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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.2437/90

New Delhi, this the 9th day of January, 1995

Hon'ble Shri N.V.Krishnan, Vice Chairman (A)
Hon'ble Dr.(Ms) A.Vedavalli, Member (J)

Shri D.R.Ghodkar

2. Shri K.K.Gandhi.

3. Shri M.P.Bindal

4. Shri G.S.Sharma

5. Shri B.S.Bector

6. Shri R.C.Gupta

7. Shri R.S.Solanki

8. Shri V.K.Arora

9. Shri Surendra Singh

10. Shri S.B.Agarwal

11. Shri B.G.Ladkani

12. Shri P.K.Nagpal

13. Shri Chand Kurar

14. Shri R.C.Sharma

15. Shri G.G.S.N. Rao

16. Shri V.Katyal

17. Shri Ashok Kumar

18. Shri K.L.Chawla

19. Shri I.K.Girdhar

20. Shri T.S.Sinha

21. Shri K.N.Singh

22. Shri A.H.Qadar

..Applicants.

(All working as Scientist 2
in National Dairy Research
Institute, Karnal (Haryana).

(By Advocates Shri R.Venkataramani
and Satya Mitra Garg)

Vs.

The Indian Council of Agricultural
Research (ICAR) through its
Director General, Krishi Bhawan,
New Delhi-110 001.

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ORDER (Oral)

SHRI N.V.KRISHNAN VICE CHAIRMAN(A)

When this case was called twice today, none appeared for either party. We have therefore perused the records and we proceed to dispose of this O.A.

2. The applicants are scientists under the Indian Council of Agricultural Research (ICAR). The Agricultural Research Service (ARS) was constituted with effect from 1-10-1975 in exercise of the powers conferred by Rule 38 of the ICAR Rules. Prior to 1-10-75 the scientists were holding positions carrying various pay scales. The lowest four pay scales with which we are concerned are Rs.425-700, Rs.550-900, Rs.650-1200 and Rs.700-1300. On the coming into force of the ARS from 1-10-75 the eligible and suitable scientists were placed in that Service according to the Rules of that Service. Simply stated the scientists were classified into four categories. Scientist (S), Scientist-1 (S-1), Scientist-2 (S-2) and Scientist-3 (S-3). The lowest pay scale prior to 1-10-75 (i.e. Rs.425-700) stood abolished from 1-10-75. It was provided that persons in the pay scale of Rs.425-700 will stand merged in new pay scale of Rs.550-900 applicable to scientist (S), alongwith scientists in the scale Rs.550-900. Likewise, the old pay scale of Rs.650-1200 does not find place in the new structure. It was provided that scientists in the old pay scale of Rs.650-1200 would be merged in the new pay scale of Rs.700-1300 with effect from 1-10-75, alongwith scientists in the pay scale of Rs.700-1300.

3. The rules of the ARS provided for a screening for promotion to the next higher category. It was

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also stipulated that for the purpose of such screening to the next higher grade, the scientist should have rendered a minimum length of service of five years in the lower grade (Rule 19 of ARS Rules).

4. Rule 19(3) provided that the first screening shall be made within one year of the introduction of the Agricultural Research Service and thereafter at intervals of one year.

There is a note 2 below Rule 22 which reads as follows:-

"For the purpose of first screening under Rule 19(3) above, entire period of service in the grade including the service rendered in the pre-revised scale of pay shall be counted."

In the case of persons absorbed in the pay scale Rs.550-900 and Rs.700-1300, a question would have arisen whether the pre-revised scale referred to in Note 2 of Rule 22 would refer to Rs.425-700 and Rs.650-1200, respectively. This was not left to doubt because the mode of assessment which was spelt out in the brochure "IDR- Agricultural Research Service" clarified inter alia as follows:-

"(a) x x x

(b) Computation of the five year period for assessment x x x

(vi) the service rendered by the Research Assistant in the scale of pay of Rs.425-700 will be equated with service rendered in Grade S and service rendered in the scale of pay of Rs.650-1200 will be taken as having been rendered in grade S.1 (700-1300)"

5. It is this clarification that seemingly created some heat burning. For, it so happened

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that persons recruited in the earlier scale of ~~before 1-10-75 and~~ Rs.425-700 sufficiently early, ~~but~~ absorbed in the ARS in the scale of Rs.550-900 as scientist (S) became eligible for consideration for screening for promotion to the grade of S.1 by also counting their service in the grade of Rs.425-700, while a scientist recruited before 1-10-75 in the grade of Rs.550-900 like the applicants, who did not have five years service did not become eligible for consideration for promotion to the grade of Rs.700-1300 of S.1 at the first screening, alongwith the former scientists. Their contention is that, before 1-10-75, they were drawing pay on a higher scale, and hence, ipso facto, they were senior to those scientists in the lower scale of Rs.425-700, notwithstanding the length of their service. Therefore, they too should have been screened for S.1 scientist alongwith the scientists in the lower pay scale of Rs.425-700.

