

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 27th DAY OF Nov, 2012)

PRESENT:

HON'BLE MR. D.C.LAKHA, MEMBER-A
HON'BLE MR. SANJEEV KAUSHIK, MEMBER-J

ORIGINAL APPLICATION No. 94 OF 2005
(U/s, 19 Administrative Tribunal Act. 1985)

Dr. Phool Chandra Dubey S/o Late R.N. Dubey, aged about 62 years, S/o Sri R.N. Dubey R/o B-322, Rajendra Izatnagar.

..... Applicant

By Advocate: Shri D.C. Mishra

Versus

1. President, Indian Council of Agricultural Research, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi.
2. Secretary, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
3. Director General, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
4. Director, Indian Veterinary Research Institute, Izatnagar, Bareilly.
5. Union of India through Secretary, Ministry of Agricultural Research Krishi Bhawan, New Delhi.

..... Respondents

By Advocate: Shri Manoj Kumar

ORDER

(DELIVERED BY:- HON'BLE MR. D.C.LAKHA, MEMBER-A

This application has been instituted for the following relief(s) :

- "(i) Issue the direction to the respondents to fix the salary of the petitioner in the pay scale of Rs.2700-5700/- (and equivalent revised scale later on) w.e.f. 14.12.87 in accordance with the Departmental Promotion Committee recommendations dated 23.01.2002.
- (ii) Issue a direction to the respondents to pay the entire due arrears of salary and all other post retirement benefits accordingly alongwith 12% interest in the fixation of salary on the pay scale of Rs.3700-5700 (and equivalent revised scale later on) w.e.f. 14.12.87 in accordance with the Departmental Promotion Committee recommendations dated 23.01.2002.



- (iii) Issue any other and further order which this Hon'ble Tribunal may deem fit and proper in the circumstances of this case.
- (iv) Award cost of the petition to the petitioner.
- (v) Issue an order quashing the order dated 3.1.03 passed by the competent authority in so far as it declines to grant the promotion of the applicant since 14.12.87 on the basis DPC REPORT dt.23.1.02."

2. Brief facts of the case as stated in the OA are that the applicant was appointed on 30.11.1967 as Farm Superintendent (Dairy) at IVRI Mukteshwar and thereafter appointed as Dairy Manager at IVRI Bareilly. The applicant was appointed as Junior Dairy Technologist in the pay scale of Rs.700/- Rs.1300/- at IVRI Bareilly w.e.f. 13.12.1974 (Annexure -1). He was appointed as Scientist Grade S-1 w.e.f. 1.10.1975 in the pay scale of Rs. 700-1300/- by order dated 28.8.1976 (Annexure-2), as such he was inducted as Scientist S-I w.e.f. 1.10.1975. By order dated 9.3.1989 the pay scale of A.R.S. in the grade of S-0, S-1, S-2, S-3, S-4, S-5 and S-6 was revised w.e.f. 1.1.1986 (Annexure-3). On account of this revision, the pay of the applicant has been wrongly fixed as Scientist S-2 as on 31.12.1985 in the pay scale of Rs.3000-5000/- (Annexure-A-4), while his pay should have been fixed in the scale of Rs.3700-5700/- after completion of more than eight years of service in ARS as on 31.12.1985. As per letter dated 15.12.1984 of ICAR (Annexure 6) the Scientists who were promoted to the grade S-2 w.e.f. 1.1.1986 were to be placed in the grade of Senior Scale i.e. Rs.3000-5000/- w.e.f. 1.1.1986 if their services as ARS did not exceed 08 years as on 31.12.1985. If such service as ARS Scientist exceeds 08 years as on 31.12.1985, they were to be placed in the grade of senior scientist in the pay scale of Rs.3700-5700/- w.e.f. 1.1.1986 on the basis of decision of Hon'ble Supreme Court. Keeping in view the provisions of Clause 2 to 4 of order dated 9.3.1989 and Clause II of letter dated 7.12.1991 and Clause II of letter dated 15.12.1994 as above, the applicant having completed about 11 years of service was entitled for the



pay scale of Rs.3700-5700 w.e.f. 14.12.1987. The applicant preferred representation dated 28.4.1995 followed by various reminders for fixation of his pay in the pay scale of Rs. 3700-5700/- w.e.f. 14.12.1987 but nothing was done. On his retirement on 31.7.2001 the applicant's pay was fixed in the pay scale of Rs.3000-5000/-. Vide order dated 7.7.2004, Senior Administrative officer, IVRI informed the applicant that the competent authority has recommended the scale of Rs.3700-5700/- w.e.f. 14.12.1992 to the applicant (Annexure-9).The Departmental Promotion Committee had already recommended the pay scale of Rs.3700-5700 w.e.f. 14.12.1987 for the applicant, but the applicant was granted promotion w.e.f. 14.12.1994. The Writ Petition No.51442 of 2003 filed by the applicant was dismissed by the Hon'ble High Court as lacking in jurisdiction. Due to less fixation of salary he is being paid less pension. Hence the O.A.

