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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 178/2003

Date of decision: 23-8-2005

**Hon'ble Mr. J K Kaushik, Judicial Member.
Hon'ble Mr. G R Patwardhan, Administrative Member.**

1. Dr Syed Irfan Ahmed, s/o late Shri Ziaulhaque, Scientist 'E'
2. Kailash Chand Gupta, S/o Shri Shambu Dayal, Hindi Translator.
3. Shera Ram Baloch, S/o Shri Bhanwaru Ram Baloch,
Research Assistant Gr. I
4. Dr. Sahadev Chouhan, S/o Shri Ladu Ram Chouhan
Research Assistant Gr. I
5. Dr. Hemant Kumar Sharma, S/o late Shri Jagdish Prasad,
Research Assistant Gr. II
6. Mrs. Anuradha Bhati, W/o Shri Dilip Bhati,
Assistant Librarian Gr. I
7. Rajendra Kumar Sarvate, S/o Shri G.S.Sarvate,
Research Assistant Gr. II
8. Bharatveer Jayant S/o Shri Arjun Singh Hayant,
Research Assistant Gr. II
9. Vinod Kumar Sahani S/o Shri A.D. Sahani,
Research Assistant Gr. I.
10. Karna Ram Choudhary, S/o Shri Bheekha Ram Choudhary,
Research Assistant Gr. I.



All applicants are working in Arid Forest Research Institute,
Pali Road,
Jodhpur.

: Applicants.

Rep. By Mr. Harish Purohit : Counsel for the applicants.

VERSUS

1. The Indian Council of Forestry Research & Education
through its Secretary, PO New Forest, Dehradun 248 006.
2. The Director General, Indian Council of Forestry Research
and Education, P.O. New Forest, Dehradoon 248 006.
3. The Director, Arid Forest Research Institute, New Pali Road,
Jodhpur.

: Respondents.

Mr. Vinit Mathur: Counsel for the respondents.

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ORDER.

Per Mr. J K Kaushik, Judicial Member.

Dr. Syed Irfan Ahmed and 9 others have filed this application under section 19 of the Administrative Tribunals Act, 1985, for seeking the following reliefs:

- (i) This Original Application may kindly be allowed.
- (ii) The Order dated 14.07.2003 (Annex. A/1) passed by the Secretary ICFRE kindly be declared illegal and the same may be quashed and set aside.
- (iii) The order dated 01.08.2003 (annex. A/2) passed by the Director, AFRI, Jodhpur may kindly be declared illegal and the same may be quashed and set aside.
- (iv) The Orders Annex. A/4 collectively issued by the office of the Director, Arid Forest Research Institute, Jodhpur may kindly be declared illegal and the same may be quashed and set aside.
- (v) The respondents may kindly be restrained from withdrawing the two additional increments allowed to the applicants on permanent absorption of their services with the Indian Council Forestry Research and Education.
- (vi) The respondents may kindly be restrained from effecting recovery of the amount from the applicants pertaining to the amount paid to them as a consequence of grant of two additional increments on permanent absorption of their services with the Indian council of Forestry Research and Education."

2. With the consent of learned counsel for both the parties, this case was taken up for final disposal at the stage of admission. We accordingly heard the arguments advanced at the bar as well as perused the pleadings and records of this case.

3. The factual matrix of the case, as averred by the applicants in the O.A, are that all the applicants are in the employment of Arid Forest Research Institute (for brevity "AFRI"), Jodhpur. The said institute is affiliated with the Indian Council of Forestry Research and Education (for short 'ICFRE'). It has

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been averred that the applicants were in the employment of the Government of India prior to their absorption in ICFRE. All the applicants opted for permanent absorption on their respective posts with ICFRE, vide letter dated 13.10.1992. The details of their present posts and designation on deputation with ICFRE and their initial appointment in the Government of India as well date of their absorption are indicated in the schedule annexed with this application. As per the rules in vogue, there is a provision for grant of two additional increments on permanent absorption with ICFRE and all of them were duly granted the two additional increments.



4. The further facts of this case are that the applicants applied for appointment through direct recruitment to the higher posts in higher grade of pay scales. They were duly selected and appointed on the said higher posts. Subsequently, Annexure A/7 came to be issued through which the applicant No. 1 has been shown to be absorbed on dated 1.4.93. Now an order dated 14.07.2003 has been issued by the Headquarters to the effect that persons appointed in the ICFRE and the institutes thereunder on or after 31.08.91 are not entitled to the benefits of grant of two additional increments on absorption except in cases of whom the offer of appointment came to be issued prior to 01.06.1991. The order also contains an annotation to effect recovery of the over payments made on account of grant of two additional increments. In compliance of the same, the Director AFRI, Jodhpur, issued an order on 01.08.2003, (Annex. A/2) wherein it has been specifically directed that the excess payment

involved shall be recovered in installments. A representation was moved to the competent authority but finding no response this O.A has been preferred on diverse grounds mentioned in sub para a to c of para 4 (xiii).

