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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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RA.439 of 1993 in OA.897 of 1988, And
RA.440 of 1993 in OA.908 of 1988.

Dated at New Delhi, this the 07th day of Oct, 1994

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

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

RA.439/93 in OA.897/88

1. Dr Sushil Kumar
Biotechnology Centre
Indian Agricultural Research Institute
NEW DELHI-12
2. Dr Balram Sharma
Division of Genetics
Indian Agricultural Research Institute
NEW DELHI-12
3. Dr Bibhash Kumar Mukherjee
Cummings Laboratory
Division of Genetics
Indian Agricultural Research Institute
NEW DELHI-12
4. Dr M. Ahluwalia
Head, Central Seed Testing Laboratory
Indian Agricultural Research Institute
NEW DELHI

... Applicants

By Advocate: Shri B. S. Raval

VERSUS

1. Union of India through
Secretary
Ministry of Agriculture
Krishi Bhawan
Rafi Marg
NEW DELHI
2. Indian Council of Agricultural
Research, through its
Director General
Krishi Bhawan
NEW DELHI

... Respondents

By Advocate: Shri V. K. Rao

RA.440/93 in OA.908/88

Dr (Mrs) Swaraj Ghai
Professor of Entomology
Division of Entomology
Indian Agricultural Research Institute
Pusa, NEW DELHI-12

... Applicant

By Advocate: Shri B. S. Raval

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Ministry of Agriculture
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... Respondents

By Advocate: Shri V. K. Rao

O R D E R

Shri J. P. Sharma, M(J)

These two RAs have been filed by the review applicants for review of the order and judgement and OA.908/88 passed by this Tribunal in OA.897/88 on 21.9.93.

No replies to the RAs have been filed. The judgement dated 21.3.93 was a common one and OA.897/88 was the leading case. RA.439/93 is against judgement in OA.897/88 and RA.440/93 is against judgement in OA.908/88. Both the above RAs are taken together. OA.897/88 was filed by Dr Sushil Kumar and three

others including the present review applicant

Dr Balram Sharma. The reliefs prayed for jointly by

all these applicants was: (i) for a direction to the

respondents to rectify the anomaly erupted in the

salary of the applicants in comparison to the juniors,

viz., Dr Anupam Verma, G. R. Sethi and Dr Baldev (ii)

direct the respondents to take alternative step to

step up the salary of the applicants in comparison

to the salary of the juniors, and (iii) pass any other

orders as deem fit by the Tribunal.

2. OA.908/88 was filed by Dr (Mrs) Saroj Ghai against the respondents claiming almost the same reliefs which have been prayed by Dr Sushil Kumar and three other in OA.897/88. The Principal Bench delivered the judgement after hearing the proxy counsel for Shri A. K. Sikri, counsel for the respondents, and none was present for the applicants in either of the OAs referred to above. By the aforesaid judgement delivered on 21.9.93, both the OAs were dismissed.

3. These RAs have been filed on the ground that ^{an} there is an error apparent on the face of the record in as much as there is an observation in the order that all scientists are clubbed and converted into crowd without any seniority whatsoever, which is not correct which is not a fact because the absence of inter-se-seniority is limited only to a particular grade. Secondly, it is pointed out that scientists when assessed for promotion are promoted to the next ^{if} higher grade if found fit, but not and if the case merits, instead of promotion, they are given some advance increments which means that persons who do not merit promotion on assessment are given some sort of consolation prize by way of advance increments. It is stated as a ground that those who failed to make the grade yet earned advance increments, as senior and superior to the applicants whose only fault was that

they earned promotion by virtue of merit, and not consolation prize by way of advance increments. The third ground is that those who were lacking merit, on the observation got advance increments. The fourth ground is that the applicants are enjoying all the benefits of ARS Rules, 1975 by accepting promotions and, therefore, it is not open for them to demand stepping up of pay because the matter is exactly the other way round.

It is stated that in the judgement a view has been taken against the facts as the applicants were meritorious and therefore got promotions earlier than those who lacked merit but were given advance increments as a consolation prize and the pay fixation was done according to rules. It is further stated that respondents had failed to inform certain facts to the Tribunal at the time of hearing. It is stated in the case of Dr. S. M. Ilyas Vs U.O.I. though he could not get relief from the Tribunal, the Hon'ble Supreme Court ordered for stepping up of pay of Dr. Ilyas on the basis of higher pay to his junior.

