

1
CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

ORIGINAL APPLICATION NO. 261 OF 2006

Dated this the 13th day of December, 2011

CORAM

Hon'ble Dr. K.B.Suresh, Judicial Member
Hon'ble Mr. Sudhir Kumar, Administrative Member

N.Ravi, S/o Shri A.Namasivayam,
r/o Type IV Quarters, AFRI Campus,
Basni, Jodhpur at present posted as
Research Officer in the Office of AFRI, Jodhpur. ...Applicant

(By Advocate Mr. Harish Purohit)

Vs

1. Union of India , through Secretary,
Ministry of Environment and Forests,
Government of India, PO New Forest (Dehradun)
Uttaranchal.
2. The Indian Council of Forestry Research & Education,
PO New Forest, Dehradun (Uttaranchal)
through its Director General.
3. The ARID Forest Research Institute,
PO. Krishi Mandi, New Pali Road,
Jodhpur through its Director.
4. The Secretary,
Indian Council of Forestry Research & Education,
PO New Forest, Dehradun (Uttaranchal).
5. Shri K.L.Arora,
Scientist 'B' (Wood Seasoning Discipline)
Forest Production Division, PO New Forest,
Dehradun-248 006 (Uttaranchal).



2

6. Shri Asgar Ali,
Research Officer;
Directorate of Administration,
Indian Council of Forestry Research & Education,
PO New Forest, Dehradun-248006 (Uttaranchal).

7. Shri S.K. Sheel,
Research Assistant Gr.I
Directorate of Administration,
Indian Council of Forestry Research & Education,
PO New Forest,
Dehradun-248006 (Uttaranchal)

8. Shri B.D. Kanswal,
Research Officer,
Resource Survey & Management Division,
Forest Research Institute, PO New Forest,
Dehradun-248 006 (Uttaranchal).

..... Respondents

(By Advocate Mr. Ankur Mathur proxy counsel for Adv. Vinit Mathur,
Asst. Solicitor General of India).

ORDER

Per Sudhir Kumar, Administrative Member

(1) This O.A has been filed by the applicant, naming four private respondents R/5 to R/8 as party respondents in this matter relating to seniority. However, the opposite party private respondents could never be served properly. Fresh notices were ordered to be issued to the private respondents on 21.5.2007 and the service in respect of Respondents 5 to 8 was deemed through order dated 2.8.2007. Reply was never filed on their behalf, and when the case came up for further hearing, orders were issued once again on 15.10.2008 to send them fresh notices. However, the process fee was not paid, and fresh addresses were also not filed, in spite of repeated opportunities being given on 16.10.2008, 24.12.2008 and 24.2.2009.



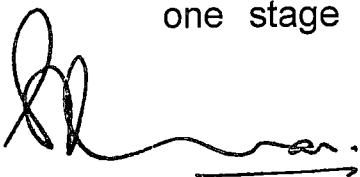


3
On 3.4.2009 and 20.4.2009 also, the applicant was directed to furnish fresh addresses of respondents 5 to 8, and ultimately fresh notices were again issued to them on 21.4.2009. It was submitted by the applicant that notice had been served on private respondent R/8. After many hearings, on 21.4.2010 once again it was held that the notices have been deemed to have been served, and the private respondents were set ex-parte. Again, after many hearings, on 19.10.2010 learned counsel for the applicant submitted that he is prepared to once again serve dasti notices afresh, in order to make sure that his case does not suffer from any infirmity in the event of any order being passed in favour of the applicant against the interests of the private respondents. Once again dasti notices were issued, but no proof of service of the same could be filed by the learned counsel for the applicant. At one stage the Bench was of the view on 3.5.2011 that if by next date proof of service with regard R/5 to R/8 is not filed, the OA will be dismissed. On 19.5.2011 an affidavit in support of proof of service with copy of postal receipts was filed but the notices were apparently returned unserved. On 14.7.2011 the learned Asst.Solicitor General of India was directed to telephonically inform the Respondent No.2 to inform all the concerned private respondents R/5 to R/8 in the matter, and then to file a statement in the court indicating that the private respondents have been informed. Some more time was asked on 18.11.2007 by the learned ASG and on 21.7.2011 it was noted that the respondents R/ 5 to R/8 have

since retired from service, and once again dasti notices were issued on 22.7.2011. However, the applicant thereafter filed an affidavit on 23.8.11, along with unserved notices, expressing his inability to serve the notices on the private respondents. Therefore, it is seen that repeated attempts have been made in the last five years to serve notices upon and to inform the private respondents R/5 to R/8 about this case having been filed, but somehow they could never be served properly.

