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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 877 of 1990

New Delhi this the 31/8 day of August, 1995

HON'BLE SHRI J. P. SHARMA, MEMBER (J)

HON'BLE SHRI B. K. SINGH, MEMBER (A)

Agricultural Research Service
Scientists Forum through
its General Secretary, Delhi Unit,
Division of Soil Science and Agricultural
Chemistry, I.A.R.I.,
New Delhi - 110002.

... Applicants

(By Shri Jitendra Sharma with Ms. Gunwant Dara, Adv.)
with Mahesh Srivastav

Versus

1. Union of India through
its Secretary DARE (Ministry
of Agriculture), Krishi Bhawan,
Dr. Rajendra Prasad Road,
New Delhi.
2. Indian Council of Agricultural
Research, through its Secretary,
Krishi Bhawan,
Dr. Rajendra Prasad Road,
New Delhi.

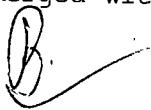
... Respondents

(By Shri A. K. Sikri, Advocates)

O R D E R

Shri B. K. Singh, M(A):-

The applicants in this Original Application are Scientists working in the Indian Council of Agricultural Research (ICAR). In the amended O.A., the applicants prayed for various reliefs from (i) to (xiv). However, in the meanwhile, while the case was pending in this Tribunal for adjudication, the respondents themselves have granted most of the reliefs and, therefore, the applicants have confined themselves only to the cut off date for implementation of the orders issued by the respondents and secondly, they have sought their assessment prior to the implementation of the UGC pay package w.e.f. 1.1.1986 and giving the actual benefits from the same date. Thirdly they want S-0 (Rs.1700-3000) to be upgraded and merged with S-I (Rs.2200-4000). The



notional fixation on these basis has /been allowed w.e.f. 1.1.1986 which is the date of implementation of the recommendations of the 4th Pay Commission. There are several streams of people working in ICAR and the non-technical staff who opted for the replacement scales recommended by the 4th Pay Commission, were given the benefits from 1.1.1986 and drew their arrears. In case of the Agricultural Scientists, the question remained pending because there were lot of representations from various streams working in the ICAR for implementation of the UGC pay package as per recommendations of Dr. M. D. Rao Committee which had seven members and they made certain recommendations. After several representations were filed against this also, another Committee was constituted with Dr. M. G. K. Menon as Chairman and on receipt of the various recommendations finally the UGC pay package was adopted in their case also. The respondents have accepted all their reliefs. The only grievance is now about the cut off date and about their assessment prior to 1.1.1986. The ICAR issued orders on 9.3.1989 and gave the actual benefits from that date. Another prayer now made is to upgrade S-0 to S-I.

2. The ICAR has been held to be a Society within the meaning of Article 12 of the Constitution as per the judgment of the Hon'ble Supreme Court in P. K. Ramachandra Iyer & Ors.

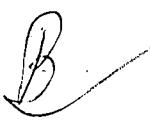
vs. Union of India & Ors. reported in [1984] 2 SCR 200.

3. The ICAR started an Agricultural Research Service (for short ARS) w.e.f. 1.10.1975 and the relevant grades and pay scales as on 31.12.1985 were as under :-

<u>"Grade</u>	<u>Pay Scale</u>
Scientists-S	Rs.550-950
Scientists S-I	Rs.700-1300
Scientists S-II	Rs.1100-1600
Scientists S-III	Rs.1500-2000"



The Scientists of the ICAR who were earlier covered by the 3rd Pay Commission pay scales had been demanding parity in pay scales with the employees of the Agricultural Universities who were also financed by the ICAR. After repeated demands made by the various unions and associations, the ICAR agreed to revise the pay scales w.e.f. 1.1.1986 vide notification No. 1-14/87-Per.IV dated 9.3.1989. The aforesaid notification was given effect for purposes of pay fixation from 1.1.1986. During the course of argument, the learned counsel for the applicants argued that if an assessment had taken place, these people would also have got the benefit of promotion against ex cadre posts as was done in case of others. The learned counsel for the respondents, Shri A. K. Sikri, categorically stated that the ARS scheme was abolished w.e.f. October, 1985 and the new scheme and UGC pay scales as per notification dated 9.3.1989 were given effect to from 1.1.1986. When the scheme on the basis of which they are claiming their promotion as Scientists itself gets abolished, there is no question of constituting any review ASRB meetings for their promotion. It was argued that UGC grades were introduced in the form of pay package retrospectively w.e.f. 1.1.1986 strictly as per the scheme formulated by the respondent ICAR with the approval of Governing Body and President-ICAR/Ministry of Finance. Pursuant to the above said adoption of the pay scales, the corresponding gradation on the pattern of the UGC grades have been prescribed accordingly on the re-constitution of the Service, which are in exercise of the administrative powers as a policy decision after due application of mind. This was done as a result of the various representations received from the Scientists. Such a classification of pay scales was made after several committees went in depth about the duties and functions and the qualifications prescribed for the posts.



