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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 05 of 2003.

Cuttack, this the 21st day of March, 2006.


CHITTARANJAN PATTNAIK APPLICANT.


VERSUS

UNION OF INDIA & ORS RESPONDENTS.

FOR INSTRUCTIONS.

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


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

21/03/06

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK.**

O.A.NO. 05 of 2003.

Cuttack, this the 2nd day of March, 2006.

C O R A M:-

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

Chittaranjan Patnaik, Aged about 57 years,
Son of late Padma Charan Pattanaik,
At present Senior Farm Manager (T-6),
Estate Management Central Rice Research Institute,
Cuttack-6, permanently residing at New Colony,
Mahatab Road, Cuttack.

..... APPLICANT.

* By legal practitioner:- Mr.B.S.Triathy, M.K.Rath, J. Pati,
Advocates.

-VERSUS-

1. Union of India, represented through its Secretary, Indian Council of Agricultural Research (I.C.A.R), Krishi Bhavan, New Delhi-110001.
2. The Director General, Indian Council of Agricultural Research, Krishi Bhavan, New Delhi-110 001.
3. The Director, Central Rice Research Institute, Cuttack, At/Po/Dist.Cuttack-6.

..... RESPONDENTS.

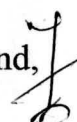
By legal practitioner:- Mr. S.B.Jena, Additional
Standing Counsel (Central).

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ORDER

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

Applicant having been entered into the Service of Indian Council of Agricultural Research (I.C.A.R) in the grade of T-5, joined at Central Rice Research Institute at Cuttack on 01-02-1978 as Farm Manager. On being promoted to the post of Grade T-6 w.e.f. 01-04-1986, he is now working as Senior Farm Manager in the Central Rice Research Institute at Cuttack. It is the case of the Applicant that, although he was eligible to be promoted to Grade T-7 w.e.f. 01-01-1992, instead of giving him promotion, on the recommendation of the Assessment Committee held on 21-10-1992, the Applicant was granted three advance increments with effect from 01-01-1992. Although the Assessment Committee (held on 29-07-1995) recommended the case of Applicant for promotion to T-7 grade retrospectively w.e.f. 01-07-1993, the competent authority (i.e. I.C.A.R.) did not approve the same. Again, the Assessment Committee sat on 08-10-1997 and recommended the case of Applicant for promotion to T-7 grade with effect from 01-07-1993 but, instead of approving the same, the I.C.A.R. returned the proposal of promotion of Applicant with note that he (Applicant) can be considered with effect from 01-07-1994 (instead of with effect from 01-07-1993 as recommended by the Committee) and,



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accordingly, requested the authorities to review the matter and send the recommendation of the Review Assessment Committee for necessary action at their end. It is the case of the Applicant that; due to lack of communication of the Director, CRRI, Cuttack; instead of considering the crucial date of determination of the promotion of the Applicant to Grade T-7 as per the advice of the I.C.A.R., (issued under Annexure-1 dated 08-01-1998/06-02-1998), the Assessment Committee (held on 20-08-1999) again recommended the case of Applicant for promotion to Grade T-7 with effect from 01-04-1999 and sent to the I.C.A.R. for approval; which was also returned without any approval. Repeated representations dated 05-07-2000, 08-09-2000, 23-01-2001 and 09-08-2001 having yield no result, the Applicant invoked the jurisdiction of this Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985; wherein he has prayed for a direction to the Respondents to promote him to Grade T-7 with effect from 01-01-1992 with all consequential benefits.

2. Respondents, by placing a counter, have submitted that this Original Application is not maintainable as the Director General is not the proper authority to represent the ICAR. It has also been stated that, taking into consideration the five years period from 01-04-1986 to 31-03-1991 with effect from 01-01-1992, the Applicant was granted three advance

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increments, that his case was placed before the Assessment Committee (held on 27-07-1995) for according promotion to the Applicant to T-7 grade; that the Applicant having been recommended by the Assessment Committee to be promoted to T-7 grade w.e.f. 01-07-1993, the matter was sent to the I.C.A.R. Headquarters at New Delhi for concurrence, that in turn, the Council (in its letter under Annexure-R/6 dated 06-02-1998) suggested that, as per Technical Service Rules, the Applicant is entitled to be promoted to T-7 grade w.e.f. '01-07-1994' (instead of '01-07-1993') and, accordingly, the Council suggested to place the matter before the Assessment Committee once again and send the detailed materials for necessary approval; that, as per the letter of the I.C.A.R., the Assessment Committee was reconvened on 08-10-1997 and, again, recommended the promotion of the Applicant to T-7 grade with effect from '01-07-1993'; which was sent to the ICAR/New Delhi under Annexure-R/7 dated 26/27-03-1998 for approval; that the ICAR/New Delhi (in letter dated 09-08-1998 under Annexure-R/9) intimated that level of performance of the Applicant does not come within the scope and ambit of the Rules entitling him to be promoted to T-7 grade. It has been disclosed by the Respondents that, again, the case of the Applicant was placed for consideration before the Committee held on 20-08-1999 (which recommended the case of Applicant for

