

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1332/94 with OA 473/95

199

T.A.No.

DATE OF DECISION 9-2-2000

Dr.R.L.Arora(OA 1332/94)
Dr.R.C.Katiyar(OA 473/95)

....Petitioner

Sh.S.S. Tiwari

....Advocate for the
Petitioner(s)

VERSUS

ICAR through DG ICAR
Krishi Bhawan & Ors

....Respondent(s)

Sh.V.K.Rao

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)
The Hon'ble Shri M.P.Singh, Member (A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

31

O.A. 1332/94
with
O.A. 473/95

New Delhi this the 9 th day of February, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri M.P. Singh, Member(A).

O.A. 1332/94

Dr. R.L. Arora,
S/o Shri C.L. Arora,
R/o E-1060, Rajendra Nagar,
Izatnagar (Bareilly).

... Applicant.

By Advocate Shri S.S. Tiwari.

Versus

1. ICAR through
Director General ICAR,
Krishi Bhawan,
New Delhi.

2. Director (Personnel),
ICAR, Krishi Bhawan,
New Delhi.

... Respondents.

By Advocate Shri V.K. Rao.

O.A. 473/95

Dr. R.C. Katiyar,
S/o late Shri R.N. Katiyar,
R/o E-1228, Rajendra Nagar,
Bareilly (UP).

... Applicant.

By Advocate Shri S.S. Tiwari.

Versus

1. Indian Council of Agricultural
Research through
Director General,
Krishi Bhawan,
New Delhi.

2. Director (Personnel),
ICAR Krishi Bhawan,
New Delhi.

... Respondents.

By Advocate Shri V.K. Rao.

82

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Hon'ble Smt. Lakshmi Swaminathan, Member(J).

32

The learned counsel in both these cases (O.A.1332/94 and O.A.473/95) have submitted that these cases may be taken up together as the facts and issues involved in these cases are similar. Accordingly, both these cases are being disposed of by a common order.

2. The main issue for consideration in these cases is whether a direction should be given to the respondents to consider/re-consider their cases for promotion as Scientist-2 (S-2) and further grades in relaxation of Rule 19(2) of the Agricultural Research Service (ARS) Rules. The applicants claim that the respondents have failed to extend the benefits of the judgements of the Hon'ble Delhi High Court and the Tribunal in **Dr.M.L.Lodha & Ors. Vs. Union of India & Anr.** (Civil Writ Petition No. 1192 of 1984), decided on 5.3.1987 and **Dr. M.L. Lodha Vs. ICAR & Ors.** (TA 8/90), decided on 28.1.1992, giving them ante-dated promotions.

3. Shri S.S. Tiwari, learned counsel, has very vehemently submitted that the recent decision of the Tribunal in **Dr. R.L. Sharma Vs. D.G. ICAR and Anr.** (OA 2416/95), decided on 29.11.1999 is applicable to the facts in these cases. According to him, the respondents, who are the same as in **Dr. R.L. Sharma's case** (supra) had been directed by the Tribunal to consider the case of the applicant for promotion from S-I to S-II grade from the earliest date from which any of his juniors had been so promoted and on that basis give him further promotions with all consequential benefits, excepting monetary benefits in respect of the back-wages. He has

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submitted that the respondents have, ^{justified} ~~therefore~~ failed to implement the judgement in **Dr.M.L. Lodha's case** (supra) in a proper manner by not assessing the applicants for promotion from the time they became due for assessment i.e. 31.12.1975. He has also relied on the directions given by the High Court in **Dr. M.L. Lodha's case** (supra) in which the respondents were directed to extend their decision contained in the letter dated 24.8.1977 to the case of the petitioners and to relax Rule 19(2) in their favour and other erstwhile Junior Class-I Scientists who had been absorbed with effect from 1.10.1975 and further to give effect to the said relaxation to the case of eligible S-I Scientists for promotion w.e.f. 1.7.1976. Learned counsel has submitted that the facts in this case are ⁱⁿ ~~no~~ way different from the facts in **Dr.R.L. Sharma's case** (supra) wherein a direction had been given to the respondents to consider his case for promotion from S-I to S-II grade from the earlier date. He has very vehemently contended that in the present two cases also, the respondents in their reply have admitted that this has not been done and, therefore, he has prayed that a similar direction as given by the Tribunal in **R.L. Sharma's case** (supra) should be given to the respondents to have the cases of the applicants re-assessed strictly in accordance with the judgement in **M.L. Lodha's case** (supra) for further promotions. He has also submitted that in para 4.17 of the reply given by the respondents they have themselves admitted that it was not possible to carry out the assessment for the period ending 31.12.1975 after over a decade which shows that the respondents have failed to give effect to the judgement in **Dr.M.L. Lodha's case** (supra) to give benefits to the applicants which have been given to similarly situated persons in that case.

