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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.824 of 2006
Cuttack, this the 14th day of August, 2009

Dr.Nikunja Bihari Dash Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 824 of 2006
Cuttack, this the 14th day of August, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....
Dr.Nikunja Bihari Dash, aged about 60 years, son of Late
Kelu Charan Dash, At-Dandasahi, PO-Tentulipada, Via-
Tirtol, Dist. Jagatsinghpur at present working as
Technical Officr (T.7-8) and posted at Head Soil Science
and Micro Biology Division, Central Rice Research
Institute (CRRI), At/Po/Dist. Cuttack.

.....Applicant

Advocate for Applicant: M/s.P.K.Nayak-I, P.Mohanty,
M.K.Das

-Vs-

1. The Indian Council of Agricultural Research (ICAR),
represented through its Secretary, Krishi Bhawan, New
Delhi-110 001.
2. Union of India represented through the Secretary,
Ministry of Finance, North Block, New Delhi-110 001.
3. Central Rice Research Institute (CRRI), represented
through its Director, Bidyadharpur, Cuttack-753 006
4. Head, Soil Science and Micro Biology Division, Central
Rice Research Institute (CRRI), At/Po/Dist. Cuttack.

....Respondents

Advocate for Respondents: Ms. S.B.Jena.

O R D E R

Per- MR.C.R.MOHAPATRA, MEMBER (A):-

Applicant, with qualification of B.Sc was
appointed to the grade of Senior Field Assistant on
21.10.1974. At the relevant time the pay scale of
Senior Field Assistant was Rs.380-560/-.

Subsequently, vide order under Annexure-1 dated
24.07.1997 the Applicant was placed in the scale of
Rs.425-700/- w.e.f. 21.10.1974 i.e. the date of his
induction to the service of the Respondents in the

grade of Senior Field Assistant. While the applicant was continuing in service he acquired the qualification of M.Sc in Chemistry in July, 1980 and PhD in Agricultural Chemistry and Soil Science and was placed in T(7-8) Technical Grade. According to him as per the provisions of ICAR more particularly, Agricultural Research Service Rules, 1975 employees who were in the pay scale of Rs.425-700/- as on 01.10.1975 and possessing minimum qualification of M.SC in the relevant field within five years viz; as on 30.09.1980 shall be considered for induction to 'S' Grade of Agricultural Service. He having not been considered for induction to 'S' grade in spite of fulfilling conditions stipulated in the Rules, made representation seeking the extension of the benefits of induction to 'S' grade. The said claim of Applicant having been turned down, he has approached this Tribunal in the present Original Application seeking the following relief:

“to issue notice to the respondents calling upon them to show cause as to why the order under Annexure-7 will not be quashed and why the applicant not be extended benefit of induction in the 'S' Grade of ARS due to above said facts and

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circumstances. If the respondents do not show any cause or show insufficient cause then your lordships may make the rule absolute by directing the respondents to quash the order under Annexure-7 and appropriate order may kindly be passed for the Induction of the applicant is the 'S' Grade of Agricultural service and side by side the applicant may kindly be continued in his service upto dated 30.11.2008 as per his legitimate claim due to above said facts and circumstances for the protection of law and also for the protection of natural justice to the Applicant."

2. The order of rejection is under Annexure-7

dated 23.10.2006 *inter alia* states as under:

"This has reference to the representation of Dr.N.B.Dash, Technical Officer (T 7-8) for his induction in the Agricultural Research Service (ARS) in Grade 'S' w.e.f. 01.07.1980. The issue has been examined carefully in the Council with reference to ARS Rules as well as all other relevant factors on this subject and the following facts/clarifications are offered.

1. As per ARS rules the Scientific Grade 'S' was meant to provide initial induction opportunities to qualified employees of the Council in the then pay scales of Rs.425-700/-, Rs.550-750/- and Rs.550-900/- as on 1.10.1975. A suitable proportion of positions in the Grade 'S' of the service were kept vacant

for such persons for a period of five years i.e. from 01.10.1975 i.e. the date of constitution of the Agricultural Research Service. It is specific and clear that vacancies Grade 'S' ceased to be in existence w.e.f. 1.10.1980 i.e. after five years from 1.10.1975 and it is administratively not possible to consider this request at this belated stage.

2. The criteria for categorization of posts in the Council as defined vide Bye-Law 21 of the Rules and Bye Laws of ICAR Society makes a clear distinction between the duties and functions of the scientific and technical personnel in the Council.
3. The services of Dr.N.B.Dash have all along been regulated and all the benefits of Career Advancement etc under the Technical Service Rules has been granted to him. He has already got promotions and further placements in higher grades due to him in the technical category by way of assessment of his work under the provisions of Technical Service Rules.
4. For more than 30 years Dr.Dash has been engaged in technical duties assigned to him by the Institute. His work and performance, therefore, cannot be equated and assessed with

that of the output and performance of a Scientist by any standards.

