

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 24th day of November, 2005.

Original Application No. 1446 of 1999.

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A.K. Singh, Member (A)

M.L. Ayim, S/o Sri Aghnoo, working as Carpenter Grade T. I 3 In Indian Gross Land and Fodder Research Institute Jhansi Under Indian Council of Agricultural Research.

.....Applicant

By Adv: Sri R.K. Nigam.

V E R S U S

1. Union of India through Director General, Indian Council of Agricultural Research, Ministry of Agriculture, Govt. of India, Krishi Bhawan, NEW DELHI.
2. Director Indian Gross Land and Fodder Research Institute, JHANSI.

.....Respondents.

By Adv: Sri B.B. Sirohi.

O R D E R

By K.B.S. Rajan, JM

The applicant through this O.A. has sought the following relief(s):-

"8.1 Direct the respondents to consider promotion of the applicant in T II 3 category since 1.1.1995 after circular dated 1.2.1995 issued by Indian Council of Agriculture Research for removal of category bar.

8.2 Direct the respondents to consider promotion in category T II 4 at par with

his Juniors Shri V.K. Tambay and Bhole Ram Sepam with consequential benefits of service.

8.3"

2. Brief Facts of the case as contained in the OA are as under:-

- (a) The applicant, an ITI qualified individual was appointed to the post of Carpenter in T-1 Grade of the Technical services vide order dated 25-02-1978. In the respondent's organization, the cadre structure as per the Technical Service Rules (came into force w.e.f. 01-10-1975) is as under:-

"Categories and Grades of the Services

3.1 The Technical Services are grouped into three categories consisting of the following grades:

<i>- Category</i>	<i>Grade</i>	<i>Pay Scale</i>
<i>Category-I</i>	<i>T-1(i)</i>	<i>Rs 260-6-290-EB-6-326-8-366- EB-8-390-10-430</i>
	<i>T-2 (ii)</i>	<i>Rs 330-10-380-EB-12-500-EB-15-560</i>
	<i>T-I-3 (iii)</i>	<i>Rs 425-15-500-EB-15-560-20-700</i>
<i>Category-II</i>	<i>T-II-3(i)</i>	<i>Rs 425-15-500-EB-15-560-20-700</i>
	<i>T-4 (ii)</i>	<i>Rs 550-25-750-EB-30-900</i>
	<i>T-5 (iii)</i>	<i>Rs 650-30-740-35-810-EB-35-880-40-1000-EB-40-1200</i>
<i>Category-III</i>	<i>T-6(i)</i>	<i>Rs 700-40-900-EB-40-1100-50-1300</i>
	<i>T-7 (ii)</i>	<i>Rs 1100-50-1600</i>
	<i>T-8 (iii)</i>	<i>Rs 1300-50-1700</i>
	<i>T-9 (iv)</i>	<i>Rs 1500-60-1800-100-2000"</i>

- (b) The Applicant was promoted to the next grade of T2 Category w.e.f. 01-07-1984 by order dated 01-05-1985.
- (c) As per para 6.2 of the TSR, five yearly assessment shall take place and on the individual being found fit, irrespective of availability of vacancies, promotion would be made within the same category. However, by virtue of this five yearly assessment, none is permitted to jump from one category to the other. In

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other words, in so far as Category I is concerned, under this scheme one could ascend from T-1 to T-II and from T-II to T-1-3 but not from T-1-3 to T-II-III, as that would amount to change of category. The applicant was given the promotion from T-II to T-1-3 under the five yearly assessment w.e.f. 01-01-1991 vide order dated 05-03-1994.

- (d) As T-1-3 of Category I and T-II-3 of Category II had overlapping scale, the two grades were merged into one i.e. T-II-3 grade w.e.f. 01-01-1995. This would then mean that services rendered in T-1-3 category would count for five yearly assessment from T-II-3 to T-4. According to the applicant, the next promotion under the said scheme fell due in 1996. And while certain juniors to the applicant were promoted from T-II-3 to T-4 grade, the applicant was not so promoted but was given three increments, vide order dated 19-09-1998 (Annexure A-2). The applicant is aggrieved by the fact that instead of affording him the promotion, the respondents have given only three increments. His representations did not result in any fruitful action by the respondents and hence the O.A.

3. The respondents have contested the O.A.
4. Arguments were heard and the case received our anxious consideration. The relevant paras of the Regulations for the purpose of this case are paras 3.2, 3.3 and 5.1 which read as follows:

"3.2 The pay scales in Categories I and II replace the existing pay scales in the manner indicated in Appendix I. The new pay scales in Category III are the same as the existing pay scales.

3.3 The new pay scales will be applicable both to the future entrants as well as to the existing incumbents from 1-10-1975. However, the existing incumbents may, if they so desire, retain their existing scales as personal to them.