5. The respondents have contested the case and have filed an exhaustive reply to the O.A. It has been averred that ICFRE as well as AFRI were Government offices and ICFRE became autonomous body from 01.06.91 and AFRI is a part of it. The applicants had opted for absorption in the respondents department and they were given two additional increments. Subsequently, they were appointed to higher posts against direct recruitment vacancies. The complete details in respect of the applicants are reflected in Schedule 'A' to the reply (page 44 of the paper book). All the applicants were appointed on posts as indicated in exhibit R-1/2 to R-1/10. The further defence of the respondents as set out in the reply is on their appointment to higher posts additional increments were not permissible. But due to oversight two additional increments along with other benefits were given to them. Subsequently, when it came to the notice of the authorities that two additional increments have been wrongly given to the applicants, the impugned order dated 14.07.2003 and the consequential order had to be passed. It has also been averred that the applicants are being paid the salary for the posts on which they have been given fresh appointment. The representation dated 08.08.2003 of the applicants reached the competent authority on 22.08.2003 but without waiting for the disposal of the same the applicants have rushed to the



Tribunal just within four days from 22.08.2003. The grounds raised in the O.A have been generally denied. The applicants are not entitled to any relief and the O.A deserves to be dismissed. The respondents have also filed additional affidavit along with number of documents in support of their defence.

6. The learned counsel for the applicants has made us to traverse through the various documents filed on behalf of the applicants. Our attention was invited to Annex. A.5, A.6, A.7, A.8 and A.9, wherein the provisions relating to the absorption of the staff have been envisaged. The Annex. A.8 is stated to be an order by which the provision has been made for the grant of two additional increments. Our attention was specifically invited to Annexure A/7 at page 88 of the paper book wherein the applicant No. 1 has been shown as absorbed on the post of Scientist E in the pay scale of Rs. 3700-5000 from 01.04.1993. He has next contended that once the applicants have been absorbed with the respondents department with effect from 01.04.93, they are fully entitled for the grant of two additional increments and passing of the impugned orders for withdrawing the same is not proper; rather the same is illegal as well as uncalled for.

7. Per contra, the learned counsel for the respondents has contended that the applicants were not absorbed in the respondents institute. He has asserted that all the applicants have been appointed by direct recruitment on the higher posts, on the recommendations of the duly constituted selection board by the ICFRE. He has particularly invited our attention



to Annex. A/17-page 112 of the paper book, order dated 27.07.92 and has submitted that the applicant No. 1 was offered appointment to the post of Scientist E(Zoology) in the pay scale of Rs.3700-5000 as a direct recruit and thereby appointed on probation. He has also submitted that similar is the position in respect of other applicants. As regards Annex. A/7, it has been submitted that the same came to be issued inadvertently and by mistake. He has tried to persuade us that the order at Annex. A/7 is of 29.06.1993, whereas the appointment on the higher post were made in the year 1992 itself and therefore there was no question of absorption of the applicants after they have been appointed by direct recruitment and that too on higher posts. He has also contended that the applicants have absolutely no case on merits and they cannot get any benefit for any inadvertent mistake that might have been committed by the competent authority in as much as the executives have inherent power to correct their mistake. Since the applicants have enjoyed extra benefit of two additional increments which was not admissible to them as per rules, the recovery of overpayment is cannot be questioned or faulted with.

8. We have anxiously considered the rival submissions put forth on behalf of both the parties. As far as the factual aspect of the matter is concerned, it has been projected on behalf of the applicants that it was a case of absorption of the applicants in the respondents department. From the side of the respondents it has been projected that it is a case of direct recruitment and appointment thereon even to a higher posts.



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It any case all the applicants were employed on deputation of the next higher posts than the posts held by them on substantive basis in their parent department.

9. Before framing the issues, we would like to make a reference to the order dated 15.09.95- Annex. A/9- page 104 of the paper book, which prescribes grant of two additional increments. The contents of the same are reproduced as under:



ORDER.

