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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

1. OA No. 897/88 Date of decision: 21.09.1993.

Dr. Sushil Kumar & Others ...Petitioners

2. OA No. 908/88

Dr. (Mrs) Swaraj Ghai ...Petitioner

Versus

Union of India through the
Secretary, Ministry of
Agriculture, New Delhi & Another ...Respondents

Coram:- The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. J.P. Sharma, Member (J)

For the petitioners None.

For the respondents Shri V.K. Rao, proxy counsel
for Shri A.K. Sikri, Counsel.

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra)

OA-897/88 has been filed by Dr. Sushil Kumar, Dr. Balram Sharma, Dr. Bibhash Kumar Mukherjee and Dr. M. Ahluwalia while O.A. No.908/88 has been filed by Dr. (Mrs) Swaraj Ghai. As both the OAs raise identical issues of law and of fact, we proceed to dispose them of through this common judgement. For facility of disposal we are dealing in detail with OA-897/88 and the conclusions arrived at in the said O.A. would be applicable mutatis mutandis to OA-908/88.

OA-897/88

2. Dr. Sushil Kumar, petitioner No.1, Dr. Balram Sharma, petitioner No.2, Dr. Bibhash Kumar Kukherjee, petitioner No.3 and Dr. M. Ahluwalia, petitioner No.4 are Scientists working in the Indian Agricultural Research Institute (IARI). The IARI is a unit of

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Indian Council of Agricultural Research (ICAR) which is a society registered under the Registration of Societies Act. The petitioners contend that the administrative control of the IARI was transferred to ICAR with effect from 1.4.1966 vide memorandum dated 21.2.1966. Consequent to the said transfer the following terms and conditions were arrived at to regulate their service:-

- i) that the scales of pay of the post as also the emoluments at the time of their employment by the council will continue to be the same;
- ii) the grant of pay, leave, travelling and other allowances and other service conditions of the said staff shall be regulated, mutatis mutandis in accordance with the Fundamental and Supplementary rules and orders as are issued by the Government of India from time to time; and
- iii) the existing inter-se-seniority of the employees in the said institute will be maintained.
"However, their overall seniority in the I.C.A.R. with the rules to be framed for this purpose."

Respondent No.2, I.C.A.R. notified new rules and constituted Agricultural Research Service (ARS) w.e.f. 2.10.1975. The said rules provide merit assessment scheme with a view to provide adequate avenues of promotion to the Scientists having regard to the research work and their other performance. The petitioners No.1-3 were promoted as S-III w.e.f. 1.7.1977 while petitioner No.4 was promoted to the post of S-III w.e.f. 1.7.1976. The petitioner concede that the promotion was given to them according to the merit, as contemplated under Rule 19 of 1975 Rules. They also concede that

the promotion was granted after meticulously considering the work of the petitioners on the basis of peer review system. They, however, contend that the respondents were maintaining inter-se-seniority for all purposes except for promotion among the Scientists. They ^{further} contend that although Rule 12 of ARS, Rules, 1975 provides for only four grades including and upto S-III level but a scientist can be promoted to the next higher grade to S-IV if it is found that he has done outstanding work during his research career as Scientist-III. In pursuance of the provisions of the Rules and the procedure prescribed in Rule 19 of ARS, 1975, a five yearly assessment is provided for S-III to grant them advance increments ^{and} for grant of S-4 scale of pay as personal to them. While they consider that there is no inter-se-seniority provided for, they contend that the inter-se-seniority is maintained for all other practical purposes. The petitioners were considered by the Agricultural Scientists recruitment Board and promoted from S-III to S-IV in the pay scale of Rs.1800-2250 w.e.f. 1.7.1982 and their pay was fixed at Rs.2000 per month. Prior to their promotion they were drawing Rs.1900/- per month. In a subsequent selection Dr. Baldev, Dr. Anupam Verma and Dr. G.R. Sethi were considered for promotion to the grade of S-IV. Dr. Anuppa, Verma and G.R. Sethi have been given promotion w.e.f. 1.1.1984 whereas Dr. Baldev has been promoted to S-IV w.e.f. 1.7.1983. The grievance of the petitioners is that whereas Dr. Anupam Verma, Dr. Sethi and Dr. Baldev were fixed at Rs. 2125/- per month from the date of their promotion, the petitioners were fixed at Rs.2,000. They contend that they are senior to Dr. Baldev, Dr. Anupam Verma and Dr. G.R. Sethi but are drawing less

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salary than the three Scientists mentioned above.

