

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR
Original Application No. 393/2012**

Jodhpur, this the 24th day of April, 2015

CORAM

**Hon'ble Justice Mr K.C. Joshi, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member**

1. Omprakash Char S/o Late Sh. Kalu Ram, aged about 56 years.
2. Mota Ram S/o Late Shri Hari Ram, aged about 56 years.
3. Prahlad Singh S/o Shri Richhpal Singh, aged about 55 years.
4. Bhanwar Singh Solanki S/o Late Shri Udai Singh Solanki, aged about 55 years.
5. Nand Kishore S/o Late Shri Bhikha Ram aged about 54 years.
6. Laxmi Narayan S/o Late Shri Har Dan, aged about 54 years.
7. Manohar Singh Solanki S/o Late Shri Bhanwar Singh, aged about 55 years.
8. G.S. Deora S/o Late Shri Lal Singh Deora, aged about 55 years.
9. Chanderpal Singh S/o Late Shri Ram Singh, aged about 57 years.
10. R.S. Chouhan S/o Shri Jaswant Singh, aged about 58 years.
11. Girdhari Ram S/o Late Shri Bridha Ram, aged about 58 years.
12. Poona Ram Bheel S/o Shri Ganga Ram, aged about 55 years.
13. Alok Chand Mathur S/o Late Shri J.C. Mathur, aged about 56 years.
14. Purshotam Sharma S/o Late Shri Parma Nand Sharma aged about 56 years

15. Safiullah Ansari S/o Late Shri MD Adalat Ansari, aged about 54 years.

16. Hari Dayal S/o Shri Tej Singh, aged about 50 years.

17. Budha Ram S/o Late Shri Jaga Ram, aged about 58 years.

All the applicants are presently working on technical post in the office of Director Central Arid Zone Research Institute Jodhpur.

.....Applicants

By Advocate: Mr. S.K. Malik.

Versus

1. Indian Council of Agricultural Research Krishi Bhawan New Delhi through its Secretary.
2. Deputy Secretary (TS), India Council of Agricultural Research, Krishi Bhawan, New Delhi.
3. Director, Central Arid Zone Research Institute, Jodhpur.

.....Respondents

By Advocate : Mr A.K. Chhangani.

ORDER

Per Justice K.C. Joshi

The applicants have filed this OA under Section 19 of Administrative Tribunal Act, 1985 challenging the order Annex. A/1 dated 11.06.2012 passed by respondent No. 2 by which the recovery of advance increment in cases where more than one advance increments have already been paid from 2006 is restricted to only one to be paid at the rates indicated in the order

- (a) By an appropriate writ, order or direction the impugned order dated 11.06.2012 (Annex. A/1) be declared illegal and be quashed and set aside as if it was never issued against the applicants.
- (b) By an order or direction respondents may be directed not to make any recovery and refixation of pay of the applicants, if any amount is recovered, the same may be refunded alongwith interest @ 12% per annum.
- (c) By an order or direction applicants be allowed to file joint application as the subject matter and relief claimed is identical.
- (d) Any other relief which is found just and proper be passed in favour of the applicants in the interest of justice.

2. The applicants are allowed to file the present Original Application jointly as the cause of action has arisen from the same order and relief claimed is common. The brief facts, as averred by the applicants, are that the applicants are working on Technical posts under respondent No. 3 since their dates of initial appointment. The applicants are governed by the Technical Service Rules of ICAR and Rule 6.1 of the said rules provide for career advancement of persons in their respective categories. The applicants No. 1 to 13 have got three advance increments and the applicants No. 14 to 17 have got one advance increment by the competent authority, after completion of five years service assessment in lieu of promotion. After implementation of 6th