4. In Dr. R.L. Arora's case (OA 473/95), the applicant has also filed M.A. 2234/94 for interim directions. His claim for appointment as Project Co-ordinator (Pigs) would depend on his claims for promotion from an ante-date as Scientists S-2 and S-3 which are the main claims, referred to above.

5. The respondents in their reply to the two O.As have controverted the above facts. They have submitted that pursuant to the judgements of the High Court and the Tribunal in Dr. M.L. Lodha's case (supra) (TA 8/90), a High Powered Committee was set up which had made recommendations on Merit Promotion Scheme which was also approved by the competent authority. Shri V.K. Rao, learned counsel has submitted that the judgements of the High Court and the Tribunal have been fully and faithfully implemented by the respondents and the applicants can have no grievance at this stage. He has stoutly defended the position of the respondents in the present cases, stating that the applicants are not entitled to get the relief given in Dr. R.L. Sharma's case (supra). According to him, in that case as the pleadings would show, there was no assessment of Dr. Sharma, as directed by the High Court in Dr. Lodha's case (supra), which is not the position in the present two cases. He has also relied on what has been stated by the respondents in Para 4.17 of the reply that as it was not possible to carry out the assessment after over a decade, the competent authority had broadly decided to ante-date the benefit of assessment already granted to the erstwhile Junior Class-I Scientists on the basis of the original assessment by the number of years they were short of five years as on 31.12.1975. He has also drawn our attention to the original records maintained by the respondents to show that the

35

Applicant Dr. R.L. Arora's case had been reviewed in accordance with the judgement of the Delhi High Court and he had also availed of the right to seek another review by the ASRB which was also in accordance with the decision of the competent authority. Accordingly, the applicant's appointment to the erstwhile Grade S-2 among others, was ante-dated from 1.7.1982 to 1.7.1981. As a result of this ante-dated appointment, the applicant, however, did not become eligible for further assessment in the erstwhile Grade S-2 on 30.6.1986, but in the meanwhile the assessment scheme ceased to operate w.e.f. 1.1.1986 consequent on the introduction of the UGC pay package. Learned counsel has, therefore, contended that the facts in these cases are entirely different from the facts in Dr. R.L. Sharma's case (supra) as the applicants have accepted the decision of the competent authority and have had their cases assessed and re-assessed in furtherance to the judgement of the Delhi High Court. He has, therefore, submitted that the order of the Tribunal dated 29.11.1999 in Dr. R.L. Sharma's case (supra) would not apply in the facts and circumstances of these cases.

6. The respondents have also referred to the case of Dr. P.G. Nair whose appointment had been ante-dated in the erstwhile Grade-II from 1.7.1983 to 1.7.1977 as a result of which he had completed five years service in the erstwhile Grade S-2 on 30.6.1982 and, therefore, he had been assessed for the period ending 31.12.1982 and granted promotion to the next higher Grade S-2 w.e.f. 1.1.1983. They have also submitted that no favour as such has been shown to anybody and the applicants could not compare themselves to Dr. P.G. Nair as they did not have the requisite number of years. Shri V.K. Rao, learned counsel has submitted that the contention of Shri S.S.

