

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(5)

O.A. No. 511/90
T.A. No.

199

DATE OF DECISION 15.02.1991.

Scientific Staff Association, _____ Petitioner
I.A.R.I. & Others
Shri S.C. Gupta, Sr. Counsel _____ Advocate for the Petitioner(s)
with M.K. Chatterjee, Counsel
Versus
Indian Council of Agricultural _____ Respondent
Research & Others
Shri Arun Jetly, Sr. Counsel with _____ Advocate for the Respondent(s)
Shri A.K. Sikri, Counsel

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? */NO*
4. Whether it needs to be circulated to other Benches of the Tribunal? */NO*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicants, who are working as Scientists in the Indian Agricultural Research Institute (hereinafter referred to as 'IARI'), filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (i) To strike down para 4 of ICAR circular No.1-14/87 per IV(Vol.III) dated 21st March, 1989 reproduced below:-

"Service in ARS will include all the Class I or Class II service (Gazetted level) only which was counted for purpose of induction as S-1 or above as on 1.10.1975 and for subsequent assessment benefits".

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- (ii) to direct the respondents to count services rendered in "S" grade of Agricultural Research Service (ARS) or equivalent grades (inclusive of grades merged into "S" grade at the time of constitution of ARS) for computing total length of service of petitioners for the purpose of placement/promotion in UGC pay package adopted by the ICAR and also for all other allied service matters; and
- (iii) to grant any other relief or pass any other order which this Hon'ble Tribunal deem fit and proper, fair and equitable based on facts and circumstances of the case.

2. The Indian Council of Agricultural Research (ICAR) is the first respondent. I.A.R.I. is the second respondent. The Union of India through its Secretary, DARE, Ministry of Agriculture is the third respondent. The applicants are working in I.A.R.I. which is under the administrative control of ICAR.

3. The Agricultural Research Service (ARS) for the scientific staff was constituted with effect from 1.10.1975. The Scientists then serving under respondent No.1 and its various research Institutes were inducted in corresponding grades into the ARS after screening and assessment for suitability by duly constituted selection committees appointed by the Agricultural Scientists Recruitment Board (ASRB).

4. The ARS consists of the following grades as per rule 6 of the ARS service Rules:-

<u>Post</u>	<u>Grade</u>	<u>Scale</u>
Scientist	S	Rs. 550-900
Scientist	S-1	Rs. 700-1300
Scientist	S-2	Rs. 1100-1600
Scientist	S-3	Rs. 1500-2000.

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5. Provision had been made for periodical promotion on completion of 5 years of service in a grade to the next higher grade irrespective of vacancies through a due assessment process. Rule 19 of the Agricultural Research Service Rules which deals with Merit Promotion and Advance Increment, reads as follows:-

"Rule 19. Merit Promotion and Advance Increment

There shall be a system of merit promotion from one grade to the next higher grade and advance increment within the same grade in the manner specified below:

- (1) The number of posts sanctioned shall relate to the total number in the group of grades as a whole, and not to each individual grade. Promotion from one grade to the next higher grade shall be done periodically on assessment of performance by a procedure to be prescribed by A.S.R.B. 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 increment 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 Agricultural Research Service 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 increment to the successful scientist shall be given with effect from 1st July of the year in which the assessment is made".

6. The requirement of a minimum service of five years in a grade to become eligible for promotion to next higher grade after an assessment was relaxed for the incumbents of "S" grade by the ICAR vide its letter

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No.8(1)/76-Per IV dated 24th August, 1977. It was decided that "all existing grade "S" Scientists may, in relaxation of rule 19(2) of the Agricultural Research Service Rules, be assessed for promotion to the next higher grade, irrespective of whether they have or have not completed five years of service in that grade on the crucial date, viz., 31.12.1975 and may, if found suitable, be promoted to grade S-1 of the service with effect from 1.7.1976". This was done on the representations of "S" grade scientists stating that their qualifications, duties and responsibilities were equivalent to that of lecturers of degree/post graduate college and as such they straight way should be absorbed in grade "S-1" of the "Service" on the analogy to that of lecturers (with pay scale of Rs.300-600) of degree/post graduate colleges who were placed/granted UGC pay scale of Rs.700-1600.

7. On March 9, 1989, respondent No.1 introduced University Grants Commission (UGC) pay scales and package to the scientists, who were till now in ARS System, by issuing a notification.