4. . We have heard the counsel for the Review applicants. The respondents have refrained from filing any reply and obviously it appears that other cases decided by the Principal Bench have directed the stepping up of pay of similarly situated applicants to the level of the juniors.

5. Shri V. K. Rao, counsel represents the respondents and he could not, in any way, say the impugned orders pointed out by the learned counsel for the applicant XXXXX were not considered in judgement under review. We have also gone through the judgement in OA.1820/93 Devpal Vs. ICAR decided by Principal Bench on 11.3.94. In that case Dr Devpal was granted relief of stepping up of pay with effect from the date as has been given to Amar Singh. The review applicants have also prayed before us the decision on Civil Appeal No.2736/91 in the case of Dr S. M. Ilyas and others versus ICAR and others decided by the Hon'ble Supreme Court vide order dated 13th November, 1992. The operative portion of that judgement is quoted below:

"We, therefore, allow this appeal and direct the respondents to issue appropriate orders so that any of the appellants or the like working as Scientist S-2 or S-3 on or before 31.12.85 earlier to anyone of the Scientists getting benefit of the revised pay scales under the impugned notification dated 9.3.1989 also get a similar benefit of revised pay scale of Rs.4500-7300 in the case of S-3 and pay scale of Rs.3700-5700 in the case of S-2. Such revised pay scales shall be given from 1.1.1986 as given to S-2 and S-3 scientists under the impugned notification. The respondents are directed to take suitable action in this regard and to pay the entire amount within six months from the date of this order. In the facts and circumstances of the case, we pass no order as to costs."

6. Paragraph-5 of the judgement dated 21.9.1993 under Review is reproduced below:-

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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 OA is devoid of merit and is dismissed, leaving the parties to bear their own costs."

The observation of the Bench in the above judgement is

that there was no inter-se-seniority among the

-scientists and their promotions are based on merit

and not on seniority. The question of stepping up of

pay with reference to so-called juniors does not arise.

However, it appears that the ratio laid down in the case

of Dr. S.M. Ilyas and others has not been correctly

applied to the present case. The Honourable Supreme Court

while disposing of Civil Appeal No. 2736/91 by the order

dated 13th November, 1992 that Scientist S-2 were in the

pay scale of Rs.1100-1600 prior to the introduction of

the revised pay scales by the impugned notification dated 9th March, 1989. By the impugned notification, the post of Scientist S-2 has been bifurcated in two grades as Scientist (Senior Scale) in the pay scale of Rs.3000 - 5000 and Scientist (Selection Grade) in the pay scale of Rs.3700 - 5700. Similarly, in the case of Scientist S-3 which has a common pay scale of Rs.1500 - 2000 has now been bifurcated as Scientist (Selection Grade) in the pay scale of Rs.3700 - 5700

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XXXXXXXXXXXXXXX and Principal Scientist in the pay

scale of Rs.4500 - 7300. The basis for giving higher

pay scales has been taken as period of total service

in ARS as 8 years in the case of Scientist S-2 and

16 years in the case of Scientist S-3. It would have

been correct in case the recruitment rule of Scientist

S-2 and S-3 had been made purely on the basis of

seniority and length of service in ARS. But the

admitted position is that such posts of Scientists S-2 &

S-3 were also filled by direct recruitment from public

as well as by merit from amongst the members of the

ARS. Thus, the analogous situation created is amply

illustrated by the examples of Dr. G.C. Sharma and

Dr. Sheo Raj in the case of Scientist S-3 and the case

of Mrs. Pratibha Shukla, Sh. B.S. Modi in the case of

Scientist S-2. Dr. Sheo Raj came to be appointed as

Scientist S-3 on 16.12.1979 while Dr. G.C. Sharma

came to be appointed as Scientist S-33 on 1.1.1985

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Admittedly on 31st December, 1985 both were in the scale of Rs.1500 - 2000. Now on the basis of the impugned notification Dr. G.C. Sharma gets the pay scale of Rs.4500 - 7300 as Principal Scientist, while Dr. Sheo Raj is fixed in the pay scale of Rs.3700 - 5700 as Scientist(Selection Grade).

