

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.258/2004

(38)

Monday, this the 7th day of August 2006

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri N.D. Dayal, Member (A)

Shri Bhagwan Sharma
R/o 2260/171, Tri Nagar
New Delhi-35

..Applicant

(By Advocate: Shri N. Bipin Chandra for Shri VSR Krishna)

Versus

ICAR through

1. The President
Indian Council of Agricultural Research
Krishi Bhawan
New Delhi
2. Director General
Indian Council of Agricultural Research
Krishi Bhawan
New Delhi
3. The Secretary
Indian Council of Agricultural Research
Krishi Bhawan
New Delhi

..Respondents

(By Advocate: Ms. Nidhi Bisaria for M/s. Sikri & Company)

ORDER (ORAL)

Hon'ble Shri Shanker Raju, Member (J):

Heard the learned counsel for the parties.

2. Applicant's claim, who has since retired on superannuation, is for grant of increments as Assistant as well as promotion as Assistant on regular basis. The fact transpires that while working as UDC, the applicant was promoted on ad hoc basis as Assistant and thereafter a DPC was held on 23.8.1994 to consider the applicant and other similarly circumstanced, including the juniors, for regular promotion as Assistant. Applicant's ACR for the year 1993-94, which was considered

39

in respect of all other candidates, was found adverse. As such by applying para 12.1 of the DOPT's instructions on promotion issued in 1992 which stipulates that if the ACR contains adverse remarks, the DPC would be deferred in respect of such a consideration and with an opportunity to the concerned to be communicated adverse remarks and on representation a review DPC be held to consider the case. As the adverse remarks communicated on rejection of representation when not assailed before the court of law, a review DPC held on 29.3.1995 declared the applicant unfit for promotion for the year 1994 on the post of Assistant. However, subsequently, when the applicant in a disciplinary proceeding was awarded the punishment of withholding of increment for two years without cumulative and as a result of censure, his ad hoc promotion was discontinued and the applicant was continued on his substantive post of UDC. Till the DOPT's advice could be available, provisional pay in the post of UDC was paid to the applicant.

3. Learned proxy counsel for applicant states that when the original DPC had met on 23.8.1994, applicant's ACR for the year 1993-94 was not communicated, as such consideration of it when nothing adverse was against the applicant, denial of promotion and promoting juniors would be violative of Articles 14 & 16 of the Constitution.

4. Learned proxy counsel would also contend that in the year 2000, when the applicant had been working on the post of Assistant till 2003, pay slip shows his basic pay Rs.6550/- whereas the basic pay fixed by the respondents was Rs.5800/-. As such the applicant has been deprived of his legitimate rights.

uo

5. This has been vehemently opposed by Ms. Nidhi Bisaria, learned counsel for respondents. She stated that if a person is ultimately not exonerated in the disciplinary proceedings, the ad hoc promotion, which is not a right, has to be discontinued. As far as consideration for promotion, as the adverse remarks have attained finality, the applicant was found unfit.

6. Insofar as increments are concerned, learned counsel would contend that increments would have to be earned by the applicant in a substantive post of UDC and whatever he has earned as Assistant on his discontinuance from the ad hoc post of Assistant, the applicant would not be entitled to the increments in the pay scale of Assistant in any manner, as he does not hold a lien on the substantive post.

7. We have carefully considered the rival contentions of the parties and perused the material placed on record.


8. It is trite that we cannot sit as an appellate authority or a review DPC over the proceedings held by the respondents. The only exception is when the DPC has acted in contravention of the rules or the action is malafide violative of Articles 14 & 16 of the Constitution. As applicant's ACR for the year 1993-94 was existing but not conveyed and the serious allegations were leveled, the DPC on deferment adopted a valid procedure as envisaged in law and on finalization of the ACR, it has been found that the applicant is not fit for promotion in the review DPC, we do not find any illegality with the procedure adopted by the respondents or any malafide. As such, the claim of




the applicant for promotion to the post of Assistant along with his juniors cannot be countenanced in law.

9. Insofar as increments are concerned, one who is working on the post on substantive basis, is entitled for the increments from year to year basis on that post alone. Incidentally, when a person has been functioning on ad hoc basis till the time he remains on ad hoc, he would be entitled not only to the pay scale but also increments earned by way of functioning and performing higher duties. However, we do not find any illegality in putting back the applicant to his substantive post of UDC, as the punishment in disciplinary proceedings were inflicted upon him, which had attained finality. One has no right to be continued on ad hoc basis, as now reiterated by the Apex Court recently in **Secretary, State of Karnataka & others v. Uma Devi & others**, 2006 (4) SCALE 197. In this view of the matter, we are not at all impressed as to non-grant of increments to the applicant in the post of Assistant, to which he was never entitled legally.

10. Finding no merit in the OA, it is accordingly dismissed without any order as to costs.


(N.D. Dayal)
Member (A)


(Shanker Raju)
Member (J)

/sunil/