promotion w.e.f. 01-04-1999, inadvertently, instead of 01-01-1999 covering the whole assessment period 01-04-1986 to 31-03-1999, although the actual period of assessment should have been shown from 01-04-1986 to 31-12-1998 such recommendation was, again, sent to the ICAR/New Delhi under Annexure-R/10 dated 14-01-2000; which, on examination again turned down the case of the Applicant and communicated the refusal under Annexure-R/12 dated 06-06-2000. It is the specific case of the Respondents that as the Applicant did not fulfill the test of the Rules, he was not approved for promotion.

3. Mr. B.S. Tripathy, learned counsel appearing for the Applicant has submitted that law is well settled that hyper technicality should not stand on the way of dispensation of justice, where glaring omission and commission has taken place; inasmuch as the Applicant has addressed his representation to the D.G., ICAR; that apart the Applicant has made the Secretary, ICAR and Director CRRI as parties to this case. Merely because the ICAR represented through Director General has been made a party, the just and rightful claim of the Applicant should not be thrown to the winds. As regards the merit of the matter, it has been submitted by the learned counsel appearing for the Applicant that Assessment Committee

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(held on 27-07-1995) having recommended the promotion of Applicant from T-6 to T-7 with effect from 01-07-1993; (which was made taking into consideration the re-assessment period from 01-04-1991 to 31-03-1992, including the period from 01-04-1986 to 31-03-1991 i.e. 5 + 1 = 6 years the recommendations were not to be dis-approved by the ICAR/New Delhi and that, when his case was again recommended by the Assessment Committee (held on 08-10-1997) by taking into consideration the five years period (i.e. from 01-04-1988 to 31-03-1993) for promotion w.e.f. 01-07-1993, there were no reasons for the ICAR/New Delhi not to accept the same on the ground that the date of promotion of the Applicant should be 01-07-1994 in place of 01-07-1993 . Instead of considering the case of the Applicant in the light of the directions of the ICAR/New Delhi for rectifying the date of promotion to 01-07-1994, the Respondents wrongly convened another meeting on 20-08-1999 and again, recommended the case of Applicant for promotion to T-7 grade w.e.f. 01-04-1999 (instead of 01-07-1999) in gross disregard to Rule 7(3) of the Technical Service Rules which was also not available to be dis-approved by the ICAR. It has been submitted by the learned counsel for the Applicant that the ICAR/New Delhi was estopped under law to reprobate and approbate from the decision already taken and communicated in regard to the promotion of Applicant. Learned counsel

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appearing for the applicant has also argued on the point of non application of mind by the ICAR/New Delhi in the decision taking process of the Respondents.

4. Mr. Sashi Bhusan Jena, Learned Counsel appearing for the Respondent-Organisation, has submitted that no employee can claim promotion as a matter of right. Merely because the Assessment Committee recommended the case of the Applicant it does not confer any right on the Applicant to claim promotion unless such recommendation has been duly accepted by the final authority i.e. ICAR/New Delhi; that the recommendation of the Assessment Committee is subject to the approval of the ICAR/New Delhi. It has been pointed out by the learned Counsel for the Respondents that no equity can be claimed by an employee on the basis of any internal communication and that in every Government Organisation, hierarchy of posts are available for the purpose of check and balance in the decision making process and that in the matter of promotion from T-6 to T-7, final say vests with the ICAR/New Delhi, who did not accord his concurrence and that, without any breach of rules, the Applicant has no right to challenge the decision taken in the matter; as promotion is not a matter of right of any employee. Applicant having not shown any violation of the Rules in the matter of his promotion; nor any such violation has been pin

