

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 520/2010

Wednesday, this the 9th day of November, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

1. P.K.Harikumar,
Technical Officer (T-7-8),
Central Marine Fisheries Research Institute,
Kochi.
2. J.Srinivasan,
Technical Officer (T-7-8),
Central Marine Fisheries Research Institute,
Kochi.
3. S.Haja Najeemudeen,
Technical Officer (T-6),
Central Marine Fisheries Research Institute,
Kochi.
4. Smt K Ramani,
Technical Officer (T-6),
Central Marine Fisheries Research Institute,
Kochi.Applicant

(By Advocate Mr P.K.Madhusoodhanan)

v.

1. Union of India through the Secretary,
Ministry of Agriculture,
Krishi Bhavan, New Delhi-110 114.
2. The Director,
Central Marine Fisheries Research Institute,
Kochi-682 018.
3. India Council of Agricultural Research,
represented by its Secretary,
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi-110 11.Respondents

(By Advocate Mr Varghese M Easo for M/s Varghese & Jacob for R.2 & 3)

This application having been finally heard on 12.10.2011, the Tribunal on 09.11.2011 delivered the following:

ORDER

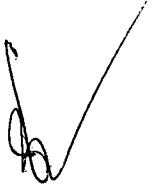
HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The Indian Council of Agricultural Research (ICAR) is an autonomous organization, being a Society registered under the Societies' Registration Act, 1860. The ICAR was set up for undertaking scientific research in Agriculture, Animal Husbandry and allied subjects on which the entire economy of this country revolved till the advent of industrial revolution. It was set up with a view to imparting speed and momentum to research in Agriculture and allied subjects so that the country may move from the middle ages to the modern methods in agricultural technology. (**P.K. Ramachandra Iyer v. Union of India, (1984) 2 SCC 141**).

It is an Apex Agricultural and Scientific Research Organisation, having a network of Research Institutes/National Bureaus, National Research Centres and Project Directorates. It has forty seven Research Institutes, five National Bureaus, twenty-six National Research Centres, ten Project Directorates, five hundred ninety four Krishin Vigyan Kendras and seventy three All India Coordinated Research Projects (**Director, Central Marine Fisheries Research Institute v. A. Kanakkan, (2009) 17 SCC 253**).

2. The posts in the ICAR have been classified as many as five categories as -

- (a) Scientific
- (b) Technical
- (c) Administrative
- (d) Auxiliary
- (e) Supporting

 (Extracted from para 3.1 of the ICAR letter 7-15/75-CDN, II dt.

01-08-1975, reproduced at page 55 of the Manual of
Administrative Instructions First Edition - 1979)

3. The service conditions of services of Scientific posts are governed by the Agricultural Research Services and those of Technical personnel are governed by the Technical Services of the ICAR.

4. The applicants in this OA are Technical Officers (T-7-8 or T-6). According to the applicants, in so far as pay parity or for that matter, the service conditions are concerned, initially these were comparable between the two posts - Scientific and Technical. However, later on, certain differences were created in such service conditions and this difference became more and more. Especially, in the wake of the acceptance of the Sixth Pay Commission Recommendations, the pay scales of scientists were based on the UGC scales, while those of the Technical posts the Central Pay Commission Rules were followed. It is the case of the applicants that the UGC scales were made applicable only to ICAR, while in other Research Institutions, i.e. Space Research Organization, Defence Research Development Organization, ICMR etc., under the government of India, uniform policy has been maintained irrespective of the posts - scientific or technical. Initially, the pay scale of T-6 was Rs 9300 - 34800 (PB 2) with grade pay of Rs 5400/- while in respect of Scientists, they were placed in the higher pay scale of Rs 15600 - 39100 with grade pay of Rs 6000/-. Similarly, the pay scale of Technical Officer T-7-8 was revised to Rs 15600 - 39100 with grade pay of Rs 6,600 while that of Scientists (Sr.

Scale) the scale was revised to Rs 15600 – 39000 with grade pay of Rs 7000/-. In addition, there is a difference in the age of superannuation in that while the scientists could serve upto 62 years, in so far as Technical Officers are concerned, the same has been restricted to 60 years.

5. The applicants preferred their representations vide Annexure A-1 to A-3 which remained non-responded. Hence this OA claiming the following reliefs:-

- (a) Issue necessary directions to the 3rd respondent to take up, consider and pass orders on Annexures A1 to A-3 in accordance with law, within a time limit to be fixed by this Tribunal.
- (b) Declare that the applicants are eligible and entitled to get the same scale of pay and all other service benefits as granted to their counterparts in scientific cadre working along with the applicants without showing further classification in a class and as granted to them earlier and disburse to them all the monetary benefits arising therefrom.
- (c) Issue necessary directions to the respondents to grant the applicants the same scale of pay, grade pay and service benefits as granted to their counter parts in the scientific cadre working along with them.