This is a major policy decision involving finances of the Government as held by the Hon'ble Supreme Court in the case of Umesh Chandra Gupta vs. O.N.G.C. (AIR 1989 SC 29), following the ratio of the judgment in case of State of U.P. vs. J. P. Chaurasia reported in AIR 1989 SC 19 and AIR 1989 SC 129 in the case of All India Customs and Central Excise Stenographers Association vs. Union of India. The applicants have been allowed pay fixation w.e.f. 1.1.1986 retrospectively. The applicants have already accepted and taken the benefit and are now estopped from contending otherwise and that the application is barred by the doctrine of estoppel for the reason that they cannot be permitted to approbate and reprobate either. Once restructuring has been done and accepted a fresh review being done in their cases when the scheme itself of merit promotion stood abolished from October, 1985 does not arise.

3. The old career advancement scheme was no longer operative after 31.12.1985. The Scientists under ICAR system are eligible for placement/promotion in the higher pay scales w.e.f. 1.1.1986 under the new 'career' advancement scheme circulated vide letter dated 28.10.1991 which is as per para 16 of the notification dated 9.3.1989. The ICAR letter dated 24.2.1992 also has been issued as part of the UGC pay package. This letter indicates that those Scientists who were holding Ph.D degrees prior to 1.1.1986 and had been placed in the revised pay scale of Rs.3700-5700 will be designated as Senior Scientists and those not possessing the said degree will be designated as Scientists (SG). These orders are all as per UGC pattern. The orders dated 5.2.1992 and 14.5.1992 have been issued by the Council in implementation of the judgment of the Tribunal in O.A. No. 511/90 for counting all 'S' grade service in ARS or

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equivalent grades in ICAR only. There is no scale of that type in general or other agricultural universities. This is peculiar only to ICAR. The learned counsel, Shri Mahesh Srivastava, also wanted the Scientists in grade S-0 to be equated with Scientists S-I. This is not as per the scheme and any financial decision which has been agreed to by the Department of Expenditure, Ministry of Finance cannot be changed. Their duties and responsibilities and their functions as Tutors/Demonstrators are different from those of the Scientists who are entrusted with the task of research and teaching and as such there is no justification for allowing these people S-0 to be equated with Scientists S-I who have been put in the pay scale of Rs.2200-4000. These people have been rightly placed in the scale of Rs.1740-3000 and designated as Experimental Scientists. They do not have the qualifications and they do not perform the functions of research and teaching and as such are not entitled to the scales of pay allowed to Scientists S-I, that is, Rs.2200-4000. In the Universities no benefit of the service rendered as Demonstrator/Tutor has been allowed for purposes of promotion/appointment to the post of Lecturer and above post.

5. In the ARS also no benefit whatsoever has been allowed in respect of the service rendered in grade 'S' for purposes of induction/assessment promotion to S-I. The law has been laid down by the Hon'ble Supreme Court in case of Shyam Babu Verma & Ors. vs. Union of India & Ors. (JT 1994 (1) SC 574) wherein it has been held that the scales of pay can be linked with the academic performance, experience and qualifications. Before any direction is issued by the court, the claimants have to establish that there were no reasonable basis to treat them separately in matters of payment of wages or salary, only then the court is competent to hold that there

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has been a discrimination within the meaning of Article 14 of the Constitution. No such thing has been proved by the claimants and it is also admitted by them that these Demonstrators/Tutors, re-designated as Experimental Scientists do not possess the qualifications required for recruitment as S-I. Thus, the entire theory as explained above is untenable and there is no question of upgrading the Scientists S-0 to the level of Scientists S-I.

6. Fixing a cut off date falls within the domain of the Executive and unless it is shown that it is arbitrary or unreasonable or it is completely off the mark, no interference by the court is called for. We do not find that the cut off date giving the actual benefit from 9.3.1989 and notional fixation of pay from 1.1.1986 can be faulted with. Secondly, it is a financial matter and the Government are the best custodian of their finances and resources and they have to fix a date taking into consideration various factors and the courts are not required to go into these factors since these are policy decisions of the Government. The law has been laid down about cut off date by the Hon'ble Supreme Court in case of Union of India & Ors. vs. M/s Parmeswaran Match Works : 1975 (2) SCR 573. It lays down, "The choice of a date as the basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical." In the instant case, the choice of date is neither arbitrary, nor unreasonable, nor wide of the mark and as such, no interference is called for.

7. Although the learned counsel for the applicants argued on several dates but they could not convince the court about a review ASRB meeting for assessment of those Scientists who have been left out. The merit promotion scheme was based on

