

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 44/2003

THURSDAY THIS THE 17TH DAY OF NOVEMBER, 2005

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

P.G. Kamalakshi Amma, w/o late Appukuttan
Senior Scientist
Central Plantation Crops Research Institute
Regional Station,
Kayamkulam.

Applicant

By Advocate Mr. P.V. Mohan

vs.

- 1 The President
Indian Council of Agricultural Research
Krishi Bhavan
New Delhi.
- 2 The Director General
Indian Council of Agricultural Research
Krishi Bhavan
New Delhi.
- 3 The Director,
Central Plantation Crops Research Institute
P.O. Kudlu
Kasaragod.

By Advocate Mr. C.N. Radhakrishnan

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This Application is filed by a Scientist belonging to the Agricultural Research Service (ARS for short) working in the Central Plantation Crops Research Institute (CPCRI), Regional Station at

Kayamkulam against the denial of her promotion as Scientist Selection Grade. The brief facts submitted by the applicant can be summarised as below.

2 The applicant was appointed as a Research Assistant on 8.12.1969 in the scale of Rs. 425-700. She was inducted as Scientist Selection grade in ARS w.e.f. 1.10.1975 in the scale of Rs. 550-900. Though she was eligible for promotion to Scientist S-1 grade w.e.f. 1.7.1976 she was promoted w.e.f. 1.7.1979 only and granted two advance increments w.e.f. 1.7.1976 when similarly placed Scientists were promoted as Scientist S-1. When the UGC scales were implemented in the Institute, she was given revised scale of Rs. 2200-4000 w.e.f. 1.1.1986. The applicant claims that she was entitled to the scale of Rs. 3000-5000 w.e.f. 1.1.1986 and Selection Grade of Rs. 3700-5700 w.e.f. 2.1.1986. When the UGC scale was implemented in the Institute it was clarified that the service in the ARS will include all Class-I and Class-II Services (gazetted level) only for the purpose of placement in the scales. This clarification was challenged by Scientists S-1 and their Association in O.A. 511/1990 before the CAT, New Delhi which was allowed holding that the services in ARS will include services rendered in Scientist (S) Grade irrespective of Class-I or Class-II or Gazetted or not. The SLP filed against this order was also dismissed by the Apex Court on 5.1.1991. Thereafter the ICAR by proceedings dated 20.1.1991 (Annexure A1) formulated Career Assessment Scheme by which

Scientists are placed in Senior and Selection Grade respectively. It was ordered therein that the service rendered in S grade of ARS or equivalent grades merged with S grade namely scales of 425-700, 550-750 and 550-900 would be relevant for the purpose of placement/promotion. The DPC which met on 20.10.92 however took into consideration only the service rendered in the Scientist S-1 grade for the purpose of promotion. This was challenged by the applicant and 8 other Scientists in O.A. 991/93 which was allowed and was confirmed in SLP No. 17610/95 and also in the review application filed by the ICAR before the Apex Court. The order has become final. The DPC which met on 30.9.96 considered the applicant and others reckoning the entire service rendered in Grade S or equivalent grade and 3 applicants in O.A. 991/93 were granted promotion to the post of Scientist Selection Grade but the applicant was not found fit for promotion as on 31.3.1995. Aggrieved the applicant filed O.A. 1236/97 which was allowed by order dated 8.8.2001 directing convening of the Review DPC for the purpose of considering the applicant for promotion to the grade of Scientist Selection Grade/Senior Scientist. A review DPC was held on 16.6.2002 and found the applicant 'not fit' for placement as Scientist Selection Grade as on 2.1.1986 and the same Committee considered the applicant for subsequent years viz., 1987 to 1995 and found her 'not fit' (Annexures A6 to A-15). A normal DPC was convened on 16/17.6.2002 for consideration of placement of the applicant in Scientist Selection grade for the years 1999, 2000 and 2001

respectively and the applicant was found fit for promotion w.e.f. 27.7.2001. The applicant has therefore impugned the proceedings at Annexures A6 to A-15 in so far as it does not find the applicant suitable for promotion to Scientist Selection Grade w.e.f. 2.1.96. She has sought the following reliefs.

- (i)call for the records leading to AnnexureAL6 to A-16 and to set aside Annexure A-6 to A-15
- (ii) To call for the records leading to Annexure A-16 and set aside the same in so far as it does not promote the applicant to the category of Senior Scientist (Scientist Selection Grade)with effect from 2.1.1986.
- (iii) To direct the respondents to promote the applicant to the post of Scientist Selection grade (Rs. 3700-5700) w.e.f. 2.1.1986 with all consequential benefits
- (iv) Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice.