3. By way of relief they have prayed that the respondents be commanded to rectify the anomaly in the fixation of pay in regard to the petitioners and their pay should be stepped up to the level of their juniors viz. Dr. Anupam Verma, G.R. Sethi and Dr. Baldev. They claim the benefit of higher fixation of pay under FR31 (2), in terms of their conditions of service.

4. The respondents have not disputed the status of the IARI vis-a-vis ICAR. They also admit that F.R. S.R. are also applicable to the employees of ICAR. They submit that all the persons including the petitioners were substantively appointed in the A.R.S and this position was accepted by the petitioners. The petitioners were thereafter considered for promotion to S-III Rs.1500-2000 and were appointed to the said post. According to the ARS Rules, 1975 Scientists can be promoted upto the level of S-III only. The next higher grade of S-IV is granted on personal basis to those Scientists whose performance has been outstanding during their research career. They affirm that in accordance with the rules the substantive promotion is only upto S-III. However, in accordance with proviso to Rule-12 a particular Scientist with outstanding performance and research is given a personal scale of higher pay than that of S-III. For the purpose of promotion there is no inter-se-seniority amongst the members of the service. The promotions are based primarily on merit. The seniority has no role to play in promotion. Under this five yearly assessment scheme promotions are made in accordance with the flexible complementing scheme, i.e., the post held by the

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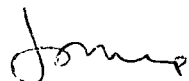
Scientist who is being promoted itself is upgraded if his performance and merit is found to be of higher order by the Assessment Board. The promotion accordingly does not depend on the vacancies. The seniority has a role to play where the promotions are dependant on the number of vacancies. The promotions in IARI or ICAR are on the other hand dependant on merit. The respondents also submit that there is no question of applicability of F.R. 31(2). The difference in the pay drawn by the petitioners and Dr. Baldev, Dr. Verma and Dr. Sethi has arisen because the latter were given advance increments on their assessment. Dr. Sethi, Dr. Verma and Dr. Baldev were each given one advance increment. They were granted the grade of S-IV w.e.f. 1.7.1984, 1.1.1984 and 1.7.1983 respectively. In these circumstances the question of stepping up of pay with reference to Dr. Baldev, Dr. Verma and Dr. Sethi does not arise. The provisions of FR 31 (2) are not applicable in the case. In fact the matter was considered by the ICAR in consultation with the Ministry of Finance and Department of Personnel when it was clarified that FR 31(2) will not be applicable in the matter of pay fixation of such Scientists who have been granted merit promotion on the basis of five yearly assessment under Rules 12 and 19 of A.R.S. Rules respectively. As the Scientists are not confirmed against any posts in the A.R.S. and the pay in the higher posts is treated as substantive pay. In these circumstances, there is no violation of F.R. 31 involved.


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5. We have considered the respective stand of the petitioners and the respondents. Admittedly, there is no inter-se-seniority amongst the Scientists. Their promotions are based on merit and not on seniority. The question of stepping up of pay with reference to so called juniors accordingly does not arise. There is no anomaly in the pay fixation. The pay of these Scientists have been fixed in accordance with the relevant rules and the fact that certain persons are drawing higher pay is due to the fact that the Assessment Board recommended them advance increments at a particular stage. The grant of advance increments on the basis of assessment does not constitute anomaly in the fixation of pay. The petitioners have also been enjoying the benefit of ARS Rules 1975 and accepting promotions under the five yearly merit assessment. It is not open to them to seek stepping up of pay under FR/SR. Once they have accepted the promotion under the new scheme, they cannot invoke the conditions of service for seeking benefit to which they are not entitled. In view of the above facts and circumstances of the case the O.A. is devoid of merit and is dismissed, leaving the parties to bear their own costs.

OA-908/88

6. In view of the conclusions arrived at above in OA-897/88, OA-908/88 also does not survive and the same is also dismissed. No costs.


(J.P. SHARMA)
MEMBER(J)


(I.K. RASGOTRA)
MEMBER(A)

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