8. By the aforesaid notification, the ARS Grades were revised with effect from 1.1.1986 as follows:-

"S.No.	Grade	Existing pay scale (Rs)	New designation	Revised pay scale (Rs.)
1.	Scientist "S"	550-900	Experimental scientist	1740-3000
2.	Scientist S-1	700-1300	Scientist	2200-4000

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3.	Scientist S-2 (with total service in ARS as on 31.12.85 upto 8 years)	1100-1600	Scientist (Sr. scale)	3000-5000
4.	Scientist S-2 (with total service in ARS as on 31.12.85 exceeding 8 years)	1100-1600	Scientist (Selection Grade)	3700-5700
5.	Scientist S-3 (with total service in ARS as on 31.12.85 upto 16 years)	1500-2000	Scientist (Selection Grade)	3700-5700
6.	Scientist S-3 (with total service in ARS/equivalent grades as on 31.12.85 exceeding 16 years)	1500-2000	Principal Scientist	4500-7300
7.	Scientist S-4	1800-2250	Principal Scientist	4500-7300
8.	Scientist S-5	2000-2500	-do-	4500-7300
9.	Scientist S-6	2500-3000	-do-	5900-7300".

9. On 21.3.1989, respondent No.1 issued a clarificatory notification which provides, inter alia, that "Service in ARS will include all the Class I or Class-II service (Gazetted level) only which was counted for the purpose of induction as S-1 or above as on 1.10.1975 and for subsequent assessment benefits".

10. The applicants have stated that although the "S" grade has been an integral part of ARS, the notification has excluded the services rendered in "S" grade/ equivalent grade for computation of total length of 8/16 years of ARS/equivalent service. The post in pre-revised pay scale of Rs.550-900 (equivalent to grade "S" of ARS) has/had been categorized by Central Government



as Class II(B group). Moreover, in certain departments of Central Government the scale has also been classified as Gazetted Class II.

11. The contentions raised by the applicants are as follows:-

- (i) The Grade "S" being an integral part of the ARS, the services rendered in that grade cannot be overlooked for computing the total length of service required for placement in revised UGC pay scale.
- (ii) The notification dated 9.3.1989 has been issued by the ICAR with approval of the Government of India, Ministry of Finance. The same cannot be amended by a "clarificatory notification" dated 21.3.1989 so as to bring an altogether different, detrimental and discriminatory provision as contained in para 4 of the said notification/circular which changed the basic service condition. The same would be arbitrary and violative of Articles 14 and 16 of the Constitution of India.
- (iii) The notification dated 9th March, 1989 has been issued by the ICAR with the approval of Govt. whereas the notification dated 21st March, 1989 has been issued by the Secretary, ICAR without approval of the competent authority.

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- (iv) The appointing and disciplinary authority even for "S" cadre of the A.R.S. Scientist is the same as for other grades, i.e. President, ICAR, who happened to be Union Minister of Agriculture. Thus "S" grade being the integral part of ARS and governed by the same set of rules, the services put in this grade cannot be ignored and segregated.
- (v) The incumbents of "S" grade have been given the designation of Scientist and it will be unjust to exclude the service rendered in Scientific Grade "S".
- (vi) The incumbents of "S" grade, prior to their induction in "S" grade of ARS on 1.10.1975, were engaged in the scientific research and post-graduate teaching and were initially recruited with minimum qualification of post graduate degree in science. However, quite a large number of them held Ph.D degree as well.
- (vii) The service rendered in "S" grade/equivalent grades has been/is being counted by the ICAR and also by the universities for computation of total length of experience as required for the direct recruitment on higher posts, i.e., S-3, S-4 etc, which is equivalent to Professor of an University. Thus experience put in "S"
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grade of the ARS cannot be adversely discriminated.

- (viii) In the colleges/Agricultural Universities being financed by the ICAR, the service rendered as lecturer in the pay scale of pre-revised grade (before 1.1.1973) of Rs.300-600 which has been equivalent to that of scientist "S" grade (pre-revised scale of Rs.325-575 before 1.1.1973 and designated as Senior Research Assistant) has been counted for promotion/placement in the higher UGC scales in those institutions.
- (ix) As per the rule 38 of the rules of the Indian Council of Agricultural Research (ICAR), its Governing Body alone is empowered to modify the rules so as to affect/alter service conditions. The para No.4 of notification of 21st March, 1989 changes the basic service condition as stipulated in ARS rules to the disadvantage of petitioners and the same was not approved by the Governing Body of ICAR. This mandatory requirement not being fulfilled, the subsequent amendment is illegal, arbitrary and invalid.