(2) The case of the applicant is that he was appointed as a direct recruit Research Assistant Grade I in the Respondent No.3 Institute, the Arid Forrest Research Institute, Jodhpur and joined his duties on 26.11.1990. He has submitted that on 10.1.1996, when the respondents published a provisional Seniority List of Research Assistants Grade I, his name appeared much above the private respondents R/5 to R/8. Similar was the position in the final seniority list of Research Assistants Grade-I as on 30.11.1996, published on 3.2.2000, through Annexure.A/4. The Research Assistant Grade-I constituted one of the channels for promotion to the next higher post of Research Officers.

(3) The applicant has submitted that the persons working as Computer Operators had a two stage channel of promotion for his post, firstly as Head Computer Operator and Research Assistant Grade-II, and thereafter as Research Assistant Grade-I. However, at one stage the Board of Governors of the Respondent Institute



25

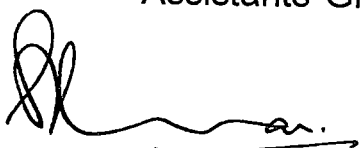
5

approved a proposal for the merger of the posts of Computer Operators with their promotional posts of Research Assistants Grade-II, with protection of seniority of the incumbents holding the posts of Computer Operators.

(4) This ultimately resulted in the respondents revising the Seniority List of the promotional posts of Research Assistant Grade-I also, and the name of the applicant suddenly appeared below the private respondents R/5 to R/8. The applicant represented against this through A/5 dated 17.10.2003, followed by many reminders, but vide letter dated 5.10.2004, the applicant was informed by the Respondent Authorities that his seniority had been correctly determined in view of the decision regarding merger of posts of Computer Operators and Research Assistants Grade-II, and his representation was accordingly rejected. He again submitted a representation against this, and also requested for a copy of the decision of the Board of Governors dated 22.8.1991 to be supplied to him, but the same was given to the applicant much later, through Annexure.A/1 dated 26.12.2005, by which it was seen that through Agenda Item No.IV of the meeting of the Board of Governors held that day, the Recruitment Rules of Technical Services stood revised.

(5) Immediately after issuance of this reply to the applicant, on the recommendation of the Departmental Review Committee, promotion order dated 30.12.2005 from the Cadre of Research Assistants Grade-I was issued by Annexure.A/7, through which the

B.

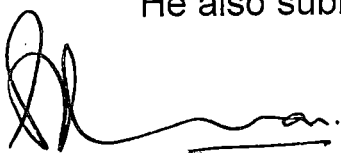


private respondent No.R/5 was further promoted to the next promotional post of Scientist 'B'.

(6) The applicant is aggrieved by the orders dated 5.10.2004 communicating the rejection of his representation in regard to his seniority, the letter dated 26.12.2005 communicating to him extracts of the minutes of the meeting of Board of Governors of the Respondent Institute, as well as the corrected seniority list issued on 21.1.2003.

(7) The applicant has assailed these on the ground that the official respondents have not afforded any opportunity to him of being heard, and have not issued him any show cause notice while downgrading him in the seniority. He has also submitted that the Seniority List at Annexure.A/4 dated 3.2.2000 was an outcome of a wrong process undertaken which was not in accordance with law. The applicant has stated that the respondents have arbitrarily re-determined the seniority of Research Assistants Grade-I by illegally taking into account the services rendered by the private respondents R/5 to R/8 as Research Assistants Grade-II. He submitted that even the qualifications for the posts prescribed for recruitment to Research Assistants Grade-I and Research Assistants Grade-II, in the pay scale Rs. 1400-2300 and Rs.1320-2040 respectively, are different, and the applicant, being more qualified and being a direct recruit in a higher post, was entitled to be placed above the private respondents.

He also submitted that the Board of Governors of the Society running



29

7

the respondent Institute was not competent to determine or re-determine the seniority of the employees working in the Institute, and they were under an obligation to determine the seniority only in accordance with the Rules framed by the Government of India in this regard.

(8) He, therefore, prayed that the OA may be allowed, and the orders dated 25.12.2005 and 5.10.2004 Annexure.A/1 may be declared as illegal, and quashed and set aside, and the respondents may be directed (a) to correct the seniority list dated 21.1.2003 (A/2), and (b) to consider his candidature for promotion to the post of Research Officer, as well as Scientist 'B', from the date his junior, Respondent No.4, was so considered and promoted, and any other orders or directions, as well as costs.