5. From the judgments of various Court in the cases filed by several employees of CRRI, Cuttack it has been observed that these cases related to their placement to higher grades of technical services and they were decided by the Courts on the individual facts and circumstances and specific merits. These decisions have come after a period of 20 to 25 years of the constitution of the Agricultural Research Service and, therefore, do not entitle technical personnel to be considered for induction to scientific service retrospectively, after such a long lapse particularly when one has practically worked as a technical employee all along during his service and now requests for induction into scientific service in the fag end of his career. Moreover, he was not fulfilling the criteria of holding a position in the then pay scale of Rs.425-700/- either as on 01.10.1975 or as on 31.09.1980.

6. The induction of four technical employees of CRRI, Cuttack i.e. Shri K.M.Das, Sh.A.B.Dash, Smt.Sanjukta Das and Shri Ashok Patnaik ha been made based on grant of

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erroneous extension of benefits to higher grades within the Technical Service by the Institute. The erroneous benefits in their cases had to be regularized by the Council due to the peculiar facts and circumstances of the case. As per decision already taken by the Council and communicated to the Institute vide Council's letter No. 15 (8)/030-Estt.IV (Vol.II) dated 10th December, 2004, the same cannot be a valid ground/reason for extension of similar erroneous benefits to other persons, as parity cannot be claimed with errors.

Therefore, considering the issue in its totality the request of Dr.N.B.Dash cannot be acceded to at this belated stage."

3. Respondents, by placing reliance on the decision of the Hon'ble Apex Court, in their counter, have made all endeavour to substantiate the order of rejection under Annexure-7 in reiterating by way of **emphasis that as the Applicant's initial induction was not in the scale of Rs.425-700/- he was rightly not placed in the 'S' grade of the service.**

4. Learned Counsel appearing for both sides, have reiterated their stand taken in their respective

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pleadings and having given our anxious consideration to the rival contention of the parties, perused the documents placed on record.

5. Requisite conditions for induction into the Scientist 'S' grade as communicated by ICAR to The CRRI is that one must have the minimum qualification of M.Sc in the relevant field and secondly he/she is/was in the post of T-II-3 carrying the scale of Rs.425-700/- w.e.f. 1.10.1975. The main/basic ground of the Respondents, in not inducting the Applicant to S grade, as revealed from the record, is that the Applicant was not in the scale of pay of Rs.425-700/- as on the cut off date fixed in the Rules. But from the order under Annexure-1 dated 24.07.1997 it is crystal clear that he was placed in the scale of pay of Rs.425-700/- with effect from 21.10.1974 i.e. the date when he initially entered to the service. It is also noticed that through this order not only the Applicant but also several others were placed in the said scale of pay retrospectively. Now question remains whether this order under Annexure-1 placing the applicant in the aforesaid scale retrospectively has ever been rescinded/modified, if at

all, according to the Respondents the same was erroneously issued by the Department. When we put this focused question to the Learned ASC, he was not able to provide us any satisfactory answer. However, we allowed him time to obtain instruction and convince us whether the order under Annexure-1 has ever been rescinded/modified and if so produce copy of the order. Mr.Jena, Learned ASC was not able to produce any such order that the order placing the applicant in the scale of pay of Rs.425-700/-w.e.f, 21.10.1974 had ever been withdrawn/modified. However, by relying on the decision of the Hon'ble Apex Court as also some of the decisions of this Tribunal it was contended by him as similar grievance of similarly situated employees have already been dismissed this OA is liable to be dismissed. In this context, we have gone through the decisions relied on by Mr. Jena. We find that the decisions relied on by him are not at all relevant for taking a view than what has been taken by this Tribunal in earlier OA; because we find that in none of those cases this point had formed the basis of any discussion besides the factual aspects of some of the cases are totally different and

distinct to this case. Similarly, the common thread running through the decisions of the Hon'ble Apex Court relied on by Learned ASC for the Respondents is that "while making fitment of the existing employees I the new categories/grades of service, the initial induction should be only on the basis of **pay scale**. Merely because one possessed the qualification, he cannot claim as a matter of right that he should be fitted into a higher category." The decision rather supports the case of the Applicant as he was in the scale as per Annexure-1. So far as qualification of Applicant to go to 'S' grade, the same is not in dispute. The only dispute is in regard to the scale. From the discussions made above, existence of the order under Annexure-1 placing the Applicant in the scale of pay of Rs.425-700/- from the date of his initial induction to service 21.10.1974 is conclusively proved. As such, denial of the benefit on the ground that he was not in the scale of pay of Rs.425-700/- by the cut off date is proved to be an erroneous decision of the Respondents thereby causing miscarriage of justice in the decision making process of the matter and consequently rejecting the representation of Applicant under

Annexure-7. Hence, the order of rejection of the representation of the Applicant under Annexure-7 is hereby quashed.

6. Consequently, this Original Application stands allowed holding that the Applicant was entitled to be considered for induction as Scientist 'S' grade with effect from the due date. Respondents shall first consider the same and bring him within the fold of scientific cadre and grant him all consequential benefits including service benefits. However, he shall not be entitled to the back wages except notional fixation of pay for the purposes of his pension and pensionary benefits.

7. This order shall be complied with within a period of 90(ninety) days from the date of communication of this order. No costs.

Kappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

Chapati
(C.R. MOHAPATRA)
MEMBER (ADMN.)