6. Respondents have contested the O.A. According to them, vide order dated 08-12-2009, the pay scale of Technical Officers of T-6 grade, the pay scale has been revised from PB 2 (Rs 9300 – 34800) to PB-3 (Rs 15600 – 39100) with grade pay of Rs 5400/-. Thus, pay parity in respect of pay scale has been maintained. However, in so far as Grade Pay is concerned, there is one grade pay called "Research Grade Pay (RGP)" which is available in the scientific posts while there is no such RGP in the

Technical posts. Hence, the applicants are not entitled to parity in Grade Pay. Respondents have further contended that in so far as qualifications are concerned, even ordinary graduates reach the grade of T-6 etc., whereas, higher qualifications are prescribed for the posts of Scientists.

7. The applicants have furnished their Rejoinder wherein the fact of the T-6 personnel now being granted higher pay scale at par with the scientist (15600 - 39100) has not been denied. However, in so far as difference in Grade Pay is concerned, the applicants contend that now there is no RGP and the same is substituted by what is called Academic Grade Pay (AGP). Introducing this grade pay to one section of the personnel to the exclusion of the other section which is also associated with research project has been termed as "unfortunate" by the applicants. The respondents have also added certain testimonials to hammer home the point that the technical personnel are no less than the Scientists.

8. In their additional rejoinder the applicants have added a decision of the CAT in OA No. 1536 of 2002 dated 06-06-2002 (Rajendra Singh and others vs Union of India and others) and its affirmation by the High Court in CWP No. 3364-65 of 2004 vide order dated 21-07-2010. They have also annexed a communication dated 22-07-2007 whereby the ICAR distinguished the scientists of ICAR from the teaching staff under the UGC scheme and thus, denied the enhancement of the age of superannuation from 62 to 65 claimed by the scientists. Further

development in this regard being that there has been another attempt by the Ministry of Agriculture to the Ministry of Finance vide note dated 01-07-2010, a copy of the said note (obtained by the applicants through RTI) has also been furnished by the applicants.

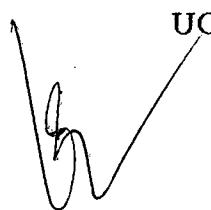
9. Counsel for the applicant argued that there cannot be any disparity in pay structure on any ground whatsoever when pay parity has been maintained right from the beginning between the scientists and comparable technical officers. Thus, the difference in grade pay in respect of T-6 personnel and difference in the scale of pay as well as grade pay in respect of Technical Officers (T-7-8) compared to their counterparts in the Scientists i.e. Sr. Scientists is unconstitutional. Reliance to the decision of the Principal Bench as affirmed by the High Court has also been made by the counsel for the applicants. The counsel submitted that though in the relief column parity in respect of age of superannuation has not been specifically mentioned, in the body of the OA the same has been referred to and as such, the claim of the applicants should be considered for parity in matter of age of superannuation as well.

10. That there has always been a blend in the constitution of Projects of the Divisions wherein there would be association of Technical officers with Scientists has been specified by the counsel for the applicant by referring to Annexure A-10 of the O.A. He has also invited the attention of the Tribunal to Annexure A-11 which relates to rules and guidelines for doing Ph.D for Technical Staff.

11. Senior counsel for the respondents after narrating a brief description of the difference between the scientists (who are recruited at a comparatively higher posts with higher qualifications) and the technical posts (wherein the recruitment is at a lower level with lower qualifications) submitted that the scientists stand as a different class compared to the technical officers. The senior counsel submitted that the UGC scale is meant not only for teaching faculty but also for research purposes and as such, scientists are given higher pay scale and/or grade pay compared to the Technical Officers of T-6 or T-7-8 level.

12. Arguments were heard and documents perused. The senior counsel for respondents 2 & 3 has produced the relevant rules and regulations which have been gone through.

13. The Agricultural Research Services and the Technical Services in the ICAR came into existence in 1975 and admittedly, there has been a parity between the scientific posts and technical posts of corresponding grades. It is only with reference to the research grade pay that disparity arose in respect of T-6 and pay scale as well as G.P are higher in respect of Sr. Scientists compared to those of Technical Officers (T-7-8) though hitherto there had been pay parity. The reason afforded by the respondents is that UGC pay scale has been introduced for the scientists. Against the argument of the counsel for the applicant that in so far as UGC scale is concerned, while there could be justification in respect of

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teaching staff which are of minuscule size confined to four or five institutions, compared to the total complement of scientists in nearly 100 institutes, senior counsel for the respondent's response was that UGC scale is not only for teaching staff only but also for conducting research, in which all the scientists are involved, whereas such is not the case with reference to the Technical Officers of T-6 or T-7-8 which include even Drivers.

14. Comparison between the scientists and the Technical Officers has already been made in the case of Union of India and others vs Rajendra Singh and others in Writ Petition No. 3364-65 of 2010 before the High Court, and the High Court has passed the following order:-

"1. A perusal of the impugned order shows that the respondents, holding Technical posts under the petitioner, had a grievance of being discriminated.

2. The discrimination alleged was that the petitioner accorded two advance increments to Scientists who acquired doctoral degrees but denied the same to those who held technical degrees.

