

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 31st day of January 2002.

Original Application no. 1703 of 1993.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Maj Gen K.K. Srivastava, Administrative Member

1. Dr. B.S. Rathore, S/o Late H.S. Rathore
2. Dr. A.S. Panisup, S/o Sri Ram Chandra
3. Dr. Kali Charan, S/o late Sh Het Ram
4. Dr. S.K. Srivastava, S/o Santosh Behari
5. Dr. G.C. Ram, S/o Sri Sarju Prasad
6. Dr. A.P. Pandey, S/o Pt. Gajanand
7. Dr. B. Singh, S/o Sh. Sher Singh
8. Dr. V. Lakshmanan, S/o Sri V. Naicker
9. Dr. M.K. Mandape, S/o Sri K.F. Mandape
10. Dr. C.K. Wahal, S/o Sri K.P. Wahal
11. Dr. M.C. Saxena, S/o P.N. Saxena
12. Dr. M.C. Santoshi, S/o late B.N. Lal
13. Dr. Gopal Narain. S/o Sri S.N. Tandon
14. Dr. N.N. Siddiqui, S/o Dr. M.A. Siddique
15. Dr. P.K. Mohanty, S/o Sri A.C. Mohanty
16. Dr. V.K. Dwivedi, S/o Sri K.N. Dwevedi
17. Dr. Ram Kumar, S/o late Khazuk Singh
18. Dr. J.C. Verma, S/o late M.L. Verma
19. Dr. V.P. Singh, S/o late G.K. Pandiya
20. Dr. S.A. Khan, S/o Sri S. Ahmad Khan
21. Dr. Rameshwar Singh, S/i Sri Devi Singh
22. Dr. D.N. Kamra, S/o Sri J.K. Kamra
23. Dr. V.R.B. Sastry, S/o late Sh. V.S. Rao
24. Dr. R.C. Katiyar, S/o Sri R.N. Kathyar
25. Dr. Paritosh Joshi, S/o Sri C.S. Joshi
26. Dr. V. Ravi Prakash, S/o Sri V.S. Raju
27. Dr. S.K. Tandon, S/o late Sri S.L. Tondon
28. Dr. S.K. Mishra, S/o Sri M.S. Mishra
29. Dr. K. Sharma, S/o late S.C. Parashari
30. Dr. Satish Kumar, S/o Sri Prithivi Ram
31. Dr. A.S.R. Anjaneyulu, S/o Sri A.V. Rao
32. Dr. V. Kesavarao, S/o Sri V. Manikyyam

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33. Dr. B.N. Kowale, S/o Sri N.P. Kowale
34. Dr. D.C. Maurya, S/o late Har Prasad
35. Dr. P.C. Verma, S/o Sri MMP Verma
36. Dr. J.R. Rao, S/o Sri J. Krishna Rao
37. Dr. M.H. Khan, S/o Sri T.H. Khan
38. Dr. S.C. Gupta, S/o Sri Ved Ram
39. Dr. G.C. Bansal, S/o Sri Banarsi Das
40. Dr. B.P. Singh, S/o Sri Jai Chand
41. Dr. A.K. Misra, S/o Sri S.S. Mishra
42. Dr. K.N. Kapoor, S/o Sri P.C. Kapoor
43. Dr. D.C. Shukla, S/o late J.P. Shukla
44. Dr. A.C. Majumdar, S/o Late H.N. Majumdar
45. Dr. S.D. Singh, S/o Late J Prasad
46. Dr. S.K. Meur, S/o late D.C. Meur
47. Dr. Ashok Kumar, S/o Sri S.B.L. Kulshrestha
48. Dr. R.S. Srivastava, S/o Sri Ram Swarup
49. Dr. Murari Lal, S/o late Ram Chandra
50. Dr. S.S. Sengar, S/o Sri A.S. Sengar
51. Dr. V.K. Jain, S/o Sri K.L. Jain
52. Dr. V.P. Varshney, S/o late B.L. Gupta
53. Dr. D. Swarup, S/o Sri R.S. Sharma
54. Dr. N.N. Pandey, S/o late Sh. D. Pandey
55. Dr. M.C. Sharma, S/o Sri P.C. Sharma
56. Dr. G.R. Singh, S/o Sri Satyavir Singh
57. Dr. O.P. Gupta, S/o late Lakh Pd. Gupta
58. Dr. C.V.S. Rawal, S/o Sri B.M.S. Rawal
59. Dr. N.C. Sharma, S/o late H.L. Sharma
60. Dr. R.P. Verma, S/o late Ramavtar Pd. Verma
61. Dr. Greeish Mohan, S/o Sri Tej Pal
62. Dr. P.N. Kumar, S/o Sri B.L. Kumar
63. Dr. S.K. Das, S/o Sri K.S. Das
64. Dr. Dr. N. Ahmad, S/o late Amanullah
65. Dr. K.P. Mallick, S/o late J.D. Mallick
66. Dr. K.C. Tripathi, S/o late G.D. Tripathi
67. Dr. Ranjit Singh, S/o late Sri D. Singh
68. Dr. H.C. Tripathi, S/o late B.R. Tripathi
69. Dr. Y.P. Singh, S/o late T.R. Kamboj
70. Dr. H.S. Pandey, S/o Sri S.D. Pandey
71. Dr. D.N. Jana, S/o late B.C. Jana
72. Dr. M.M. Saxena, S/o late N.N. Prasad
73. Dr. H.N. Pandey, S/o Sri R.R. Pandey

