

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 512 OF 1994
Cuttack, this the 17th day of August 2001

Shri Narain Tewari Applicant

Vrs.

Indian Council of Agricultural Research
and others... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the benches of the Central Administrative Tribunal or not? No.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
17.8.2001

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 512 OF 1904
Cuttack, this the 17th day of August- 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Shri Narain Tewari, aged 42 years, son of Shri Ram Adhar Tewari, a permanent resident of village Sikata, P.O-Panwari, District-Mirzapur (UP), at present serving as Senior Scientist in Plant Protection (Plant Pathology), Central Rice Research Institute at Bidyadharpur, Cuttack.... Applicant

Advocates for applicant- M/s A.K.Misra
S.B.Jena
S.K.Das
J.Sengupta
B.B.Acharya
J.P.Rath
A.K.Guru

Vrs.

1. Indian Council of Agricultural Research, represented through its President, Krishi Bhavan, New Delhi.
2. Director General, ICAR, Krishi Bhawan, New Delhi.
3. Director, Personnel, ICAR, Krishi Bhawan, New Delhi.
4. Director, Central Rice Research Institute, At-Bidyadharpur, P.O-CRRI, Cuttack

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Respondents

Advocate for respondents- Mr.Ashok
Mishra
Sr.Panel
Counsel

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this Application the petitioner has prayed for a direction to the respondents to give him the scale of pay of Rs.1100-1600/- with effect from 1.7.1976 as has been given to similarly circumstanced Scientists. His second prayer is for a direction to the respondents

to promote him to the higher grades of Scientist (S-3) and Principal Scientist with all service and financial benefits. The last prayer is for quashing the order dated 28.6.1994 at Annexure-10 rejecting his prayer for higher scale. The respondents have filed counter opposing the prayers of the applicant, and the applicant has filed rejoinder.

2. The applicant's case is that he was appointed as Subject Matter Specialist (Plant Protection) (hereinafter referred to as "SMS (PP)") in Indian Council of Agricultural Research (ICAR), National Demonstration Project and worked as such from 2.9.1975 to 28.9.1977. While continuing as such, in response to an open advertisement issued by ICAR for the post of Scientist, he applied, was duly selected and joined the post of Scientist (S-1) in the pay scale of Rs.700-1300/-. As SMS (PP) he was drawing the pay scale of Rs.700-1600/-. He joined Central Rice Research Institute (hereinafter referred to as "CRRI") on 30.9.1977 in the post of Scientist (S-1). The petitioner's case is that ICAR have framed a Scheme/Service Rules for Agricultural Research Service (for short, "ARS") and under Rule 19(2) a Scientist is eligible for being screened for promotion for advance increments after expiry of five years of service in the grade. This merit promotion is done after periodical review of the work of a Scientist. The promotion scheme was subject-matter of challenge in various High Courts, particularly in the Hon'ble High Court of Delhi, and the Hon'ble Delhi High Court in their judgment observed that since there is power to relax under Rule 22, the authorities should consider the

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provisions of Rule 22 and allow the Scientists to be promoted to S-2 Grade. The scale of pay of Scientist, S-2 Grade is Rs.1100-1600/-. The applicant has stated that accordingly whoever was continuing in the scale of Rs.700-1300/- as on 1.10.1975 was given a jump to the grade of Rs.1100-1600/- irrespective of the length of service. The applicant has stated that some other Scientists approached this Bench of the Tribunal in OA No. 92 of 1990 and the Tribunal in their order dated 21.1.1994 directed that the High Power Committee should consider the cases of the applicants before them and the opinion of the High Power Committee should be submitted to Government positively by 31.3.1994 and further action should be taken within 90 days thereafter. The applicant has stated that when he joined as Scientist S-1 on 30.9.1977 in CRRI, his pay was protected and past service has been taken into account and accordingly, he must be taken to be an employee of ICAR from 1.10.1975, having joined the National Demonstration Project on 2.9.1975. He made series of representations. But in order dated 28.6.1994 (Annexure-10) his representation was rejected. In the context of the above, the petitioner has come up with the prayers referred to earlier.