3 The main ground on which the applicant assails the denial of her promotion is that it was vitiated by extraneous considerations. According to her, her service records from 1.1.1986 to 2000 are exemplary, she has many research publications to her credit and there are no adverse entries recorded in her ACRs, and that during her tenure, the applicant was harassed by the Head of the Division Dr. C.C. Biddappa and the complaint filed by the applicant against Shri Biddappa was gone into by the Womens Commission Cell and the issue is pending before the National Commission for Women and therefore the respondents nurse animosity against the applicant and have denied promotion to her arbitrarily.

4 The respondents have filed a reply statement in which they

have averred that the applicant filed O.A. 1236/97 praying for a direction to grant promotion as Scientist Selection Grade w.e.f. 2.1.1986 and the OA was disposed of with a direction to convene a review DPC. The Review DPC was held but it did not recommend the applicant for promotion and nothing has been done against the rules applicable and the impugned orders are not liable to be quashed. With regard to the service particulars as narrated by the applicant it is stated that the applicant was promoted to the grade of Scientist Selection Grade w.e.f. 1.1.1986 consequent on the introduction of UGC scale on the due date. As her performance during the subsequent years was not good, the DPC did not recommend her promotion to the Scientist Grade-II w.e.f. 2.1.1986. Every Scientist in the senior scale is eligible to be promoted to the post of Scientist (Selection Grade) if he/she fulfills the conditions stipulated in Annexure A-1 which includes that Scientist should have consistently good performance appraisal reports. Since the applicant was not having the required reports the DPC did not recommend her promotion to the grade of Scientist (SG) w.e.f. 2.1.1986. Her length of service alone is not a criterion for promotion. The review DPC has also considered her promotion as per directions in the judgment in OA 991/93 and the assessment upto the period 31.3.1995 considering the availability of ACRs was taken up. The respondents have also furnished extracts of the recommendations of the DPC which considered the applicant's eligibility as on 2.1.1986 to 2.1.1995. It is also submitted that the

ACRS of the applicant contained several adverse remarks against her research work which were also communicated to her. The allegations about the Head of the Division has no substance. She has filed an OP before the Hon'ble High Court of Kerala with the same set of allegations which is pending before the High Court. The respondents also sought leave to file additional documents including copy of the OP filed by the applicant before the High Court of Kerala. They also filed additional reply statements with copy of the reply filed by them before the High Court in the said OP to show that the applicant had got ACRs of varying standards from different officers which goes to show that there was no harassment meted out to her by the head of the division by recording adverse remarks as alleged by her in the O.A.

5 The applicant has filed additional document enclosing the counter affidavit filed by the National Commission for Women who were respondent No.2 in the OP NO. 23559/02 pending before the High Court of Kerala stating that the petitioner has a right to make complaint in case of a sexual harassment and the respondents are duty bound to act as per the directions of the Hon'ble Supreme Court in the case of Visaka and Ors. Vs. State of Rajasthan reported in 1997 (6) SCC 241) in which the Apex Court has laid down guidelines to be followed to prevent sexual harassment of women at their work place.

6 Detailed arguments were presented by the learned counsel for both sides. It was argued on behalf of the applicant citing the

Constitution Bench decision in State of Kerala and another Vs. NM Thomas and others (AIR 1976 SC 490) wherein the seniority cum fitness is the criterion for promotion seniority has to be given preference though performance can also be looked into. The judgment in Union of India Vs. Lt. General Rajendra Singh (2000(6) SCC 698) was also relied upon to canvas the concept of seniority cum fitness that it does not envisage any selection and the employee has to be only considered fit or not. It was also urged that the adverse remarks of 1982-83 were not communicated to the applicant and hence that could not have been made the basis for denial of promotion. The respondents on the other hand relied on the decision of the Apex Court in Durga Devi Vs. Govt. of Himachal Pradesh (AIR 1997 SC) and 1990 SCC 434 to contend that the finding of the DPC can be interfered with only if there is any lacuna in the constitution of the Committee, proved malafides or procedure vitiating the selection and argued that in this case none of the grounds were present. It was also mentioned that though OAs were filed by the applicant in 1993 and 1997, she has not taken any stand of harassment by the head of the Division and in the OP filed before the High Court of Kerala she is a party and the matter is sub-judice.

7 We have given careful consideration to the averments made in the O.A. and gone through the documents produced by both the parties and the judgments referred. The respondents have also

produced the folder of ACRs of the applicant which has also been perused by us.