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(x) Even Universities are counting the past services of their lecturers rendered by them in CSIR/ICAR/DRDO etc. in order to count the total length of their service for the purpose of promotion/placement as enumerated in the Circular No. DO No. F-1-6/90 (PS cell) dated 29th January, 1990.

12. The respondents have stated in their counter-affidavit that they are within their right to lay down the criteria which have been impugned in the present proceedings as the same are based on reasonable nexus with the objective sought to be achieved. According to them, the exclusion of services in Grade 'S' of ARS for computation of total length of service is based on reasonable classification. They have stated that Grade-'S' (Rs. 550-900) was specifically kept in the ARS for limited purposes of providing induction opportunities to the existing qualified employees of the respondent, who were holding posts in the lower pay scale of Rs. 425-700 and Rs. 550-900 on regular basis on the date of introduction of the service (ARS) on 1.10.1975. A period of five years was laid down for the Council's Scientific and technical employees to improve their qualifications for being eligible for induction in Grade-'S'. It was envisaged that there will be no further recruitment to this grade and it was treated as dying cadre and the posts were gradually brought

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over to S-1 grade (Rs.700-1300) consequent upon the promotion/retirement or resignation of the incumbents of the posts.

13. The respondents have stated that there was a persistent demand of 'S' Grade Scientists of ARS for immediate abolition of grade-'S' from the ARS and absorption of all the existing 'S' grade Scientists in S-1 grade of the service straight-away. This demand was considered and it was decided that all the existing scientists in 'S' grade may be assessed for S-1 grade irrespective of the condition of 5 years service, in relaxation of the provisions of rule 19(2) of ARS. The respondents have denied contentions of the applicant, that this major relaxation was allowed on the ground of their qualifications, duties and responsibilities, which were similar to those of the Lecturers of Degree/ Post Graduate Colleges and also on the analogy of the Lecturers (with pay scale of Rs.300-600) of Degree/ Post graduate colleges who were granted UGC pay-scale of Rs.700-1600. Grade 'S' was all along treated as a dying grade under ARS, but at the same time, it was not administratively or otherwise feasible to abolish this grade immediately and promote all the scientists of this grade straight-away to S-1 grade. It was, therefore, decided to assess all the scientists of this grade without imposing the condition of 5 years of service in the grade, in relaxation of the provisions of

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Rule-19(2) of ARS Rules.

14. According to the respondents, the revised UGC pay package provides substantial financial benefits to the scientists, particularly to the serving scientists, as they have been placed in the appropriate UGC scales by reckoning all the service rendered in ARS or equivalent elsewhere. The modified scheme of assessment/promotion etc. based on UGC pattern is under active consideration in consultation with the Ministry of Finance. This scheme will be circulated in due course of time as soon as the matter is finally decided.

15. The respondents have submitted that the UGC pay packages for ICAR scientists duly approved by the Govt. of India covers the cadre of Scientists beginning from S-1 level (Rs.700-1300 pre-revised)/(Rs.400-900) before 1.1.1973. In other words, the service rendered in a grade lower than S-1 grade cannot be taken into account for computing the length of service in ARS, as far as the implementation of the revised UGC pay scales is concerned. Under ICAR letter dated 21.3.1989 (Annexure.I to the application), it has been clarified that only the service rendered in the scales of (Rs.700-1300 pre-revised/Rs.400-900 before 1.1.1973) will be taken into account for the purpose of computing length of service for placement of Scientists S-2 and S-3 in the higher scale. Benefit of service in Class-II (gazetted

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level only) has also been allowed for the purpose of computing the period of length of service in ARS provided that service was counted for the purpose of induction into S-1 or above as on 1.0.1975 and for subsequent assessment benefits. This benefit has been allowed on the basis of the decision taken by the respondents in the wake of its re-organisation and also at the time of formulation of ARS in 1975. At that time, it was decided that the scientific posts in the scale of Rs.650-1200 (pre-revised) may be brought over to the scale of Rs.700-1300(pre-revised). Thus, the scale of Rs.650-1200 (pre-revised) was merged with the scale of Rs.700-1300 (pre-revised) in scientific service(ARS). Consequent upon this decision, the then existing employees who were holding scientific posts in the pay-scale of Rs.650-1200 (pre-revised), were allowed induction into grade S-1 of ARS on 1.10.1975 and the service rendered in that scale was treated as service rendered in grade S-1 Rs.700-1300 for assessment benefit.

