

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 217/2006

Date of order: 24.3.2010

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

R.S. Dhillon S/o Late Sh. Ranjeet Singh Dhillon, age 58 years, by caste Jatsikh, Resident of 30 Shiv Colony, Subhashpura, Bikaner, presently working as Technical Officer (T-6), Central Sheep & Wool Research Institute, Sub-Station Arid Region Campus, Bikaner.

...Applicant.

Mr. Sandeep Shah, counsel for applicant.

VERSUS



1. Union of India through the Secretary to the Government, Ministry of Agriculture, Department of Agriculture Research & Education, Krishi Bhawan, New Delhi.
2. Indian Council for Agriculture Research through its Secretary, Krishi Bhawan, New Delhi.
3. Central Sheep & Wool Research Institute, Avikanagar, Distt. Tonk through its Director.
4. Head Central Sheep & Wool Research Institute Arid Region Campus, Bikaner (Raj.).
5. Senior Administrative Officer, Central Sheep & Wool Research Institute, Avikanagar, Dist. Tonk (Raj.).

... Respondents.

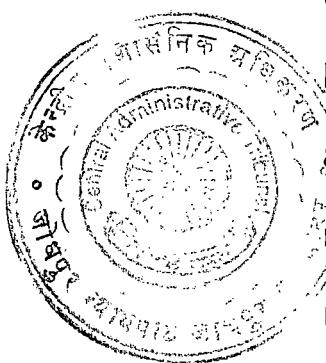
Mr. V.S. Gurjar, counsel for respondents.

ORDER

Per Hon'ble Dr. K.S. Sugathan, Administrative Member

[Signature]
The applicant joined the respondent's organisation as a Research Assistant in the year 1972. The post of Research Assistant was re-designated as Sr. Technical Assistant T-4 in

1975. From the said post, the applicant was promoted as Technical Assistant grade T-5 in the year 1978 and thereafter as Technical Assistant T-6 in the year 1991. At the time of filing this O.A. in 2006 the applicant was still working in the T-6 grade. The Technical Services Rules, 1975 of the ICAR inter alia provided for career advancement of the technical personnel. Rule 6 of the said rules provided for merit promotion after 5 years of service in a particular grade. By virtue of this rule the applicant was eligible for consideration for promotion to T-7 grade in the year 1996. The applicant received a communication dated 08.10.1996 asking him appear before the Assessment Committee on 16.10.1996. The applicant appeared before the Assessment Committee on 16.10.1996. However, no communication about his promotion was given to the applicant. In November 1998, after waiting for 2 years the applicant made representation regarding his merit promotion. It was mentioned in the said representation that his contemporary Ms. Veera Gogia and his junior P.R. Sharma have already received merit promotions, but the applicant was still waiting (Annex. A/3). The applicant received a reply dated 06.02.1999 stating that efforts are being made to convene the Assessment Committee (Annex. A/4). Another representation was made by the applicant on 18.02.2000, which resulted in the same type of response from the respondents. Subsequently, the applicant was asked to appear before the Assessment Committee meeting on 01.11.2001. It is contended by the applicant that he again appeared before the Committee on 01.11.2001 and that the





Committee had actually recommended his merit promotion, but it was not communicated to him.

Thereafter, the applicant made several representations on 03.04.2002, 28.05.2002, 28.08.2002 and 14.01.2003. In the meanwhile the applicant became eligible for promotion to the next grade i.e. T-8. The respondents informed the applicant that the matter was still under consideration. The applicant again made a series of representations on 12.02.2004, 23.03.2004, 02.04.2004, 08.04.2004, 18.12.2004 and 06.01.2005. The applicant received a reply dated 26.02.2005 stating that the proceedings of the assessment committee meeting dated 01.11.2001 was not accepted by the Council "for one reason or the other" (Annex. A/12). The applicant filed O.A. No. 86/2005 in the year 2005 for his promotion. In their reply to the O.A., the respondents relied on a circular dated 02.06.1989, which states that for promotion from T-6 and above the bench-mark is three consistently "very good" reports and that the applicant did not fulfil this bench-mark. Thereupon the applicant withdrew the O.A. with a view to challenge the circular dated 02.06.1989 also. Permission for withdrawing the O.A. was granted and liberty was given to the applicant to file a fresh O.A. Accordingly, the applicant has filed this O.A. and prayed for the following relief:



- "1. It is, therefore, prayed that the impugned communication dated 20/21.9.2005 (Annex. A/1) passed by the respondent No. 5 denying promotion to the applicant may kindly be quashed & set-aside.
2. by an appropriate order or direction, the respondents be directed to promote the applicant as Technical Assistant (T-7) w.e.f. 1/1/1996 and thereafter, to consider his case for promotion as Assistant

Technical (T-9) w.e.f. 1/1/2003 and other consequent promotions.