3. On notice, Counter reply has been filed by the respondents denying the allegations made in the O.A. It is submitted that the applicant was granted the pay scale of Rs. 2200-4000 w.e.f. 14.12.1987 and later on he was granted the pay scale of Rs. 3000-5000 w.e.f. 14.12.1987 as per ACP Scheme, following the period of completion of penalty of withholding of one increment imposed upon him vide order dated 21.3.1986. As per circular dated 9.3.1999 providing that Scientist S-2 (with total service in ARS as on 31.12.85 exceeding 8 years) was to be granted the scale of Rs. 3700-5700 w.e.f. 1.11.86 while the applicant was holding the post of Scientist S-I as on 31.12.85, therefore, he was not entitled to S-2 Scientist grade on 1.1.1986. He was correctly given the scale of Rs. 2200-4000 w.e.f. 1.1.1986 as per Council's letter dated 1.1.1986. As per Clause I of the ACP Scheme effective from 1.1.1986, the applicant was placed rightly in the scale of Rs. 2200-4000 w.e.f 1.1.1986, because the applicant was holding the post of S-1 as on 31.12.1985 and not in the scale of Rs. 3700-5700 w.e.f. 1.1.1986. Therefore,



his case for getting promotion to the grade of Scientist in the pay scale of Rs. 3700-5700 is not tenable and covered under rules. As stated above, he is covered under Clause I and not under Clause II of the ACP Scheme. It is further stated that the applicant was inadvertently recommended by the DPC for placement in the pay scale of Rs. 3700-5700 w.e.f. 14.12.1987. This mistake was rectified by putting the case of applicant afresh before the Assessment Committee held on 3.12.2003 and on the basis of the recommendations of this committee the applicant was approved for promotion to the grade of Rs. 3700-5700 w.e.f. 14.12.1992 vide order dated 7.7.2004. Hence the claim of the applicant is lacking merit and the O.A. is liable to be dismissed.

4. Rejoinder Affidavit has also been filed on behalf of the applicant, in which, the points in his favour are reiterated and the allegations made in the Counter reply have been denied. Supplementary Counter and Supplementary Rejoinder have also been filed in which the respondents reiterated their stand taken in the C.A. and the applicant has, by and large, reiterated his stand taken in O.A. and R.A. It is further submitted by the applicant in the Supplementary R.A. that the order dated 3.1.03 has not been served on the applicant and he has challenged the same by means of amendment application, when he came to know about it.

5. The respondents have also filed short arguments. Citing the following judgments, It is stated that wrong recommendation of DPC cannot become a ground of claim and it is always within the power of the competent authority to overrule, ignore and cancel the same in accordance with the rules:

- i) (1997) 6 SCC 766, ICAR and another vs. T.K. Suryanarayan and others.
- ii) JT 2002 (2) SC 483, P.H. Reddy and others vs. N.T.R.D. and others

The respondents have also cited the following rulings:




- i) AIR 1984 SC 885 Ramendra Singh and others vs. Jagdish Prasad and others.
- ii) AIR 1962 SC 1711 Sukhbans Singh vs. State of Punjab.
- iii) AIR 1966 SC 1842 State of U.P. vs. Akbar Ali Khan
- iv) 2000 (2) SLR 772 Chandra Prakash Shahi vs. State of U.P.

6. We have gone through the pleadings of the parties and have heard the learned counsels for both sides.

7. The learned counsel for applicant, in support of the averments in the O.A., has made assiduous efforts to plead in favour of claim of the applicant, with reference to recommendations of DPC dated 23.1.2002, for fixation of his pay in the pay scale of Rs.3700-5700/- w.e.f. 14.12.1987 and for payment of 10% interest on the arrears. It is also argued on behalf of the applicant the post retiral benefits be accordingly directed to be paid after fixation of revised pension. The main plea taken by the learned counsel for applicant is that the DPC had recommended the pay scale of Rs.3700-5700/- as the applicant had rendered more than 08 years of service as his service record was upto the mark. But on the recommendations of the DPC dated 23.1.2002 the competent authority did not pass any order and the benefit which was to accrue to the applicant in natural course of his right, was not allowed in spite of the fact that he moved one representation dated 28.4.1995 followed by various reminders in this regard.

8. The learned counsel for the respondents, on the other hand, has controverted the claim of the applicant in the Counter Reply as well as in his arguments. In his contention, the counsel has argued that the applicant was holding the post of Scientist S-1 as on 31.12.1985. As such, the pay scale

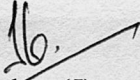


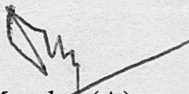
admissible to Scientist S-2 on 1.1.1986 could not be made available in his case and as such he was correctly placed in the pay scale of Rs.2200-4000/- w.e.f. 1.1.1986. Clause (ii) of ACP Scheme effective from 1.1.1986, as circulated vide Council's letter dated 28.10.1991, is applicable in the case of the applicant, according to which, every Scientist in the pay Scale Rs.2200-4000/- was to be placed in the senior pay scale of Rs.3000-5000/-. Since the applicant had completed more than 08 years of service as Scientist as on 31.12.1985, he had been placed rightly in the Scientist (Senior Scale) of Rs.3000-5000/- based on the recommendations of DPC 23.01.2002 w.e.f. 14.12.1985, i.e. on the completion of penalty of withholding of one future increment against the applicant vide ICAR's letter dated 31.3.1986. Therefore, the claim of the applicant for promotion to Selection Grade in the pay scale of Rs.3700-5700/- is not tenable. The counsel has also referred to citations as relied upon by him in the Counter Reply (supra). It is also added in the arguments of the learned counsel for respondents that the recommendations of the DPC dated 23.01.2002 on which the applicant is trying to build up his case, was never mandatory in nature. It was not agreed to by the competent authority as correct facts were not placed before the DPC leading to its recommendations. As per the settled position in service jurisprudence as sustained in law of land as well as the fact that recommendation of DPC is not mandatory in nature, the competent authority is never bound by the same.

9. We have given thoughtful consideration to the submission of both learned counsels in their arguments and have taken into account their contentions in respective pleadings and taking in view the position of rules and law settled in this regard as is also clear from the relevant judgments relied upon by the respondents' counsel, we are inclined to agree with the



stand and arguments of the respondents. We observe accordingly that the O.A. lacks merit and is liable to be dismissed. Accordingly, the same is dismissed. No order as to costs.


Member (J)


Member (A)

s.a.