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74. Dr. T.P. Parai, S/o late S.C. Parai
 75. Dr. B.B. Srivastava, S/o late R.B. Lal
 76. Dr. H.C. Joshi, S/o Sri A Joshi
 77. Dr. Uma Shanker, S/o Sri S. Shanker
 78. Dr. Satyapal, S/o Sri Bharat Mitter
 79. Dr. S.C. Arya, S/o Sri P.L. Arya
 80. Dr. R.C. Keshri, S/o late S.L. Keshri
 81. Dr. Mahavir Singh, S/o Sri R.C. Singh
 82. Dr. O.B. Goswami, S/o late B.R. Goswami
 83. Dr. B. Sharma, S/o Sri D.R. Sharma
 84. Dr. A.A. Kumar, S/o late A.B.N. Sahay
 85. Dr. R.L. Arora, S/o Sri C.L. Arora
 86. Dr. M.R. Ansari, S/o late A.C. Ansari
 87. Dr. C.L. Suman, S/o Sri R.C. Suman
 88. Dr. S.C. Misra, S/o Sri H.C. Misra
 89. Dr. M.L. Mhuja, S/o late Thana Ram
 90. Dr. K.L. Raheja, S/o Sri Har Dayal
 91. Dr. Satya Pal, S/o Sri Shanti Swaroop
 92. Dr. M.C. Kataria, S/o G.R. Kataria
 93. Dr. R.P. Moudgal, S/o Sri C.S. Moudgal
 94. Dr. R.L. Sharma, S/o late Dr. B.D. Sharma
 95. Dr. J.C. Biswas, S/o Sri A.C. Biswas
 96. Dr. S.K. Bandopadhyaya, S/o Dr. T.P. Banerjee
 97. Dr. R. Somvanshi, S/o Sri Badri Singh
 98. Dr. B.D. Gupta, S/o Sri C.D. Gupta
 99. Dr. R.S. Das, S/o Sri P.R. Gupta.

All presently working as Senior Scientists
 (Senior/Selection grade Scientists/S-2 Grade) I.V.R.I.
 Izatnagar Bareilly.

... Applicants

By Adv : Sri S. Agarwal
 Sri S.K. Mishra

V E R S U S

1. Union of India through the Secretary, Ministry of Agriculture (Dept. of Agricultural Research and Education) Krishi Bhawan, New Delhi.



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2. The Indian Council of Agricultural Research
Krishi Bhawan Dr. Rajendra Pd. Road, New Delhi
through its Secretary
3. The Secretary, Agricultural Scientists,
Recruitment Board, Krishi Anusandhan Bhawan,
New Delhi.
4. The Indian Veterinary Research Institute,
Izatnagar Bareilly U.P. through its Director
and Chief Administrative Officer.