3. The Circular No. T (18) 85-per-III dt. 2/6/1989 (if the same exists) may kindly be quashed & set aside.

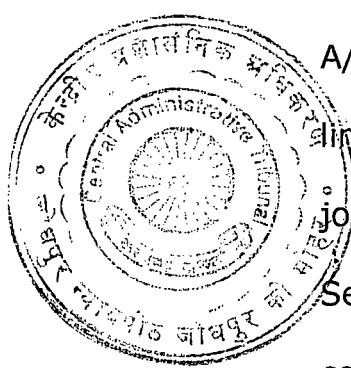
4. any other appropriate relief which this Hon'ble Tribunal deems fit and proper in the facts of the case may kindly be passed in the favour of the applicant."

2. The respondents have contested the Original Application.

In the reply filed by them, it is contended that the applicant did not fulfil the prescribed benchmark for promotion, i.e. consistently three 'very good' ACRs during the five years assessment period. The eligible candidate has a right to have his name considered in accordance with law. That requirement has been complied with by the Departmental Promotion Committee. The cause of action arose in the year 1996 but he slept over the matter till the year 2005. The O.A. is therefore barred by limitation. The M.A. filed along with the previous O.A. No.86 of 2005 stood dismissed along with the O.A. Though liberty was given to file fresh O.A., no new M.A. has been filed for condonation of delay. The ICAR is a registered society and as per rule 23(c) of the Rules of the ICAR any suit shall be against the Secretary of the Society. The O.A. is not maintainable for non-joinder of proper parties.

3. We have heard the learned counsel for the applicant Shri Sandeep Shah and the learned counsel for the respondents Shri V.S.Gurjar. We have also perused the documents on record carefully.

4. Before going into the merits of the case, we shall deal with the issue of limitation raised by the respondents. It is their contention that the cause of action arose in the year 1996 and the O.A. is filed in 2005/2006, and there is no M.A. for condonation of delay. We have seen from the facts of the case that the applicant has been representing to the respondents to communicate their decision about his merit promotion from time to time since 1998 onwards and the respondents have also replied to the applicant re-assuring him that the matter is under consideration. Therefore, we are of the view that the actual cause of action arose when the decision to reject the promotion was communicated to the applicant on 20/21.09.2005 (Annex. A/1). The contention of the respondents that the O.A. is hit by limitation cannot be sustained. As regards the issue of non-joinder of parties raised by the respondent, we find that the Secretary of ICAR is respondent No.2 and therefore the contention that necessary parties have not been impleaded does not survive.



5. Now, on to the merits of the case, the issue that arises for consideration is whether the respondents have committed any illegality in not promoting the applicant from the grade T-6 in the year 1996. It is not disputed that the applicant was considered by the Departmental Assessment Committee on 16.10.1996. As per the records made available to us in response to our direction, it is seen that the Assessment Committee in its meeting on 16.10.1996 recommended the merit promotion of

the applicant. But when the recommendations were forwarded to ICAR, there was a query by letter dated 20.05.1997 about the composition of the Assessment Committee. It would appear that the composition of the Committee was not in accordance with the approval given by the Agricultural Scientists Recruitment Board (ASRB). However, the Chairman of the Committee and one other Member are approved names. Subsequently, the applicant was again considered by another Assessment Committee on 01.11.2001. That Committee also recommended his promotion with effect from 04.01.1996 i.e. the date on which he became due for promotion. That recommendation was also not accepted by the ICAR on the ground that the Committee had not followed the criteria laid down in the letter dated 02.06.1989 (Annex. A/14-A) which stipulates the bench-mark of three consistently Very Good grading. The local Director was thereupon asked to place the matter again before another Committee, which met on 28.06.2005 and decided not to recommend the promotion to the applicant. In the reply filed by the respondents they have repeatedly highlighted the ground for non-promotion, namely, the applicant does not meet the bench-mark of three consistently Very Good grading during the period of 1991 to 1996. It would be seen from the reply that the respondents have interpreted the word "consistently" as consecutively. The dictionary meaning of the word "consistently" does not imply that an event should "consecutively" occur to be called as consistent.

