per ARS 1975 Rules. On the other hand they were granted promotion only after completion of 8 years of service vide order dated 10.5.1994.

2. According to the respondents the ICAR had the authority to amend the recruitment rules with retrospective effect. The applicants as well as their colleagues were agitating for the application of the UGC package which involved higher pay scales as well as incentives for acquiring higher qualifications; the applicants having availed of the higher pay scales, could not choose to be governed by the promotion rules

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which were in force prior to the application of the UGC package. They also refute the claim of the applicants that the applicants had not opted for the UGC pay scales. According to the respondents, the applicants were asked to give their option with the stipulation that in case no intimation regarding an option for the new pay scales was received within the prescribed time then it will be deemed that the Council's employee had elected to be governed by the revised scale of pay with effect from 1st January, 1986. Since the ICAR did not receive any representation from the applicants, it was to be deemed that they had opted for the revised pay scales.

3. Shri Tiwari arguing for the applicants submitted that the applicants could not have exercised an option as required by the circular dated 9.3.1989 (Annexure-C) since it did not indicate the Career Progression Scheme which came into force only by the ICAR letter dated 28.10.1991 (Annexure-D). Thus even if the applicants had given their consent to the higher pay scale, it was without knowledge of the condition being imposed regarding the qualifying service for promotion by the subsequent letter of the respondents dated 28.10.1991. For this reason, even the deemed option had no meaning and the applicants were entitled to revise their option after new conditions were offered by the letter dated 28.10.1991.

4. Shri Tiwari, learned counsel for the applicants relied on the case of Union of India Vs. Tushar Ranjan Mohanty, (1994) 5 SCC 450 wherein it was held that the power under Article 309 of the Constitution to make laws with retrospective effect

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could not be used to nullify a right already vested in a person under a statute. He also cited the case of Dr.S.M.Ilyas & Ors Vs. The Indian Council of Agricultural Research & Ors, JT 1992 (Supp) SC 20 in which it was held that as the higher pay scale was allowed to juniors, the seniors must get the same benefit. Shri Tiwari pointed out that certain Scientists junior to the applicants herein had been given promotion and higher pay scale on the plea of relaxation as they had Ph.D. degrees, therefore, in any case irrespective of the options exercised, the UGC pay scales could not be refused to the applicants as these had been granted to their juniors.

5. We find, however, that the grounds taken by Shri Tiwari are negatived by the decision of the Supreme Court in I.C.A.R. Vs. Satish Kumar and another, AIR 1998 SC 1782. In that case the applicant was a Scientist S-1 appointed with ICAR on 13.1.1982. He was thus covered by the ARS 1975 Rules regarding assessment, promotion etc. on the basis of a five yearly assessment. He also thus became eligible for grant of next higher grade from 1987. By the letter dated 9.3.1989 the Scientists were asked to give their option to draw salary in the revised pay scales. The applicant gave his option to be covered under the new scheme but with a rider i.e. subject to the clarification in regard to his career advancement. The new career advancement scheme came in force by the letter dated 28.10.1991 with retrospective effect from 1.1.1986. The

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question which fell for consideration before the Tribunal was whether the applicant had acquired a vested right for promotion under the old scheme or could the amended rules given retrospective effect with effect from 1.1.1986 take away the vested right already conferred on him. While the Tribunal relying upon Tushar Ranjan Mohanty's case (supra) held that the right which had accrued to an employee could not be taken away by making amendment with retrospective effect, the Supreme Court in the Civil Appeal held as follows :

"In the present case before us the respondent is not governed by any statutory rules. Here it is the competent body of the appellant which frames rules laying down conditions of service of its employees. Rules framed by the Society are not statutory rules and they can be amended by a resolution of the competent body and any legislation or framing of rules under Article 309 of the Constitution is not required. Scientists of the appellant had been agitating for grant of UGC pay scales. When a decision was taken on the basis of reports of the various committees and in consultation with the Ministry of Finance and UGC scales of pay were granted from January 1, 1986 the challenge to such decision could not be entertained. Moreover, no question of promotion as such is involved. Any Scientist of S-1 grade having 12 years' service could go to the next higher grade irrespective of the fact that if there is any vacancy in the higher grade or not. Of course, he cannot pick up the higher grade merely on completion of 12 years' service and his work has to be assessed. It is also not the case of the respondent that any Scientist had been treated differently than him after January 1, 1986a. To all the Scientists amended rules effective from January 1, 1986 had been applied without any discrimination. Scientists including the respondent are now in a much better position. It cannot be said that action of the appellant has been in any way unreasonable, arbitrary or irrational for respondent to challenge the same as violative of Articles 14 and 16 of the Constitution."

6. In our view the case of the applicants herein is on all four with the Satish Kumar's case (supra). Shri Tiwari, however, submitted that there was one material


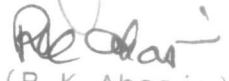
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difference in that - the applicants before us had not given any option while the applicant before the Tribunal in Satish Kumar's case (supra) had given a conditional option. We do not find that this makes a difference, precisely because the applicants not having given a response in writing had, in terms of para 4(3) of the letter of the ICAR dated 9.3.1989, in fact, exercised their option. Paragraph 4(3) reads as follows :

"If the intimation regarding option is not received within the prescribed time the Council employee shall be deemed to have elected to be governed by the revised scales of pay with effect from the 1st day of January, 1986."

7. In terms of the aforequoted paragraph, by not responding, the applicants herein had, in fact, exercised an unconditional option. They thus have even a weaker case compared to the applicants in Satish Kumar's case (supra) who had at least mentioned a condition in his option.

8. In the ratio of the Supreme Court's decision in Satish Kumar's case (supra) the case of the applicants before us has no merit. It is accordingly hereby dismissed. However in the facts and circumstances of the case the parties shall bear their own costs.


(Ashok Agarwal)
Chairman

(R.K. Ahooja)
Member (Admnv)