

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.1640 of 1988

1st day of December, 1993

Hon'ble Mr. J.P. Sharma, Member (J)

Hon'ble Mr. B.K. Singh, Member (A)

G.S. Sirohi

Head of Division of Plant Physiology

Indian Agricultural Research Institute (IARI)

New Delhi.

..... Applicant

By Advocate: Shri B.B. Raval

VERSUS

1. The Union of India, through
The Secretary,
Department of Agricultural Research & Education,
Ministry of Agriculture,
Krishi Bhavan, New Delhi.

2. The Secretary,
Indian Council of Agricultural Research (ICAR)
Krishi Bhavan,
New Delhi.

2. The Director,
Indian Agricultural Research Institute (IARI)
New Delhi. Respondents

By Advocate: Shri A.K. Sikri

O R D E R

(By Hon'ble Mr. B.K. Singh, Member (A))

This O.A. No.1640/1988, Dr. G.S. Sirohi, applicant Versus Union of India & Others as respondents is directed against the impugned decision of the respondents communicated to the applicant vide letter No.2-1/87-AU dated 7th July 1988 from Director (P), ICAR, denying the career advancement opportunities on the basis of five-yearly assessment scheme to the applicant.



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2. The petitioner joined service of respondent No.3 on 2nd March 1963 as Plant Physiologist in Class I with a basic pay of Rs.850/- in the scale of pay Rs.700-1200. He was selected by Chairman, UPSC when he was working in USA. True copies of the offer of appointment and interview along with appointment letter dated 10.5.1963 are all annexed with the application and have been marked as annexure-A. At the time of joining, the respondent No.3 was Head of Department under the Ministry of Food & Agriculture but was subsequently transferred in 1966 under the control of respondent No.2, i.e. ICAR, a society registered under the Societies Registration Act. This was done as per the decision of the Government stipulating in the memorandum of transfer dated 21.2.1966 that the service conditions and other interests of the petitioner would be taken care of even after the transfer. This is annexure 'B' of the paper book.

3. The petitioner after transfer became a regular employee of respondent No.2. He was promoted to the post of Senior Plant Physiologist in the pay-scale of Rs.1100-1400 in the year 1968. This is annexure 'C' of the paper-book. On 7.1.71 the applicant was appointed to the post of Head of Division of Plant Physiology, IARI in the pay-scale of Rs.1300-1600 (pre-revised) and was governed under the rules and regulations issued by respondent No.2 i.e. ICAR from time to time. True copy of the order dated 7.1.71 has been filed with the application and marked as annexure 'D'. As a result of recommendations of 3rd Pay Commission he was placed in the pay-scale of Rs.1800-2000.

He however, claimed that he was entitled to higher pay-scale since he was holding a post which required managerial and research experience. It is further stated that after several representations the respondent No.2 revised his paya-scale and he was placed in the pay-scale of Rs.1800-2500 w.e.f. 1.11.1980. True copy of this fixation has been enclosed with the petition and marked as annexure 'E'. The petitioner, however, claims that this should have been done retrospectively w.e.f. 1.1.1973 when the recommendations of the 3rd Pay Commission were implemented. The applicant has prayed for grant of the following reliefs:-

- (1) He has wanted his assessment for the following promotional pay-scales along with the dates indicated against each:-

i. Rs.1800-2000	1.7.1976
ii. Rs.2000-2500	1.7.1982
iii. Rs.2500-3000	--
iv. Rs.3500.00 (fixed)	--

- (2) All the assessments due may be completed at one stroke and within 3 months of the court's decision;

- (3) He may be granted the pay-scale of Rs.1800-2250/- instead of Rs.1800-2000 as a result of recommendations of the 3rd Pay Commission.

4. A notice was issued to the respondents who filed their reply and contested the application and the grant of reliefs prayed for by the applicant. Heard the learned counsels for the applicant and the respondents, Shri B.B. Raval and Shri A.K. Sikri respectively.



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5. The main arguments of the both learned counsels are focussed on the interpretation of the rules of ARS which came into force w.e.f. 1.10.75. A copy of these rules of 1975 has been annexed with the application as annexure 'F'.

