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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 23rd day of January, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.

HON. MR. D. R. TIWARI, A.M.

O.A. No. 1061 of 1997

Dr. D.S. Singh son of late Sri K.C. Singh, Senior Scientist at present posted in Project Directorate of Vegetable Research, 1 Gandhi Nagar, Varanasi.....Applicant.
Counsel for applicant : Sri S. Narain.

Versus

1. The Indian Counsel of Agricultural Research, Krishi Bhawan, New Delhi, through its President.
2. The Indian Council of Agricultural Research, Krishi Bhawan, New Delhi through the Director (Personnel).
3. The Agricultural Scientists Recruitment Board, Krishi Anusandhan Bhawan, Pusa, New Delhi.
4. The Union of India through the Secretary, Ministry of Agriculture, New Delhi.....Respondents.

Counsel for respondents : Sri V.K. Singh.

ORDER (ORAL)

BY HON. MR. JUSTICE S.R. SINGH, V.C.

THEARD Sri S. Narain, learned counsel for applicant and Sri V.K. Singh, learned counsel representing the respondents. We have also perused the pleadings.

2. The minimal facts necessary to highlight the controversy involved in this case, as stated in the O.A. are that the applicant was appointed as a Class-I Officer in the Indian Counsel of Agriculture Research (ICAR) w.e.f. 21.8.1972 His service conditions were governed by the provisions contained in Agricultural Research Service Rules, 1965. Subsequently, w.e.f. 1.10.1975, Agricultural Research Service was created and for that purpose Agricultural Research Service Rules, 1975 came to be promulgated. The petitioner was inducted to the said service as Scientist Grade S-1 (Plant Pathology) with effect from 1.10.1975.

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It appears that for redressal of his grievance regarding promotion to higher grades in the service, the applicant instituted O.A. No.696 of 1988 in the C.A.T. Jabalpur Bench, Circuit Camp, Indore. The grievance of the applicant was that he was not given promotion to Scientist Grade-II with due date and further that he was not at all considered for promotion to Scientist Grade-III along with his juniors. The said O.A. was disposed of in terms of the following direction:

"In view of the above facts we direct the competent Authority to consider the issuance of an order of appointment of the applicant to Scientist Grade S-2 with effect from 1.7.1976 and also to consider his promotion to Scientist Grade-S-3 on completion of five years of service as Scientist Grade S-2 with effect from the date his immediate junior was considered for the same and if found fit as a result of the process of selection by the Agricultural Service Recruitment Board, promote him accordingly and confer the benefit of back wages, if so done in the case of other employees."

2, It appears that pursuant to the direction aforesaid the respondents promoted the applicant to Scientist Grade S-2 with effect from the due date i.e. 1.7.1976 but did not implemented the direction given by the Tribunal with regard to his promotion from Scientist Grade S-2 with juniors to that grade. The applicant filed CCP No.47 of 1994 which came to be disposed of in terms of the following order dated 25.4.1996 :-

"By this petition, the applicant states that the direction of the Tribunal dated 15.9.93 in O.A. 696/88 regarding his consideration for promotion in the year 1976 in Scientist Grade S-2 has been complied with by order dated 16.3.1995. His grievance is that despite the direction given by this Tribunal to consider his case for promotion immediately after 5 years in S-3, the same has not been done.

In the return filed by the respondents it is stated that the case of the applicant for promotion to S-3 grade was considered from the year 1984. The reply does not disclose that the applicant was not

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eligible for consideration or that his record was bad during the said period i.e. from 1976 to 1983 and if that was not so, the applicant was entitled for consideration right from the year 1981. If any of his juniors have been promoted in the year 1981 then the applicant is also entitled to get the same benefits. Let this be done within a month from today. The CCP is accordingly disposed of.

The parties shall bear their own costs."