pointed in decision of the ICAR/New Delhi, the counsel for the Respondents has prayed for dismissal of the case. It has also been pointed out that there was no allegation of discrimination in the matter of promotion of Applicant. It has further been elaborated by the counsel appearing for the Respondents that the assessment period under consideration was from 01-04-1986 to 31-03-1991 and that the Applicant has earlier been granted three advance increments w.e.f. 01-01-1992 in his existing grade T-6 as a result of Five Yearly Assessment during the period from 01-04-1986 to 31-03-1991. Respondents' counsel has pointed out that as per Rule 6.12 of ICAR Handbook of Technical Services (4th Edition), a person who is not found fit for merit promotion will be considered again at a subsequent stage or stages. In other words, such person will be considered every year till such time they are adjudged suitable for promotion to the next higher grade. As a result of this, the subsequent yearly assessment periods were from 1-4-1991 to 31-3-1992, 1-4-1992 to 31-3-1993, 1-4-1993 to 31-3-1994, 1-1-1995 to 31-12-1995, 1-1-1996 to 31-12-1996, 1-1-1997 to 31-12-1997, 1-1-1998 to 31-12-1998 respectively and that the benefits are to be allowed as on 01-01-1993 and so on, as the case may be. Therefore, the Assessment period indicated in respect of the Applicant was from 1-4-1986 to 31-3-1999 is not in conformity with the provisions contained in Rule 6.4 of the Technical

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Service Rules which has since been amended. It has been pointed out by the counsel appearing for the Respondents that, as per the procedure, the assessment promotion of the technical personnel to the next higher grade is not automatic and that it is subject to fulfillment of eligibility criteria of benchmark on grading of CRs and certain other conditions. The Bench mark criteria laid down prior to 22-04-1998 for grant of merit promotion to the next higher grade in respect of technical personnel of Category III was "consistently three Very Good" ACRs during the assessment period. However from 22-04-1998 onwards the criteria is " Any three very Good" ACRs during the assessment period. Applicant has earned only one very good ACR (i.e. from 01-04-1998 to 31-03-1999) during the period of (10) ten years from 01-04-1992 to 31-03-1999 and, therefore, Applicant as per the Respondents, does not fulfill the essential conditions of Benchmark criteria for merit promotion to the next higher grade, though the Assessment Committee has recommended his case for merit promotion to T-7 w.e.f. 01-04-1999 and that, as no reason was assigned in the proceedings of the Assessment Committee (while recommending the case of the Applicant for merit promotion to T-7 grade despite the Applicant not fulfilling the Benchmark criteria) the case of the Applicant was rightly turned down by the ICAR/New Delhi which needs no interference.

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5. Having heard the counsel for both sides, and upon perusal of the materials placed on record, we have given our anxious thought to the issues involved in this case. It is to be noted here that the case of the Applicant received consideration for promotion to T-7 grade on the basis of the letter (No.F.7(18)/85-Per-III dated 02-05-1989) which interalia speaks as under:-

“the technical personnel who are recommended for assessment/promotion up to grade T-5 should possess consistently three “good” reports and “Very good” for T-6 and above which was in force up to 21-04-1998.

(iii) The above provision was subsequently superseded vide Council's letter No.F. 18(5)/98-Estt.IV dated 22-4-1998 on the subject that “Five Yearly Assessment of Technical Personnel- Adoption of some criteria for the gradation of CCRs of Technical Personnel for the past five years under assessment for purpose of eligibility for promotion to the next higher grade in Category-III persons who possess any three “Very Good” ACRs during the Assessment period may be considered for Five Yearly Assessment promotion. There is however, no changes in the Rules/instructions regarding Five Yearly Assessment system being followed at present. This will be effective from the date of this circular i.e., 22.4.1998 and past cases will not be reopened.

(iv) Besides the above, the provision under TSR-6.12 i.e. A person who is not found fit for merit promotion or for grant of advance increment(s) may be considered again at a subsequent stage or stages.

Note: Such persons will be considered every year till such time as they are adjudged suitable for promotion to the next higher grade.

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The Technical Personnel once promoted will, however, be eligible for promotion to the next higher grade/grant of advance increment(s) only after they have put in prescribed period of service in that grade and not earlier (ICAR) Letter No. 7/4/79-Per-III dated 10-09-1979).

6. From the counter and the materials produced before us it is not clear as to why the recommendation of the Assessment Committee could not be accepted by the ICAR/New Delhi. The orders denying acceptance of the recommendation of the Committee is not only bereft of any reason, the counter, filed in this case also does not disclose the mind/reason of the ICAR for non acceptance of the recommendation of the Committee. We find that the order of the ICAR is without any reason and the counter filed is also bereft of any reasoning and has been filed in a bald and cryptic manner without any discussion on the findings reached by the ICAR. It is the settled position of law that the authorities, while passing any order detrimental to the interest of a Govt. servant, must assign reasons leaving no room of doubt that his grievance has been left out of consideration. Recording of reasons by every authority entrusted with quasi judicial functions and communication thereof to the parties are the basic requirements for complying the principles of natural justice. The requirement of recording of reasons and communications thereof have been

