

5

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.479 OF 2003
CUTTACK THIS THE 28 DAY OF December 2005

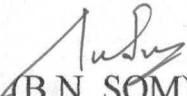
DULLAV CHANDRA JENA & 21 OTHERS. ... APPLICANT

-VERSUS-

UNION OF INDIA & ORS. RESPONDENTS

FOR INSTRUCTIONS

11. Whether it be referred to reporters or not ? No.
12. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.


(B.N. SOM)
VICE-CHAIRMAN


28/12/05
(M.R. MOHANTY)
MEMBER(JUDICIAL)

4

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.479 OF 2003
CUTTACK THIS THE 28th DAY OF December 2005

CORAM:

**THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)**

...

Dullav Chandra Jena & Others. ...Applicant

By the Advocates : M/s. K.C.Kanungo,S.Bheras,
B.D.Das, Advocates.

-VERSUS-

Indian Council of Agricultural Research represented through

1. Director General,ICAR,Krishi Bhavan, New Delhi-1
2. Director, Central Rice Research Institute,Bidyadharpur,
At/Po/Dist:- Cuttack, Orissa.

....Respondents

By the Advocates : Mr.U.B.Mohapatra, Sr.St.Counsel.
&
Mr.S.B.Jena, A.S.C.



X

O R D E R

MR.M.R.MOHANTY, MEMBER(JUDICIAL):-

In this Original Application under Section 19 of the Administrative Tribunals Act, 1985, the Applicants have challenged the action of the Respondents in giving an interpretation the Technical Service Rules, 2000 to their disadvantages amounting to denial of their promotional prospects.

2. Initially, the Applicants were engaged as Casual Laborers (since 1973) under Indian Council of Agricultural Research (in short I.C.A.R) which introduced Technical Service Rules (in short T.S.R.) with effect from 01.10.1975. The said Rules outlined three categories of Technical Personnel viz., Category-I, Category II and Category-III under the I.C.A.R. For the sake of clarify, those three categories of Technical Personnel are mentioned hereunder in a tabular form:

Category-I

T-1
T-2
T-I-3

Pay Scale

Rs.260-430/-
Rs.330-560/-
Rs.425-700/-

Category-II

T-II-3

T-4

T-5

Category-II

T-6

T-7

T-8

Rs.425-700/-

Rs.550-900/-

Rs.650-1200/-

Rs.700-1300/-

Rs.1100-1600/- ✓

Rs.1300-1700/-

J

3. The Applicants thereafter were appointed under the Functional Group of Field/Farm Technicians from 1980 onwards and their nature of job having been classified as Technical, in view of the abovementioned personnel policy, they were designated as T-1. In line with the provisions of T.R.S. 1975 and since the said Rules provided career assessment for promotion/three advance increments in respect of technical personnel in each of the categories (on completion of five years in a particular grade), the present Applicants were promoted to T-2 grade in the year 1986, and thereafter to T-I-3 grade in the year 1992 onwards. It is to be noted here that T-II-3 (Cat-II) being a direct recruitment post, there was no career assessment for promotion of an incumbent in T-1-3 of Cat.I to T-II-3 of Cat.II on completion of five years in T-1-3 unless and until one acquired the prescribed qualification as required in case of Direct Recruit to T-II-3 grade.

However, as a measure of one time relaxation, category jump was allowed vide instruction/letter dated 16.7.1984 advance increments, (subject to maximum of three) were granted to the Technical personnel after completion of five years service in the highest grade of each of the Categories, i.e., T-I-3, T-5 and T-9, irrespective of vacancies. While the matter stood thus, the Governing Body of I.C.A.R took a decision to remove the Category Bar between T-I-3

and T-II-3 (Categories I and II) and accordingly, instruction dated 1.2.1995, (prescribing certain modalities in that behalf) was issued making it effective from 01.01.1995. It was by the reason of certain conditions in the matter of removal of category bar in the said instruction/ letter dated 1.2.1995, a large number of representations were made by the technical personnel from various Institutes of the country who were likely to be adversely affected. In the circumstances, (by letter under Annexure-R/6 dated 10.1.1996), another instruction was issued safeguarding the interest of the representationists.

