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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of Order : 08.11.2001

O.A. No. 210/1999
with
M.A. No. 78/2001

Data Ram Son of Shri Phool Chand Official Address : T-I-3, Central Sheep and Wool Research Institute, Arid Region Campus, Bikaner, aged about 49 years, resident of House No. 2-D-12 Pawan Puri, Rajasthan Housing Board Colony, Bikaner.

... APPLICANT.

v e r s u s

1. The Union of India through : The Secretary, Ministry of Agriculture, Govt. Of India, New Delhi.
2. The Director General Indian Council of Agriculture Research, Krishi Bhawan, New Delhi.
3. The Director, Central Sheep & Wool Research Institute, Avikanagar (Tehsil-Malpura District Tonk), Rajasthan-304501.

... RESPONDENTS .

Mr. Kamal Dave, counsel for the Applicant.
Mr. V. S. Gurjar, counsel for the Respondents.

CORAM

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.
Hon'ble Mr. A.P. Nagrath, Administrative Member.

: O R D E R :

(per Hon'ble Mr. A. P. Nagrath)

In the Indian Council of Agricultural Research (ICAR), the Technical Services are grouped into 3 categories i.e. Cat.I, Cat.II and Cat. III. In turn, each category has different grades. By order dated 1.1.1995, the governing body of ICAR decided to remove the category Bar between Cat.I and Cat.II. The procedure for removal of this Bar was also explained in the said order. The order stated interalia that the existing employees at Category T-I-3 Level, who possess qualifications prescribed for entry to Cat. II by direct recruitment, will be placed in Grade T-II-3 of the Cat.II w.e.f. 1.1.1995. Further by letter dated 8.8.1996 (Annexure A-3), it was decided that council employees in service as on 1.1.1977 and who possess alternate qualifications in

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terms of ICAR's letter's dated 27.1.1979 and 6.4.1994 will also be eligible for category jump from Cat. I to Cat. II w.e.f. 1..1995. The applicant has been denied this benefit on the ground that he was not in service as on 1.1.1977. Feeling aggrieved he has filed this OA.

2. The relief brought for by the applicant is as follows :-

7.1 That by quashing Annexure A/1 and A/2 respondents may be directed to extend the benefit of relaxed alternative qualification treating him to be in service on the date of initial date of formation of technical services.

7.2 That by calling the record pertaining to cadre of T-II-3 category respondent may be directed to consider applicant against 33 1/3% quota for the post in the Category T-II-3.

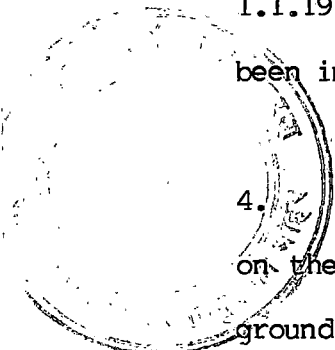
7.3 Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.

7.4 Costs of the application may kindly be awarded in favour of the applicant.

3. The applicant has stated that the relief cannot be denied to him on the ground that he was not in service on 1.1.1977. He has stated that he had already been selected and offered appointment prior to this date and hence he should be deemed in service from 01.01.1977. Documents relating to the applicant's appointment and date of his joining ICAR was submitted by the learned counsel, after conclusion of arguments and these have been taken on record. Thrust of the arguments on behalf of the applicant is twofold, first as already stated above that he should be deemed to be in service on 1.1.1977. The second is that he should have been promoted and appointed against 33 1/3%

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quota vacancies in Cat. T-II-3 in the year 1994, he being the senior most belonging to Scheduled Caste Community. He had represented on this aspect to the department but his claim was rejected vide communication dated 22/23-2-94 informing him that SC point under 33 1/3% quota had already been filled up by appointing one Shri Uttam Rao who also belongs to SC community. The applicant submits that during this period Shri Uttam Rao who was promoted in the Category of T-II-3 superannuated on 30.07.1995, 4 more employees in the same category of T-II-3 also retired and one employee had died. The applicant vide his representation dated 5.7.1997, brought these facts to the notice of the respondents particularly when the specific reply vide order dated 22/23-2-94 was given. To this, the department responded by saying that the applicant is not covered under the instructions of 1.2.95 as he was not in ICAR Service on 1.1.1977. Regarding his request for promotion against 33 1/3% quota, he has been informed that his request will be kept in view.



4. The respondents have raised preliminary objections in their reply first on the ground of non joinder of necessary and proper party and second on the ground of limitation. It has been stated that under the rules of ICAR, the Society may sue and be sued in the name of Secretary of the Society. Therefore, the original application is stated to be non maintainable for non inclusion of necessary and proper party as the Secretary of ICAR has not been impleaded as a party respondent. Since we find that the Director General of ICAR has been made a party, so this technical objection should not come in the way of the applicant.

