

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 525/2006

FRIDAY THIS THE 3rd DAY OF AUGUST 2007.

C O R A M

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

T.S. Ponnaiah
Assistant Administrative Officer
Central Plantation Crops Research Institute
Kasaragode -671 124

..Applicant

By Advocate Mr. P.K. Madhusoodhanan

Vs

1 Director
Central Plantation Crops Research Institute
Kasaragod-671 124

2 Under Secretary (Administration)
Indian Council of Agricultural Research
Krishi Bhavan, New Delhi.

3 Indian Council of Agricultural Research
represented by its Secretary
Krishi Bhavan, New Delhi-1

..Respondents

By Advocate Mr. T.P. Sajan

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is aggrieved by the denial of second financial
upgradation to him under the ACP scheme w.e.f. the due date.

2 He seeks the following reliefs:

(a) Declare that the applicant is eligible and entitled to get the 2nd Assured Career Progression Scheme benefits in scale of pay of Rs. 8000-13500/- with effect from 25.10.2000 as ordered and declared in Annexure A-1 on completion of his eligibility period of 24 years regular service with the Central Plantation Crops Research Institute.

(b) Set aside Annexure A-2 only in so far as it prescribes 25.10.2001 as the date of effect of financial upgradation, instead of 25.10.2000, the due date on completion of 24 years regular service of eligibility period for 2nd ACP financial benefits arising therefrom to the applicant forthwith or within a time limit to be fixed by this Hon'ble Tribunal.

© Set aside Annexures A-4 and A-7

(d) Issue necessary directions to the respondents to grant the applicant the ACPL benefits from his due date of 25.10.2000 of completion of the eligibility period of 24 years regular service as the date of effect of 2nd Assured Career Progression upgradation to the scale of pay of Rs. 8000-13500/- and grant disburse to him; all monetary benefits arising therefrom forthwith or within a time limit to be fixed by this Hon'ble Tribunal

(e) costs of these proceedings

(f) Grant such other reliefs as this Hon'ble Tribunal deems fit and proper.

3 The facts as submitted by the applicant are: The applicant joined the service of CPCRI as a direct recruit Assistant on 25.10.1976 and at present is working as Assistant Administrative Officer in the office of the first respondent since 28.12.1995. The ACP scheme was introduced by the Government of India wide OM dated 9.8.1999. The respondents did not implement the ACP scheme issued by the Government and the applicant was constrained to submit representations dated 13.11.2000 and 26.11.2003 before the 1st and 3rd respondents. As no reply was received from them he

(64)/99-CDN dated 30.9.1999. It is admitted that the applicant was appointed on 25.10.1976 and that he qualifies for the second financial upgradation on 25.10.2000. According to them mere completion of 24 years of service does not entitle him to the grant of higher scale and there shall be a Selection Committee (DSC) for the purpose of processing the cases for grant of benefits under the ACP Scheme. The case of the applicant was accordingly considered by the duly constituted DSC of the ICAR and it had recommended the grant of second financial upgradation to the applicant only w.e.f. 25.10.2001. The DSC enjoys full discretion to devise their own methods and procedure for objective assessment of the suitability of the candidate to be considered by them. A mere "satisfactory overall grading" in the ACRs does not alone entitle an officer for promotion/placement to the next higher grade. The DSC after taking into consideration the ACRs and other relevant records of the applicant and the provisions of the Scheme have recommended his case w.e.f. 25.10.2001. The representations of the applicant have been examined in accordance with the above view and he has been informed accordingly. There has been no arbitrariness on the part of the respondents as stated by the applicant.

6 The applicant has filed a rejoinder reiterating his earlier averments. It is specifically pointed out that the DSC was not justified in ignoring the "satisfactory overall grading" as pointed out by the respondents in their reply and if the entries in the ACRs are not upto the "bench mark" the downgrading in the ACR was required to be communicated before consideration of his case and this has not

approached the third respondent through proper channel to extend the benefit of ACP Scheme at the earliest. Thereafter by order dated 8.11.2004 (Annexure A-2) he was granted the second financial upgradation w.e.f. 25.10.2001 along with one Shri T.K. Narayanan Nambiar who was granted the upgradation w.e.f. 9.8.1999. Though the applicant submitted a representation on 1.12.2004 seeking the reasons for not granting the benefit from the due date i.e. 25.10.2000, only by Annexure A-4 dated 17.3.2005, the respondents have informed him that the Departmental Screening Committee (DSC for short) recommended the grant of upgradation to him only w.e.f. 25.10.2001.

4 According to the applicant there are no disciplinary proceedings are pending or contemplated against him or any adverse remark or downgrading in his ACRs have been communicated to him which could adversely affect the grant of ACP benefit. The DSC has not made out any case that he is unfit to be put in the scale of Rs. 8000-13500/- and it has no authority to postpone the eligibility period of the applicant. All other employees in the office of the first respondent including his juniors have been granted ACP benefit from their respective due dates and there is no reason for discriminating the applicant alone in clear violation of the principle of equality and equity. The decision of the respondents has resulted in denial to him of an yearly increment of Rs. 350/- causing a recurring loss of monetary benefits and also has affected his gratuity and pension.