4. While this was the state of affairs, T.S.R. 1975 was revised/ modified. Based on the said modification, T-I-3 and T-II-3 of Categories-I and II were merged together by giving birth to T-3 (in Category-II) with a provision of promotion from newly born T-3 grade onwards. This revised T.S.R. was made effective from 3.2.2000. In accordance with the Rules, technical personnel under the I.C.A.R. were called to exercise their option as to whether they would be governed under the old Rule, i.e., T.S.R. 1975. Be that as it may, the service conditions of the applicants are now governed under the modified T.S.R., under Annexure-3 dated 3.2.2000 and clarificatory order under Annexure-2 dated 6.2.2003.

10
5. In the context of the above facts, Applicants (Dullav Chandra Jena and 21 others) have assailed the decision of the Council/ICAR in misinterpreting the modified T.S.R. vide their Clarificatory order under Annexure-R/2 dated 6.2.2003 to their disadvantage.

6. Shri K.C.Kanungo, the learned counsel for the Applicants has submitted that the basic object of the modified T.S.R. 2000 (which governs the service conditions of the Applicants), has been distorted by virtue of the clarificatory instructions under Annexure-2 dated 6.2.2003 and, thereby, they have been deprived of their career mobility/promotion. In the circumstances, it has been urged that by any interpretation like clarificatory order under Annexure-2 puts an embargo on their career progression, the intention of the modified TSR has been given a go bye.

7. In consideration of the fact that T-1-3 in Cat.I and T-II-3 in Cat.II carry the same scale of pay and the incumbents of these posts also discharge the same and identical work and the fact that, these overlapping grades had become redundant, the Governing Body of the ICAR approved the changes in T.S.R by amalgamating two overlapping grades, i.e., T-I-3 and T-II-3 in Category-I and II respectively, to facilitate assessment promotion of Category I employees, as a

11

consequence of which T.S.R.1975 was modified vide notification No.18-1/97-Estt.IV DATED 3.2.2000.

8. By the time the modified T.S.R at Annexure-2 came into effect, the Applicants had already rendered more than five years (i.e.7.5 to 8 years of service) in the grade of T-1-3 (Cat.I) and in view of introduction of the said T.S.R., they were expecting their immediate assessment for the purpose of promotion during 2000 having acquired the eligibility. In this connection, the Applicants have based their claim on the old TSR as well as the modified TSR, which unequivocally and unambiguously stipulate assessment promotion from T-3 onwards to T-4 and T-4 to T-5 shall continue to be regulated at 5 years. Since the Applicants could not derive the benefit of career assessment in the year 2000, they put forth their grievances before the authorities followed by reminders and, ultimately, their representations were turned down by the Respondent No.2 on 13.7.2001 with bald and cryptic order.

9. Earlier, TSR had provided assessment for promotion twice in a year, i.e., 1st January and 30th June, but that system was changed in the modified TSR; wherein it was stipulated that assessment for promotion could be considered on completion of 5 years service in a grade, irrespective of vacancies, and this is how, the

✓ Applicants have lost their chances of promotion during 2000, 2001, 2002 and also 2003.

10. Clarificatory instruction under Annexure-2 dated 6.2.2003 stipulated that 5 years computation would start afresh on 03.02.2000 and no weight age or consideration of any length of service in the erstwhile grade, i.e., T-1-3 would be given. By this, the basic object, which necessitated modification of the TSR, has been frustrated. It has been urged, whereas the modified TSR explicitly promulgated the prescribed length of service in a particular grade, e.g., T-1-3 (Cat.I) for consideration for further promotion by assessment to T-4 onwards and that five years service in T-3 grade is required for further promotion to T-4 grade, there was no justification for the Respondents to clarify vide Annexure-2 limiting the period which would be taken into account from 3.2.2000. Further, the old TSR as well as the modified TSR make the matter more conspicuous that no distinction in the pay scales and the nature of duties between T-1-3 and T-II-3 being the prime intention of the authorities in removing the overlapping grades, it was un- reasonable in restricting promotional prospects of the employees, like the applicants in T-1-3 of Cat.I by assessment promotion. Backed by this, the applicants have laid their claims that the period of services rendered by them in the erstwhile T-I-3 grade under Category I or erstwhile T-II-3 in

Category II are to be construed as services rendered in T.3 grade as per the modified TSR.