6. The main contention of the applicant is that though he did not exercise his option for ARS, his case is fully covered by the Appendix 2 of the service rules for the ARS issued by the Indian Council of Agricultural Research and as amended upto August 31, 1977 whereby the Council candidates means the persons specified in the schedule 1 on the date of constitution of the Service and rule 4 defines the scope and stipulates that all incumbents engaged in agricultural research and education and in all other disciplines under ICAR shall be deemed to be included in the Agricultural Research Service, option or no option, and as such the petitioner should have been deemed to be a member of the ARS and given the benefit of five-yearly assessment on par with those who exercised their option for ARS. However, the Part-I defines the initial constitution of the Service states in sub-clause 3,

"Council candidates who are not absorbed in the initial constitution of service will continue to work as at present."

Rule 12, however, is specifically devoted to scientists of outstanding merit and this reads as follows:



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"Notwithstanding anything contained in these rules, a scientist may be allowed to have a personal scale of pay higher than that of Grade S-3 while continuing in the service, in recognition of outstanding performance in research. For this purpose an appropriate procedure for assessment shall be prescribed by the Controlling Authority, in consultation with the ASRB."

Rule 19 lays down the procedure for the merit promotion and advance increments:

(1) Promotion from one Grade to the next higher grade shall be done periodically on assessment of performance by a procedure to be prescribed by the ASRB (after 5 years). The promotion of deserving scientists to the next higher scale will be irrespective of the occurrence of vacancies in the higher scale;

(2) A scientist will be eligible for screening for promotion or advance increments after the expiry of a period of five years service in the grade;

(3) The first screening of scientists for promotion or advance increment shall be made within one year of the introduction of ARS and thereafter once a year as early as practicable after 1st January in respect of all who have become eligible for consideration for promotion on or before the last day of the previous year ending on 31st December;

(4) Promotion or grant of advance increments to the successful scientists shall be given w.e.f. 1st of July of the year in which the assessment is made.



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Rule 20 of ARS lays down the policy of transfer:-

(1) A scientist shall be liable to be transferred to any place in India;

(2) A scientist maybe required to serve a minimum period of time in a backward or comparatively less developed area of the country as may be determined and decided by the Controlling Authority.

Rule 21 defines tenurial appointment. Any member of the Service appointed in the Council on a tenure basis, on completion of tenure will revert to a matching position in any area or Institute depending on the Councils' needs.

Other service conditions are laid down in Rule 22 which state:

(1) There will be no inter-se seniority among the scientists of the Service for the purpose of promotion;

(2) For the purpose of first screening under rule 19(3) entire period of service in the Grade including the service rendered in the pre-revised scale of pay shall be counted.

Rule 24 lays down that in any question of interpretation of these rules, decision of the President of the Council shall be final. A bird-eye-view has been given above to indicate the frame-work of the policies evolved by ICAR in regard to the Agricultural Research Service.



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7. The ARS was created to enable young scientist entering research career to get higher salary possible in public service without changing his or her field of specialisation without shifting to managerial and administrative posts merely for receiving better salary. The basic aim was to deglamourise the management posts and leave such positions only in the hands of those who have real aptitude and ability in the field of coordination and management. Opportunities for career advancement irrespective of the occurrence of vacancies, through a system of assessment should lead to each scientist competing with his or her own past rather than with colleagues and to the acceptance of the principle that "all rights accrue from a duty well done".. Horizontal and vertical mobility has been rendered possible and helping tribal and neglected regions has been made a part of this sacred duty and that is the reason why, while evolving policy for ARS, transfer to backward/tribal areas has been a must though on a tenure basis. The basic aim was to have the ARS to foster co-operation in the place of unhealthy competition; enable the scientists to get the highest salary possible within the system while remaining rooted to work in their respective discipline/field without hankering after glamorous posts; promote an outlook where solving a specific field problem through inter-disciplinary team work to achieve a goal or research rather than the worship of a discipline or publication of papers; promote horizontal and vertical mobility and adequate attention to neglected and backward areas; and to link rights and responsibilities, duties and obligations and rise in the ladder through



five-yearly assessment system. These assessments were to be based on dedicated and efficient discharge of duty and obligation cast on them.