(9) The official respondents filed a reply on 18.7.2007 through the learned Asst. Solicitor General of India. In this reply they had stoutly defended the decision taken in the second meeting of Board of Governors of the respondent Institute on 22.8.1991, approving the proposal for the merger of the posts of Computer Operators and Research Assistants Grade-II, and the protection of seniority of the incumbents of the posts of Computer Operators and the merger of the posts of Head Computer Operators with those of Research Assistants Grade-I, and submitted that this decision was later ratified by the Ministry of Finance, Government of India. It was



158

8

submitted that on interpolation of the names of the Computer Operators in the Seniority List of Research Assistants Grade-II, and of the Head Computer Operators with Research Assistants Grade-I, the applicant who had been appointed as Research Assistant Grade-I on 26.11.1990 has rightly been shown junior to the persons who stood appointed in the Grade of Research Assistants Grade-I even before him. It was submitted that incumbents in the posts of Computer Operators also possess the necessary qualifications for consideration for promotion to the post of Research Assistants Grade-I, and later as Research Officers, and when once their cadre stood merged with those who were initially recruited as Research Assistants Grade-II, their seniority on the basis of the dates of appointment of the individual persons had to be counted. They pointed out that as a result of this merger, the names of the concerned employees in the merged seniority list according to the date of appointment shows that nine persons, who had joined that C.O/R.A.II cadre much earlier, and whose subsequent promotion to the posts of Research Assistants Grade-I were made notionally from the common seniority list, became senior to the applicant, whose date of appointment itself was 26.11.1990.

(10) It was also submitted that the resolution of the Board of Governors on 22.8.1991 was the result of a pay anomaly which had occurred while implementing the recommendations of the third Central Pay Commission, and the Board of Governors of the Society



9
had only acted to remove the pay anomaly, by approving the proposal regarding amendment of the relevant Recruitment Rules of Technical Services, which decision was later ratified by the Ministry of Finance also. It was, therefore, denied that any mistake or mischief was inherent in the interpolation of the names of Computer Operators in the combined Seniority List of R.A. Grade.II circulated after giving effect to such resolution, removing the pay anomaly.

(11) It was further submitted that since the revision of seniority with retrospective effect had resulted in a variation of the seniority lists of R.A-II placed before the DPC meetings held in the past for promotion as R.A-I, a review DPC was also held for giving promotion as R.A-I to the affected persons, with effect from the date of their respective juniors being promoted, and further promotions as Research Officers were also reconsidered accordingly, and that this was done by informing all the concerned persons that such a correction of seniority was being done. In support of this contention, the respondents have produced a copy of a Memorandum dated 27.6.2005 (Annexure.R/2) issued to one Smt. Prabha Bisht, Research Officer in the Botany Division of FRI, Dehradun, as a sample letter of communication.

(12) Therefore, it was submitted by the Respondents that the contention of the applicant that he came to know about the decision of the Board of Governors dated 22.8.1991 belatedly, (only in 2004 or in 2005), is incorrect, as he had been informed about the



7/9

decision, and he had even filed repeated representations, which were considered, and one of which was replied to through the impugned Memo dated 5.10.2004. It was further submitted that the applicant has no right to claim seniority over the employees appointed on the same grade at least six years prior to him. The Respondents had, therefore, denied all the contentions of the applicant, and had submitted that the applicant was rightly promoted to the post of Research Officer on 12.8.2002, and that there was no discrepancy in the combined Seniority List of Research Assistants Grade-I circulated on 21.1.2003 (Annexure.A/2). They had therefore, prayed that the OA is liable to be dismissed with costs.

(13) The respondents had subsequently filed an additional affidavit on 27.3.2008 through the learned ASG, reiterating the contents of the earlier reply, on the basis of the information/documents provided by the Registrar, FRI, Dehradun.

(14) Heard the learned counsel of the applicant and the learned proxy counsel appearing on behalf of the learned ASG. As has already been mentioned, nobody appeared for private respondents R/5 to R/8, and at one stage orders have been passed for hearing to proceed ex-parte against them. Both the counsels argued their cases very vehemently.

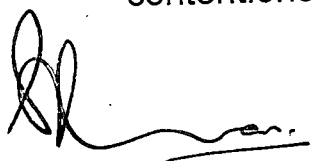
(15) The crux of the issue arises from the decision taken on 22.8.1991 by the Board of Governors of the Indian Council of Forestry Research and Education, Dehradun, State of Uttaranchal.



7/5

It had taken policy decisions¹¹ regarding amendments to the Recruitment Rules of the Technical Services. The Indian Council of Forestry Research and Education, being a Society registered under the Societies Registration Act, 1860, is an autonomous body under the Ministry of Forest and Environment, Government of India. The contention of the applicant that the Governing Body of a Society constituted under the Societies Registration Act, 1860, cannot take a decision, and make it applicable in respect of the affairs of the Society, cannot, therefore, be accepted at all, and this contention is rejected with the contempt it deserves.