11. T-3 grade is not an independent grade, taking its birth with some higher responsibilities with a new pay scale and that it is the ultimate result of two overlapping grades having been treated as one and therefore, there was no justifiable reason to negate the legitimate expectation of the applicants in the matter of promotions in the garb of clarificatory instruction. It has been added that clarificatory instruction being in the nature of executive instruction cannot override the statute.

12. While the employees in T-1 and T-2 grade are availing the benefits of their length of service in their respective grade for promotion by virtue of the modified T.S.R., it is unreasonable not to count the services of the employees in T-1-3 for the purpose of promotion to T-3. This apart the action of the Respondents in not giving weightage/benefit of length of service for promotion is illogical and that non-computing their service in erstwhile T-1-3, i.e. T-3 under Annexure-1 is a clear case of discrimination.

13. An illustration has been given that at present an employee in T-2 will take 10 years for promotion to T-3 and thereafter further 5 years for promotion to T-4 (which comes to 15 years) whereas the present applicants having completed five years in T-2 grade and 8

years in T-1-3 grade would take further five years(in toto 18 years) for promotion to the post of T-4 against their juniors and in the process, they would be losing three years valuable service.

14. Employees having no qualification of direct recruits to T-II-3 their length of service in T-1-3 have been taken into consideration for promotion to T-II-3 grade, where after further promotion to grade of T-4 onwards have been given. In other words, while similarly placed persons like that of the applicants have been promoted to T-II-3 cadre and thereafter T-4 cadre the applicants have been deprived of the same. By this, they have submitted that experience in a grade is a substitute to the qualification which was accepted by the Respondents, may be as a measure of one time relaxation and in the same analogy, the applicants are required to get the benefit of their service rendered in T-1-3 grade.

15. With these submissions, the applicants have prayed for the following relief:

“...to quash Annexure-2 to the extent it prescribes 10 years of combined service in grade T-2 and T-1-3 as on 03.02.2000 for acquiring eligibility for assessment of promotion to T-3.

...to hold that the length of service of the Applicants in the erstwhile grade of T-1-3 will be treated as service rendered in grade of T-3 under category-II.



9
...to hold that the Applicants have acquired the eligibility that is length of service of more than 5 years in the grade of T-3 as on 03.02.2000 for consideration for promotion to T-4 grade.

...to hold that the Applicants are entitled to promotion to the post of T-4 grade with effect from the year 2000 onwards".

16. The Respondents-Council have filed a detailed counter opposing the claims of the Applicants. They have stated that on account of two overlapping grades, i.e., of T-I-3 and T-II-3 in Categories-I and II, the assessment promotion became redundant and therefore, grade structure in those categories were modified vide Annexure-R/3 dated 3.2.2000, as under:

Category I	Existing	Category I	Revised
T-1	Rs.3200-85-4900	T-1	Rs.3200-85-4900/-
T-2	Rs.4000-100-6000/-	T-2	Rs.400-100-6000/-
T-1-3	Rs.4500-125-7000/-		
Category II	Existing	Category-II	Revised
T-II-3	Rs.4500-125-7000/-	T-3	Rs.4500-125-7000/-
T-4	Rs.5500-175-9000/-	T-4	Rs.5500-175-9000/-
T-5	Rs.6500-200-1050	T-5	Rs.6500-200-1050

It has been stated that the allegation of the applicants that the revised T.S.R. has been misinterpreted to their disadvantage is out of place. Since the applicants do not possess the requisite qualification prescribed for Category-II, their service conditions are to

