

8

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 732 of 2006

Monday, this the 21st day of April, 2008

CORAM:

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MR. C.R. MOHAPATRA, ADMINISTRATIVE MEMBER**

Shri Akshya Kumar Mishra,
Son of Late Arjun Mishra,
Village : Jagadishpur, P.O. Kabirpur,
Via. Jajpur Town, Dist. Jaipur,
At present working as Technical Officer,
T (7-8), Division of Social Science,
Central Rice Research Institute (C.R.R.I.),
Cuttack : 753 006

... Applicant.

(By Advocate Mr. B.S. Tripathi)

v e r s u s

1. Union of India through
The President of Indian Council of
Agricultural Research, Government of India,
Krishi Bhawan, Dr. Rajendra Prasad Road,
New Delhi : 110 001
2. The Secretary,
Department of Agricultural Research &
Education & Director General, ICAR,
Krishi Bhawan, Dr. Rajendra Prasad Road,
New Delhi : 110 001
3. Agricultural Scientists Recruitment Board,
Through its Chairman, Dr. K.S. Krishnan
Marg, Pusa Campus, New Delhi : 110 012
4. Central Rice Research Institute,
Represented through its Director,
At/PO : Bidyadharpur, Dist. Cuttack : 753 006 ... Respondents.

(By Advocate Mr. S.B. Jena, ACGSC)

6

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant, a post graduate in Mathematics, joined the CRRJ as 'Computer' initially in April, 1974 in the pay scale of Rs 330 – 560 which was later on revised to Rs 425 – 600 from the date of inception and thereafter, the pay scale underwent further revision of Rs 550 – 900 w.e.f. 01-10-1975 as per the decision of this Tribunal in OA 182/91. Annexure A-1 refers.

2. The applicant came to know that provision exists for induction into the scientific grade 'S' by computer possessing P.G. Degree in Mathematics and in another part of the same I.C.A.R., i.e. I.A.S.R.I., the same was extended. As such, he had, by Annexure A-2 representation dated 02-11-1995, requested for the same. This request was renewed later on in 2003 vide Annexure A-4 representation dated 27-02-2003. Reminder thereto was also sent on 2-9-2003 vide Annexure A-6. The applicant also informed the respondents of the discrimination meted to him, inasmuch as one Dr. K.M. Das and three others similarly situated as the applicant were inducted into the scientists 'S' grade. The applicant's final reminder in this regard is dated 24-06-2006 vide Annexure A-11, which was also forwarded to the higher authorities vide Annexure A-12.

3. Yet another OA was filed by the applicant vide OA No. 683/2006 seeking a direction for his induction into scientists Grade in the line of one Mr. C.P.S. Solanki, Statistical Officer, and this Tribunal on 13-10-2006 directed the respondents to consider the representation of the applicant by end of October, 2006. On his apprehension that the respondents may not so consider the case, this OA is filed seeking the following reliefs:-

"(i) To pass appropriate orders directing the respondents to induct the applicant into the Scientists Grade 'S' w.e.f. 1.10.1975 as per the A.R.S. Rules, 1975;

(ii) To pass appropriate orders directing the respondents to make further assessment and extend all the service and consequential benefits, to which the applicant is entitled and to allow him to retire at the age of 62 (sixty two) years as a Scientist; and

(iii) To pass such further order/orders as are deemed just and proper in the facts and circumstances of the case and allow this O.A. with costs."

4. Respondents have contested the OA. Preliminary objection of the respondents include limitation under sec 21 of the Administrative Tribunals Act, 1985. On merit, the respondents contended that the applicant was not placed in the pay scale of Rs 425-600/700 as of 01-10-1975 as the decision of this Tribunal in another case was taken up before the Apex Court which has in that case set aside the decision and held that the applicant in that OA would be entitled to be considered for promotion in the category II, T-4 in the pay scale of Rs 550 - 900 after fitment in the pay scale of Rs 425 - 600 w.e.f. 01-10-1975. As regards induction of Dr. K.M. Das and three others, the response of the respondents is as under:-

"8. That again, O.A. No. 291 & 292/1995 were filled by Smt. Sanjukta Das and three others viz. Dr. K.M. Das, A.B. Dash and Ashok Pattnaik in the Hon'ble CAT, Cuttack Bench, Cuttack. The Hon'ble CAT allowed the fitment of applicants in the pay scale of Rs. 425-700 w.e.f. 1.1.1973 along with consequential benefits as per order dated 29.9.1995 in the facts and circumstances of each case. In the fitment exercise carried out by CRRI, Cuttack, they were, however, erroneously placed in scales above their entitlement. Due to this error, undue benefits were allowed to the above four persons. Despite this, all the four incumbents again approached the CAT in a contempt petition on the ground that while other benefits had been given, their induction into ARS in the year 2000 with retrospective induction benefit with effect from 1977/1978.