3. The claim of the respondents was that be it a Scientist or be it persons holding a Technical posts, all were engaged in research activities under ICAR i.e. the petitioner. They also relied upon a policy of the petitioner which recognizes the importance of higher qualifications for not only Scientists but even persons in the Technical posts. The same was evidenced from the ARS Study Leave Regulations 1991 which entitled study leave to Scientists as well as Technical posts to acquire doctoral degrees.

4. The Tribunal has accordingly granted relief to the respondents.

5. Indeed, the issue as to be adjudicated: whether, keeping in view the object sought to be achieved, it was a rational distinction to treat scientists and technical persons differently.

6. Now, the object which is sought to be achieved is

better research under the ICAR. The criteria for enhancing the quality of research would be better qualified people in the area. If this be so, we see no escape from the view taken by the Tribunal that it would be arbitrary, irrational, discriminatory and hence, violative of Art. 14 of the Constitution of India to grant two increments only to scientists who have acquired doctoral degrees but deny the same to persons holding technical posts: both categories being engaged in research categories.

The writ petition is dismissed.

No cost.

15. The above order of the High Court would go to show that the High Court insists equal treatment to both the Scientific and Technical posts. And, that UGC scale is granted not only for teaching staff but to those who are engaged in research work has been the admitted fact. (para 3 of the reply to the rejoinder filed by the respondents refers). That the technical staff are also engaged in research work has been confirmed by communication dated 29-03-2004 vide Annexure A-11. That there is a blend of the two cadres in constituting various Project Divisions is confirmed by Annexure A-10.

16. Thus, in so far as the requirement of conducting the research work is concerned, there does not seem to be any distinction between the Scientists and the Technical Officers. To this effect, the applicants have made out a cast iron case in their favour, on the basis of the decision of the High Court of Delhi in the case of Union of India vs Rajendra Singh and others. However, it is understood (from the internet) that the aforesaid order of the High Court has been stayed by the Apex Court.

17. One aspect to be seen here is the concern expressed by the Senior Counsel for the respondents in that the Technical posts carry apart from research work, certain other faculties also, for which the qualifications are not high but only at the graduate level etc., In other words, persons inducted at a lower post such as T-1/T-2 etc., get promoted to the post of T-6 by virtue of their time bound promotion and it would be inappropriate that such persons too are paid the higher grade pay which is meant only for teaching and research work. The implied contention of the senior counsel for the respondents is that in case indiscriminately higher grade pay is given to all the Technical Officers of T-6 or higher pay scale and grade pay is granted to all T-7-8 technical officers, the same would amount to treating unequals as equals and would not meet the requirement of equality clause of the Constitution. The predicament expressed by the senior is certainly understandable but the same is not remediless.

18. Admittedly pay scale has been given at par with scientists in respect of Technical Officers (T-6) and it is only in the grade pay that there exists a difference. There could be different pay scales for same post as held by the Apex Court in the following cases -

(a) ***State of Bihar v. Bihar State 'Plus-2' Lecturers Associations,***
(2008) 7 SCC 231, at page 237 :

13. Dealing with the contention, S.R. Das, J. (as His Lordship then was) made the following instructive observations which were cited with approval in several

subsequent cases: (*Anwar Ali Sarkar case*, AIR 1952 SC 75 p. 93, para 54)

"54. ...It is now well established that while Article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an 'abstract symmetry' in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different bases. It may be geographical or according to objects or occupations or the like. Mere classification, however, is not enough to get over the inhibition of the article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. *In short, while the article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained.*"

(emphasis supplied)

(b) **Confederation of Ex-Servicemen** (2006) 8 SCC 299 :

"30. In our judgment, therefore, it is clear that every classification to be legal, valid and permissible, must fulfil the



twin test, namely,

- (i) the classification must be founded on an intelligible differentia which must distinguish persons or things that are grouped together from others leaving out or left out; and
- (ii) such a differentia must have rational nexus to the object sought to be achieved by the statute or legislation in question."

(Also cited in the case of *State of Bihar v. Bihar State 'Plus-2'*

Lecturers Associations, (2008) 7 SCC 231)

(c) The Apex Court in the aforesaid case of Bihar State 'Plus-2' supra specifically held in para 17 thereof as under:-

"17. A legal and valid classification may be based on educational qualifications.

(d) In *State of Mysore v. P. Narasinga Rao (AIR 1968 SC 349)* different pay scales were prescribed for tracers; one for matriculate tracers which was higher than the other for non-matriculate tracers which was lower. The action was held legal, lawful and not violative of Article 14 or 16 of the Constitution.