8 Though the case has a chequered history from 1993 onwards and the counsel has taken us through the entire service records of the applicant from 1969 onwards and , the judgments referred to in the pleadings, we find that the issue raised in the earlier OAs have been settled and do not require to be re-opened at this stage. The cause of action as far as the reliefs sought in this OA is concerned arises out of the decision of the review DPC held on 16.6.2002. This review DPC was convened in compliance of the following directions of the Tribunal in O.A. 1236/97:

“.....A Review DPC shall be convened for the purpose of considering the applicant's for promotion to the grade of Scientist (Selection Grade/Senior Scientist. If the applicants are found fit to be promoted to the above grade from the respective dates of their attaining eligibility for promotion to the said grade, they shall be entitled to all the consequential benefits flowing therefrom and the respondents are directed to grant them such benefits. The whole exercise of convening the Review DPC and passing consequential orders including granting of consequential benefits if any, shall be completed within a period of five months from the date of receipt of copy of this order.”

9 Basically the finding in the above OA in respect of the applicant was that the DPC that met on 3.9.96 in compliance of the order of the Tribunal to consider the case of Scientists including the applicant for the purpose of placement/promotion to Scientist Senior Scale and Selection Grade did not take into account her eligibility for promotion as on the date when she was due for promotion. On the other hand the DPC proceeded to observe that as the performance of the person during the subsequent period was not satisfactory with

regard to scientific out put, the Committee do not recommend her fit for promotion as on 31.3.1995. Hence it was held that it would be gross injustice to exclude a person for the alleged deficiency relating to a period subsequent to the date of attainment of eligibility. It was on this account that a review DPC was ordered to consider her case afresh. Now the finding of the Review DPC has been challenged in this OA. The only point for us to consider is whether the Review Committee had considered the applicant's suitability as on the date of eligibility and whether this lacuna earlier pointed out by the Tribunal was cured in the review DPC. The details of the recommendations of the DPC have been extracted by the respondents in the reply statement. These indicate that the case of the applicant was considered as on 2.1.1986, the date of her eligibility and also for subsequent years 1987-95 in separate proceedings. Since her claim primarily is as on 2.1.1986, the recommendations of the DPC in this regard is extracted below.

As on 2.1.1986: Not recommended for promotion to the next grade of Scientist (SG) on 2.1.1986 due to the following reasons:-

- 1) Not having consistently Good performance appraisal report which is a mandatory requirement.
- 2) She has got grading as 'Average' during the period from 1.1.1983 to 31.12.1985.
- 3) She has got grading as 'Below Average' with adverse remarks" during the period from 1.1.1982 to 31.12.1982

It is seen from the above that records upto 1985 were considered and she has 'Average' grading from 1983 to 1985 and 'Below average' with adverse remarks in the year 1982. Therefore not having a consistent report of 'Good' she was not recommended for

promotion. The same sequence of events has been followed for the subsequent years, where again she has secured 'Average' reports. She has only two 'Good' reports in 1989 and 1991. Therefore in every block of five years her 'Average' reports outweighed 'Good' reports. The applicant was finally found fit for promotion only w.e.f. 1.6.2001.

10 It is necessary to refer in this context to the provisions of the scheme for Career Advancement of ARS in ICAR which came into effect from 1.1.1996. Paragraphs I and II are relevant in this regard which are reproduced below:

I. **Scientist (Senior Scale)**

Every Scientist in the pay scale of Rs. 2200-4000, will be placed in the Senior Scale of Rs. 3000-5000 if he/she has:-

- (a) completed 8 years of service after regular appointment as Scientist in the pay scale of Rs. 2200-4000.
- (b) made a mark in the area of Research/Teaching as evidenced by Research Publications in reputed journals, variety/product/technology developed and innovations in teaching/extension education and has

© consistently satisfactory Performance Appraisal Reports

II **Scientist (Selection grade/Senior Scientists)**

Every Scientist in the senior Scale of Rs. 3000-5000 will be eligible for promotion to the post of Scientist (Selection Grade/Senior Scientist (Selection Grade/Senior Scientist, in the pay scale of Rs. 3700-5700 if he/she has:-

- (a) completed 8 years of service in the senior Scale provided the requirement of 8 years will be relaxed if his total service as Scientist is not less than 16 years;

(b) obtained Ph.D Degree or an equivalent published working

© made a mark in the area of Research/Teaching as evidenced by Research Publications in reputed Journals/Variety/Product/Technology developed and innovations in teaching/extension education and has

(d)consistently good Performance Appraisal Reports

Reading the above would show that for promotion as Scientist Selection Grade four conditions are necessarily to be fulfilled namely length of service, Ph.D or equivalent published work, research publications in reputed journals and consistently good performance appraisal reports. The contention of the applicant was that only seniority and length of service should be taken into consideration is not correct. Since the applicant was not recommended only because she was not found to have consistently good performance and it has been contended from the applicant's side that 'adverse remarks' were not communicated to her, we have examined the ACRs of the applicant "For consideration" as on 2.1.1986, the period from 1980 to 1985 has to be ordinarily considered. Since the total service as Scientist or completed 8 years of service in the senior scale is being taken into account the DPC could also look into the records prior to 1980. The following table would give a clear picture of the record of the applicant.