8. Thus ARS was completely different in its aims and objectives. Research management posts were created at the ICAR Headquarters and Institutes and these were to be filled up on a tenurial basis and thus were kept outside the Agricultural Research Service. These posts were to be filled up by direct recruitment in which scientists working in ICAR were also made eligible. After holding a post in the ICAR a candidate was expected to revert to his previous position on a matching scale of pay.

9. We have very carefully gone through the pleadings and heard both the learned counsels and also have perused the record of the case, and we find that there were 14 scientists in all who did not opt for ARS. We have a feeling that these scientists deliberately did so because majority of them were working as Heads of Division with administrative and financial powers of sanctioning purchases to the tune of Rs.10,000/- and also sanctioning loans and advances minus HBA and car advance and sanctioning tours of scientists working under them and having their own perks and privileges and as such they did not want to subject themselves to the discipline of ARS which cast on them duties and obligations along with opportunities for career advancement. Duties and responsibilities also

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entailed their shifting from their cosy jobs as Head of Division and their transfer to backward/tribal areas and they were averse to this kind of rotation from IARI to any other place in the country and this is precisely the reason why they did not opt for the ARS. This is also the reason why ICAR could not shift them from their positions. The research management posts were all kept outside the purview of ARS. It would be seen that the third relief sought by the applicant is his promotion to the pay-scale of dRs.1800-2250 which was already allowed to him w.e.f. 1.11.80 and therefore this relief has become infructuous.

10. As regards the five-yearly assessment, the procedure laid down is that the proforma is circulated to the scientists working under IARI and other Institutes under ICAR. The procedure laid down is that Part-I of the proforma has to be filled up by the office in which the scientist is working; Part-II and Part-III have to be filled up by the scientist himself. Part-II is to give research project file maintained by the scientist and Part-III is to give bio-data and career information (various posts held etc.) of the scientist throughout his service career in ICAR. Part-IV of the proforma is to contain the gist of the synopsis of the CRs for the past 5 years for which assessment is being made. Part-V deals with personal discussion if so desired by the concerned scientist. Thus it is relevant to point out that the scientist is required to fill up the Part-II and Part-III




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of the proforma and after filling it he has to pass it on to the reviewer. The reviewer will then record his critical assessment in Part-IV of the proforma and pass it on to the DDG/DG of ICAR, who after his assessment may agree or disagree with the reviewer and in case of disagreement he will record his reasons and pass on the same to the ASRB. The assessment of each scientist shall be extremely rigorous and his suitability for grant of next higher pay-scale shall be adjudged by the Committee on the basis of whether his performance has been outstanding or not rather than on the basis of long and meritorious service done. It is only on the basis of such assessment that the scientists will be considered and recommended for the next higher pay-scale. It is only through this process that a scientist can rise to Grade S-8 (Rs.3500/- revised to Rs.8000).

11. Whereas the learned counsel for the applicant relies on the fact that the applicant was Council's candidate and therefore he shall be deemed to be included in the ARS as defined in "Scope" as per Rule 4. The learned counsel for the respondents rebutted the same. The applicant, according to the learned counsel for the respondent, chose not to opt for ARS and preferred to be Head of Division under which he took the benefit of special pay of Rs.150/- (annexure 'E') along with the pre-revised pay-scale of Rs.1300-1600 which was later on revised in the case of scientists vide letter No. 8-3/76/AU-4 dated 29.6.81 giving them the benefit of pay-scale of Rs.1800-2250 w.e.f. 1.11.80.