(Also cited in the case of *State of Bihar v. Bihar State 'Plus-2'* *Lecturers Associations, (2008) 7 SCC 231 vide para 18*). The Constitution Bench in that case had held as under:-

"4. ...It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on

which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. *In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule.*"

(emphasis supplied)

(e) In ***State of J&K v. Triloki Nath Khosa*** (1974) 1 SCC 19

the Apex Court upheld the classification for promotion on the basis of academic and technical qualifications. It was contended on behalf of the diploma-holders that classification sought to be made by the State between "degree-holders" and "diploma-holders", was illegal and artificial and denial of promotion to diploma-holders while granting such benefit to degree-holders had violated Article 14 of the Constitution. But the argument was negatived. The Apex Court in para 34 has held as under:-

"34. On the facts of the case, classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstance and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification. The provision in the 1939 Rules restricting direct recruitment of Assistant Engineers to Engineering graduates, the dearth of graduates in times past and their copious flow in times present are all matters which can legitimately enter the judgment of the rule-making authority. In the light of these facts, that judgment cannot be assailed as capricious or fanciful. Efficiency which comes in the trail of higher mental equipment can reasonably be attempted to be achieved by restricting promotional opportunities to those possessing higher educational qualifications. And we are concerned with the reasonableness of the classification, not with the precise accuracy of the decision to classify nor with the question whether the classification is scientific. Such tests have long since been discarded. In fact

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American decisions have gone as far as saying that classification would offend against the 14th Amendment of the American Constitution only if it is 'purely arbitrary, oppressive or capricious' and the inequality produced in order to encounter the challenge of the Constitution must be 'actually and palpably unreasonable and arbitrary'. We need not go that far as *the differences between the two classes—graduates and diploma-holders—furnish a reasonable basis for separate treatment and bear a just relation to the purpose of the impugned provision.*'

(emphasis supplied)

19. Thus, if the fact that the post of Technical Officers has apart from research workers is the main reason for denying the pay parity between the scientists and those technical officers of T-6 comparable to the scientists, the same could easily be met with be the aforesaid distinction. If so felt necessary, the respondents could accordingly fix higher pay scales to those Technical Officers who could be compared with Scientists. Denying the applicants who are doing research work the grade pay or pay scale at par with scientists thus is a glaring discrimination amongst the equals which strikes at the very root of fundamental right to equality enshrined in Article 14 and 16 of the Constitution.

20. In so far as the claim of the applicant for enhancement of the age of retirement is concerned, the same has to be rejected as the policy decision in this regard has been on various other considerations such as continuity etc., and these have not been fully explained by the applicants in the OA. Nor has there been a specific prayer in this regard. However, rejection of this part of the claim by the applicant cannot act as res-judicata in case the applicants or similarly situated Technical Officers claim for the same in any other O.As. For, this part of the claim has not

been dealt with on merits in this O.A.

21. In view of the above, **the OA is allowed.** It is declared that the applicants are entitled to the pay parity with their counterparts in Scientists cadre. The grade pay of T-6 shall be enhanced to Rs 6000 and the pay scale of T-7-8 Technical Officers and the grade pay attached should correspond to that of the Senior Scientists as the two had been placed at par with each other till recently. At the same time, in view of the fact that the decision of the High Court in **Rajendra Singh's case** (supra) on the basis of which the applicant could establish comparability between the Scientists and the Technical Officers, has been stayed, implementation of this order, at the discretion of the respondents could well be deferred till the outcome of the case pending before the Apex Court. (The applicants are in their early fifties only and as such, they can afford to await the decision of the Apex Court). If the decision of the Apex Court goes in favour of the respondents before the Apex Court, the same would be extended to the case of the applicants as well and the order in this OA shall be complied with from 01-01-2006. If however, the decision goes in favour of the respondents herein, they are at liberty to move a review application seeking review of the order in this O.A.

22. No costs.



Dr K.B.S.RAJAN
JUDICIAL MEMBER

Original Application No. 520/10
NOTE

I have gone through the order. I find that I am unable to agree with the decision to grant pay-parity for technical service personnel of T-6 to T-8 levels with the category of Scientists in Agricultural Research due to the under mentioned reasons:-

1. The Hon'ble Supreme Court in its judgment dated 13.11.1992 in the case of **Dr. S.M. Ilias and others v. ICAR and others [1993 (1) SCC 182]** narrates the history behind setting up of ICAR in para 3 " *The Imperial Council of Agricultural Research, a Society established under the Societies Registration Act in the year 1929 was re-designated as the Indian Council of Agricultural Research after the advent of independence. Till 1965, the ICAR was largely functioning as a coordinating agency and apex body for financing research projects. With effect from 1966, administrative control over the Indian Agricultural Research Institute (IARI) and other such Institutes was transferred to ICAR simultaneously placing the staff of such Institutes at the disposal of the ICAR. A department of Agricultural Research and Education was set up in the Ministry of Agriculture and the said department came into existence on December 15, 1973'.*

In exercise of powers under the Memorandum of Association and Rule 40 of the Rules of the ICAR, the bye-laws of the society was formed.

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The Bye-law 21 states that:

The posts in the council shall be categorized as Scientific, Technical, Administrative (including Accounts) Auxiliary and Supporting on the basis of the following criteria:-

(a) Scientific: Scientific personnel shall be those who are engaged in agricultural research and education including extension education whether in physical, statistical, biological, engineering, technological or social sciences.

This category shall also include persons engaged in planning, programming and management of scientific research.

(b) Technical: Technical personnel shall be those who perform technical service in support of research and education whether in the Laboratory, Workshop or field, or in areas like Library, Documentation, Publication and Agricultural Communication.

