

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

I/6

O.A. No. 311/2001
T.A. No.

198

DATE OF DECISION 372-02.

Bhagwan Singh Gehlot Petitioner

Mr.S.K.Malik Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr.V.S.Gurjar Advocate for the Respondent(s)



*Hon'ble V.C.
May kindly see
Hups*

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr. A.P.Nagrath, Adm Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

(Signature)
(A.P.Nagrath)
Member (A)

(Signature)
(G.L.Gupta)
Vice Chairman

I/7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

* * *

Date of Decision: 3-12-02

OA 311/2001

Bhagwan Singh Gehlot, Cook, CAZRI Guest House & Hostel, Jodhpur.

... Applicant

Versus

1. Union of India through Secretary, ICAR, Krishi Bhawan, New Delhi.
2. Director General, ICAR, Krishi Bhawan, New Delhi.
3. Director, ICAR, CAZRI, Jodhpur.
4. Sr. Administrative Officer, ICAR, CAZRI, Jodhpur.

... Respondents

CORAM:

HON'BLE MR. JUSTICE G.L. GUPTA, VICE CHAIRMAN

HON'BLE MR. A.P. NAGRATH, ADM. MEMBER

For the Applicant


... Mr. S.K. Malik

For the Respondents

... Mr. V.S. Gurjar

ORDER

PER MR. A.P. NAGRATH



Shorn of all superficialities, the facts relevant to the controversy involved in this case are that the applicant, who was initially appointed on the post of Chowkidar, got selected as a Cook (Auxiliary) and was appointed as such purely on ad hoc basis vide order dated 15.9.87 (Ann.A/4) for a period of six months or till the Recruitment Rules for the post of Cook (Aux) were finalised. Consequent upon receipt of the Recruitment Rules dated 22.2.88 and by deletion of condition No.6(a) from the said rules, the applicant was regularised on the post of Cook in the pay scale of Rs.950-1500 w.e.f. 16.9.88. Later, by order dated 20.2.93 (Ann.A/7) his regularisation was ante-dated to 16.9.87 i.e. the date on which he had joined the aforesaid post and his pay was fixed at Rs.990/-.

2. Separately, a matter relating to to reclassification of technical posts/abolition of Auxiliary categories and reclassification of Auxiliary posts had been considered by a Board of Arbitration. Vide order dated 1.8.95 (Ann.A/8) the posts mentioned in Ann.I and Ann.II, attached to the said order, were reclassified as Technical posts or Administrative posts. The post of Cook in grade Rs.950-1500 was classified as Administrative (Non-Ministerial). Subsequently, another committee under the Chairmanship of Dr. Kirti Singh was appointed to consider issues relating to classification/reclassification of posts and to reconsider appropriate classification of the posts classified as Administrative, Administrative

(Non-Ministerial) and Supporting. As per this classification, the category of Cook was classified as Supporting staff. The grade of Cook had been indicated as Rs.825-1200. The applicant submitted his representation against his being classified as Supporting staff but vide order dated 28.5.2001 (Ann.A/1) he was informed that as per ICAR reclassification letter dated 20.8.96 the post of Cook has been classified in Supporting category.

3. The scheme of Assured Career Progression (ACP) was introduced in ICAR vide OM dated 9.8.99, issued by the DOPT and circulated by the ICAR vide letter dated 30.8.99. Under the provisions of this scheme, the applicant has been placed in the pay scale of Rs.3200-4900 vide order dated 30.11.99 (Ann.A/18). In pursuance of this order, his pay has been fixed at Rs.4050/- p.m. w.e.f. 16.9.99 under FR-22(I)a(i).

4. The applicant is aggrieved both by his reclassification as a Supporting staff and also his placement in the pay scale of Rs.3200-4900 under ACR. His prayer is that;



That by an appropriate writ, order or directions the impugned memorandum dated 28.5.2001 (Ann.A/1), Office Order dated 30.11.99 (Ann.A/18) & 7.8.2000 (Ann.A/19) be declared illegal and be quashed and set aside by the Hon'ble Tribunal.

By an order or directions respondents may be directed to place the applicant in Technical/Administrative category and further grant him the benefits of ACP Scheme in the pay scale of Rs.4000-6000 or Rs.5000-7000 w.e.f. 16.9.99 alongwith arrears of pay and allowances with all consequential benefits."