... Respondents

By Adv : Sri R. Tewari & Sri J.N. Tewari

O R D E R

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

These 99 applicants are scientists serving in Indian Veterinary Research Institute (in short IVRI) Izatnagar, Bareilly. By means of this OA, filed under section 19 of the A.T. Act, 1985, they have approached this Tribunal for redressal of their grievance of non consideration for promotion from Scientists Grade S-2 to Scientists Grade S-3 in accordance with the Agricultural Research Service Rule 1975 (in short Rule 1975). They have also prayed for a direction to the respondents to hold annual assessment for promotion to scientists Grade S-3 for the year 1985 and onwards till Rule 1975 were in force. They have also claimed for consequential benefits arising out of the assessment and promotion as Scientist Grade S-3.

2. Sri S. Agarwal, learned counsel for the applicant has submitted that last assessment for promotion to Scientist Grade S-3 was made on 31.12.1984 which was finalised in 1988. It is submitted that in the year 1985, 1986, 1987 & 1988 no



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assessments were done and the applicants suffered a serious prejudice to chances of their promotions to Scientist Gr. S-3. Learned counsel for the applicant has further submitted that on the basis of report of Menon Committee dated 15.3.1988, the respondents have adopted UGC scales to scientists serving in IVRI and issued an order on 09.03.1989 (Ann A-1) giving effect to the scheme from 1.1.1986. Learned counsel for the applicant has submitted that the new rules for promotion came into force on 28.10.1991. Learned counsel for the applicant has also submitted that these rules do not take into account, the loss ~~occurred~~ to the applicants on account of non assessment of merits during the period of 4 years as mentioned above. Learned counsel for the applicant has submitted that the applicants are entitled for a direction to the respondents to assess the applicants for promotion as scientist gr S-3 in respect of the years 1985, 1986, 1987 & 1988 which was mandatory obligation of the respondents under rule 19 read with para 5-C of chapter IV of Rule^{of} 1975. It is also submitted that the UGC scheme which has been adopted w.e.f. 1.1.1986 does not compensate prejudice and disadvantages suffered by the applicants. Learned counsel for the applicant in support of his aforesaid submissions has relied upon the judgment of Hon'ble Supreme Court in case of Syed Khalid Rizvi & Ors Vs. U.O.I. & Ors JT 1992 (Suppl) SC 169 and Nirmal Chand Bhattacharya Vs. U.O.I. & Ors JT 1991 (5) SC 35.

3. A counter affidavit has been filed by the respondents resisting the claim of the applicants. It has been stated therein that the claim of the applicants are time barred as the cause of action arose on 09.03.1989 when the UGC scheme was adopted for scientists of IVRI on the basis of the report of Menon Committee dated 15.3.1988. It is also stated that

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Rule of 1975 were applicable only upto 31.12.1985 and after 1.1.1986 as the respondents adopted UGC scheme, Rule of 1975 do not govern the service condition of scientists and they are wholly redundant. It has also been stated that the applicants are trying to take advantage under old rule and also on the basis of the new scheme adopted on 09.03.1989.

4. We have carefully considered the submissions made by Sri S. Agarwal, learned counsel for the applicant and Sri J.N. Tewari, learned counsel for the respondents in objections raised in the counter affidavit. We have also perused the scheme dated 09.03.1989 by which the UGC scale has been adopted. However, we do not find any thing on which basis it may be said that the Rule of 1975 have been deleted, repeated and rendered redundant. Admittedly, Rule of 1975 continued to remain in force upto 1989 when new scales of pay were adopted. Mode provided under Rule of 1975 for yearly consideration for promotion continued to be valid. We do not find any cogent and plausible explanation on the part of the respondents as to why the exercise required under rule 19 was given up for this long period.. Hon'ble Supreme Court in case of N.C. Bhattacharya (supra) has held in para 5 as under :-