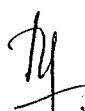
2. In the preface to the first edition of Hand book Agricultural Research Services (ARS), the then Director General Shri M.S. Swaminathan has stated "Science and education are creative activities. They require men and women of integrity, dedication, scholarship and an attitude of mind where work and recreation are synonymous. Research Service for its scientists which will enable a young scientist entering a research career to get the highest salary possible in public services without changing his or her

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field of specialization and without shifting to managerial and administrative posts merely for receiving a better salary." In the salient features of the ARS noted in the hand book, it is shown that the objective of the ARS is to promote an outlook where solving a specific field problem through inter-disciplinary team work is regarded as the primary goal of research than the worship of a discipline or publication of papers. It has a structure which enables it to maintain continuous contact with the policy maker, on the one hand, and the farmer, who is the user and hence the ultimate judge of the value of agricultural research, on the other hand.

3. While for Technical Services he has noted "Scientists are supported in their work by a large number of technical staff members as well as by administrative and other supporting staff. Members of the Technical Services provide the kind of support that can enhance the per capita output of research scientists". Shri R.S. Paroda, the then Director General of ICAR, in the preface of the 3rd edition of the Hand book has written the following:-

"The technical personnel of the system have rendered a very important service in translating the ideas of scientists into realities. The technical personnel provide crucial support to the scientists and in the process serve as an important link between the researchers and the end users."

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4. This clearly shows that the role and the work assigned to technical personnel are to support the Scientists of ARS to collect the data, compile the same and get the complete research done by the Scientists of ARS, document it, etc. to maintain a regular flow of technology to deal with the complex problems of improving terrestrial and aquatic productivity to cope with the big issue of food shortage. Therefore, the roles and functionalities of the technical and research services are defined when ICAR as a society was set up with effect from 01.10.1975.

5. As per the Rule 3.1 of TSR, the Technical Services are grouped into three categories consisting of 3-4 grades. Within each category, the posts have been functionally classified into 7 groups. For instance, Group I consists of Field/Farm Technicians. Group II – Laboratory Technicians, Group III- Workshop Staff including Engineering Workshop Staff and Group IV – Library/ Information/ Documentation Staff, etc. Direct Recruitment normally will be only in the lowest category. Promotions were restricted within the category. Grade T1 o T3 in Category I, Grade T5 in Category II and Grade T9 in Category III were not eligible for further promotion. But they were being given advance increments. From 1995, this category bar is removed. A person appointed as T1 and getting promoted to T1-3 could enter into Category II and such other, as provided in Career Advancement in Page 4 of TSR.

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6. While so, in ARS initially there were the following 4 grades with the scale of pay as indicated against each:

Grade	Pay Scale
Scientist (S)	Rs. 550-25-750-EB-30-900
Scientist 1 (S-1)	Rs.700-40-900-EB-40-1100-50-1300
Scientist 2 (S-2)	Rs. 1100-50-1600
Scientist 3 (S-3)	Rs. 1500-60-1800-100-2000

ARS Scientist 1 (S-1) is recruited through:-

- (a) a competitive examination and interview through the Agricultural Scientists Recruitment Board (ASRB) in accordance with the provisions of Schedule II; and
- (b) by promotion from grade 'S'.

Therefore, the direct recruitment through the ASRB will start at the level of S-I through open competitive examination. The essential qualifications were prescribed as Master's Degree in the relevant subject or a Bachelor's Degree in any branch of Engineering or Technology. Therefore, at the time of constitution of TRS and ARS in 1975, the erstwhile Scientific and Technical staff with a Post Graduate Degree or Bachelor's Degree in Engineering with pay scales ranging from Rs. 425-700 to Rs. 2000-2500 (III CPC) were considered for induction to ARS. The post of Scientist in ARS was earmarked for eligible candidates of the council. Those who did not fulfill the educational qualification were given 5 years time to acquire the above mentioned educational qualification. The time was further extended by another 5 years. In service employees of ICAR with the prescribed essential qualification and who are less than 35 years of age were permitted to appear

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in the ARS examination for Scientist (S-I) from 17.09.1985 onwards. So a fair opportunity is given to the existing staff to come over to ARS through the open competitive examination even as on date. The applicants have not stated about the group, the grade and the category in which they were recruited and the number of promotions they have been granted to bring them a comparable level of Scientist which till 1985 was filled up through promotion from the council employees.

7. The post and the grade the applicants compare between them and ARS are the first category in ARS viz., scientist with T6 in the category III of the technical service. In technical service the first post is T1 and in ARS, the first post is scientist. The scales of pay are totally different. The applicants have not stated how these posts are comparable, how the mode of recruitment is similar and how the duties and work are similar. The applicants only claim is that the implementation of VI CPC recommendation resulted in unreasonable and unjustifiable disparity in pay scales between the staff of TSR and ARS. The fact remains that the remuneration for all the employees of ICAR was being paid in tune with the Central Government scales of pay for a long time. But, the scientists in the Agricultural Research Services were given UGC pay scales with effect from 01.01.1986 and enhancement in age of superannuation from 60 to 62 years from 31.10.2003. S-1 to S-3 posts of scientists were re-classified from scientist to Principal Scientists. Research Management positions were also re-classified,

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the Recruitment Rules and Assessment were also totally changed. The assessment system as available in TSR was abolished.