29

6. The Concise Oxford Dictionary defines word "consistent" as "compatible" or "in harmony"; "not contradictory". Whereas "consecutively" is defined as "following continuously", "in unbroken or logical order" meaning something which is sequential. We are therefore unable to accept the interpretation of the respondents that "consistently" means "consecutively". We have perused the ACRs of the applicant during the period 1991 to 1996. The relevant entries are as follows:



<u>Period</u>	<u>Grading</u>
01.04.91 to 31.03.92 -	Very Good.
01.04.92 to 31.03.93 -	Very Good.
01.04.93 to 31.03.94 -	Good.
01.04.94 to 31.03.95 -	Very Good.
01.04.95 to 30.11.95 -	Good.
01.12.95 to 31.03.96 -	Very Good.

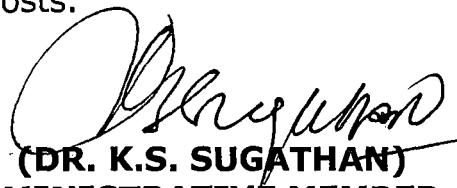
It would be seen from the aforesaid entries that the applicant had three Very Good entries during the period of five years upto 31.03.1996, but it is not in consecutive years. Therefore the applicant was denied promotion through a wrong interpretation of the word "consistently". In any case, it is for the DPC to interpret or lay down their own criteria for selection. The Assessment Committee in its meeting held on 16.10.1996 and on 01.11.2001 considered the overall records of the applicant and recommended his promotion. It was therefore not open to the ICAR to reject the recommendation and ask the Assessment Committee to follow their interpretation of the word "consistently". There is nothing on record that the Assessment

Committee did not consider the overall record of the applicant. The discretion given to the DPC to consider an employee's suitability cannot be questioned on the basis of a superior authority's interpretation of the guideline. In a landmark judgment in **Union of India & Anr. vs. S.K.Goel & Ors.** [SLP (C) No.2410 of 2007] the Hon'ble Supreme Court has held that "we hold that the DPC enjoyed full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate being considered by it....".

7. The counsel for the applicant drew our attention to an order of the Jaipur Bench of this Tribunal in a similar matter involving merit promotion of scientists in the same organisation, i.e. ICAR. The applicant in that O.A. had two Very Good gradings, but the recommendation of the Committee for his promotion was not accepted, while the recommendation in respect of another official with two Very Good grading was accepted (OA No.290/1998). The order of the Tribunal in that matter was also upheld by the Hon'ble High Court of Rajasthan. If the ICAR can accept the recommendation in respect of a scientist with two Very Good gradings as reflected in the order of the Tribunal in OA No. 290/1998, we are unable to understand why the recommendation of the Assessment Committee in respect of the applicant had to be rejected merely because the three Very Good gradings of the applicant were not in consecutive years.

8. In view of the above discussion, we are of the considered opinion that the respondents have committed gross illegality in rejecting the recommendation of the Assessment Committee of 16.10.1996 and 01.11.2001 for promotion of the applicant.

9. For the reasons stated above, the Original Application is allowed. The impugned note at Annexure A/1 dated 20/21.09.2005 is quashed and set aside. The respondents are directed to implement the recommendations of the Assessment Committee dated 01.11.2001 and promote the applicant to T.7 grade with effect from 04.01.1996 and grant all the consequential benefits including arrears of pay and allowances and re-fixation of his pension within a period of three months from the date of receipt of copy of this order. The respondents are also directed to expeditiously consider the promotion of the applicant to the next grade or grades for which he became eligible before he retired in the year 2008. There is no order as to costs.


(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER


(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

R/C
Dwight
Paw Sandeep Singh
Doh
29/3/10

R/Copy
3/3/10
Dwight