36

Tiwari, learned counsel that the cases of the applicants are comparable with the case of Dr. Nair is not correct. For these reasons, the learned counsel has submitted that the judgement of the High Court in Dr. M.L. Lodha's case (supra) has not only been properly implemented in the cases of the applicants but has been implemented several years back. He has, therefore, submitted that for these reasons the present applications are not only barred by limitation but are also without any merit and he has prayed that the same may be dismissed.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. We have also seen the records in Dr. R.L. Sharma's case. From the reply given by the respondents in that case, it is seen that the contention of Shri V.K. Rao, learned counsel that no assessment had been made in pursuance of the judgement in Dr. M.L. Lodha's case (supra) is correct. Accordingly, the Tribunal vide order dated 29.11.1999 had directed the respondents to consider his case for promotion from S-I to S-II grades and subsequent promotions from the due dates. That set of facts is not the same in the two cases before us. Learned counsel for the applicant had relied heavily on para 4.17 of the reply given by the respondents to show that no assessment had been carried out by the respondents in the case of the applicants. The relevant portion of para 4.17 of the counter affidavit reads as follows:

"It is further submitted that the applicant is also an erstwhile Jr. Class-I Scientist and the benefit of antedation as per decision taken on the directions of Delhi High Court was also extended to the applicant. A copy of the Office Order No. 4-5/88-AU(1) dated 7.2.89 is placed below. The name of the applicant appears at S.No. 1 under the CSWRI, Avikanagar where he was

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37

posted before his transfer to the IVRI, Izatnagar. It may be recalled that the Hon'ble High Court had directed that the erstwhile Jr. Class-I Scientists who were absorbed in ARS w.e.f. 1.10.75 may be assessed in Gr. S-1 for promotion to the next higher grade S-2 w.e.f. 1.7.76 and that they shall also be entitled to all the consequential benefits ensuing therefrom. Since it was not possible to carry out assessment for the period ending 31.12.75 after over a decade, the Council decided broadly to antedate the benefit of assessment already granted to the erstwhile Jr. Class-I Scientists on the basis of the original assessment by the number of years they were short of five years as on 31.12.75. It was also provided that if any Jr. Class -I Scientist is not satisfied with the antedating of his assessment benefit as per the above scheme which gives him one review benefit and as such the chance of getting a benefit of assessment antedated, he shall have a right to seek another review by the ASRB. The applicant also availed of this decision and his appointment to the erstwhile Gr. S-2 among others, was antedated from 1.7.82 to 1.7.81.

9. It would appear ^{from the above on first flush} that the respondents have admitted that they did not carry out the assessment as it was not possible to carry out the same for the period ending 31.12.1975 after over a decade. However, the further sentences in the aforesaid paragraphs show that, in fact, the competent authority had carried out the assessment giving the benefit of assessment already granted to the erstwhile Junior Class-I Scientists on the basis of the judgement in Dr. M.L. Lodha's case (supra) which had been given by the Delhi High Court on 5.3.1987.

10. We have also seen the records pertaining to the applicants. It is noted that the respondents have held a special assessment of Junior Class-I Scientists who had joined service prior to 1.10.1975 and who were covered under the Delhi High Court judgement as a result of which the applicant Dr. Arora's appointment to the erstwhile grade S-2 had been originally assessed w.e.f. 1.7.1982 and later on re-assessment ante-dated to 1.7.1981. Similar is the case of the other applicant Dr. Katiyar in O.A. 473/95. It is also clear from

83/


38


the records that not only the applicants in the present cases have been assessed for the period ending 31.12.1975 in furtherance to the judgement of the Delhi High Court, but they had also availed the decision of the Council to avail of another chance and thereby got assessment to the Grade of S-2 ante-dated by one year w.e.f. 1.7.1981.

11. Therefore, in the facts and circumstances of the case, we see force in the contention of the learned counsel for the respondents that these cases are not ^{at all} on all fours with the facts in Dr. R.L. Sharma's case (supra). In that case, as no assessment had been done in furtherance to the judgement in Dr.M.L. Lodha's case (supra), a direction for assessment had been given. Such a direction would, therefore, not be applicable in the facts of the present cases. Apart from the merits, as the assessment of the applicants has already been done soon after the judgement in M.L. Lodha's case (supra), and these O.As have been filed on 9.6.1994 and 2.3.1995 respectively, they are also highly belated and also liable to be dismissed on the ground of limitation.

12. In the result, for the reasons given above, we see no merit in these two applications. O.A.1332/94 and O.A.473/95 are accordingly dismissed along with M.A.2234/94. No order as to costs.

13. Let a copy of this order be kept in O.A.473/95.


(M.P. Singh)
Member(A)


(Smt. Lakshmi Swamianthan)
Member(J)

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