8. The circumstances under which the ICAR adopted UGC scales for ARS personnel are shown in para 14 of the judgment of the Hon'ble Supreme Court **supra (1993) 1 SCC 189** :-

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"The Scientists working in the ICAR had made a grievance for the revision of their pay-scales and the Government being satisfied with their grievances had appointed various expert Committees such as M.V. Rao Committee, N.G.P Rao Committee, Menon Committee and G.V.R. Rao Committee for improvement of service conditions of the Scientists working in the ICAR.

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Dr. M.V. Rao Committee after considering the fact that the ICAR has the role of UGC in agricultural education recommended that the ICAR being an apex organization in the country for agricultural education, research and extension should have the pay-scales at least at par with the State Agricultural Universities. Dr. M.V. Rao Committee's recommendations were accepted by the Central Government and a policy decision was taken on October 13, 1988 to the effect that UGC package may be extended to ICAR Scientists engaged in teaching, research and extension."

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9. Further, those who are in the teaching field, gets academic grade pay, those who are engaged in research get research grade pay and scientists of outstanding merit will have a scale of pay which is higher than that of the grade in which they draw their pay. Such features are not at all available in the pay scales prescribed for the Central Government employees. The foregoing clearly shows that both TSR and ARS are set up with different objectives and are governed by a distinct personnel policy method of recruitment and career advancement. The ICAR is a society and employees of ICAR are not central government employees. They are the employees of the ICAR and are governed by its Rules and Regulations. The Pay Commission Recommendation as accepted by Government of India are adopted by the ICAR. UGC Pay package is adopted and recommended only for scientists in the Agricultural Research Service.

10. In the **State of West Bengal and another v. West Bengal Minimum Wages Inspectors Association and others**, the Hon'ble Supreme Court held that equal pay for equal work is not a fundamental right but is only a constitutional goal. The determination of pay parity is an executive function to be carried out by expert bodies. That the principle is not automatically applicable but the claim based on previous equal pay.

A handwritten signature in black ink, appearing to read 'D.Y.' or a similar initials.

11. **2009 (9) SCC 514 State of Punjab v. Surjith Singh and others** – in the above case the Hon'ble Supreme Court held that equal pay for equal work, principle cannot be applied blindly. That the principle has undergone a sea-change. There cannot be a mechanical application of grant of benefits of equal pay for equal work. It depends upon large number of factors including equal work, equal value and source and manner of appointment, equal identity of groups and whole-scale and complete identity. (Refer paras 16, 17 and 24). It was further held that the importance of pleadings and also burden of proof and also that modern manner of appointment are considered as relevant factors for application of the principle.

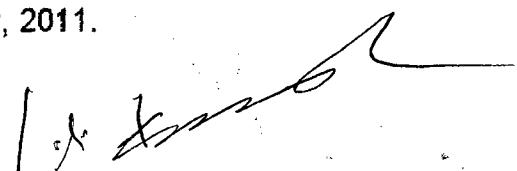
12. The enhanced age of 62 is applicable only to the Faculty in Universities funded by the Central Government and the Scientists in ARS. The Hon'ble High Court of Kerala took the view that Court has no power to prescribe age of retirement. **2011 (2) KLT 468; 2010 (4) KLT 481.**


K. NOORJEHAN
ADMINISTRATIVE MEMBER

In view of the divergent opinion in this O.A, the case has to be referred to a Third Member in accordance with Section 26 of the Administrative Tribunals Act, 1985. Accordingly, Registry is directed to place the matter before the Hon'ble Chairman for appropriate action.

Dated, the 9th day of November, 2011.


K NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S.RAJAN
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 520 of 2010

Tuesday, this the 19th day of June, 2012

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member

1. P.K. Harikumar, S/o. P. Balakrishnan Nair,
Technical Officer (T-7-8),
Central Marine Fisheries Research Institute, Kochi.
2. J. Srinivasan, S/o. Late S. Jagannathan, Technical officer
(T-7-8), Central Marine Fisheries Research Institute, Kochi.
3. S. Haja Najeemudeen, S/o. Late Sheik Jamal,
Technical officer (T-6),
Central Marine Fisheries Research Institute, Kochi.
4. Smt. K. Ramani, W/o. K. Damodaran Namboothiri,
Technical officer (T-6), Central Marine Fisheries
Research Institute, Kochi.

Applicants

(By Advocate – Mr. P.K. Madhusoodhanan)

V e r s u s

1. Union of India, through the Secretary,
Ministry of Agriculture,
Krishi Bhavan, New Delhi-110 114.
2. The Director, Central Marine Fisheries
Research Institute, Kochi-682 018.
3. Indira Council of Agricultural Research,
represented by its Secretary, Indian Council of
Agricultural research, Krishi Bhavan-
110 114.