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the assessment of individuals on their own performance in the field of research and teaching and they were not required to compete with any one. Such a scheme was prevalent in the general universities under the UGC scheme. In a case decided by the Hon'ble Supreme Court vide their judgment dated 20.4.1995 it was held that those who got the merit promotion on the basis of the assessment of their work and academic performance in the field of research and teaching as covered under the merit promotion scheme constituted one class and those who were laterally inducted as direct recruits to the rank of Lecturers/Associate Professors/Professors and by means of promotion constitute another class altogether and there cannot be questions of inter se seniority between two different groups since they are unequals. This was the view held in case of Dr. Rashmi Srivastava vs. Vikram University & Ors. : 1995 (2) SCALE 181. In that judgment it was held that merit promotee Professors and Readers form a distinct class and they belonged to ex cadre or supernumerary posts compared to cadre employees, that is, directly recruited Readers and Professors. They are unequals not only because of the source of their appointment but also because of the nature and character of their appointment and the nature of posts which they hold. They cannot be treated equally for all purposes and particularly for purposes of seniority and promotion. Although the learned counsel appearing for the applicants did not refer to another judgment of the Hon'ble Supreme Court which is directly to the point and relevant in the instant case, and that is the judgment in Civil Appeal No. 2736 of 1991 decided in 1992. This is the judgment in case of Dr. S. M. Ilyas & Ors. as appellants and the ICAR & Ors. as respondents. The learned counsel for the applicants never mentioned this judgment although while going through the judgments of the Hon'ble Supreme Court we came across the



ratio of this particular judgment. In this judgment, the Hon'ble Supreme Court has referred to the recommendations of Dr. M. V. Rao Committee and the policy decision taken by the Government of India on 13.10.1988 to the effect that UGC package may be extended to ICAR Scientists engaged in teaching, research and extension. Before the impugned notification dated 9.3.1989 was issued, there were four grades of Scientists, namely, Scientists 'S', S-I, S-II and S-III, apart from other higher grades with which we are not presently concerned. We are also not concerned, as stated above, with Experimental Scientists, and it has been admitted by the learned counsel for the applicants that it is dying cadre. It has further been stated by us that there is no justification for upgrading them to the rank of S-I since on the basis of qualifications they have been placed in the lower grade of Rs.1740-3000 whereas on the basis of higher qualifications S-I Scientists have been placed in the grade of Rs.2200-4000. The classification is based on an intelligible criteria and as such we are not inclined to interfere with that classification. The only demand which needs attention is the disparity between those who are directly inducted to the grades of S-I, S-II and S-III Scientists and those who were due for assessment for merit promotion but were not considered. The Hon'ble Supreme Court felt that there was a disparity which was arbitrary and unreasonable. It was mentioned in that judgment that Dr. Shivraj having been appointed as Scientist S-III on merit as back as on 6.12.1979 was fixed in the new pay scale of Rs.3700-5700 while Dr. G. C. Sharma who became Scientist S-III as late as on 1.1.1985 is fixed in the scale of Rs.4500-7300. Similarly, in the case of the incumbents on the post of Scientist S-II, Shri B. S. Modi having been appointed by direct recruitment on 22.7.1978 has been fixed in the new pay

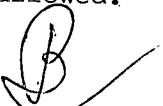
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scale of Rs.3000-5000 as Scientist (Senior Scale) while Ms. Pratibha Shukla who came to be able to take her chance for appointment to a higher post was not considered. By applying the principle of length of service in the ARS irrespective of grades in which the officers were hitherto working, a large number of erstwhile seniors were rendered juniors and after the introduction of the new pay scales and the new package they will be fitted in lower pay scales than their erstwhile juniors. That would also adversely affect their eligibility for promotion from 1.1.1986. The Hon'ble Supreme Court felt that if these seniors were eligible to be considered for promotion to the next higher grade under the old dispensation, it will be unjust and inequitable to render them ineligible for such promotion against the existing vacancies proposed to be filled up. The Hon'ble Supreme Court directed the respondents to devise suitable steps, including grant of one-time relaxation and/or appropriate weightage to the applicants and those similarly situated, so as to make them eligible to appear before the selection board for the various posts and consider them for appointment according to their eligibility to S-II and S-III and granting them the pay scales in the selection grade. The Hon'ble supreme Court felt that those who had appeared as appellants before them were justified in their submission that they were entitled to the higher pay scales on the post of Scientists S-II as well as S-III specially when they were recruited on these posts much earlier to those who had now become entitled to higher pay scales under the impugned notification dated 9.3.1989. The Hon'ble Supreme Court further felt that they were right in their submission that it also mars their future chances of promotion on the higher posts. In this it had been admitted by the respondents that they had issued orders allowing directly recruited S-II and S-III Scientists

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certain weightage for a period of service rendered by them for placement in the higher pay scale as on 1.1.1986. They had also stated before the Tribunal (Principal Bench) that they were devising means by which the grievance of affected Scientists could be removed as a result of anomalies which had occurred on account of the direct recruitment and non-assessment of the Scientists due for merit promotion. The Hon'ble Supreme Court directed the respondents to consider the cases of such Scientists who were eligible for merit promotion on the basis of their assessment till the scheme remained in operation. If any of Scientists before us are similarly circumstanced as Dr. Ilyas and others, their cases should also be considered by the respondents and they are directed to take suitable action in this regard for their assessment by ASRB and those found similarly circumstanced and fit may be given weightage in higher pay scales as allowed to directly recruited Scientists in S-II and S-III.

8. Thus, the application is partly allowed with the aforesaid direction but without any order as to costs. This direction may be complied within a period of six months from the date of receipt of a copy of this order. Other reliefs for changing the cut off date and for upgradation of Experimental Scientists to the rank of S-I Scientists are disallowed.


(B. K. Singh)
Member (A)


(J. P. Sharma)
Member (J)

/as/