respective grades and accordingly due arrears have been paid to the applicants. The respondent No. 2 vide order dated 11.06.2012 (Annex. A/1) directed that only one advance increment will be granted to those who have been recommended/approved for grant of advance increment w.e.f. 01.01.2008 and advance increment so given would be treated as separate element distinct from basic pay and no increment/allowance will be earned on this element of advance increment. In cases where more than one advance increment have already been paid from 01.01.2006, the same may be restricted only to one to be paid at the rate indicated in the order and necessary recoveries be made for the excess payment, if any. It has been averred in the OA that the applicants made representation dated 06.08.2012 (Annex. A/2) though proper channel before the respondents highlighting their grievances and requested not to take action as per impugned order dated 11.06.2012 and also requested not to implement the said order. The applicants sought information under RTI vide applicant dated 06.08.2012 (Annex. A/3) which was provided by the respondents vide their letter dated 16.09.2012 (Annex. A/4) clearly stating that the question of pay protection does not arise, recoveries on account of over payment is an inherent mechanism in the government system. Therefore, aggrieved by the order dated 11.06.2012 (Annex. A/1), the applicants have filed this OA seeking

3. By way of reply the respondents have averred that the Indian Council of Agricultural Research (ICAR), New Delhi has issued policy guidelines vide letter dated 11.06.2012 (Annex. A/1) to the effect that "under Rule 6.1 of the ICAR Service Rules, there is a system of merit promotion from one grade to next higher grade irrespective of the occurrence of the higher grade or grant of advance increment(s) in the same grade, on the basis of the assessment of performance. For the implementation of Central Civil Services (Revised) Pay Rules, 2008, grant of advance increments to technical employees has been reviewed by the ICAR in consultation with the Ministry of Finance and have, as a result, decided that pay of the employees, who have been granted advance increments prior to 01.01.2006, may be refixed in the revised structures and granted only one advance increment to those technical employees w.e.f. 01.01.2006, with the prescribed rates which is mentioned in the letter dated 11.06.2012 (Annex. A/1). The matter regarding regularization of advance increment to Technical employees after implementation of 6th CPC was examined by the ICAR in consultation with Ministry of Finance and it was advised that "*the advance increments so given will be treated as separate element distinct from the basic pay. No increments/allowances will be earned on this element of the increment. The competent authority in the Council decided that one*

w.e.f. 01.01.2006. Therefore, the over-payment made to the Technical employees on account of advance increments was accordingly ordered to be recovered." Thus, the respondents have averred that order Annex. A/1 dated 11.06.2012 and their action is perfectly legal, valid and in consonance with service law jurisprudence as well as the policy guidelines issued by the ICAR in consultation with the Ministry of Finance, GOI and the claim of the applicants and the OA merits rejection at the very threshold without any substance.

4.. The applicant has filed rejoinder reiterating the same facts as averred in the OA and have filed Annex. A/5 alongwith the rejoinder which shows the details of advance increments received by the applicants.

5. Heard both the parties. Counsel for applicant submits that the recoveries from the applicants have been ordered vide Annex. A/1 dated 11.06.2012 without serving the notice upon the applicants which is against the principle of natural justice. Counsel for applicants further contended that the applicant No. 1 submitted the representation dated 06.08.2012 (Annex. A/2) which is still pending with the respondents.

6. Per contra, counsel for respondents submits that recoveries of the applicants have been ordered as earlier erroneous fixation

the error, in order to rectify the same, recoveries have been ordered from the applicants.

7. In view of the submissions made by both the counsels, we intend to dispose of this OA with following directions:.

- (i) The respondents are directed to decide the representation of the applicants dated 06.08.2012 (Annex. A/2) in the light of judgment passed by Hon'ble Apex Court in the case of State of Punjab & Ors etc. v. Rafiq Masih (White Washer) etc. reported in 2015 AIR SCW 501 and in accordance with relevant circulars, within 4 months from the date of receipt of this order.
- (ii) No recovery shall be effected upon the applicants till disposal of the representation Annex. A/2 as above.
- (iii) Thereafter, if any grievance remain to the applicants, they may approach appropriate forum, if so advised.

8. In terms of aforesaid directions, OA No. 393/2012 is disposed of with no order as to costs.



[Meenakshi Hooja]
Administrative Member
ss



[Justice K.C. Joshi]
Judicial Member

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~~S.K. Mallie~~
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