16. According to the respondents the impugned circular dated 21.3.1989 does not amend the circular dated 9.3.1989 but is only clarificatory in nature.

17. After the UGC pay package became effective from 1.1.1986, all the existing scientists in grade 'S' have been equated with the Tutors/demonstrators and placed in

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revised pay-scale of Rs.1740-3000. The designation assigned to this grade is 'experimental Scientists'. Demonstrators and Tutors in the revised pay-scale of Rs.1740-300 in the Universities are not part of the Faculty staff governed by UGC system. The lowest grade in UGC system starts from the grade of Lecturer in the scale of Rs.2200-4000. In the Universities, no benefit of the service rendered as Demonstrator/Tutor has been allowed for the purpose of promotion/appointment to the post of Lecturer and above posts. In the ARS, no benefit whatsoever has been allowed in respect of the service rendered in Grade 'S' for the purpose of induction/assessment promotion to S-1. Grade 'S' Scientists were assessed for promotion to S-1 grade as a special concession in relaxation of normal rules.

18. We have carefully gone through the records of the case and have considered the rival contentions. In exercise of the powers conferred by Rule 38 of the Rules of the Indian Council of Agricultural Research, the Governing Body with the approval of the President has made the Agricultural Service Rules, 1975. These Rules came into force with effect from 1.10.1975. Rules 4,6, 19 and 23 are relevant in the present context. According to Rule 4, all posts in the grades mentioned in Rule 6, except those excluded by a specific order of the Competent Authority, the incumbents of which are engaged

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in Agricultural Research and Education "shall be deemed to be included in the Agricultural Research Service". Rule 6 provides that there shall be the following grades in the service, namely, Scientist (S), Scientist 1(S-1), Scientist 2(S-2) and Scientist 3(S-3). Rule 19 deals with the Merit Promotion and Advance Increments. This Rule provides that there shall be a system of merit promotion from one grade to the next higher grade and advance increment within the same grade in the manner specified therein. Promotion or grant of advance increments to the successful scientists, who complete 5 years of service between the first of July and 31st December of a year, shall be given with effect from the first of July of the following year and those who complete 5 years of service between first January and 30th June of the year, shall be given with effect from 1st January of the following year. Rule 23 which deals with relaxation stipulates that the Controlling Authority may relax the provisions of these Rules to such an extent as may be necessary to ensure satisfactory working or for removing inequitable results.

19. The power to relax can be exercised only to remove inequitable results and not to make the position more stringent.

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20. By the impugned order dated 21.3.1989, the respondents have in fact made the Rules ^{more} stringent in so far as they have sought to provide that the service in ARS will include only Class I or Class II service (Gazetted level). The concept of Gazetted or non-Gazetted has not ^{however,} been incorporated in the notification dated 9.3.1989 whereby the pay-scales of the ARS Scientists were revised.

21. On 6.7.1990, the respondents have issued certain clarifications regarding the revised pay-scales in respect of ARS Scientists. One of the decisions referred to therein is that the cut-off date for placement of Scientists in the revised scale "in all cases" would be 1.1.1986. The placement of Scientists is to be done strictly on the basis of length of service as on 31.12.1985. There is no exclusion of Scientist 'S' grade in this regard.

22. The applicants have also drawn our attention to the judgment of this Tribunal dated 23.2.1990 in OA 1722/87 (Dr. C.L. Sethi & three others Vs. the Union of India & Another), which related to the fixation of pay of some Scientists on their induction into the Agricultural Research Service. The Tribunal

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referred to the four grades in the service including the grade of Scientist 'S'.

22. It may be that the Scientist 'S' grade is a dying cadre, as has been contended by the respondents. This does not mean or imply that it falls outside the Agricultural Research Service or that the service rendered in Scientist 'S' grade is not service in the Agricultural Research Service.

23. In the conspectus of the facts and circumstances of the case, we are of the view that service in the ARS will include service rendered in 'S' grade irrespective of whether the post is a Class I or Class II post or whether it is a Gazetted one or not. We are also of the opinion that the service rendered in the 'S' grade of ARS or equivalent grades would be relevant for computing the total length of service for the purpose of placement/promotion in the UGC pay package adopted by the ICAR by their notification dated 9.3.1989.

24. The application is disposed of on the above lines. There will be no order as to costs.

D. K. Chakravorty 15/2/89
(D.K. CHAKRAVORTY)
ADMINISTRATIVE MEMBER

P. K. Karthi 15/2/89
(P.K. KARTHI)
VICE CHAIRMAN (J)