(16) Also, it appears that all the actions of the respondent authorities including the decision taken on 22.8.1991, the publication of the provisional combined Seniority List Annexure A/3 dated 10.1.1996, the final combined Seniority List of Research Assistant Grade-I notified by Annexure.A/4 dated 3.2.2000, and the corrected combined Seniority List published on 21.1.2003 (Annexure.A/2) could not have escaped the notice of the applicant at the relevant points of time. He was even filing repeated representations, and was issued a reply dated 5.10.1004 in respect of his representation dated 2.9.2003, explaining to him as to how the revision of seniority lists of employees, undertaken with retrospective effect, was proper, and that his request for promotion with retrospective effect with notional benefits cannot be acceded to. However, the applicant has based his contentions that these decisions were not at all in the knowledge of



X
3

1.2

the applicant at the relevant point of time and the cause for him to agitate the matters before this Tribunal arose only with the issuance of Annexure.A/1 dated 26.12.2005, and this prompted him to file his OA on 29.6.2006.

(17) We are unable to agree with the contention of the applicant that the cause of action for him to agitate the matter before this Tribunal arose only with the issuance of Annexure.A/1 dated 26.12.2005, through which he had been given a copy of the extract of the minutes of the meeting of the Board of Governors of ICFRE, held more than 14 years back, on 22.8.1991.

(18) It is seen that the applicant had knowledge about this decision, and had continuously represented to his higher authorities, through A/5 dated 17.10.2003, dated 2.9.2003, dated 23.7.2003, dated 10.3.2003 and dated 7.4.2004 (Annexure.A/6), and the respondent authorities did reply to his representation dated 2.9.2003 through their letter dated 5.10.2004 impugned in this OA. Therefore, the cause of action which arose in favour of the applicant on 22.8.1991, with the decision of the Board of Governors of the ICFRE, can at best be seen to have extended its life by another 13 years, till the applicant received the communication dated 5.10.2004. Still he chose not to approach this Tribunal in time. Therefore, prima-facie it appears that the sit-back rule would apply against the applicant, as he has not chosen to approach this Tribunal within time after



✓ 13

13

issuance of the last Memo dated 5.10.2004, explaining the legal position to him.

19. The powers to reconstitute the Cadres, and merge two Cadres into one, is available to the Society (as an instrumentality of the Union of India) from the Proviso to Article 309 itself. As was held by the Hon'ble Supreme Court in the case "Anil Kumar Vitthal Shete V. State of Maharashtra, (2006) 12 SCC 148: AIR 2006 SC 2018", it is always open to an employer to adopt a policy for fixing service conditions of his employees, as long as the policy is in consonance with the Constitution of India, and is not arbitrary, unreasonable, or otherwise objectionable. Such a change in the policy should not, however, be made secretly, or capriciously, or with any ulterior motive, as held in "Dy.Registrar V. M.B.Koyakutty, AIR 1979 SC 1060: (1979) 2 SCC 150". Here, in the instant case, it is not the applicant's case that the resolution passed by the Governing Body of the Society was secret, or capricious, or was passed with an ulterior motive to harm his promotional prospects.

20. A rule or order can be said to be discriminatory, and invalid under Article 14 of the Constitution if it can be shown that the classification made by it is not reasonable, "State of Punjab Vs. Joginder Singh, AIR 1963 SC 913: 1963 Supp (2) SCR 169", which the applicant has not been able to demonstrate in the instant case. The applicant may allege hardship to have been caused to him, but when the decision taken by the Board of Governors of the Society



14

was taken for the general good, in order to remove a pay anomaly, it has to be held as valid, and does not suffer from any vice of unreasonableness, so as to be violative of Article 14 of the Constitution, as held by Hon'ble Supreme Court in "R.N.Goyal Vs. Ashwani Kumar Gupta, (2004) 11 SCC 753: (2005) 5 SCALE 319".

21. Therefore, on merits also, we find that the respondent authorities (Board of Governors of the Society) were fully within their rights to re-constitute the cadres of the persons in technical services in their Institutes, and to rectify the anomalies brought in with the implementation of the recommendations of the Third Pay Commission, which was the basis for the decision dated 22.8.1991 to have been necessitated. Therefore, on merits also, the applicant does not have a case, and, therefore, the OA does not survive.

22. In the result, the OA is rejected, with no order as to costs.



Dated this the 13th day of December, 2011

SUDHIR KUMAR
ADMINISTRATIVE MEMBER

DR. K.B. SURESH
JUDICIAL MEMBER