5. The respondents have filed a detailed reply, to which a rejoinder has been filed by the applicant. The respondents have raised a preliminary objection regarding maintainability of this OA by stating that the applicant was informed about his classification as Supporting staff by order dated 21.4.97 and for this reason this application is time barred. The applicant has explained the reason for his filing the application only in the year 2001 by saying that he had submitted his representation dated 2.5.97 and vide respondents' letter dated 13.10.97 he was informed that his matter had been referred to the Council for his placement in the newly classified category. He was finally informed of the decision only by the

impugned letter dated 28.5.2001. With respect to this communication, the OA is not barred by time. We have considered this aspect of the matter and we accept the plea of the applicant that there has been no delay on his part and that the final decision was communicated to him only by letter dated 28.5.2001. This OA has been filed on 5.11.2001 and thus it cannot be said to be barred by limitation.

6. The respondents have denied the claim of the applicant by saying that initially offer of appointment for the post of Cook was only on ad hoc basis and subject to finalisation of Recruitment Rules. They have justified reclassification of the post of Cook as Supporting staff on the ground that it is a matter of policy and that it was done after the governing body considered the recommendations made by the committee under the Chairmanship of Dr. Kirti Singh. This expert committee was constituted to consider various issues relating to classification/reclassification while removing Auxiliary and Administrative (Non-Ministerial) categories. Regarding placement of the applicant in scale of Rs. 3200-4900 on grant of benefit under ACP, it has been the contention of the respondents that in the case of isolated posts in absence of any hierarchical grades, the upgradation has to be given in the next immediate scale. Their plea is that the scale of Rs. 4000-6000 in the Hierarchy of Cook is not in existence in the Institute and the grade of Rs. 3200-4900 is the next higher grade to Rs. 3050-4590, in which the applicant had been placed as a Cook. For this reason, the stand of the respondents is that the applicant has not suffered any legal injury and is not entitled to any legal remedy.

7. The learned counsel for the applicant, Shri S.K. Malik, argued at great length while taking us through the history of classification and reclassification of posts and strongly contested the action of the respondents in putting the category of applicant in the category of Supporting staff. His plea was that the applicant should have been only categorised as a Technical staff, to which category he had initially belonged. Regarding the benefit under the ACP Scheme, Shri Malik drew our attention to Ann.A/24, filed by the applicant alongwith the rejoinder, which is an OM dated 24.9.98 and which deals with the revised pay and allowances of Non-statutory Departmental Canteen employees. He stated that in this category the scale of Rs. 950-1500 has been revised to Rs. 3200-4900 and the next higher grade available is only Rs. 4000-6000. His contention was that the applicant could have only been placed in the grade of Rs. 4000-6000 at least if not in grade Rs. 4500-7000, which was the scale applicable to Chief Cook or Catering Incharge, which finds mention in the

reclassification issued by the respondents by letter dated 1.3.95. This stand of the applicant was strongly contested by the learned counsel for the respondents, Shri V.S.Gurjar, who produced before us the Recruitment Rules dated 22.2.88. While referring to the scale of pay for the post of Cook, he submitted that the authorised scale for the said post was Rs.825-1200, which has now been revised to Rs.3050-4590 and the next scale in the hierarchy is Rs.3200-4900. Thus, he defended the action of the respondents in placing the applicant only in the scale of Rs.3200-4900 w.e.f. 16.9.99. On the reclassification, he reiterated the stand of the respondents that it was a matter of policy and this reclassification has been done after proper study and evaluation by an expert committee.

8. We have given our anxious consideration to the rival contentions. In so far as reclassification of the posts is concerned, we are of the view that this is essentially a matter of policy and the scope of judicial review in such matters is very limited. This aspect of the matter came for consideration in the case of Government of Tamil Nadu and Another vs. S. Arumugham and others, (1998) 2 SCC Page 198, in which a particular policy of promotion laid down by the Government came to be challenged. The Tamil Nadu Administrative Tribunal by order dated 30.04.1991 passed in O.A. No. 1969 of 1990 and other connected OAs, quashed the GOMs No. 145 (Revenue) dated 29.01.90 and directed the Government of Tamil Nadu to review their scheme as far as the Secretariat staff is concerned and further directed to evolve a different Scheme which would give the staff a wider perspective in all aspects of executive works which, according to the Tribunal, would be more useful to the staff in the Secretariat working in different departments. The Tribunal has also directed all Revenue Officers to be clubbed into one group and for the manner of deputing officers from that group it has also given directions as to how such grouping could be made. The decision of the Tamil Nadu Administrative Tribunal was set aside by the Apex Court by observing in Para 10 of the judgement as follows :-

"10..... The Tribunal ought not to have directed the Government to change its policy. The government has a right to frame a policy to ensure efficiency and proper administration and to provide suitable channels of promotion to officers working in different departments and offices. In Indian Railway service of Mechanical Engineers' Association vs. Indian Railway Traffic Service Association, (1994) 26 ATC page 352, this court reiterated that the correctness of a policy should not be questioned by the Tribunal. The appellants in their affidavit before the Tribunal have given in detail the history