"One of the principles of service is that any rule does not work to prejudice of an employee who was in service prior to that date. Admittedly the vacancies against which appellants were promoted had occurred prior to restructuring of these posts. It is further not disputed that various other posts to which class 'IV' employees could be promoted were filled prior to 1st August 1983. The selection process in respect of Ticket Collectors had also

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started prior to 1st August 1983. If the department would have proceeded with the selection well within time and would have completed it before 1st August 1983 then the appellants would have become Ticket Collectors without any difficulty. The mistake or delay on the part of the department, therefore, should not be permitted to recoil on the appellants. Para '31' of the restructuring order itself provides that vacancies in various grades of posts covered in different categories existing on 31st July 1983 would be filled in accordance with the procedure which was in vogue before 1st August, 1983."

If the principle laid down by Hon'ble Supreme Court in the above case is applied in the present case there remains no doubt that the respondents were under obligations to assess applicants for promotion to scientists Grade S-3 under Rule ^{of} 1975 which was holding field and ^{continued} ~~gradation~~ the obligations to the respondents to carryout yearly assessment. In case Syed Khalid Rizvi (supra) the Hon'ble Supreme Court in para 34 held as under :-

".....Unless the select list is made annually and reviewed and revised from time to time, the promotee officer would stand to lose their chances of consideration for promotion which would be a legitimate expectation. This Court in Mohan Lal Kapoor's case held that the committee shall prepare every year the select list and the list must be submitted to the U.P.S.C. by the State Govt. for approval and thereafter appointment shall be made in accordance with the rules. We have, therefore, no hesitation to hold that preparation of the select list every year is mandatory. It would subserve the object of the Act and the rules and afford an equal opportunity to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Govt. concerned and this court takes serious note of wanton infraction."



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In the present case as stated earlier, the respondents without any cogent and valid reason simply ignored the claim of the applicants for promotion to scientists Gr. S-3. This loss of four years have caused prejudice to the claim of the applicants. The respondents have not shown in the counter affidavit that disadvantage caused to the applicants on account of their inaction has been taken into account and they have been suitably compensated under new scheme and the new rule made applicable in 1989 and 1991. In absence of such explanation, in our opinion the applicants are entitled for the relief. The mere fact that the new pay scales were made applicable from 1.1.1986 subsequently will not render the rule^{of} 1975 inapplicable during the period mentioned above. The contention of the respondents cannot be accepted. With regard to the submissions raised on behalf of the respondents about delay and latches, Sri S. Agarwal, learned counsel for the applicant has submitted that the applicant had filed representation which remained pending. The respondents assured that the representations will be considered after the judgment of Hon'ble Supreme Court in case of Dr. S.M. Ilyas Vs. Indian Council of Agricultural Research & Ors, (1993) 1 SCC 182, which was decided on 13.11.1992. It is submitted that when the representations of the applicants were not decided even after the judgment of Hon'ble Supreme Court and advertisement were published inviting applications for direct recruitment as scientists gr S-3, the applicant ~~had~~ filed this O.A. Sri S. Agarwal, learned counsel for the applicant has also pointed out that this Tribunal taking into account the urgency passed an interim order on 09.11.1993 to the following effect :-

"In the meantime, if any direct recruitment will be made, the same shall be subject to the final order

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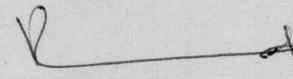
of this case."

5. We have carefully considered the submission of learned counsel for the parties and in our opinion, in the facts and circumstances mentioned above, we do not find any delay and latches on the part of the applicants, they are entitled for the relief. The OA is accordingly allowed in part. The respondents are directed to consider the claims of the applicants with regard to their promotions to scientists gr S-3 under Rule 1975 with regards to the years 1985, 1986, 1987 & 1988 and promote the applicants if they are found suitable in the assessment and satisfy other conditions. We also make it clear at this stage that in case the applicants have been conferred benefits under new scheme relating to UGC ^{Pay} ~~scale~~ ^{as per 1989} ^{Rule of} scheme under Rule 1975 on 1991, they will be entitled to adjust the same, while giving benefits of promotion under Rule 1975.

6. There shall be no order as to costs.



Member-A



Vice-Chairman