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held as an integral part of the concept of fair play. The administrative authorities vested with powers should act judicially and should not decide the matter on extraneous considerations and it should exhibit clarity and maintain checks and balance in the decision making process. In absence of any reason, it is difficult for this Tribunal to reach a just and proper conclusion in the matter. Following were the grading in the CCRs of the Applicant which are reproduced below:-

Five years Period	Period of CCRs	Outstanding	Very Good	Average	Good	Below Average	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(7)
1-4-86 to 31-3-91	1.1.1986 to 31.12.86	-	5	05	-	-	One year
	1.1.87 to 31.7.87	-	06	04	-	-	Seven months.
	1.8.87 to 31.12.87	-	10	-	-	-	five months
	1.1.88 to 31.3.89	-	05	05	-	-	one year.
	1.4.89 to 31.3.90	-	04	04	-	-	one year
	1.4.90 to 31.10.90	-	-	Average	-	-	Seven months
	1.11.90 to 31.3.91	-	V.Good	-	-	-	Five months.

Subsequent Ass. Period	Period of CCRs	Outstanding	V.Good	Good	Average	Below Avg.	Remarks
1.1.92 to 31.11.92.	1.4..91 to 31.12.92	-	V.Good	-	-	-	One year.
	1.4.91 to 31.3.93	-	-	Good	-	-	One year.

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1.7.93 to 30.6.94	1.4.93 to 31.3.94	-	-	Good	-	-	One year.
	1.4.94 to 31.3.95	-	04	-	06	-	One year
1.1.95 to 31.12.95	1.4.95 to 31.3.96	-	-	Good	-	-	One year
1.1.96 to 31.12.96	1.4.96 to 31.3.97	-	-	Good	-	-	One year
1.1.97 to 31.12.1997	1.4.97 to 31.3.98	-	-	Good	-	-	One years.
1.1.98 to 31.12.890	1.4.98 to 31.3.99	-	V. Good	-	-	-	One year.

7. The admitted fact of the matter is that the technical personnel who are recommended for assessment/promotion upto grade T-5 should possess consistently three "good" reports and "Very good" for T-6 and above which was in force upto 21-04-1998. The above provision was subsequently superseded in letter dated 22-04-1998 by providing that five yearly assessment of Technical Personnel –Adoption of some criteria for the gradation of CCRs of Technical Personnel for the past five years under assessment for purpose of eligibility for promotion to the next higher grade in Category-III persons who possess any three Very Good ACRs during the Assessment period may be considered for Five Yearly Assessment Promotion. The TSR 6.12 also provides that a person who is not found fit for merit promotion or for grant of advance increment(s) may be considered again at a subsequent stage or stages. Prime facie it reveals that the applicant fulfills the above conditions to be conferred with the next promotion to grade T-7. From the minutes dated 28-01-2005 drawn by the Assistant

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Administrative Officer, Adm. II (Legal Cell) and produced before us at the time of hearing discloses as under:-

“(2) Accordingly subsequent/Re-assessment was again held for the above period on 27.7.2001 and committee recommended for promotion to the next higher grade (T-7) w.e.f. 1.4.1999 instead of 1.1.1999 as annexed Annexure-R/13. The Council has communicated the decision in their D.O. Letter No. F.11(61)/95-Estt.IV dated 27.8.2004 to follow the prescribed procedure while considering the Assessment cases instead of trying to facilitate the promotion out of way (3) As per counter reply under para 10 as Annexure-R/19, the petitioner has been advised to submit the duly filled in Subsequent Assessment forms already provided to him vide this Office letter No. 31-1/98-Adm.II/8648 dated 26.09.2003 for his Subsequent/Re-assessment periods i.e. 1.1.1999 to 31.12.1999, 1.1.2000 to 31.12.2000, 1.1.2001 to 31.12.2001 and 1.1.2002 to 31.12.2002. **But Shri Patnaik has not yet submitted the assessment forms as a result of which the respondent is not a position to consider his case and the matter is also subjudice before the Hon’ble CAT, Cuttack in OA No. 05/2003.”**

8. In view of the undertaking given by the Respondents that the matter is under consideration, we dispose of this Original Application with liberty to the Applicant to submit the Assessment forms within a period of 15 days hence and, on receipt such information, the Respondents are



hereby directed to consider the case of the Applicant for promotion to T-7 retrospectively and pass a reasoned order within a period of 90 days of receipt of the necessary Assessment form from the Applicant. There shall be no order as to costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER(JUDICIAL)