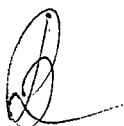


When this letter was issued in 1981 giving effect from 1.11.80, the applicant according to the respondents never raised any objection to this and therefore the doctrine of ~~estoppel~~ will apply to this case. The applicant not only was allowed this higher pay-scale admissible to scientists of S-4 but also got Rs.150/- as special pay as Head of Division and then he could also escape the hassles of transfer which creates dislocation in ones family life and he also could escape the duties and obligations of ARS by choosing not to go in for it. He cannot be allowed to have the best of the both worlds. He already had the best as a scientist working as Head of Division drawing his pay-scale of Rs.1800-2250 with a special pay of Rs.150/- and he had also financial powers of sanctioning purchases to the tune of Rs.10,000/- and sanction loans and advances and tours of the scientists working under him. It is also possible that if he had opted for ARS, he would have ^{been} required to work under an officer who might have been his junior because in ARS inter-se seniority had been done away with. It is also a fact that when the ICAR was constituted he signed an agreement to the effect that he will be transferred to ICAR and will be governed by the rules, regulations and other policies evolved by it subsequently. His attention was invited to Part-IV of the Memo No.F-28/65-Re-organisation/(CC)(1) dated 21.2.66 issued along with the letter. The endorsement made to

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him said, "If you are agreeable send a reply to the said letter as prescribed therein within the specified time". The applicant did signify his assent and sent the communication to them. The learned counsel for the respondents further stated that the contents of the letter of offer dated 21.2.66 has to be read harmoniously and as a whole. This agreement was not based on any tripartite agreement as alleged by the applicant. It was based on the decision of the Government. Rationalisation of the pay-scales of Heads of Divisions is shown at annexure 'E' which also gives a alist of 7 Heads of Divisions in which Dr. Sirohi's name figures at Sl. No.4. The Letter No.A-3/36 Part-4 dated 29.6.81 while rationalising the pay strucutre gave them the pay-scales retrospectively from 1.11.80 and placed them in the scale of Rs.1800-2250 with a special pay of Rs.150/- that It was further argued/ on the basis of Gajendra Gadkar Committee recommendations the research management posts were kept outside the Agricultural Research Service. The scientists who were working as Heads of Divisions including the applicant, accepted the rationalisation of their pay structure without any protest or raising any grievance, and therefore the applicant cannot be allowed to raise the grievance now by filing a belated application. Once they decided to remain outside the ARS they cannot be allowed to demand their pay-scales which were based on five-yearly assessment. These scientists were averse even to fill up the proforma, especially Part-II and Part-III. Atleast there is nothing to show that they ever filled up the proforma and sent it to the Director, IARI for the critical

evaluation of the reviewer/Controlling Authority and to ARSB. The assessment report filed by the applicant is just an after-thought to claim higher scale of pay. The applicant along with other scientists decided not to join the ARS and to continue as Head of Division meant that he did not want to subject himself to the discipline of the ARS which has in it a compulsory posting in a backward/tribal area. The S-4 pay-scale of Rs.1800-2250 was given to these scientists including the applicant as personal pay and on an ad hoc basis with a special pay of Rs.150/- S-5 pay-scale required three years experience as Director/Head of Division/Project Coordinator/Joint Director//Asstt ^{General} Director/_or Head of Department or equivalent post in an university in the pay scale of a Professor on a regular basis. S-6 posts required 6 years experience as Dean/Director/Head of Division/Project Director/Jt. Director/Asstt. Director/Head of Department or an equivalent post in a university. The averment of the applicant that he was holding a managerial-cum-research post is not correct. The Heads of Divisions were also to be appointed on rotation basis for a tenure of 3 years and these were not included in research management posts. And therefore, the applicant was not entitled to the benefit of assessment as envisaged in Rule 8 applicable to Research Management Positions (RMP). He did not comply with the terms of Rule 10 of the ARS read with Schedule 1 thereto and instructions contained in ICAR circular dated