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3. Respondents in their counter have stated that in pursuance of the order of the Tribunal in OA No.92 of 1990 a High Power Committee was constituted to review the entire scheme of merit promotion and the High Power Committee, after considering the cases of the applicants before the Tribunal in the earlier OAs,

concluded that there was no distortion in their cases because their cases are not parallel to those Scientists who were in position as Scientists S-1 on 1.10.1975. The respondents have stated that the applicant was not a Scientist under ICAR on 30.9.1975. He was appointed by ICAR and joined the grade of Scientist S-1 only on 30.9.1977. The statement of the applicant that he was working as SMS in Allahabad Agricultural Institute under ICAR is incorrect as Allahabad Agricultural Institute is not under ICAR. The applicant joined CRRI under ICAR on 30.9.1977 through an open interview and by giving resignation from his old post in Allahabad Agricultural Institute. The respondents have stated that as the applicant was not in the Class I service on 1.10.1975, the provisions of Rule 19(2) are not applicable to his case. The respondents have stated that under the merit promotion scheme, copy of which has been enclosed at Annexure-R/3, a Scientist is entitled to merit promotion/advance increment after assessment of his work of five years in a particular grade in ICAR only. They have stated that allowing higher initial pay to the applicant on his joining ICAR through pay protection does not mean that the service of the applicant under Allahabad Agricultural Institute has been taken as service under ICAR. In support of this, the respondents have enclosed a certificate dated 6.12.1979 at Annexure-R/2 from the Principal, Allahabad Agricultural Institute. On the above grounds, the respondents have opposed the prayers of the applicant.

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4. The applicant in his rejoinder has mentioned that he was working in National Demonstration Project in Allahabad Agricultural Institute. This project was financed by ICAR and Scientists of ICAR were supervising the project and from this it can only be concluded that the Project was under the direct administrative control of the ICAR and he should be taken as an employee of ICAR from the date of his joining the Allahabad Agricultural Institute in National Demonstration Project. On the above grounds, the applicant has reiterated his prayers in the OA.

5. We have heard Shri A.K.Mishra, the learned counsel for the petitioner and Shri Ashok Mishra, the learned Senior Panel Counsel for the respondents. The learned counsel for the petitioner has filed the decision of the Principal bench of the Tribunal in TA No.8 of 1990 and the decision of the Hon'ble High Court of Delhi in the case of Dr.M.L.Lodha and others v. Union of India and another, CWP No. 1192 of 1984, disposed of on 5.3.1987 and we have perused these decisions. The petitioner has filed documents indicating that in 1993-95 he has been given Rafi Ahmed Kidwai Memorial Awards for Agricultural Research for outstanding contribution in the field of Crop Science along with citations and we have taken note of the same.

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6. At this stage, it is only necessary to note that the Hon'ble High Court of Delhi in their judgment in Dr.M.L.Lodha's case (supra) directed in the last paragraph that the ICAR should extend its decision contained in their letter dated 24.8.1977 to the case of the petitioners before the Hon'ble High Court and relax Rule 19(2) in favour of the petitioners and other

erstwhile Junior Class-I Scientists who had been absorbed in Grade S-1 with effect from 1-10-1975 and further to give effect to the said relaxation to the case of eligible S-1 Scientists for promotion with effect from 1.7.1976. From this it is clear that the decision of the Hon'ble High Court of Delhi ^{was} in respect of persons who were in the service of ICAR as on 1.10.1975. The Principal bench in their decision in TA No. 8 of 1990 directed that the entire scheme of merit promotion should be referred to a High Power Committee consisting of experts and necessary amendment should be made in 1975 Rules. Pending review, certain directions were given for promotion of the applicants before the Principal Bench of the Tribunal to the grade of S-3 on the basis of their appointment in S-2 Grade. Thus, the first question which arises in this case for consideration is whether the applicant was in the service of ICAR as S-1 Scientist on 1.10.1975.