Respondents

**[By Advocates – Mr. Sunil Jacob Jose, SCGSC (R1) &
M/s. Varghese & Jacob (R2 & 3)]**

This application having been heard on 11.06.2012, the Tribunal on

19.06.2012 delivered the following:

ORDER

Applicants in this OA are Technical Officers (T-7-8 or T-6). According to them they are entitled for the very same Grade Pay as that of Scientists and also for uniformity in the matter of retirement age. The Bench which heard the matter held that the enhanced age of 62 is applicable to the Scientists and it cannot be extended to the Technical Staff like the applicants. However, the question as to whether the applicants are entitled for the same Grade Pay, the opinion was divided between the Members. Hence, this Original Application was referred to the 3rd Member in accordance with the provisions contained in Section 26 of the Administrative Tribunals Act, 1985 and thus come up for consideration before me.

2. According to the learned counsel appearing for the applicant the Technical Staff (T-7-8 or T-6) cannot be discriminated against the Scientists who were given the same scale of pay by the Government of India decision and the difference lies only in the matter of Grade Pay, while the Technical Staff was given Grade Pay of Rs. 5,400/- Scientists were given Rs. 6,600/- as Grade Pay.
3. The point in controversy is as to whether Technical Staff are entitled to the same Grade Pay and that is the question to be answered.
4. To compare the service conditions of the applicants it is submitted that the service conditions of the Scientists are governed by the Agricultural Research Service (ARS) and those of Technical Staff is governed by the



Technical Service Rules (TSR) of Indian Council of Agricultural Research (ICAR). The Technical Staff in T-6 level should possess a Postgraduate Degree as in the case of Scientist. Both of them are given the same leave facilities for doing research for Ph.D. That the Hon'ble High Court of Delhi has confirmed the Tribunal's order in the matter of grant of two increments to the Technical Staff as was given to the Scientists. Both Scientists and Technical Staff are engaged in Research work. Reliance is placed on the judgment of the Hon'ble High Court of Delhi as well as the Annexures A5 and A6. Both Technical Staff in T6 and Scientists were treated alike until the VIth Pay Commission Recommendations and subsequently by Annexure R2, pay scale was restored by the Government based on the representation made by the Technical Staff.

5. The respondents on the other hand would contend that in Annexure A2 representation the prayer made was to the extent of grant of UGC package as in the case of ICAR Scientific staff to persons directly associated with research package who may be treated at par with scientific category. That other Technical staff like Motor/Tractor Drivers, Milk Measurer, Butcher etc. could not directly participate in the research projects, they may be governed by the present Technical Service Rules. In other words applicants wants bifurcation in the technical staff and to cull out the technical staff who are directly associated with research project to be treated alike with that of Scientific category in the matter of pay scale and work. Respondents would contend that it is impermissible. According to them UGC scale was extended to the Scientists only after the recommendation



made by the Rao Committee was accepted and till then they were also not given the UGC scale. There is no comparison of Technical Staff in T-6 and T-7-8 with that of Scientists and they are not comparable posts.

6. I have heard the learned counsel for both sides and gone through the pleadings.

7. The applicants' contention that they are entitled for getting pay as in the case of Scientists can be accepted, if only, they are able to convincingly prove that they are similarly situated with that of the Scientists. Admittedly in the ICAR Society, the posts in the Council is categorized as per Rule 21 as Scientific, Technical, Administrative (including Accounts), Auxiliary and Supporting on the basis of the criteria mentioned thereunder. In respect to Scientific posts are concerned, Scientific personnel shall be those who are engaged in agricultural research and education (including extension education) whether in physical, statistical, biological, engineering, technological or social sciences. This category shall also include persons engaged in planning, programing and management of scientific research. In the case of Technical personnel Rule 21(b) provides that Technical personnel shall be those who perform technical service in support of research and education whether in the Laboratory, Workshop or field, or in areas like Library, Documentation, Publication and Agricultural Communication. Besides these two types of personnel Scientific and Technical, there are administrative, auxiliary and supporting personnel. The employees of all of whom fall in one of these categories generally governed as per the rules and bye laws of the ICAR Society. There are different pay

scales of Technical Services as per Appendix-I of ICAR Handbook of Technical Services. Technical posts are also classified into various groups. Further within each category the posts have been functionally classified into seven groups. A person appointed as T-1 can get promotions to T-1-3 and can enter in category-II and such other as provided in career advancement under TSR. While so in ARS initially there were four grades with the scale of pay as indicated and Agricultural Research Scientists are recruited through the competitive examination and interview through the Agricultural Scientists Recruitment Board (ASRB) in accordance with the provisions of Schedule-II and also by promotion from Grade 'S'. Therefore, the direct recruitment through the ASRB start even in the level of S-I through open competitive examination. The essential qualifications were prescribed as Master's Degree in the relevant subject or a Bachelor's Degree in any branch of Engineering or Technology. In Technical Service the 1st post is T1 and in ARS the 1st post is Scientist. The scale of pay are totally different. The recruitment is not proved to be similar nor the duties and the nature of work. The mere fact that there were no difference in the mater of scale of pay until the VIth Pay Commission recommendations is made by itself is not adequate to hold that they are similarly situated to that of Scientists. The fact remains that salary and other remuneration of the employees of ICAR was paid in tune with the Central Government pay for a long time. But Agricultural Research Scientists were given UGC pay scale with effect from 1.1.1986 and there was also enhancement in the superannuation age from 60 to 62. The research management positions were also re-classified and the recruitment rules and assessment were also changed. The assessment system