6. In other words, they seek the benefit of a recognised service rule obtaining in certain departments, which provides that, if a junior person in a cadre is eligible for consideration for promotion on the ground that he has the necessary length of service to be considered for such promotion, all persons senior to him in the cadre would also be eligible for consideration for promotion, even though they do not have the necessary length of service for such promotion.

7. It is pointed out that a similar situation had arisen in respect of the scientists who were in the pay scale of Rs.700-1300 before 1-10-75 for the same reasons mentioned above vis-a-vis other scientists in the grade Rs.650-1200. They filed

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Civil Writ Petition No.1192/84 in the High Court of Delhi in which the An.II decision was rendered on 5-3-87. That petition was allowed with the following observations:-

"Whereas the Rules of 1975 have benefitted class II scientists immensely, if the power of relaxation is not exercised, erstwhile class I scientists would be greatly harmed. As a result of the Rules of 1975, the erstwhile class II scientists have not only been able to get the next higher grade of 700-1300 but they have stolen a march over their former seniors and have become eligible for promotion to grade S.2 posts earlier than the holders of class I posts, like the petitioners. Whereas, prior to 1975, recruitment of Grade 2 posts did not require any minimum period of service and the petitioners were eligible for being considered for appointment to Grade S.2 posts in the scale of Rs.1100-1600, now by virtue of the Rules 1975, it is necessary that they must put in at least five years service in the scale of Rs.700-1300. Whereas prior to the promulgation of the Rules 1975 a scientist in the scale of 700-1300 could apply and be appointed in the scale of 1100-1600 after one year's service, now he cannot be appointed unless he has completed five years service. The Rules, therefore, have been to the disadvantage of scientists like the petitioners, whereas the said Rules have given a considerable benefit to scientists who were in a scale lower than the petitioners. It is unjust and unfair that such a situation should have been brought about. The grievance of the petitioner is not that the benefit should not be

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given to the erstwhile class II scientists. Their grievance is that they should not be put at a greater disadvantage. The petitioners are entitled to be considered alongwith their former junior colleagues for promotion to the higher posts in grade S.2. By the Government ~~not~~ exercising its powers to relaxation under Rule 23 it has acted arbitrarily and unfairly and unjustly especially when in the case of scientists in Grade S the Government has waived the operation of rule 19(2).

For the aforesaid reasons, the writ petition is allowed. A writ of mandamus is issued directing the respondents to extend its decision contained in the letter dated 24th August, 1977 to the cases of the petitioners and to relax rule 19(2) in favour of the petitioners and other erstwhile junior class I scientists who had been absorbed in Grade S.1 with effect from 1st October, 1977 and further to give effect to the said relaxation to the case of eligible S.1 scientists for promotion with effect from 1st July, 1976 and they shall also be entitled to all consequential benefits ensuring therefrom."

8. It would appear that a review application has been filed in the High Court in respect of the judgment by certain persons who were in the lower pay scale of Re.650-1200 prior to 1-10-75, on the ground that the judgment was delivered without hearing them, though they were necessary parties to the writ petition. Nevertheless, the applicants filed individual representations requesting the respondents to consider their cases also in the same manner as the case of S.1 scientists was considered by the High Court of Delhi. A copy

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of their representation is An.III. This was rejected by the letter dated 30th March 1988 of the respondents addressed to Dr.SB Aggarwal, the applicant at serial No.10.

9. It is stated that, even thereafter, another representation was made on behalf of the petitioners highlighting anomalies of the situation in respect of various categories. That representation does not bear any date and is at An.V. Not having received any reply thereto, the applicants have ^{on 6-8-90} filed this O.A. seeking the following reliefs:-

- (a) Call for the records of the case;
- (b) pass an order declaring that the principles laid down by the High Court of Delhi in C.W.P. No.1142 of 1984 are applicable to the applicants;
- (c) pass an order directing the respondents to reconsider the applicants' cases in the light of the ratio of the above said judgment and to give all consequential benefits arising therefrom, within a reasonable period.