3. By letter dated 15.11.96 (Annexure A-I) addressed to the Director, Project Directorate of Vegetable Research, 1, Gandhi Nagar, Varanasi, the Director (Personnel), Indian Council of Agricultural Research informed the former that in terms of Rule 19 of the Service Rules for Agricultural Research Service, the Agricultural Scientists Recruitment Board had carried out the assessment of Dr. D.S. Singh, Sr. Scientist (Pl Pathology) of ^{the} ~~your~~ Institute for the period ending 31.12.81, 31.12.82 and 31.12.83 and recommended no change for the year ending 1981, 1982 and 1983, which recommendations had been accepted by the competent authority in the Council. The order contained in letter dated 15.11.96 is sought to be quashed coupled with a direction to the respondents to promote the applicant as Scientist Grade S-3 with effect from the date his juniors have been promoted. Direction for making payment of arrears of salary is also sought by means of this O.A.

4. It has been submitted by Sri S. Narain, learned Counsel appearing for applicant that once the applicant was given promotion to Scientist Grade S-2 w.e.f. 1.7.96, his performance from 1976 to 1981 ought to have been taken into consideration for the purpose of his promotion to the Scientist Grade-S-3 but the authorities have illegally taken into consideration the performance of the applicant for the period ending 31.12.81, 31.12.82 and 31.12.83. Under the Rules 19(2) of the Agricultural Research Service Rules, 1975, provided that a Scientist will be entitled for promotion for advance increment after expiry of a period of 5 years service in the grade.

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Since the applicant was given promotion w.e.f. 1.7.82, he became eligible for screening in 1981 according to Rule 19(2) of the Rules and, therefore, his performance as entered in his A.C.R. in the preceding 5 years ought to have been taken into reckoning by the Agricultural Scientist Recruitment Board. His performance during the year 1981, 1982 and 1983 was, in our opinion, not very relevant for the purpose of grant of promotion to Scientist Grade S-3. The Tribunal has no jurisdiction to sit in appeal over the assessment made by Agricultural Scientist Recruitment Board. But it would be competent for the Tribunal to interfere in case it finds any error in decision making process itself. Since the Recruitment Board has not taken into reckoning the entries from 1976 to 1980, the decision taken by the Board with respect to the applicant's claim for promotion to Scientist Grade S-3 is vitiated by error of law.

5. The next question that arises for consideration is whether the applicant was entitled to promotion to Scientist Grade S-3 in terms of judgment by Tribunal in O.A. No.696 of 1988 coupled with the direction and observations made in CCP No.47 of 1994 vide order dated 25.4.96 with effect from the date his juniors were promoted. The Tribunal, in its judgment dated 15.9.93 in O.A. No.696 of 1988, had very clearly observed that the applicant was entitled to promotion to Scientist Grade S-3 w.e.f. 1.7.1981 (after completing 5 years service on the post of Scientist Grade S-2) from the date his immediate junior was considered for promotion to Scientist Grade S-2 and in its order dated 25.4.96, the Tribunal had made it absolutely clear that if any of the juniors of the applicant had been promoted in the year 1981 then the applicant would also be entitled to get the same benefit. It is not disputed that Mahavir Singh Yadav was given Scientist Grade S-2 w.e.f. 1.7.76 by order dated 13.11.92 and yet he was promoted further to Scientist Grade S-3 w.e.f. 1.7.82 even though he had actually performed only

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for one year in Scientist Grade S-2. So in terms of the order dated 15.9.93 read with order dated 25.4.96, the applicant was entitled to be promoted as Scientist Grade S-3 w.e.f. 1.7.82. He is also entitled to monetary benefits, if any, given to Mahavir Singh Yadav.

6. Accordingly the O.A. succeeds and allowed. The order dated 15.11.96 is quashed. The respondents are directed to treat the applicant promoted as Scientist Grade S-3 w.e.f. his junior Mahavir Singh Yadav was promoted and to give him monetary benefits, if any, given to Sri Mahavir Singh Yadav including the arrears within a period of four months from the date of receipt of a copy of this order.

No order as to costs.

Asthana
A.M.

(Ran)
V.C.

Asthana/