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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NOS.581 OF 2000 & 237 OF 2002

Cuttack, this the 22nd day of July, 2004

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

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In OA No. 581 of 2000

1. Shri Kailash Chandra Mohapatra
61 YEARS, SON OF LATE again Ch.Mohapatra,
Routraypur, P.O.Kalapada, Via.Bentakur, Dist.Cuttack,
working as Technical Assistant (T-4), Central Rice
Research Institute, Cuttack.
 2. Shri Krushna Chandra Rout, aged 63 years, son of late
Mani Rout, At Keshpur, P.O.CRRI, Cuttack6, working as
T/2/3, C.R.R.I., Cuttack.
 3. Shri Harish Ch. Behera, aged about 62 years, son of late
Brajabandhu Behera, At-Bhadimul, P.O.CRRI,Cuttack 6,
working as T/2/3, CRRI, Cuttack.
 4. Shri Ganesh Chandra Dash, aged about 63 years, son of
late Durga Charan Das, Gopabandhu Nagar(House in front
of L.K.Mohanty) At-Chauliaganj, P.S.chauliaganj,
Cuttack, retired as T-II-3, CRRI, Cuttack.
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In OA No.237 of 2002

Shri Natabar Mohanty, aged about 60 years, son of late Dayanidhi Mohanty, At Kanheipur, P.O.CRRI, Dist.Cuttack, retired as T-4, CRRI, Cuttack Applicants

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In both the O.As.

1. Union of India,
represented through its Director General, Indian Council of
Agricultural Research, Krishi Bhavan, New Delhi 110001.
2. Director, Central Rice Research Institute, Bidyadharpur,
Cuttack

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Respondents

Advocates for the Applicants (in OA 581/2000): M/s A.K.Mishra
B.B.Acharya,
D.K.Panda,
J.Sengupta,
P.R.J.Dash
G.Sinha.

Advocates for the Applicant(in OA 237/2002):M/s G.Mukherjee,
P.Mukherjee,
S.Patnaik,
M.K.Mazumdar,
A.C.Panda

Advocate for the Respondents(in both O.As.): Mr.S.B.Jena,
ACGSC

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Since both the Original Applications have raised common questions of fact and law, we are proceeding to dispose of the same by this common order. However, for the purpose of deciding the issues involved in both the Original Applications, we are referring to the detailed averments and submissions made in Original Application No. 581 of 2000.

2. In OA No. 581 of 2000 has been filed by Shri Kailash Chandra Mohapatra and others alleging that the Respondents have done injustice to them in not giving them the proper fitment to which they are entitled in terms of the Technical Service Rules of the Indian Council of Agricultural Research (hereinafter referred to as 'Technical Service Rules of ICAR') effective from 1.10.1975 and subsequently, while giving such fitment in favour of the applicants, they have been discriminated and that even persons, who are junior to the applicants, have been allowed to enjoy higher scales of pay and higher service benefits, denying the same to the applicants.

3. The case of the applicants is that they all joined the service under the Respondents as Field Assistants in the pay scale of Rs.60-125/- and then promoted to the grade of Senior Field Assistant with effect from 1.6.1976, 1.4.1976, 1.6.1976 and 1.7.1976 respectively. Shortly before their promotion, in the year 1975 the Respondent-organisation was declared as a Society with the nomenclature as Indian Council of Agricultural Research with effect from 1.1.1975 and thereafter on 19.5.1978 the Respondent-organisation brought in force with effect from 1.10.1975 the Technical Service Rules of ICAR and in terms of the said Rules, by convening Assessment Committees, applicant no.1 was included at the initial constitution at T-1 level and fitted in T-2 of Category I in the scale of Rs.330-560/-. The other three applicants were also similarly fitted in T-2 grade. Thereafter the said Technical Service Rules of ICAR were amended on 27.1.1979 prescribing the alternative qualification of "Matriculate with ten years' experience in the relevant field' for Field/Farm Technicians in Category II posts. The grievance of the applicants is that even though the amendments were made applicable to all the existing employees, they were not given the benefit of the said amendment and were not fitted in T-II-3 of Category II. Again on 28.2.1980 although the Respondents issued certain clarifications with