7. The applicant's case is that he joined Allahabad Agricultural Institute as SMS (PP) on 2.9.1975 and worked there till 28.9.1977. In Allahabad Agricultural Institute he was working as SMS(PP) in National Demonstration Project, a project which is funded and supervised by ICAR. But because of his working in a project funded by the ICAR it cannot be said that he is an employee of ICAR. National Demonstration Projects are funded by ICAR and located in different institutions. But that would not mean that a person working in a National Demonstration Project, employed by the Institute where the project is located, becomes an employee of ICAR. The

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respondents have enclosed at Annexure-R/2 a certificate of the Principal, Allahabad Agricultural Institute, which certifies that Allahabad Agricultural Institute is a Government aided institute and receives assistance of funds from State and Central Governments. In the heading of this certificate it has been mentioned that Allahabad Agricultural Institute is a Christian Institute of Rural Life founded by Sam Higginbottom. The applicant has not stated that Allahabad Agricultural Institute is a research institute of ICAR like CRRI. Therefore, his service under Allahabad Agricultural Institute cannot be taken as service under ICAR. The applicant himself has stated that in response to an open advertisement he applied for the post of Scientist S-1 in the scale of Rs.700-1300/-, got selected and joined CRRI on 30.9.1977. In Allahabad Agricultural Institute he was in the pay scale of Rs.700-1600/- and when he joined CRRI his pay was protected as is seen from the order at Annexure-5. Therefore, it is clear that the applicant was not in the employment of ICAR on 1.10.1975 and he joined ICAR only on 30.9.1977.

8. The next point, which arises for consideration, is whether the past service of the applicant in Allahabad Agricultural Institute will be taken into consideration for the purpose of his further advancement in ICAR. The applicant has enclosed at Annexure-1 the letter dated 26.9.1977 of ICAR in which it has been decided to extend the service benefits at present admissible to Central and State Government employees on their appointment in the ICAR to the employees coming from Scientific organisations/Universities which are wholly or

substantially financed by the State/Central Governments. Accordingly, such employees will be eligible for service benefits like continuity of past service, retention of lien, fixation of pay, joining time pay, etc. In a subsequent letter dated 1.4.1978, it was clarified that these benefits will be applicable only to appointments made on or after 10.9.1977. At Annexure-2 is the appointment order dated 16.3.1978 of 19 S-1 Scientists including the applicant and against the name of the applicant it has been mentioned that his date of appointment is 30.9.1977 on the basis of offer of appointment, dated 31.8.1977. Thus, the appointment of the applicant is also prior to 10.9.1977 even though he joined on 30.9.1977. But this aspect is not in any way relevant for the present purpose because the decision of putting Scientists (S-1) drawing the pay scale of Rs.700-1300/- in S-2 Grade with pay scale of Rs.1100-1600/- is applicable only in respect of Scientists (S-1) who were in the service of ICAR on 1.10.1975. We have already held that the applicant cannot be treated to be a Scientist in S-1 Grade on 1.10.1975. As a matter of fact, on 1.10.1975 he was in the service of Allahabad Agricultural Institute in the pay scale of Rs.700-1600/- and Allahabad Agricultural Institute is not an institute under ICAR. In view of this, the applicant is clearly not entitled to get the benefit of upgradation from S-1 to S-2 like those S-1 Scientists who were in the service of ICAR on 1.10.1975. Thus, the prayer of the applicant for a direction to the respondents to give him the pay scale of Rs.1100-1600/- from 1.7.1976 is without

any merit. It is also to be noted that in the concluding paragraph of the judgment in the case of Dr.M.L.Lodha's case(supra) the Hon'ble High Court of Delhi have clearly mentioned about promoting S-1 Scientists to S-2 Grade with effect from 1.7.1976 only in respect of those S-1 Scientists who were appointed in S-1 Grade on 1.10.1975. This prayer of the applicant is, therefore, rejected. Consequentially, his second prayer for further promotion to S-3 Grade and Principal Scientist is also held to be without any merit. The applicant having joined the service of ICAR on 30.9.1977 has to wait for his turn under the Merit Promotion Scheme for getting promotion to S-2, S-3 and Principal Scientist. As a matter of fact, he is already working as Senior Scientist which is presumably a grade higher than S-1 Scientist.

9. In view of our discussions above, we hold that the application is without any merit and the same is rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)

17.8.2001
VICE-CHAIRMAN

17th August 2001/AN/PS