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Central Administrative Tribunal
Principal Bench: New Delhi

OA 1023/96

New Delhi this the 4th day of December 1996

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

Dr Vijay Kumar Taneja
S/o Late Shri Ram Narain Taneja
R/o D-II/27 Kidwai Nagar (East)
New Delhi - 110 023.

...Applicant

(In person)

Versus

1. Union of India through
The Secretary
Dept. of Agril. Research & Education (DARE)
Ministry of Agriculture
New Delhi-110 001.

2. The Director General
Indian Council of Agricultural Research
Krishi Bhawan
New Delhi-110 001.

...Respondents.

(By Shri Brijender Chahar, Advocate)

O R D E R

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

Applicant was working in Jawaharlal Nehru Krishi Vishwa Vidyalaya (JNKVV), Jabalpur in the scale of Rs.700-1250 when he applied for the post of Research Officer at National Dairy Research Institute (NDRI), Karnal, which was also in the scale of Rs.700-1250. He was selected and since in the meantime the scale of Rs.700-1250 had been revised to Rs.1100-1600, the offer was made to him in that scale and he got himself relieved from JNKVV, Jabalpur on 30.6.1975 to join his new assignment. The applicant states that subsequently, on revision of the pay scales by the University Grants Commission, the pay scale of the post held by him in JNKVV, Jabalpur was also revised with retrospective effect w.e.f. 1.1.73 to Rs. 1200-1900 and his pay was fixed at Rs. 1300/- p.m. w.e.f. 24.12.74 as per Annexure A-4. Since in the meantime he had joined NDRI, he stood to suffer a loss of Rs.200/- p.m. in basic pay besides other related allowances due to his shift-over. The Indian Council of Agricultural Research (ICAR), parent body of NDRI,

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thereafter issued a letter dated 26th September 1977 (A-V) saying that it had agreed to extend the benefits like continuity of past service, retention of lien, fixation of pay drawn in previous posts etc. to the employees coming from scientific organisations/universities. However, the above benefits, vide Annexure A-6 & 7, were extended only to the scientists appointed during the period from 1.10.75 to 11.6.79. As a result, the applicant who had joined NDRI/ICAR on 3.7.75 was left out from the purview of this concession. The applicant submits that as a result of this inequitable policy, a colleague junior to him, Dr. Sushil Kumar, who was all along junior to him both in the University/ICAR got higher pay because he joined ICAR after 1.10.75 (Annexure A-10). There may be similar other cases also. The applicant thereafter made a plea to ICAR that even if the benefit of protecting his pay drawn in the University though not being granted to him, at least his pay should be stepped up to the level of his junior Dr. Sushil Kumar. He is aggrieved that the ICAR has neither extended the benefit of protecting his pay in the University since he joined 3 months before the relevant date nor has in the alternative afforded him the benefit of pay equal to that of his junior. He, therefore, impugns the order (A-1).

2. Respondents in their reply state that the applicant did not suffer a loss of Rs. 200 p.m. as a comparative statement of pay drawn by him would show that the total emoluments drawn by him in NDRI were more. ~~at the time of his appointment in 1975~~ The ICAR followed the instructions of the Government of India, according to which prior to 1.10.75 the benefit of pay protection was allowed only to such quasi-permanent/permanent employees who had been allowed to retain their lien with their parent departments. It was only on introduction of A.R.S. in the council w.e.f. 1.10.75 that

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the council framed its own rules and these rules could not be given effect to cases earlier than the constitution of A.R.S. Respondents also denied the claim of the applicant that Dr. Sushil Kumar was or is his junior since there is no such concept in the A.R.S and members of A.R.S. are considered for further promotion only on the basis of their qualifications and experience. The applicant as well as Dr. Sushil Kumar were recruited directly and it is the prerogative of the Selection Committee to recommend the starting salary in respect of each candidate and, therefore, the applicant cannot claim parity with Dr. Sushil Kumar only because the Selection Committee in the case of Dr. Sushil Kumar had recommended a different starting pay.

3. During the course of the argument, the applicant appeared in person. He relied on a number of cases to substantiate his claim that there is a concept of junior and senior in ICAR and orders to that effect have been issued by ICAR. Citing the case of Dr. S.M.Ilyas & Others Vs. ICAR & Others (Civil Appeal No.2736/91) he pointed out that the issue before the Supreme Court was that the appellants before it were denied the benefit of equal pay for equal work and further persons junior to them were given higher scales of pay. The Supreme Court in its order held that while introduction of a new scheme of pay scales can place some [redacted] incumbants in better position than others but at the same time granting of new pay scales cannot be [redacted] arbitrary and cannot create a situation in which juniors may become seniors or vice-versa. This clearly established that there was a consideration of seniority and [redacted] juniors could not be placed in a better position compared to [redacted] seniors.

4. Having perused the orders of the Supreme Court, I find that the ratio cannot be applied to the case of the applicant since the facts in the case before the Supreme Court were different. There

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the scientists who were working in different grades but with similar pay scales were re-positioned in new pay scales in a manner that those with longer service were placed in lower pay scales. Nevertheless, the applicant has a case in as much as Dr Sushil Kumar joined ICAR service on 2.2.1977 as Scientist S-2 and his pay was fixed at Rs. 1100/- on joining. This pay had been allowed to the applicant on 3.7.75 when he joined. Yet, by the subsequent orders passed not on recommendations of the Selection Committee but only ⁱⁿ extending the benefit of his pay in the University, the pay of Dr Sushil Kumar was raised to Rs. 1350/- with retrospective effect from the date of his joining on 2.2.77. Had there been the recommendations of the Selection Committee, the position would have been different, as pointed out by the respondents. But ^{since} Dr Sushil Kumar and the applicant had been granted the same pay scales by the Selection Committee, persons who came later cannot be placed at more advantageous position in the same scale merely because ^{of} certain fortuitous situations like the date on which the ARS was constituted. The applicant was thus also entitled to stepping up of his pay equal to that of Dr. Sushil Kumar.

5. A point could be raised by the respondents that the applicant had been slack in seeking legal aid but since the question of limitation has not been raised by the respondents, I overlook the delay. However, the relief to which the applicant is entitled has to be modulated in terms of the time frame in which he has approached the Tribunal. Accordingly, I direct the respondents to refix the pay of the applicant on the same level as that of his junior Dr. Sushil Kumar in S-2 w.e.f. 2.2.77 on a notional basis and thereafter in accordance with the date of further promotions and the recommendations of relevant selection committees. However, any arrears on the basis of refixation are limited to one year prior to the date of filing of this OA.

R.K. Ahooja
[R.K. Ahooja]
Member (A)