9. That, however, the Council has given decision on the erroneous benefit as rebrought below:

'The replies submitted by the above four technical persons in reference to Show Cause Notices have been considered by the Competent Authority in the Council, and accordingly it has been decided not to withdraw the benefit of their wrong fitment in the scale above their entitlement, as the Counsel has already given written statement in the contempt proceedings before the CAT about implementation of the CAT order. Appropriate action for conferment of erroneous benefits to these four employees will be taken, irrespective of the Council decision not to withdraw the erroneous benefits from these four employees, against those who were responsible for extending these erroneous benefits.

It may, however, be noted that grant of erroneous benefit cannot be ground/reason for extension of similar erroneous benefit to other persons as parity cannot be claimed with errors. It may, therefore, be ensured that in future no other person will be given/extended these undue benefits, and fitment requests for treatment at par with Smt. Sanjukta Das, etc. will be dealt with strictly as per rules'."

5. As regards higher pay scale of Rs 550 – 900, granted to the applicant w.e.f. 01-10-1995, the respondents have vide para 11 of the counter stated as under:-

"That it is submitted that CAT, Cuttack Bench in O.A. No. 291 & 292/95 had directed to allow to allow replacement pay scale of Rs. 425-700 to the three applicants w.e.f. 1.1.1973. There were no further directions from CAT for placement of these employees into the higher pay scale of Rs. 550-900 w.e.f. 1.10.75. During the course of implementation of the directions of CAT in these cases, the Institute made an apparent mistake regarding placement of these employees in the higher pay scale of Rs. 550-900 instead of fitting these employees on point to point basis, as provided under Rule 5.1 of Technical Service Rules of the respondents. Subsequently, while filing replies to the Contempt Petition No. 54 & 55/1998 as well as OA 127/97 (filed by Shri Patnaik), a statement was given before the Hon'ble CAT, Cuttack Bench that orders of the CAT had been complied with.

By the time these mistakes came to the notice of the respondent No. 1, it had become impracticable to withdraw the erroneous benefits granted to the four employees."

6. The decision not to have the applicant inducted in the Scientist 'S' grade had been communicated to the applicant vide Memorandum dated 18-03-2005, holding as under:-

"It may, however, be noted that grant of erroneous benefits cannot be ground/reason for extension of similar erroneous benefit to other person as parity cannot be claimed with errors. It may, therefore, be ensured that in future no other person will be given / extended these undue benefits, and fitment requests for treatment at par with Smt. Sanjukta Das, etc. will be dealt with strictly as per rules."

7. Vide Annexure R-4 series, the grant of pay scale of Rs 550 – 900 from 01-10-1975 was considered but not agreed to and consequently, excess amount paid to the applicant was recovered in instalments from September to December, 2001.

8. Identical matter was considered by the Tribunal in OA 244/97, 245/97, 1416/04 and ~~14~~17/04 but were dismissed in view of the decision by the Apex court in the case of Director, CRRRI vs K.M. Das.

9. The applicant had already superannuated w.e.f. 31-10-2006.

10. The applicant has filed his rejoinder and contended that the reluctance of the respondents to grant the relief as asked for is on four scores, none of which is tenable due to the following:-

(a) That the applicant was not placed in the grade of Rs 425 – 600 and later in Rs 550 – 950 from 01-10-1975 and hence he is not eligible to be considered for scientist 'S' post is wrong in view of Annexure A-14 order which clearly provides for the aforesaid pay scales respectively from April, 1974 and 1-10-1975.

- (b) That the vacancies kept for initial five years from October, 1975 ceased w.e.f. 2000 is patently wrong as the respondents have inducted four senior Field Assistants namely Shri K.M. Das, A.B. Dash, Smt. Sanjukta Das and Shri Ashok Pattnaik in the Scientist Grade 'S' although they were not eligible and entitled for the same.
- (c) That the applicant being in the Technical Group, his performance cannot be equated with that of a scientific cadre person also does not hold good as, under the ARS Rules vide Annexure A-13, he is eligible and entitled to be inducted into Scientific Grade as had been done in the case of four other technical persons in the same institution.
- (d) As regards limitation, the applicant in fact had been agitating the matter from the day he became entitled to the scientist 'S' grade but the respondents had not considered the same.