✓

be governed under the provisions of revised Rules under Annexure-A/3 dated 3.2.2000, as clarified vide Council's letter dated 6.2.2003 under Annexure-A/2. Prior to 1.1.1995, the assessment promotion was restricted within the three Categories of ICAR Technical Services and the persons holding the highest positions in each of the three Categories, i.e., T-I-3, T-5 and T-9 were not eligible for further assessment promotion. However, those technical persons, who were in the highest grades of Category-I, II and II, were granted advance increments, over and above their normal annual increments, subject to maximum of three advance increments within the grade, after completion of five years of service in the grade in view of provisions made vide ICAR letter No.F-7-18/83 Per-III dated 16.7.1984. By virtue of Annexure-R/5 dated 1.2.1995 bar between Category-I (T-I-3) and Category-II(T-II-3) was removed with effect from 1.1.1995 making the provisions that T-I-3 personnel having the qualifications prescribed for entry to Category II(T-II-3) by direct recruitment will be placed in T-II-3 grade of Category-II with effect from 1.1.1995 and in respect of the persons, who had not possessed the prescribed qualification for direct entry to T-II-3 having acquired such qualification, would be placed in T-II-3 (Category-II) from 1st of January of the year following the year in which such prescribed qualification was attained. Further, prior to coming into force of the

revised T.S.R. with effect from 3.2.2000, a person, appointed in T-1 grade of Category I would go up to T-I-3 grade of that category on promotion through five yearly assessment and there was no scope being promoted to T-II-3 of Category-II unless he attained the prescribed requisite qualification as is required for direct recruit to T-II-3 grade. With the introduction of revised T.S.R., T-I-3 and T-II-3 in Categories I & II merged together and a new grade, i.e, T-3 in Category-II came into being providing a wide range of promotion to an incumbent appointed in up to T-5, the highest grade of T-II under flexible complementing system through assessment subject to his work, performance and fulfillment of bench mark criteria of CRs. Since the modified TSR was made effective with effect from 3.2.2000 the contention of the applicants that service rendered by them in T-I-3 of Category – I should be taken into account as qualified service in T-3 (Category-II) holds no water. Earlier, as per the provisions of 3rd edition of Technical Service Rules under Annexure-R/5 dated 1.2.1995, the assessment promotions of erstwhile T-II-3 (now T-3 grade) was restricted for those who possessed;; the prescribed qualifications for Category-II and in the process, the technical personnel, who could not attain the prescribed qualifications and/or remove the category bar are now getting merit promotion to T-3 grade after rendering five years service in T-2 grade of Category-I. It has

been added that this provision is in the interest of technical personnel who do not have the prescribed qualification for T-3 grade (Category-II). The Applicants having been governed under the revised T.S.R. there is no alternative for them but to abide by the said Rules, as clarified from time to time. With these submissions, the Respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

17. We have heard Shri K.C.Kanungo, the learned counsel for the applicants and Shri S.B.Jena, the learned Addl.Standing Counsel for the Respondents. The applicants have filed rejoinder, to which the Respondents have also filed reply. The applicants have also filed written note of argument. We have gone through those materials placed before us.

18. From the pleadings of the parties, the sole point emerges for our consideration is as under :

“Whether the clarification dated 6.2.2003 runs counter to revised T.S.R., 2000 and thereby the applicants have been prejudiced. In other words, whether by implication of the clarification dated 6.2.2003 any of the rights of the applicants has been infringed”.

19. Before dealing with the matter on merit, we would, at the out set, like to highlight the instructions issued from time to time by the ICAR with regard to removal of category bar between T-I-3 and T-

II-3 of Categories I & II vide Annexure-R/5 dated 1.2.1995. The manner in which the above category bar was decided to be removed by the I.C.A.R. reads as under:

- “(i) The existing employees at level T-I-3 who possess qualifications prescribed for entry to Cat.II by direct recruitment will be placed in grade T-II-3 of Cat.II with effect from 1.1.1995. The employees who do not possess such qualifications will in the event of improving their qualifications and acquiring degree/diploma/any other qualification prescribed for entry in Cat.II by direct recruitment will be placed in grade T-II-3 from the 1st of January of the year following the year in which degree/diploma/certificate is awarded. For subsequent merit promotion from grade T-II-3 to T-4 the service rendered in T-I-3 grade will count towards computation of five years of service for merit promotion.
- i) The employees with five years of service in grade T-2 and possessing qualifications prescribed for entry to Cat.II by direct recruitment, in the event of merit promotion through five yearly assessment in terms of Rule 6.2 will be placed in the grade T-II-3.
- ii) The employees with five years of service in grade T-2 and not possessing qualifications prescribed for entry to Cat.II by direct recruitment will be placed in grade T-I-3 in the event of merit promotion through Five Yearly Assessment. Such employees in the event of improving their qualification and acquiring degree/diploma/any other qualification prescribed for entry in Cat.II by direct recruitment will in case of merit promotion be placed in grade T-II-3 from 1st January of the year following the year in which degree/diploma/certificate is awarded.