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15.9.75 circulated to all Heads of Divisions including the applicant vide IARI endorsement No. 26-1/74/RMP dated 24.9.75. Since the applicant failed to comply with the requirements he was not appointed to the ARS at the initial stage of the constitution of the ARS. He also did not hold any of the posts specified as such in Rule 1 of the Rules of RMP. RMP was kept out of the purview of ARS. The applicant was compensated by giving the pay-scale of Rs.1800-2250 with special pay of Rs.150/- as Head of Division. It is only at the fag end that the applicant applied for career advancement and five-yearly assessment which according to the respondents is an after-thought in 1988. This according to the respondents is to avoid limitation. It was argued that his previous representation on the subject was drejected as far back as 1981. The cause of action arose in 1981 when he did not raise any protest or grievance and accepted rationalisation of pay-structure for the Heads of Divisions. The filing of this OA is only an attempt to revive the cause of action which is barred by limitation. The learned counsel for the respondents has also quoted ruling of the Hon'ble Supreme Court, 1988 3 SLJ 431 (432) which lays down that repeated representatio do not add to limitation. This has also been relied upon in ^{many} judgments of the Principal Bench of CAT. The applicant cannot claim to be a member of ARS without subjecting himself to its discipline, advantages and disadvantages. Rights and obligations



go together. The learned counsel for the respondents has also cited a ratio of the judgment of the Hon'ble Supreme Court in the case of V.T. Khanzode Vs. R.B.I. reported in AIR (1982 SC 917) which reads:

"No scheme governing the service matter can be fool-proof and some section of the employees is bound to be aggrieved on the score of its expectations falsified or remaining to be fulfilled."

12. We have also carefully gone through the departmental file dealing with the representations of the applicant. The departmental file is revealing in the sense that there are two streams of thought in dealing with these representations but finally the only conclusion that has been drawn is that the applicant is not a member of Agricultural Research Service. He along with 13 other scientists, who also did not opt for ARS, were excluded from ARS and they never raised any protest nor did they exercise option at a belated^{stage}. It is only at the fag end of his career that the applicant has started filing representations for five-yearly assessment which was considered by the department and it was felt that Dr. Sirohi himself did not fill up Part-2 and Part-3 of the proforma for his 5-yearly assessment and as such he is to^{be} blamed for it. All the scientists working in the IARI who did not opt also were averse to filling up the profoma prescribed for 5-yearly assessment. There was no scope of critical evaluation by Director, IARI or assessment by DG and finally also the assessment and review by the ARSB. As a matter

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of fact they blocked their own promotion by not filling up the part-2 and part-3 of the proforma which was absolutely essential for evaluation of their work and performance for promotion in the higher pay-scale. Dr. N.S. Randhawa's letter dated 30.7.87 has gone to the extent of informing Dr. Sirohi that even the post of Head of Division which he has continued to hold, is a rotational post and ^{he} may not be in a position to retain it and he may be transferred after 5-yearly assessment to some other place. There is no reply to this letter.

13. Taking a synoptic view of all the facts and circumstances of this case, we have come to the conclusion that,

(i) Fourteen scientists including 7 Heads of Divisions did not opt for the ARS and Dr. Sirohi is one of them figuring at Sl.No.4, and they were allowed the pay-scale of Rs.1800-2250 with a special pay of Rs.150/- as purely personal and ad hoc to them;

(ii) He along with other Heads of Divisions and scientists did not fill up the part-2 and part-3 of the proforma nor did they opt for rotation of their posts and as such they cannot claim the benefit of the 5-yearly assessment. Once they did not fill up the part-2 and part-3 of proforma they blocked ~~xxxx~~ further evaluation of their work and performance and as such neither the Director, IARI nor the DDG/D ICAR could evaluate their performance and send the assessment to ARSB.

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14. In view of the foregoing observations we find that the applicant has miserably failed to make a case in his favour. This application is devoid of any merit or substance and is accordingly dismissed. It is also hopelessly time-barred since the cause of action arose in 1981 and the application was filed in 1988 and as such it is also not under the jurisdiction of this Tribunal because the cause of action arose more than 3 years before the CAT Act came into force in 1985.

15. However, while parting with this case, we would like to observe that the applicant was allowed the pay-scale of Rs.1800-2250, as spersonal to him, along with other Heads of Divisions, with a special pay of Rs.150/-, and he might, therefore, be considered for replacement scale w.e.f. 1.1.86 on the basis of the recommendations of the 4th Pay Commission.

There will be no order as to costs.



(B.K. Singh)
Member (A)



(J.P. Sharma)
Member (J)