Similarly, in the case of Sh. B.S. Modi and Mrs. Pratibha Shukla in Scientist S-2.

7. In view of the above facts the impugned judgements in OA 897/88 and 908/88 delivered on 21.9.1993 are reviewed.

8. The arguments of the learned counsel for the parties have been heard afresh. Sh. V.K. Rao appearing on behalf of the respondents argued that in view of the judgement of Dr. Daspal in OA 1820/93 decided by Principal Bench on 11th February, 1994 here nothing to add and the case may be decided in terms of the judgement.

9. The applicants were directed to file further details of their service but the chart filed does not make out the facts to reach a definite conclusion.

10. The reliefs claimed by the applicants in OA 897/88 for a direction to the respondents to rectify the anomaly erupted in the salary of the applicants in comparison to the juniors, namely, Dr. Anupam Verma, Dr. G.R. Sethi and Dr. Baldev.

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11. The contention of the learned counsel for the applicants is that the persons who were promoted subsequent to the applicants, their pay has been fixed who were promoted before the persons juniors to the applicants. The applicants have also filed a chart to show the the date of promotion of Dr. Sushil Kumar and that of Dr. Baldev, Dr. Verma and Dr. Sethi showing that the date of joiningXX in this cadre is shown from 1.7.1976 and their basic pay was fixed in the grade was Rs.1500 which was subsequently raised in the course of time to Rs.1900. But on promotion to Scientist S-4 cadre Dr. Sushil Kumar was promoted on 1.1.1983 and after promotion in Scientist S-4 cadre his pay was fixed at Rs.2000. While Drs. Baldev, Verma and Sethi were promoted in July, 1983, January, 1984 and July, 1984 respectively and pay of each of them was fixed at Rs.2125. In view of this, there is a great anomaly.

12. Similarly, in OA 908/88 Dr. Mrs. Swaraj Ghai joined as Scientist S-3 in July, 1976 and so also Drs. Baldev, Verma and Sethi and initially their pay was fixed at Rs.1500 which rose to Rs.1900 on 1.7.1982. The date of promotion of Dr. Mrs. Swaraj Ghai is 1.7.1984 and she has been fixed in the pay scale of Rs.2000, while the remaining three doctors/scientists promoted alongwith her or immediately before her were fixed in the pay scale of Rs.2125.

13. The respondents counsel have given a statement at the Bar that both the applications be decided in terms of the judgement of Dr. Deopal. In the case of Dr. Deopal, Scientist S-2, Sh. Amar Singh was treated as junior to Dr. Deopal who was appointed a month later than the applicant. So the relief prayed for by Dr. Deopal was granted to him by stepping up his pay to the level of Sh. Amar Singh and it was ordered that his pay be fixed at Rs.3825 with effect from the same date as has been given to Sh. Amar Singh and his next date of increment in the pay scale of Rs.3700 - 5700 should be the same as that which has been fixed for Sh. Amar Singh.

14. In view of the above facts and circumstances, the judgement in both the original applications under Review are reviewed. The para 5 of the judgement quoted above as well as para 6 are substituted by the above reasoning and following the decision of the Supreme Court judgement in the case of Dr. S.S. Illyas & Ors.(Supra) and that of Dr.Deopal(Supra) both the applications are disposed of with the directions to the respondents :-

- (1) The respondents should rectify the anomaly in the salary of the applicants by fixing the salary of the applicants of both the original applications in comparison to the salary of Dr. Anupam Verma,

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(2)

Dr. G.R. Sethi and Dr. Baldev and the salary be

stepped up in comparison to the aforesaid persons

who are shown junior to the applicants. However,

in the circumstances, the parties should be allowed

to bear their costs. The applicants in both the OAs

shall be paid the difference of pay as a result of

stepping up of their pay as said above within three

months from the date of the receipt of the copy of

this order.

(B.K. Singh)

Member(A)

(J.P. Sharma)

Member(J)

A Hester
LSC
7/10/94
Co/C-IV