2. Direct recruitment in grade T-II-3 will continue to be made as in the past”.

20. As indicated earlier, with a view to safeguard the interests of many representationists who were to be adversely affected by the instruction dated 1.2.1995 (Annexure-R/5), the Council issued another instruction dated 10.1.1996 under Annexure-R/6, the relevant portion of which reads as under:-

“... on removal of Category bar from Category I to Category II, i.e., on placement of technical personnel in T-II-3 from T-I-3, for the purpose of five yearly assessment, their service rendered in T-II-3 grade will only be counted. In other words, the service rendered in T-I-3 for the purpose of computation of five years of service for grant of merit promotion/advance increments from T-II-3 to T-4 shall not be counted”

In the backdrop of the above instructions, it would be in the fitness of things, to bring to light the pay structures as recommended by the Vth Pay Commission in respect of the three Categories, viz., Category-I, Category-II and Category-III, as under :-

Category	Grade	Pay Scale	
		Pre-revised scales	Revised scales
Category I	T-1	Rs.975 –1500/-	Rs.3200-4900/-
	T-2	Rs.1200-2040/-	Rs.4000-6000/-
	T-I-3	Rs.1400-2300/-	Rs.4500-7900/-
Category II	T-II-3	Rs.1400-2300/-	Rs.4500-7900/-
	T-4	Rs.1640-2000/-	Rs.5500-9000/-
	T-5	Rs.2000-3500/-	Rs.6500-10500/-
Category III	T-6	Rs.2200-4000/-	Rs.8000-13500/-

T-7	Rs.3000-4,500/-	Rs.10,000-15,200/-
T-8	Rs.3000-5000/-	Rs.10,000-15,200/-
T-9	Rs.3,700-5000/-	Rs.12,000-16,500/-

On account of two overlapping grades of T-I-3 and T-II-3(vide Table-II above), the Council observed that the assessment promotion had become redundant and, therefore, grade structures in Category-I and Category-II were modified with the introduction of revised T.S.R., 2000, by giving birth T-3(in Cat.II) (as indicated in Table-II above) with prospective application, i.e., 3.2.2000. It would of profitable to quote the relevant rules governing the assessment promotion from Cat-I to Cat.-II, which reads as under :

“6.3. As per the revised grade structure, the entrants of Categories I at T-I grade would continue to be regulated for assessment from T-I to T-2 after five years of service, as at present. However, the T-2 grade personnel, possessing the qualifications as prescribed herein further under the Notification of 3 February, 2000 for Category II for direct recruitment, would be eligible for assessment promotion to T-3 grade after five years of service, while those not possessing such qualifications shall become eligible for assessment promotion to T-3 grade only after 10 years of service in T-2 grade. The assessment promotions from T-3 to T-4 and T-4 to T-5 shall continue to be regulated at five years interval, as at present(Annexure/A/3 dated 3.2.2000). While so stipulating, the ICAR Annexure-A/4 dated 3.2.2000 provided the following minimum essential qualifications for direct recruitments of technical personnel in Category I, II and III at the entry grades thereto. Since the dispute centers round Category I and II, we quote hereunder the

qualifications as prescribed for direct recruitment to Cat.I and Cat.II as under:

- a) Category-I. Matriculate with at least one year Certificate from recognized institution in the relevant field;
- b) Category-II. Bachelor's degree in the relevant field or equivalent qualifications from a recognized university.
- c) Category-III. Not applicable in the instant case"

21. In order to remove certain doubts raised by various Institutes under the ICAR, the Council, under Annexur-A/4 dated 6.2.20003 issued the following clarification. The crux of the clarification, which has been assailed by the applicants reads as under