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regard to the applicability of the alternative qualification for existing staff in position as on 1.1.1977 to benefit the existing staff in position with long years of service, but no benefit was given to the applicants. They had represented to the Respondents on 8.12.1987 and 20.12.1987, but to no effect. Thereafter on 1.2.1995 the Respondent-organisation issued an order (Annexure 10) removing category bar between Category I and Category II and declared that the existing employees at level T-I-3 who possess qualifications prescribed for entry into Category II by direct recruitment will be placed in Grade T-II-3 of Category II with effect from 1.1.1995. It further stated that for subsequent merit promotion from T-II-3 to T-4, the service rendered in T-I-3 will count towards computation of five years of service for merit promotion. The applicants' claim is that by virtue of this letter dated 1.2.1995 they were entitled to be fitted in higher grade, but that was not done. They have also made representation to this effect before the Respondents, but without any effect. Applicant Nos. 1, 3 and 4 were given the benefit of T-II-3 with effect from 1.1.1995 and applicant No.2 with effect from 1.1.1996. But they had been representing to the authorities that amendment to the Technical Service Rules having been made effective from 1.10.1975, they were entitled to be fitted in T-II-3 earlier than the dates from which they were



given. The applicants have submitted that whereas they were entitled to be fitted in T-II-3 of Category II with effect from 1.10.1975, the same benefit was made available to them with effect from 1.1.1995/1.1.1996. Secondly, that by virtue of introduction of the amendment in 1979, the applicants were entitled to get the benefit of promotion to Category II which was not given to them although some persons junior to them were allowed to enjoy the higher scale of pay and fitment.

4. The Respondents have opposed the Original Application by filing a detailed counter. The admitted facts of the case are that the Respondent-organisation had introduced Technical Service Rules with effect from 1.10.1975 and grouped all the staff in three categories in the following manner:

Category I

T-1	-	Rs.260-430/-
T-2	-	Rs.330-560/-
T-I-3	-	Rs.425-700/-

Category II

T-II-3	-	Rs.425-700/-
T-1	-	Rs.550-900/-

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T-5 - Rs.650-1200/-

Category III

T-6 - Rs.700-1300/-

T-7 - Rs.1100-1600/-

T-8 - Rs.1300-1700/-

T-9 - Rs.1500-2000/-

It was notified in the said Rules that persons recruited in the post of T-1 could get career advancements within the limits prescribed in Category I only and by way of promotion cannot go beyond that Category to Category II because of the category bar imposed in the said Rules. Similarly, in Category II persons recruited in the post Category T-II-3 of Category II can go up to T-5 within that category on five-yearly assessment/promotion basis but cannot go beyond that category even though they may possess qualification for recruitment to the post of Category III by way of promotion. The same principles applied to Category III staff who could move between the Grade T-6 and T-9. It was also laid down in the Rules in paragraph 5.1 that the existing employees are to be placed on point to point basis in the new pay scale. Referring to the applicability of the qualifications as

amended in Appendix IV and referred to as Annexure 2, they have stated that these qualifications are applicable in respect of the employees who were in service as on 1.1.1977 for entry into T-II-3 of Category II posts for direct recruitment and that the amended qualifications were not meant for promotion cases from posts of one category to the next higher category and they have, therefore, termed the claim of the applicants as based on wrong interpretation of the Rules. They have further clarified that the real intention of prescribing qualifications like Matriculation with 10 years experience for Field/Farm Technician for Category II posts under direct recruitment vacancies in respect of the employees of the Respondent-organisation was to make them eligible to face interview with the Diploma/Degree holders from open market, i.e., to allow them to get entry into Category II posts through direct recruitment method. In other words, the relaxed qualifications were not meant to be applied while carrying out initial adjustment/fitment of existing employees in the technical service. On the other hand, the existing employees were placed in Category I posts as on 1.10.1975 as per their respective pay scales prior to the introduction of the Technical Service Rules. That is how the applicants were placed in the technical service and their placement

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in T-I and T-I-3 of Category I in the pay scale of Rs.330-560/- and Rs.425-700/- was done strictly according to the rules. It was only with effect from 1.1.1995 when the Governing Body of the Respondent-organisation decided to remove the category bar between Category I and Category II with effect from 1.1.1995, all the staff members having minimum qualification for direct entry into Category II posts were given the benefit of category jump and were placed in T-II-3 post in the pay scale of Rs.425-700/- under Category II. They have further submitted that all the applicants were placed in the higher grade with effect from 1.1.1995 or from the date of their eligibility for such higher grade and that they have been allowed career advancement strictly as per rules and their entitlement. They have also stated that as applicant No.1 had more than five years service left to his credit for superannuation after his placement in the grade of T-II-3 of Category II with effect from 1995, he could be promoted to the next higher grade of T-4 of Category II in the pay scale of Rs.5550-9000/- on five-yearly assessment basis. But the other applicants, after their placement in T-II-3 grade of Category II of Technical Service with effect from 1.1.1995 have retired from service before they could complete five years to be eligible for assessment for promotion to the

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next higher grade of T-4 of Category II in the pay scale of Rs.5500-9000/- on attaining the age of superannuation. They have, therefore, submitted that the Original Application is totally baseless and has no legal sanction for which the same is liable to be dismissed.