10. The respondents have furnished a reply opposing these claims. It is stated that the applicants cannot claim similar benefit as the scientists S.1 in the scale of Rs.700-1300 who have been given certain benefits by the judgment of the High Court of Delhi. It is stated that the scale of pay of Rs.650-1200 attached to scientific posts prior to 1-10-75 was merged with the scale of pay of Rs.700-1300 in the initial constitution of the ARS, with the approval of the Cabinet in 1974 and therefore

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the service rendered in that grade was counted as service rendered in the scale of Rs.700-1300 for assessment of benefit as on 1-7-76 and thereafter. It is in these circumstance that the High Court had allowed the petition filed by them. It is also stated that in respect of that judgment a review petition has been filed by the S.2 scientists who were in the scale of Rs.650-1200 before 1-10-75. The High Court has passed an order staying the judgment delivered on 5-3-87. It is further stated that the matter is still subjudice.

11. In so far as the applicants are concerned the respondents have stated as follows:-

"This present demand of the petitioners in their application before an Hon'ble CAT is that they were holding positions of STA/SRA/Lecturer in the pre-revised scale of Rs.550-900 before 1-10-75 under the Council and as such they may not be treated at par with their juniors who were holding positions in the scale of Rs.425-700 as Technical Asstt-Research Asstt/Demonstrator. It has, therefore, been demanded by the petitioners that they may be allowed their initial induction on 1-10-75 straightway in grade S.1 (Rs.700-1300) of ARS instead of grade 'S' (550-900), in relaxation of the provisions of ARS Rules, on the analogy of the concession extended in the case of erstwhile class-II scientists who were holding positions in the scale of Rs.650-1200 as on 1-10-75. It has also been demanded that they may be assessed for S.2 irrespective of the condition of 5 years' in relaxation of Rule 19(2) of ARS., as per the judgment delivered by

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the Hon'ble High Court of Delhi in Civil Petition No.1192/84 on 5-3-87, in the case of erstwhile junior class I scientists." (Reply to para 4.xxvii)

12. The applicants have not filed any rejoinder to this reply statement.

13. We have carefully considered the pleadings in this case. We are of the view that the respondents have not correctly stated the claims made by the applicants in this O.A./in their reply extracted in para 11 supra. The applicants may have claimed many things in the past. May be, the reply is based on the claims made earlier. The relief sought in this O.A. extracted in para 9, is that the principles of the judgment at An.II of the High Court should apply to them. That principle has been applied in some departments as pointed out in para 6 supra. Their claim is only that the favoured treatment given to those who were in the pay scale 425-700 before 1-10-75 be given to them by relaxation of Rules. If persons, who were in the scale of Rs.425-700 before 1-10-75 and were thus junior to the applicants who were then in the scale of Rs.550-900, are made eligible for the first screening by taking into account their service in the scale of Rs.425-700, the applicants too must be made eligible for such screening, though they do not have service of 5 years in the grade Rs.550-900. The relief sought can be construed only thus.

14. It is unfortunate that neither party is before us today. The case record does not tell us as to what was the outcome of the review petition filed before the High Court, though it is stated that the An.II judgment has been stayed.

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15. It appears to us that the cause of action arose long back i.e. when the clarification as to how the five year service would be computed for assessment in respect of persons in the scales Rs.425-700 and Rs.650-1200 was given in the brochure "ICAR-Agricultural Research Service" as mentioned in para 4 supra. Unlike the scientists I who filed the CWP in the Delhi High Court, the applicants did not resort to any legal remedy.

16. However after the High Court delivered the An.II judgment, the applicants made a representation to the respondents despite the pendency of the review petition, for giving them the benefit of that judgment. That request was turned down by the An.IV letter dated 30 March 1988. In the circumstances, this application should have been filed on or before 30th March 1989. Instead, it has been filed on 6-8-90.

17. However as that judgment itself has been stayed pending review, we would not like to dismiss this O.A. outright on the ground of limitation and laches, ^{if} more so, considering the fact that the respondents do not appear to have correctly appreciated the prayer made in this O.A.

18. Therefore we dispose of this O.A. with the following orders/directions:-

(i) In case the High Court of Delhi dismisses the CWP 1192 of 1984 in review, the applicants can have no claim on the respondents.

(ii) If, however, the judgment in that CWP is either maintained or modified in any respect in review, that would be the date on which the judgment can be considered to have become final.

In that case, the respondents shall treat this O.A.

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as a representation made by the applicants for giving them the same benefits which might have been finally conferred on the S.I scientists, who were petitioners in the A.II judgment, and, consider the representation in accordance with law, keeping in view the observations made by us in this order, within three months from the date on which the order in review was passed by the High Court of Delhi or from the date on which a copy of this order is received, whichever is later. Needless to say, if still aggrieved, it would be open to the applicants to seek such redress in accordance with law, as may be advised.

19. O.A. disposed of as above. No costs.

A.Vedavalli

(Dr. A.VEDAVALLI)
Member (J)

N.V.Krishnan
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(N.V.KRISHNAN)
Vice Chairman (A).

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