Sl.No.8	Points for clarification	Clarifications of the Council
2.	A person was promoted In T-I-3 grade on 1.7.84 And on completion of 5 Years in the grade he was Granted 3 advance increments. The person has now Completed another 5 years From the date	As per the instructions contained in the ICAR letter No.14.3./94-Estt.IV dated 1.2.95, the existing employees at the level T-I-3 who possess qualifications prescribed for entry to Category II by direct recruitment will be placed in grade T-II-3 of Category II w.e.f. 1.1.95. The employees who do not possess such qualification will in the event of improving their qualifications and acquiring degree/diploma/any other qualification prescribed for entry in Category II from 1 st January of the year following the year in which degree/diploma/certificate is awarded. Further, the ICAR Notification No.18(1)/97-Estt. Dated 3.2.2000 provides that from T-2 grade such personnel possessing the qualification as prescribed therein for Category II for direct recruitment, would be eligible for assessment

27

	<p>of grant of 3 increments. It may kindly be clarified as to from which date he should be placed in T-3 grade of Category-II in the light of Modified TSR dated 3.2.2000.</p>	<p>promotion to T-3 grade after five years of service, while those not possessing such qualifications shall become eligible for assessment promotion to T-3 grade only after 10 years of service in T-2 grade. As such, the technical personnel in grade T-2 and erstwhile T-I-3 who do not possess qualification prescribed for direct recruitment to grade T-3 in Category II will be placed in T-3 grade only on completion of 10 years of combined service in grade T-2 and T-I-3 as on 3.2.2000 or thereafter.</p>
--	--	---

22. Admittedly, appointments to T-I and T-II-3 grades of Categories I and II are made by direct recruitment. It is also the admitted position that there was no channel for promotion from Category-I to Category-II(i.e., from T-1-3 to T-II-3) save and except induction of incumbents of Category-I in Category-II having the requisite qualification as required to direct entry to Category-II, i.e., T-II-3. In the year 1995, the Council issued instructions with a view to obviating the category bar between T-I-3 and T-II-3 of Categories-I and II, the pay scales of those posts being identical. It is in this background, letter under Annexure-R/5 dated 1.2.1995 was issued with the instructions as quoted above. On perusal of the instructions contained in that letter, we find that nowhere was there any provision made in respect of incumbents of T-I-3(Cat.I) having not the requisite qualification(as required for direct entry to T-II-3) to be inducted in T-II-3 (Cat II). In other words, induction of T-I-3 to T-II-3 was

4

permissible only in respect of those who had attained or would be attaining the prescribed qualifications as required for direct entry to T-II-3. Thus, it implies that, although the Council had decided to remove the category bar vide their letter dated 12.1995 under Annexure-R/5, it was only in respect of qualified and eligible incumbents either in T-2 or T-I-3 of Category-I and none else. It also laid down that for subsequent merit promotion from T-II-3 to T-4, the service rendered in T-I-3 grade will count towards computation of five years of service for merit promotion. For instance, an incumbent holding the grade of T-I-3 for three years if subsequently acquired the prescribed qualification for being inducted to T-II-3, his seniority in the grade T-I-3 would be taken into account as qualifying service for the purpose of next promotion to T-4 grade. This instruction having been adversely affected the career prospects of employees already in the post of T-II-3 through direct recruitment, the Council, in reconsideration of the matter, under Annexure-R/6 dated 10.1.1996 decided that **“on placement of personnel from T-I-3 to T-II-3, their seniority will only be counted with effect from the date of induction in T-II-3 grade for the purpose of promotion to T-4 and that the service rendered in T-I-3 for the purpose of computation of five years of service for grant of merit promotion/advance increments from T-II-3 to T-4 should not be counted”**. Similarly, in

order to maintain checks and balance, the Council also laid down that the personnel in T-2 (Cat.I) would, in case of acquiring requisite qualifications would be inducted in T-II-3 (Cat.II) on completion of five years service in that grade. Thus, the deduction there from is made that **a person in T-I-3 of Category-I having not acquired the requisite qualifications for direct entry to T-II-3 cannot not be inducted in T-II-3 of Category-II at all, and that he would continue to remain in that grade till his retirement**, although he might be entitled to receive three advance increments after completion of five years as such.