11. Records have been perused and the written argument submitted considered. First as to limitation. True, the applicant claims his benefit from 01-10-1975 for which his first representation was in 1995. But this was so, since, his pay scale underwent upward revision only in the wake of the Tribunal's order in OA 182/1991. Placement in the scale of Rs 550 – 900 w.e.f. 01-10-1975 is one of the conditions for induction in the scientist 'S' grade and it is only when that had crystallized, that the applicant could claim. The respondents in their counter referred to Sec. 20(2) and contended that by way of deemed rejection provided under that section, the applicant should have approached the court on time. In fact, none of the applicant's representation had been considered and the above mentioned provision generally applies to such cases where by statute remedy is available, as in the case of appeal. In regard to representations, the above rule does not apply but if the representation is unsuccessful, then

repeated unsuccessful representation would not elongate the period of limitation as held by the Constitution Bench in the case of *S.S. Rathore vs. State of M.P.*, AIR 1990 SC 10. In this case ~~since~~ there was no rejection of the representation by the respondents. In fact, by communication dated 18th September, 2003 (Annexure A-7) the ICAR had asked the CRR I to clarify the rules and regulations under which the applicant is to be considered for induction in the grade of 'S'. It was only in 2005 referring to the case of Sanjukta Das that the applicant was communicated the rejection, as is evident from para 13 of the counter. Thus, the case cannot be dismissed on the ground of limitation.

12. Now on merit, the requisite conditions for induction into the scientist 'S' grade as communicated by CRR I to the ICAR vide Annexure A-8 are as under:-

(a) Minimum qualification of P.G. in mathematics;

(b) Holding post T-II -3 in the scale of Rs 425 – 700 w.e.f. 01-10-1975.

13. Vide the aforesaid A-8, the CRR I has confirmed that the applicant had fulfilled the requisite conditions for induction. In fact this confirmation could be found in the very first forwarding letter dated 2-11-1995 vide Annexure A-3 wherein the CRR I has informed the ICAR, "Now as per the above instruction Shri Mishra is holding the scale of Rs 425 – 600 with effect from 2-4-74 and eligible for induction to 'S' grade." Of course, there seems to be some confusion as to the entitlement and eligibility for the revised pay scale of Rs 425 – 700 in T-II-3 grade consequent to which certain recoveries were to take place as stated by the respondents in their counter, but ultimately, the entire matter has been set to rest when the respondents have issued the final order dated 5-4-2003 vide Annexure A-14, granting the applicant the pay scale of Rs 425 – 700 in the

grade of T-II-3 w.e.f. 01-10-1975 on the basis of the Apex Court's judgment dated 26-09-1997. In fact, the Apex Court recorded the submission of the counsel for ICAR that the entitlement of the individuals to the pay scale of Rs 425 – 700 w.e.f. 01-01-1973 or from the date of appointment as decided by the Tribunal was not challenged and what was challenged was further promotion to the T-II-4 grade in the pay scale of Rs 550 – 900. And the Apex Court has accordingly upheld the entitlement of Rs 425 – 700 as aforesaid in the T-II-3 grade. Thus, the applicant does fulfil the requisite conditions of holding the pay scale and the qualification, as confirmed in Annexure A-8. Unfortunately, the ICAR has kept a sphinx silence without considering the case of the applicant, notwithstanding the recommendations of CRR1.

14. Thus it is declared that the applicant was entitled to be considered for scientist 'S' grade as per his entitlement. His claim was not based only on the fact that others were granted. Had his claim been so, respondents were right in holding that since in other cases it was by error that such a benefit was granted, the same cannot be perpetuated in the case of the applicant. But as stated earlier, independent of the above (others having been granted), the applicant of his own fulfills the qualifications/conditions for induction.


15. Now the question is as to how to work out the benefit. The applicant is now retired. By the time the entire process of review etc. is made, he may reach 62 years (by 31.10.2008). As such possibility of his being brought back in service is slightly remote. Any relief granted would be without enabling the applicant to actually switch over to scientist 'S' grade initially and further upward career prospects at par with those who would have been inducted from the date the applicant was entitled to such induction. All that could be possible at this

distance of time is to grant notional pay fixation in the grade of Scientist 'S' from the date the applicant was eligible to be considered and further career advancement be as per the Rules. Here again, there may be some impediment. Further promotion is based on the performance of work, including perhaps, presentation of scientific papers etc., These are apparently not available for consideration. All that could be possible may be only grant of higher increments, if so provided in the Rules. This should be left to the entire discretion of the I.C.A.R.

16. The OA is therefore, allowed to the extent that the applicant being entitled to be considered for induction as scientist 'S' grade from 01-10-1975, respondents shall first consider the same and bring him within the fold of scientific cadre. Any difference in pay scale would only be notional. Again, further promotion is to be considered judiciously by the ICAR and whatever the ICAR at appropriate level decides the same should be extended and here again, the benefit should be only notional. After affording such promotion/additional increments, the applicant's pay would be fixed as of 31-10-2006 to work out his terminal benefits on the basis of such higher pay. The difference between the amount paid and payable shall be worked out and paid to the applicant. If the applicant is entitled to pension, needless to mention that such pension would be based on the revised pay as aforesaid.

17. This order is to be complied with, within six months from the date of communication of this order. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER