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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2072/97

New Delhi, this the 23rd day of October, 2000.

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

1. Dr. S.B.S. Parihar, S/O Shri Arjun Singh, aged 44 years, working as T-II-3 in the Office of Central Potato Research Station, Modipuram (UP).
2. Pradeep Thapliyal, S/O Sh. S.C. Thapliyal, aged 45 years working as T-II-3 in the Office of Central Potato Research Station, Modipuram (UP).

.....Applicants

(By Advocate: Sh. V.S.R. Krishna)

Versus

Indian Council of Agriculture Research
through:

1. The Director General, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
2. The Director, Central Potato Research Institute, Shimla-171 507

....Respondents

(By Advocate: Sh. R.S. Aggarwal)

O R D E R

Hon'ble Mr. S.A.T. Rizvi, Member (A):

The applicants who belong to the technical services of the Indian Council of Agricultural Research (ICAR) and are as such governed by a separate set of rules, have filed this OA impugning the order contained in the ICAR's letter/order dated 10.1.96 (Annexure A-1). The ground is that by this letter, the respondents have arbitrarily and malafidely withdrawn the benefit earlier extended to the applicants vide ICAR's letter dated 1.2.95. Aggrieved by the said letter/order dated 10.1.96, the applicants filed their representation in the matter to which no reply has been received.

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2. The respondents have averred that the ICAR is competent to issue the said letter/order dated 10.1.96 and by issuing this letter/order, they (ICAR) seek to rectify an anomalous situation which had been created by extending the concession envisaged in the earlier letter dated 1.2.95.

3. We have heard the learned counsel for the parties and have perused the material on record.

4. There is no dispute about the fact that the applicant No.1 joined in T-1-1 grade in July, 1974 and was thereafter promoted to T-1-2 in June, 78 and subsequently, to T-1-3 grade in January, 85. It is admitted that all these grades fall in the category I as shown in the Hand book of Technical services published by the ICAR. Like-wise, the applicant No.2, who joined directly in T-1-2 grade in March, 76, was promoted to T-1-3 grade in July, 82. The Hand book of Technical services, on its first page, mentions three categories of Technical Officers with three grades each in categories I and II and four grades in category III. It is seen that the pay scale of T-1-3 grade in category I is the same as the pay scale of T-II-3 grade in category II. The duties and responsibilities attached to these two posts carrying the same pay scale are, according to the applicants, virtually the same. However, the respondents deny this contention. Both the applicants possess the qualifications required for promotion to the higher categories. The respondents, in their aforesaid letter dated 1.2.95, removed the category bar between categories I and II. This decision was taken at the level of the governing Council of the

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ICAR. The effect of this letter was that the existing employees working at the level of T-I-3 who possessed requisite qualifications prescribed for the entry grade of category II by direct recruitment method, were placed straightaway in grade T-II-3 of category II w.e.f. 1.1.95 and the others who did not possess the requisite qualifications as above, were given time to acquire the necessary qualifications whereafter they could also be considered similarly for placement in the entry grade of category II, namely, T-II-3. The same letter dated 1.2.95 also provides that merit promotion from grade T-II-3 to T-4 grade will be given by counting the services rendered in T-I-3 grade of category I alongwith the services rendered in T-II-3 grade in category II. A total period of five years has been provided for the purpose. The applicants' contention, admitted also by the respondents, is that the order contained in the letter of 1.2.95 has already been acted upon by the respondents in respect of the applicant No.1, whereas in the case of applicant No.2, the respondents have taken a different position in their counter reply. In respect of the applicant No.2, the respondents have stated that he was promoted under 33.1/3% department promotion quota from T-I-3 grade to T-II-3 grade w.e.f.31.10.94, and on account of this, the instructions contained in the respondents' letters dated 1.2.95 and 10.1.96 will not apply in his case. However, from a perusal of the letter dated 1.2.95, we find that no such distinction has been made and accordingly the applicant No.2 could also be considered for promotion to T-4 grade in category II after taking into account the

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services rendered by him under T-I-3 and T-II-3 grades on par with applicant No.1.

5. The respondents have stated that after issuing the letter/order dated 1.2.95, they received representations from the employees and after a careful consideration of the representations so received, they decided to recall the benefit extended through the said letter of 1.2.95, meaning thereby that for the purpose of computation of the period of five years of service for the grant of merit promotion from T-II-3 to T-4 grade, the services rendered in T-I-3 grade will not be counted. This has made all the difference and that is why the matter has been agitated by the applicants. In the light of the explanation given by the learned counsel for the respondents and the facts mentioned in the reply filed by the respondents, we can readily see that the respondents had indeed come up ² face to face ^d with certain problems and accordingly had to reverse the order dated 1.2.95. All the same, we have not been able to appreciate the need for retrospective application of the respondents' letter/order dated 10.1.96. These are executive instructions and should, therefore, be made to apply only prospectively. This would also mean that such prospective application will have to cover both the benefits extended by the letter of 1.2.95. The applicant No.1 has already benefited partly from the dispensation contained in the said letter and should, therefore, be allowed to avail of the other benefit also. He has already been placed in grade T-II-3 of category II, and viewed in this light, should be considered for subsequent merit promotion from T-II-3 grade to T-4 grade and should

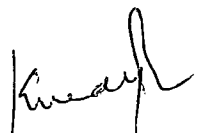
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be promoted to the T-4 grade subject to the fulfilment of the condition of five years' service in grades T-1-3 and T-II-3 and any other relevant condition already prescribed in the rule in question. We hold the same view in respect of the applicant No.2 who admittedly has not benefited from the order dated 1.2.95 so far. He is working in T-II-3 grade on a different basis after having been promoted under the departmental promotion quota of 33.1/3%. Even so, he has rendered service under both the grades, namely, T-1-3 and T-II-3. Thus, again subject to the fulfilment of the prescribed conditions including the length of service, he too should be extended the benefit envisaged in the said letter of 1.2.95.

6. In the result, the DA succeeds and the respondents are directed to grant the benefits under the ICAR's letter/order dated 1.2.95 to both the applicants. There shall be no order as to costs.

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(S.A.T. Rizvi)
Member (A)

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(Kuldip Singh)
Member (J)