23. Admittedly, the applicants were promoted from T-2 to T-I-3 of Category-I in the year 1992 onwards. They having not acquired the prescribed requisite qualification as required for direct entry to T-II-3, could not be inducted and/or placed in T-II-3 of Category-II.

24. As it appears from the record, the applicants do not have any grievance with regard to Annexures-R-5 and R/6 dated 1.2.1995 and 10.1.1996, respectively.

25. Revised/modified T.S.R. was introduced by the Council, as indicated above, with effect from 3.2.2000. This Rule, as we read and understand, is a bonanza to the technical personnel in T-I-3 grade, who did/do not have the requisite qualifications for being inducted in

erstwhile T-II-3(newly born T-3) of Category-II. Because, prior to coming into force of T.S.R. 2000, there was neither any hope nor any scope of such T-I-3 personnel being inducted to T-II-3. We have already quoted Rule 6.3 of the said T.S.R., 2000 in preceding paragraph No.

26. The provisions made under Rule 6.3 make it amply clear that the assessment of persons in T-2 category not possessing the prescribed qualification for direct entry to T-II-3 grade, would be regulated at five years interval and on completion of another five years, they would be inducted in T-II-3 grade of Category-II. In other words, Rule 6.3 lays down that although by the amalgamation of T-I-3 and T-II-3 (Categories-I and II), T-3 in Category II is born, T-2 persons not acquiring the direct entry qualification would have to wait in that grade till completion of 10 years. This rule has been laid down very consciously with reference to Annexures-R/5 and R/6 dated 1.2.1995 and 10.1.1996, respectively, with a view to safeguarding the interests of persons in T-I-3 of Category-I, least the employees in T-2 grade not acquiring prescribed qualification for direct entry to T-II-3(T-3) and having completed five years service in T-2 grade would have been placed in a more advantageous position than the persons those who were already in T-I-3 grade. Keeping all those aspects in view the Council consciously did not permit those non qualified T-2

personnel after completion of five years service in that grade for being inducted in T-3 and thereby, thus, maintained the checks and balance as was prevalent earlier for promotion of T-2 to erstwhile T-I-3 grade. Therefore, clarificatory instruction No.8 dated 6.2.2003 does not stand contrary to T.S.R. 2000 nor by any stretch of imagination it can be said to have been misinterpreted by the Respondents. Rather, we would say, the Council, has been maintaining, consistency, certainty and uniformity while laying down the Rules from time to time.

27. The submission of the applicants that restricting combined service in T-2 and erstwhile T-I-3 grade for being inducted in T-3 grade defeated the object of T.S.R. 2000 in so far as Para 6.2 is concerned. Para 6.2 speaks of the aims and object of modification of grade structure between T-I-3 and T-II-3. It says that "on account of two overlapping grades of T-I-3 and T-II-3, the assessment promotion had become redundant and, therefore, grade structures in Categories I and II have been modified". The word "assessment promotion" as interpreted by the applicants is misconception of facts. Because, T-I-3 and T-II-3 of Categories-I and II although carry an identical scale of pay, each grade is independent of each other there being no promotion from T-I-3 to T-II-3. This apart, T-II-3 is a direct entry grade, leaving no room for erstwhile T-I-3 personnel, who do not have the prescribed qualification. Be that as it may, the service conditions and/or

promotional career of the present applicants are being governed under revised T.S.R., effective from 3.2.2000. It is the applicants, who having exercised their option to be governed under the new T.S.R. 2000 were so permitted. It is not that under duress, the applicants have come under the new T.S.R. Had they found any provisions of rules in the new T.S.R. to their prejudice, they ought not to have opted to come under the new rules and in effect, they would have retired in the erstwhile T-I-3 grade without getting promotional avenue, if any, to T-4/T-5 etc.. Having acceded consciously to be governed under new T.S.R. 2000, they are now estopped to turn the table back and assail certain provisions of that rule. The question of computing seniority or for that matter computation of 10 years of combined service in T-2 and erstwhile T-I-3 for the purpose of induction in newly structured T-3 which is the subject matter of dispute can by no stretch of imagination be called as bad. Because, vide Annexure-R/6 dated 10.1.1996, it has been clearly instructed (as indicated in Para) that in respect of persons in T-I-3 having the qualification for direct entry to erstwhile T-II-3 grade, in the event of their placement in erstwhile T-II-3 grade the service rendered by them in erstwhile T-I-3 category should not be counted and only service rendered in T-II-3 grade would be counted for the purpose of promotion to T-4 grade. In the face of this restriction having governed the field in respect of qualified T-I-3

