

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.471/12

Thursday this the 24th day of October 2013

C O R A M :

**HON'BLE Mr.JUSTICE A.K.BASHEER, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

P.K.Harikumar,
Technical Officer (T-7-8),
Central Marine Fisheries Research Institute (CMFRI),
(Indian Council of Agricultural Research), P.B.No.1603,
Ernakulam North (P.O.), Kochi – 682 018.Applicant

(By Advocate Mr.P.K.Madhusoodhanan)

V e r s u s

1. The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi – 110 001.
2. Indian Council of Agricultural Research,
represented by its Secretary,
Krishi Bhavan, New Delhi – 110 001.
3. The Director,
Central Marine Fisheries Research Institute,
(Indian Council of Agricultural Research),
P.B.No.1603, Ernakulam North (P.O.),
Kochi – 682 018.
4. Dr.V.Kripa,
Principal Scientist & Head of Division,
Fishery Environment & Management Division,
Central Marine Fisheries Research Institute,
P.B.No.1603, Ernakulam North (P.O.),
Kochi – 682 018.
5. Dr.G.Syda Rao, Director,
Central Marine Fisheries Research Institute,
(Indian Council of Agricultural Research),
P.B.No.1603, Ernakulam North (P.O.),
Kochi – 682 018.

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6. Chief Administrative Officer,
Central Marine Fisheries Research Institute,
P.B.No.1603, Ernakulam North (P.O.),
Kochi – 682 018. ...Respondents

(By Advocate Mr.P.Santhosh Kumar [R1-3&6])

This application having been heard on 24th October 2013 this Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.JUSTICE A.K.BASHEER, JUDICIAL MEMBER

Applicant who is stated to be working as Technical Officer (T-7-8) in the Central Marine Fisheries Research Institute (CMFRI) at Kochi under the Indian Council of Agricultural Research, has filed this Original Application impugning Annexure A-5 and Annexure A-7 orders passed by the office of respondent no.3. By Annexure A-7 memorandum the applicant has been informed that after considering his representation against the adverse entries in his Annual Performance Appraisal Report (APAR) for the year 2010-2011, the competent authority in the Council has found that "*there is no justification for upgrading the grading given in his APAR.*" Annexure A-5 Memorandum appears to be the order passed by the competent authority in this regard. Annexure A-7 further states that there is no provision for appeal against the above decision taken by the competent authority on his representation seeking upgradation. The applicant has also sought to quash the entries in Annexure A-2 Annual Performance Appraisal Report for the year 2010-2011 while impugning Annexure A-5 and A-7 orders.

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2. We have heard learned counsel for the parties and perused the materials available on record.

3. It is fairly conceded by, Shri.P.Santhosh Kumar, who appears for the respondents that the stand taken by the Chief Administrative Officer attached to the office of respondent No.3 that there is no provision for appeal against the order passed by the competent authority in the Council, does not appear to be correct in view of the instructions issued by the Department of Personnel & Training. In this context our attention has been invited to D.P. & A.R., O.M.No.51/5/72-Ests. dated 20th May 1972. Still further Sub clause 9 of Clause 8 in the Digest relating to Annual Performance Assessment Report published by Swamy's also makes the position clear as hereunder :-

"9. A memorial or appeal against the rejection of the representation against adverse remarks is to be allowed within six months of such rejection. Pendency of any memorial or appeal would mean that the adverse remarks are not final and cannot be acted upon."

4. A perusal of the above clause will unambiguously show that appeal has been contemplated by the rule making authority. It is on record that the applicant had preferred an appeal on 16th February 2012 as could be seen from Annexure A-6. In that view of the matter the contention raised by the applicant that the competent authority ought to have forwarded the said appeal to the Appellate Authority is wholly justified.

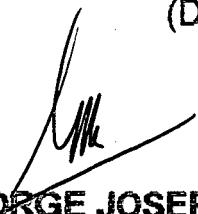
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5. It is brought to our notice that the appeal preferred by the applicant was returned to him along with Annexure A-7 communication. It will be open to the applicant to re-submit the appeal before the competent authority, who in turn, shall forward the same to the Appellate Authority. This shall be done within a period of two weeks from today.

6. Therefore, this Original Application is disposed of with a direction to respondent No.2 to place the appeal before the competent authority as provided under the relevant rules/instructions governing the field. The Appellate Authority shall consider the appeal and take a decision thereon strictly on its merit and in accordance with law as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this order. Needless to mention that the applicant shall be afforded sufficient opportunity of being heard if he so chooses.

7. The Original Application is disposed of in the above terms.

(Dated this the 24th day of October 2013)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE A.K.BASHEER
JUDICIAL MEMBER

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