Under the exercise of powers conferred under the proviso of Rules 22(b)(iv) of Indian Council of Forestry Research & Education, the Director General, ICFRE with the approval of Board of Governors is pleased to grant two additional increments with DA benefits to all staff members absorbed in the Council. These additional increments shall be on the basis salary drawn by the employee as on the date of absorption in the Council i.e. 01.04.93."

A bare reading of the aforesaid makes it evident that two additional increments with DA were admissible to all staff members absorbed in the Council by an specified date. Thus it could be safely said that additional increments are admissible only in case of the one who has been absorbed in respondents department and not in case of other mode of of appointments including by direct recruitment .

10. Now, coming to the crux of the controversy involved in the instant case, the same boils down to a very narrow compass, as to whether the applicants were absorbed in the respondents department or whether they were appointed by direct recruitment. In case they were absorbed as contended by the learned counsel for the applicants they shall swim and in case it is held that they were appointed on direct recruitment basis they shall sink.

11. The contents various Annexures relating to the exercise of option for absorption in the respondents department show that in fact the applicants were asked to submit their options for absorption on their respective posts on which they were working on deputation basis. Before they could be absorbed the respondents had held the selection which was conducted by the Departmental Recruitment Committee for the next higher posts than the posts held by the applicants in their parent department. All the applicants applied for the respective posts and faced the requisite selection tests. The Departmental Recruitment Committee recommended their names and all of them were offered the appointments on said higher posts with clear annotation that appointment will be on probation for a period of one year from the date of appointment which may be extended at the discretion of the appointing authority. The offers also contain other conditions meant for appointee by direct recruitment method. All of them accepted the offers and came to be appointed on various dates in the year 1992 itself. We have specifically verified the position in respect of the applicant No. 1 (Annex. A/17) and find that he has been appointed as SE(Zoology) in the pay scale of Rs.3700-5000 on 27.07.1992 and there is no dispute regarding other applicants regarding their appointments in similar way. Thus it is crystal clear that all the applicants have been appointed through direct recruitment as per the recruitment rules for the various posts. Therefore, we have no hesitation in holding that the applicants were appointed on the higher posts through direct recruitment and in that case they



can not be said to be absorbed in the respondents department. If that were so, they are bound to sink and the issue is decided against the applicants.

12. We may point out here that Annex. A/7 has been issued on 29.06.93, wherein the applicant No. 1 has been shown to be absorbed on the post of Scientist SE with effect from 01.04.93, whereas he was appointed on the same post through direct recruitment vide letter dated 27.07.92 itself. Thus we are unable to persuade ourselves as to once a person has been appointed by direct recruitment, how he could be absorbed on the same post subsequently. The mode of appointment for absorption and by direct recruitment are quite distinct and contention of absorption after such direct appointment is nothing but absurd. In this case we find that some of the applicants have been appointed on the higher posts which were never held before by them. In case of appointment by absorption one can to be absorbed on the post one is working on deputation basis or in an analogous post which he was holding in his parent department prior to his deputation. The applicants No. 1 to 6 have been appointed on higher posts which were never held by them at any time. There is no provision to absorb a person on a post which he neither held on deputation nor the same was his substantive post in his parent department. Even otherwise a person can be appointed by direct recruitment only if he fulfills the eligibility conditions and faces the competition along with others. Admittedly, in the instant case, all the applicants have faced the competition and selection for the higher post which they held in their

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parent department before coming on deputation. By no stretch of imagination, it could be said that they were appointed to the posts by absorption in the respondents department. If that were so, the order dated 29.06.93 (Annex. A/7) shall have to be construed as of no consequence. In this view of the matter, the action of the respondents in issuing the impugned orders cannot be faulted with. However, we find that the applicants have been drawing additional increments for the last above one and a half decades and admittedly there had been no misrepresentation on the part of the applicants. Therefore, it would not be proper to recover the over payment made to them on account of grant of two additional increments. In such circumstances, the recovery cannot be made keeping in view the numerous decisions of the Apex Court out of which we may refer to one such judgements

P.H. Reddy and others vs. National Institute of Rural Development and ors. [2002 (2) ATJ 208].

13. In the premises, the Original Application is partly accepted and the impugned order dated 14.07.2003 , insofar it relates to recovery portion is hereby quashed. The other reliefs are declined. The interim ^{order issued} relief already ~~granted~~ stands vacated.
Costs made easy.

(G.R.PATWARDHAN)
ADMINISTRATIVE MEMBER.

J K KAUSHIK
(J K KAUSHIK)
JUDICIAL MEMBER.

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