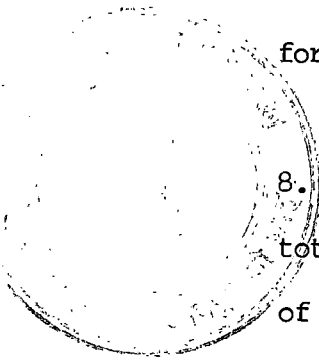
5. The respondents have raised the plea of limitation in respect of promotion of the applicant against 33 1/3% quota against SC point on the ground that the same order was issued in February 1984 and the applicant cannot agitate against the said order so belatedly. We accept this plea of the respondents and reject the claim of the applicant on this point on the ground of limitation. The promotion against this quota had been ordered in the year

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1994 and this OA has been filed in 1999. So, on this point this OA is hit by limitation.


6. The applicant has also filed MA No. 78/2001 for calling for records in respect of fulfilment of promotion quota of 33 1/3% in T-II-3 category. In view what we have stated in above para, this MA is infructuous and is disposed of as such.

7. Having said so, the question which survives for our consideration is whether the applicant is entitled to the benefit of the letter dated 8.8.1996 for appointment from Cat. I to Cat.II w.e.f. 1.1.1995.



8. Learned counsel for the applicant submitted that this cut off date is totally arbitrary but even so, the applicant should be deemed to be in service of ICAR as he was offered appointment by letter dated 30.12.1976 by which he was asked to join by 15.1.1977. The applicant had accepted this offer but sought permission for extending the time for joining to 22.2.1977. This permission was granted and ultimately he joined on 21.2.1977 i.e. within the period permitted. Learned counsel for the applicant assailed the cut off date on 1.1.1977 on the ground that the same was totally arbitrary and does not provide any reason as to why this particular date has been chosen for granting benefit to the employees already in service though the benefit is admissible only from 1.1.1995.

9. Learned counsel for the respondents opposed this contention of the other side stating that, it is for the Competent Authority in the department to decide a cut off date and such a cut off date cannot be considered as arbitrary or discriminatory. This cut off date stood applied uniformly to all those who were in service as on 1.1.1977. Learned counsel contended that since the



applicant was not in the service of ICAR, he cannot make a claim for being placed in Cat. II.

10. We have given our anxious consideration to the rival contentions and facts of this case. In service matters, there could always be a cut off date for certain requirements like determining the age for appointment, acquiring any particular qualification in a given situation, revising the pay scales or pensionary benefits and upgradation or restructuring of the posts etc. But one thing is clear in all such cases that a cut off date so decided has a nexus with the objective. In the instant case, the objective is to place the existing employees at level T-I-3, who possess qualifications prescribed for entry to cat.II by direct recruitment, to Grade T-II-3 of cat. II w.e.f. 1.1.1995. The question which came up for consideration of the department was whether such of the ICAR employees who are on the strength of the council on the date the initial date of formation of Technical Services and who possess alternate qualifications in terms of ICARs' letter dated 27.1.1979 and 6.4.1994 would also be eligible for this category jump. After due consideration, this benefit was extended to all such employees who were in the service of ICAR at the time of constitution of Technical Services. The relevance of the date of 1.1.1997 is clear from this letter as that was the date when the Technical Services were initially constituted in the council.

11. Now, coming to the case of the applicant whether he could be considered to be in service of ICAR as on 1.1.1977. Undoubtedly, the offer of appointment was made on 30.12.1976 and this appointment was accepted by the applicant who also joined within the period allowed. Under these circumstances, it is only just and proper that the applicant is deemed to be in the service of ICAR from the date of initial constitution of the Technical Services. We are saying so in view of the clear position that he had already been offered appointment prior to this date of constitution of the Technical Services. The time lapse of joining the appointment which is within the period allowed by the

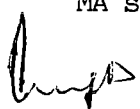


respondents cannot deprive the applicant of the benefit of the scheme. In this view this OA is liable to be allowed.

12. We, therefore, allow this OA and direct the respondents to treat the applicant as having been placed in Cat. II w.e.f. 1.1.1995 in terms of council's circular no. 14(3)/94-Estt IV dated 1.2.1995. The applicant shall be entitled to all consequential benefits arising out of his being placed in Cat.

II. Under the circumstances, no order as to costs.

MA stands disposed of as infructuous.


(A.P. NAGRATH)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

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Recd
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