as available in the TSR was abolished. Dr. M.V. Rao committee after considering the fact that the ICAR has the role of UGC in agricultural education recommended that the ICAR being an apex organization in the Country for agricultural education, research and extension should have the pay scales at least at par with the State Agricultural Universities. This recommendations were accepted by the Central Government and a policy decision was taken in 1988 extending the UGC package to ICAR Scientists engaged in teaching, research and extension. In the teaching field they get academic Grade Pay, those who are engaged in research get research Grade Pay and Scientists of outstanding merit will have a scale of pay which is higher than that of the grade in which they draw their pay. But these features are not sufficiently available to the employees in Technical side since their pay scale is prescribed by the Central Government as Central Government employees. Thus TSR and ARS are not set up with the same objectives but are governed by distinct personnel policy method of recruitment and career advancement. ICAR is a society and employees of ICAR are not Central Government employees. They are the employees of ICAR and are governed by its rules and regulations. The Pay Commission Recommendation as accepted by Government of India are adopted by the ICAR. UGC package is adopted and recommended only for Scientists in the ARS. It is well settled that equal pay for equal work is not a fundamental right but is only a constitutional goal as held in the State of West Bengal & Anr. Vs. West Bengal Minimum Wages Inspectors Association & Ors. - 2010 (5) SCC 275. Thus, though ICAR adopted UGC pay package on the direction of Government of India to the Scientists, such UGC package was



not extended to the Technical personnel in TSR and Technical personnel continued to receive the remuneration at par with the Central Government employees and all the benefits, revision of pay scales on the recommendations of the pay commission. The TSR and ARS would further indicate that the categories of posts are not similar, qualifications are totally different, method of recruitment is different and nature of work is also totally different. It may be true that for studying Ph.D. two advance increments to Scientists are extended to the Technical Staff that by itself is no reason to hold that they are otherwise equal in all other aspects. There are four categories of staff governed by different service conditions under the respondent Organization. In case of Technical Staff their career advancement is governed by five yearly assessment and no such policy has been adopted for the ministerial staff as well as supporting staff category. Therefore, there is force in the contention that the demand for parity for Technical employees governed by the VIth Pay Commission recommendation with Scientific Staff who are covered by the UGC pay package is not tenable as virtually it will be extending the UGC scale to the Technical employees if the contention of the applicants are accepted. The Scientists are directly involved in agricultural research work and directly or indirectly helped by the Technical staff. Therefore, mandate of scientific service and technical service are different. There is no functional parity established.

8. In the light of the above discussion it has to be held that Technical Staff like the applicants cannot be compared with the Scientists for the



purpose of extending the same Grade Pay as is prayed for. The question is answered accordingly. Let the matter be placed before the Division Bench for final pronouncement of the judgment in accordance with Section 26 of the Administrative Tribunals Act, 1985.



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 520 of 2010

Monday, this the 02nd day of July, 2012

CORAM:

Hon'ble Dr.K.B.S Rajan, Judicial Member
Hon'ble Ms.K Noorjehan, Administrative Member

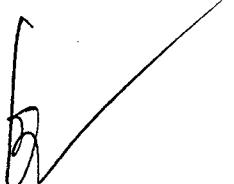
<ol style="list-style-type: none"> 1. P.K. Harikumar, S/o. P. Balakrishnan Nair, Technical Officer (T-7-8), Central Marine Fisheries Research Institute, Kochi. 2. J. Srinivasan, S/o. Late S. Jagannathan, Technical officer (T-7-8), Central Marine Fisheries Research Institute, Kochi. 3. S. Haja Najeemudeen, S/o. Late Sheik Jamal, Technical officer (T-6), Central Marine Fisheries Research Institute, Kochi. 4. Smt. K. Ramani, W/o. K. Damodaran Namboothiri, Technical officer (T-6), Central Marine Fisheries Research Institute, Kochi. Applicants
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(By Advocate – Mr. P.K. Madhusoodhanan)

V e r s u s

<ol style="list-style-type: none"> 1. Union of India, through the Secretary, Ministry of Agriculture, Krishi Bhavan, New Delhi-110 114. 2. The Director, Central Marine Fisheries Research Institute, Kochi-682 018. 3. Indira Council of Agricultural Research, represented by its Secretary, Indian Council of Agricultural research, Krishi Bhavan- 110 114. Respondents
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**[By Advocates – Mr. Sunil Jacob Jose, SCGSC (R1) &
M/s. Varghese & Jacob (R2 & 3)]**



This application having been heard on 02.07.2012, the Tribunal on the same day delivered the following:

O R D E R

By Hon'ble Dr.K.B.S Rajan, Judicial Member

On 09.11.2011, an order was passed in this Original Application referring the matter to the third Member in view of divergent opinion of the Division Bench. On the basis of majority view, this Original Application is dismissed. No cost.

(Dated this the 02nd day of July 2012)


(Ms. K. Noorjehan)
Administrative Member


(Dr. K.B.S. Rajan)
Judicial Member

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