5. The questions to be answered in this case are, whether the applicants were entitled to the benefit of amendment to the Technical Service Rules as per Annexure 2 with effect from 1.10.1975, and, secondly, whether when the category bar was removed with effect from 1.1.1995 they were entitled to the revised benefit with retrospective effect. These questions have already been answered by the Apex Court in the case of Director, Central Rice Research Institute, Cuttack and another v. Khetra Mohan Das, 1994 Suppl.(3) SCC 595 as well as in the case of Sanjukta Das and others in Civil Appeal No.6673 of 1993, decided on 26.9.1997. Their Lordships in *Khetra Mohan Das's case (supra)* have decided that fitment in higher grade/category cannot be claimed merely on the basis of qualification. Fitment in grades has to be made as specified by the new Rules on the basis of pay scale. Their Lordships in that case have specifically answered the issue as follows:

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“.....whether the respondent who was admittedly in the pay scale of Rs.330-560/- was entitled to be fitted in Category I Grade T-I-3 and further by virtue of Rule 5.1 he ought to have been fitted in Category II, Grade T-II-3. As noted above, Para 5.1 lays down that all the existing permanent and temporary employees appointed would be fitted into their respective grades specified in Paragraph 3.1 on point to point basis. The respondent who was in the pay scale of Rs.330-560/- could only be fitted in Category I, Grade T-2 and only the persons holding positions in the merged scale of Rs.425-700, i.e., Category I, Grade T-I-3 and possessing the necessary qualifications prescribed for Category II could be fitted in Category II, Grade T-II-3 for which also the scale is the same. Merely because one possessed the qualification, he cannot claim as a matter of right that he should be fitted into Category II, Grade T-II-3. The initial induction should only be on the basis of pay scale.”

It is also relevant to quote the following from the said decision of their Lordships:

“Learned counsel for the respondent, however, submitted that it is unamended Rule 7.2 as extracted above which is applicable to the case of the respondent. As mentioned above even as per the unamended rule the respondent cannot claim induction into Grade T-II-3 of Category II straightway from Grade T-2 of Category I

merely on the basis of qualifications. He can only claim promotion to Category II Grade T-II-3 provided he was holding a position in the next lower grade, namely, Grade T-I-3 of Category I. A promotion is different from fitment by way of rationalization and initial adjustment. Promotion, as is generally understood, means; the appointment of a person of any category or grade of a service or a class of service to a higher category or grade of such service or class. In C.C., Padmanabhan v. Director of Public Instructions, 1980 (Supp.) SCC 668 (AIR 1981 SC 64) 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. The promotion to Category II in the case of the respondent can be only as per Rule 7.2 and not by way of induction as claimed by the respondent. As a matter of fact I.C.A.R. while replying to the further

representations made by the respondent, made it clear by its letter dated 5th April, 1978 that those persons who are in Grade T-2 of Category I and who possess qualifications for Category II and earn merit promotion as a result of performance assessment for five years service would be promoted to next higher Grade T-I-3 and on the basis of further assessment of performance in that grade would be considered for promotion to Grade T-II-3 of Category II provided they possess the qualifications prescribed for Category II. "

The case of the applicants being identical to that of *Khetramohan Das*, in view of the said pronouncement by the Apex Court, their case surely fails.

6. Our answer to the second issue raised by the applicants that with the removal of the category bar with effect from 1.1.1995 they were entitled to get the benefit retrospectively is in the negative. The said letter of the Respondents regarding removal of category bar between Category I and Category II, is at Annexure R/1. The said letter was issued on 1.2.1995 wherein the date of effect of this decision was declared as 1.1.1995. Such policy letter clearly sets the date of application of the said policy regarding removal of category bar from 1.1.1995. Further by issuing another letter dated 8.8.1996 (Annexure R/6) the Respondents had clarified whether ICAR employees who were on the strength of the

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Council as on 1.1.1977, i.e., the initial date of formation of the Technical Service and possessing qualifications in terms of ICAR letter No.7(10)/78-Per-III dated 27.1.1979, are also eligible for the purpose of category jump from Category I to Category II in terms of the Council's circular of even No. dated 1.2.1995. In view of the clarification contained in this letter there was hardly any scope for making any plea for retrospective benefit.

7. The petitioners have also drawn our notice to some of the decisions of the coordinating Benches of this Tribunal. We have carefully perused those decisions, but see no application of those decisions in this case as we have already brought out above that the issues raised in these O.As. having been answered by the Apex Court in *Khetra Mohan Das's case (supra)* and *Sanjukta Das and others(supra)*, it is high time that the whole controversy is set at rest once for all.

8. In view of our above discussions, we find no merit in both the O.As. which are accordingly dismissed. No costs.

Sd/- M. R. Mohanty
Member (J)

Sd/- B. N. Som.
Vice-Chairman