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Initial Adjustment of Existing Employees

- 5.1 The existing permanent and temporary employees appointed through regularly constituted DPC/Selection Committees will be fitted into the grades specified in para 3.1 on 'point to point basis' without any further screening irrespective of their qualifications. However, persons holding positions in the merged grade of Rs 425-700 and possessing qualifications prescribed for Category II, will be fitted in grade T-II-3 (Rs 425-700)."

The respondents have granted three increments instead of promotion to the applicant and the same has been under challenge.

5. Provision exists to give either the promotion or the increments and in this regard the assessment is to be made by the respondents. It is not that only in the case of the applicant the respondents have limited the benefits to increments instead of promotion. In addition to the applicant two more individuals were granted only three advance increments w.e.f. 01-01-1996, while four have been granted the higher pay scale from their earlier lower pay scale. The criteria adopted, however, has not been manifested in the counter.

6. The advantage of higher promotion is that it paves way for further promotion. Since the two scales of (1)(iii) and T-2 (3)(i) have identical pay scale and the next grade above T-2(3)(i) is T-4-ii falling within the same category, it would have been fair if the applicant be also considered for promotion to the higher grade, instead of three advance increments. It would have been a different aspect had the two grades been not merged.

7. In the case of Director, Central Rice Research Institute vs Khetra Mohan Das (1994) Supp 3 SCC 595, the Apex Court had occasion to consider a case which resembles with the case in hand. In that, the Court has held as under:-

As per these rules the respondent was inducted into Category I Grade T-2 and as seen above the scale of pay for the persons holding post in Category I Grade T-2 was fixed as Rs 330-560. The respondent made a representation that as per the rules he ought to have been fitted in the lowest grade of Category II i.e. T-II-3 for which the scale of pay prescribed is Rs 425-700 and also that a Field/Farm Technician holding either a 3 years' diploma or a bachelor's degree in the relevant field should be fitted in Category II. As the representation was not fruitful he filed a writ application in the High Court of Orissa which after the establishment of the Central Administrative Tribunal was transferred to Cuttack Bench. In the counter-affidavit filed on behalf of CRRRI it was stated that the respondent was correctly inducted into Category I Grade T-2 and that as per the provisions of Rule 5.1 the existing permanent and temporary employees will be fitted only in the grades specified in para 3.1 on point to point basis without any further screening irrespective of the qualification. It is, however, stated that only the persons holding positions in the merged grade of Rs 425-700 and possessing qualifications prescribed for Category II would be fitted in Category II Grade T-II-3 carrying the pay scale of Rs 425-700 and that since the respondent was not holding a post carrying the pay scale of Rs 425-700 he would not be entitled to be inducted into Category II of the Technical Service Rules. The Tribunal, however, held that the moment the rules became applicable the necessary consequence was that a person should be fitted in the category for which he possesses the minimum qualification required and that at any rate since the respondent has been promoted to Category I Grade T-I-3 carrying the same scale of Rs 425-700 as that of Category II Grade T-II-3 he should be deemed to have been fitted into Category II Grade T-II-3. In this context the Tribunal also observed that if the respondent is made to remain in Category I then he cannot have any further promotion to Grade T-4 and Grade T-5 in Category II. In this view of the matter the Tribunal allowed the petition and held that the respondent should be deemed to have been appointed into Category II Grade T-II-3.

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In C.C. Padmanabhan v. Director of Public Instructions, this Court observed that 'Promotion' as understood in ordinary parlance and also as a term frequently used in cases involving service laws means that a person already holding a position would have a promotion if he is appointed to another post which satisfies either of the two conditions namely that the new post is in a higher category of the same service or that the new post carries higher grade in the same service or class. Viewed from any angle it is clear that



when these rules came into force only a person in Grade T-I-3 of Category I (pay scale — Rs 425-700) would be entitled to be inducted in Grade T-II-3 of Category II provided he possessed the necessary qualifications prescribed for Category II.

8. Since the applicant possesses the qualification for such promotion, as averred vide para 4.8 of the O.A. followed by para 6 of the rejoinder, he ought to have been considered for promotion instead of grant of three advance increments.

9. The respondents have relied upon the judgment of the Ernakulam Bench in the case of P. Bahuleyan and another Vs. DG, ICAR and other connected cases (vide Order dated 05-05-1999 in OA Nos. 980/97 etc., However, taking into account the Apex court's judgment, it would be appropriate if a direction be issued to the respondents to consider the case of the applicant for promotion to T-4 (ii) (Pay scale of Rs 550-25-750-EB-30-900). Review DPC should be conducted and if the applicant fills the bill, he be promoted to the said grade. If the applicant was not found suitable the same be intimated to the applicant by a speaking order. This drill shall be conducted within a period of six months from the date of receipt of copy of this order. ^{OA is allowed} No costs.


MEMBER-A


MEMBER-J

GIRISH/-