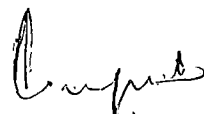
of these provisions and the justification for these provisions in the interest of efficiency and proper administration. The Tribunal cannot substitute its own views for the views of the Government or direct a new policy based on the Tribunal's view of how the allocation should be made. The three groups which have been formed as far back as in 1977 for the purposes of allocation consist of officers performing different functions and having different prospects and different avenues of promotion. They cannot be equated for the purposes of Articles 14 or 16. In the case of Govind Dattatray Kelkar vs. Chief Controller of Imports & Exports, AIR 1967 SC page 839, this Court held that the concept of equality in the matter of promotion can be predicated only when promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the difference between the two sources, the recruitment can be justified as legitimate classification. This reasoning directly applies in the present case. Therefore, the scheme does not violate Articles 14 or 16, nor is it arbitrary. The quota which should be fixed or the allocation which should be made for the purpose of deputed officers to the Tamil Nadu Revenue Subordinate Service is basically in the domain of the executive. Unless there is a clear violation of any provision of the Constitution, the Tribunal ought not to have given directions for formulating a new policy and a different quota.

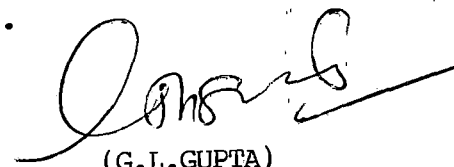
Because of such clearly established legal position, we do not find any scope for judicial interference in so far as classification of the post of Cook in the category of Supporting staff is concerned.

9. Regarding the benefit under the ACP Scheme, we find that the applicant has actullay not been given a fair deal. Notwithstanding the fact that as per Recruitment Rules the scale of pay for the post of Cook is Rs.825-1200, the fact remains that the applicant had been granted the pay scale of Rs.950-1500 from the very first day of his appointment as a Cook i.e. 16.9.87. It has not been the case of the respondents that they had committed some mistake which they intended to correct. As a matter of fact, the records clearly reveal that it was a conscious decision taken as every communication i.e. dated 21.11.87 (Ann.A/5), 15.10.92 (Ann.A/6) and 20.2.93 (Ann.A/7) makes a mention of the applicant having been placed in the pay scale of Rs.950-1500 only. Now to take a plea that the scale of pay for the post of Cook is Rs.825-1200 is meaningless in so far as considering the benefit under the ACP Scheme is concerned. The purpose of

the scheme is clear from the relevant Office Memorandum dated 9.8.99 (Ann.R/1) itself. It state in clear terms that the ACP Scheme needs to be reviewed as a 'Safety Net' to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Para-3.1 of the scheme says that keeping in view all relevant facts, it has been decided to grant two financial upgradations . . . on completion of 12 years and 24 years of regular service. The plea of the respondents that by placing the applicant in the scale of Rs.3200-4900 the objective of the scheme stands fulfilled is not tenable. Of course, the learned counsel for the respondents drew our attention to Ann.II attached the scheme, where the various scales have been indicated. While S-5 scale refer to Rs.3050-4590, the scale under S-6 is Rs.3200-4900. Thus, he justified that this was the next higher grade. We would have accepted this argument provided the applicant as a Cook had been given the scale of Rs.825-1200 as per the Recruitment Rules. This has not been the case. The applicant was granted the scale of Rs.950-1500. In the category of Canteen employees, this scale has been revised after Fifth Central Pay Commission's scale to Rs.3200-4900 as is clear from DOPT OM dated 24.9.98. This grade of Rs.3200-4900 is S-6 as per Ann.II to the Scheme of ACP and the next higher grade is Rs.4000-6000. Obviously, the only correct way of extending the benefit, as envisaged in this scheme, is by placing the applicant in the scale of Rs.4000-6000 w.e.f. 16.9.99 as against the scale of Rs.3200-4900 to which the applicant was entitled w.e.f. 1.1.96. Since the applicant has not staked this claim in the scale of Rs.3200-4900 w.e.f. 1.1.96, we do not propose to give any direction to the respondents in this regard. However, we do consider it proper and just that he should be placed in the scale of Rs.4000-6000 under the ACP Scheme w.e.f. 16.9.99.

10. In the backdrop of the dicussions aforesaid, we allow this OA partly. In so far as classification of the applicant as Supporting staff is concerned, we do not find any case for our interference. However, the applicant shall be entitled to be placed in the pay scale of Rs.4000-6000 w.e.f. 16.9.99 under the Scheme of ACP. He shall be entitled to all consequential benefits including arrears of pay on this account. The respondents shall implement this order within a perod of three months from the date of communication of this order. No costs.


(A.P. NAGRATH)
MEMBER (A)


(G.L. GUPTA)
VICE CHAIRMAN