since 1996, it is far to say that the applicants, who are not qualified enough to be inducted in erstwhile T-II-3/newly T-3 with computation of seniority in T-1-3 grade. The T.S.R. came into force with effect from 3.2.2000 when the applicants were admittedly in erstwhile T-I-3 and by the operation of the said T.S.R., the applicants were recognized as T-3 with the package to march ahead on completion of five years of service in T-3 grade with effect from 3.2.2000. Therefore, whatever they should expect with new identification as T-3, with effect from 3.2.2000 and not prior to introduction of new T.S.R. 2000 when it was in womb.

28. In their written note of arguments the applicants have enclosed two documents to show that persons similarly situated have been given the benefits of their past service. We have gone through those documents. We find that S/Shri Sanatan Baral and Swapneswar Jena belong to 1980 batch in T-I grade. They had been promoted to T-2 grade in the year 1986 and thereafter to T-I-3 grade in 1992 as that of the applicants. But they have been promoted to T-II-3 grade with effect from 1.1.1995 by virtue of Annexure-R/5 dated 1.1.1995 having possessed the requisite qualification for Category-II. It is the case of the applicants that the said Annexure-R/5 dated 1.1.1995 having been kept in abeyance, those incumbents should not have been inducted to T-II-3 with effect from 1.1.1995. This plea of the applicants holds no

water inasmuch as by the issuance of instructions under Annexure-R/6 dated 10.1.1996, while keeping the instructions contained in Annexure-R/5 dated 1.1.1995 in abeyance, the Council had also maintained counting of seniority in T-II-3 grade in respect of the qualified incumbents being inducted in T-II-3, for the purpose of next promotion to T-4 grade and not the service rendered in T-I-3 grade. Thus, Annexure-R/6 expressly imply that if at all Annexure-R/5 dated 1.1.1995 was kept in abeyance, it was only in the matter of counting seniority and not for inducting T-I-3 personnel with prescribed qualification for direct entry to T-II-3 grade. Therefore, the stand of the applicants to show discrimination in the matter of induction of S/Shri Sanatan Baral and Swapneswar Jena in T-II-3 grade as a one time relaxation of Rules is baseless and unfounded and those two persons cannot be called similarly situated as that of the applicants, more particularly when the applicants have not disputed induction of S/Shri Sanatan Baral and Swapneswar Jena in T-II-3 on the ground of they having not acquired the requisite qualifications.

29. The applicants have argued that executive instructions cannot override the statute. As discussed above, there has been no overriding effect of executive instruction on the statute. At the same time, we would like to note here that the Tribunal is also expected to

act within the four corners of the Rules and it cannot go beyond the statute in order to come to the aid of the applicants.

30. To sum up, we arrive at the following conclusions.

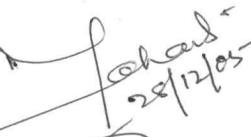
Having regard to what has been discussed above, we answer the issue(s) in the following :

- a) The Clarificatory order dated 6.2.2003 does not run counter to the T.S.R. 2000 in any manner.
- b) The T.S.R. 2000 or for that matter the clarificatory order dated 6.2.2003 is quite wholesome and consistent with the earlier rules laid down by the Council from time to time.
- c) No discrimination of any kind is apparently meted out to the applicants and similarly other placed persons.
- d) The clarificatory order dated 6.2.2003 does not have any overriding effect and /or is not ultra vires T.S.R. 2000.

31. In the result, the O.A. fails and is dismissed accordingly.

No costs.


(B.N. SOM)
VICE-CHAIRMAN


22/12/05
(M.R. MOHANTY)
MEMBER (JUDICIAL)