1.1.79 -31.12.79	Nil	A(-)Above average	NG Pillai	Dr.N.P Jayasankar
1.1.80-31-12.80	Nil	B(+)Good average	-do-	-do-
1.1.81-31-12.81	Nil	B(+)Good Average	-do-	-do-
1.1.82- 31.12.82	Yes- insufficient initiative and perception	B(-)	Dr.CC Biddappa	Dr.KV.Ahamed Bavappa
1.1.83-31.12.83	Nil	B	-do-	-do-

1.1.81-31.12.81	Nil	B(+)Good Average	-do-	-do-
1.1.84-31.12.84	Nil	B	NP Jayasankar	-do-
1.1.85-31.12.85	Nil	B	Dr.CC Biddappa	-do-
1.1.86-31.12.86	Nil	B-Average	-do-	-do-
1.1.87-31.12.87	Nil	B-Average	-do-	MK Nair
1.1.88-31.12.88	Nil	B-Average	-do-	-do-
1.1.89-31.12.89	Nil	Good	NP Jayasankar	-do-

The above tabulated statement leads us to the adverse conclusion that the applicant herein did not have a consistently good performance record and her performance has been mostly graded as 'Average' 'Above Average' and in the entire period shown above she has only three 'Good' reports in the years 1980, 1981 and 1989. If we take the period from 1979 to 1985 which is basically the period of eligibility as on 2.1.1986 she has only two 'Good' reports in the years 1980 and 1981 followed by 'Average' reports in 1983 - 84 and 1984 - 85 there is adverse remark in the year 1982. We also find that the contention of the applicant that the adverse remark is not communicated to the applicant is not correct as the records show it was communicated to her vide memorandum dated 20.1.1983. The respondents have stated that she has not filed any representation on that adverse remark and therefore the remarks stand. The ACR records as well as the Annexure R-3(b) filed by the respondents also indicate that again she has adverse remarks written by the Director in 1988-89, 93-94 and 94-95 which were also communicated to her. Thus, the whole picture does not lead to any other conclusion other than the assessment arrived at by the review DPC that assessed her

performance as not consistently upto the mark. We have also examined the reports from the point of view whether the adverse remarks were motivated by the so called animosity allegedly nursed by Dr. CC Biddappa , the head of the Division, as evidenced by her complaint to the Womens Cell and the National Commission for Women etc. On this account also, we do not find any conclusive proof as even before Dr. CC Biddappa was the head of the division her assessment made by other officers was nothing extra ordinary. It may be true that the first adverse remark was recorded by Dr. CC Biddappa in 1982. But it is also a fact that these remarks have been endorsed by the Reviewing Officers namely the Directors who we find have made stronger adverse comments than Dr. Biddappa himself. If it is a case of animosity and the applicant's work was really 'Good' the Reviewing Officers could have corrected the assessment. Since this was not done much credence cannot be given to this argument. In any case since the entire record of the applicant is not very 'Outstanding' and it has been recorded by the various officers and reviewed by higher officers we do not consider this point to be of much relevance for arriving at a decision on the prayer of the applicant. Moreover, it is separately sub judice before the Hon'ble High Court of Kerala who would adjudicate on this aspect in detail. In fact we also note that even the National Commission for Women in their references had not made any comment on the correctness of the averments made by the applicant on account of want of information.

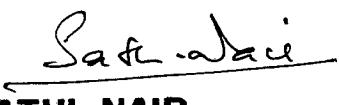
11 On the basis of the above facts and record we are of the view that the DPC findings do not suffer from any lacuna as regards the procedure adopted and are in accordance with our directions in O.A 1236/97. Therefore, we are also in agreement with the respondents' stand that in accordance with the Apex Court's decision in the judgments referred to above the findings of the DPC cannot be interfered with unless the assessment is vitiated by procedural irregularity or proved malafides. Both these grounds are absent in this case. Therefore we reject the prayers of the applicant for quashing the impugned orders. The O.A. is dismissed accordingly.

No costs..

Dated the 17th November, 2005



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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