5 Per contra, the respondents submitted that the ACP scheme was extended to ICAR employees wide ICAR endorsement No. 21

been done in the case of the applicant. Moreover, the applicant's juniors one Shri Alagamuthu has "average" grading in his ACR and is in no way better than the applicant, but has been granted ACP benefit from the due date. It has been submitted that the the statement of the respondents are not bonafide and the ACR records need to be looked into by the Tribunal.

7 The counsel for the applicant submitted argument notes and the respondents have produced the ACR folder of the applicant.

8 We have gone through the pleadings and the records produced by the respondents.

9 The question arising for consideration here are whether (1) the financial upgradation contemplated under the ACP scheme fall due automatically on the due date on completion of 12/24 years of service and if not (2) whether the DSC is empowered to postpone the grant of the benefit and (3) in the case of the applicant whether the instructions and guidelines on the subject have been followed correctly or not. The ACP scheme which has been introduced w.e.f. 9.8.1999 envisages grant of two financial upgradation to Group-B, C and D employees on completion of 12/24 years of continuous service respectively. The scheme envisages merely placement on the higher scale on notional basis, does not amount to final or regular promotion. The conditions for grant of benefit under the scheme have been enumerated in the scheme itself contained in O.M. No. 35034/197-Estt(D) dated 9.8.1999. The first question is answered by para No. 6

of the Scheme itself which reads as:

"6. Fulfillment of normal promotion norms (bench mark, departmental examination, seniority -cum-fitness in the case of Group-D employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restrictions of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advance,etc.) only without conferring any privileges related to higher status (e.g. Invitation to ceremonial functions deputation to higher posts, etc.) shall be ensured for grant of benefits under the ACP Scheme:

10 In para 6.2, it has been laid down that the composition of the Screening Committee shall be the same as that of a DPC prescribed under the relevant Recruitment Rules for regular promotion in the higher grade to which financial upgradation is to be granted under the ACP Scheme. From this it is evident that the Departmental Screening Committee has all the power of a DPC and guidelines of the Department of Personnel & Training for the functioning of the DPCs would apply in such cases also. It is therefore necessary for the DSC to examine the ACRs and other service records produced before it to arrive at an objective assessment of the suitability of the candidates for grant of financial upgradation under the ACP scheme. The DSC would enjoy full discretion to devise suitable methods for assessment of the merit. We therefore cannot accept the contention of the applicant that the DSC had no authority to postpone the eligibility period or to declare him to be unfit to be granted ACP w.e.f. the due date.

11 The next question that arises is whether the DSC has made an objective assessment or had discriminated against the applicant vis-a-vis others. The applicant has also contended that the DSC has not furnished any reasons for postponing the due date in his case by one year. To ascertain the correct position we have examined the ACRs of the applicant as produced by the respondents. The proceedings of the DSC have not been produced. The gradings in the ACR records of the applicant for the years 1993-94 to 1999-2000 which includes the relevant period that would have been taken into consideration by the DPC for considering the eligibility of the applicant on the due date of 25.10.2000 is summarised in the following table:-

<i>Year/Period</i>	<i>Grading</i>	<i>Remarks</i>
1.4.1993 – 31.3.1994	Good	“Very good” by reporting officer downgraded to “Good” by Reviewing Officer
1.4.1994 - 31.3.1995	Very Good	
1.4.1995-27.12.1996	Good }	Good
28.12.1996-31.3.1996	Average }	
01.04.1996 – 31.3.1997	Average	
1.4.1997 – 31.3.1998	Good	“Very Good” By the Reporting Officer down graded to “Good” by the Reviewing Officer.
1.4.1998 – 31.12.1998	Average }	Average
01/01/99 to 31.3.1999	Good }	
1.4.1999 -31.3.2000	Good	

12 According to the instruction in Annexure A-1, the DSC is to meet in advance and also meet twice in a financial year and cases mature during the second half of the particular year shall be taken up for

consideration in the first week of July of the year. Accordingly, the case of the applicant should have been considered in the first week of July 1999. According to the respondents all the cases in the ICAR Institute including the applicant's case were placed before the DSC based on the approval of the Committee communicated by ICAR letter dated 2.11.2004. Since the applicant was being considered for his eligibility w.e.f. 25.10.2000 even though the DSC has met in 2004, normally the ACRs for the preceding five years i.e. From 1994-95 onwards upto 31.3.2000 would have been considered by the Committee. Since the proceedings of the Committee has not been produced before us, assuming that the normal guidelines of the DPC have been followed for looking in to the preceding five years Reports, the applicant has three "Good" reports and two "Average" reports. The ACRs of 1995-96 has to be considered as "Good" only for it is written in two parts, as the report covering the longer period has to be taken in to account in accordance with the instructions of the DOPT. On the same ground, the report of 1998-99 has to be taken as "Average" only. The reports of 1996-97 and the first part of 1998-99 have been gone through and we find that these are written by the same officer. In fact we find from the entire record of the applicant that only one particular officer has given "Average" report to him. The report for 1998-99 is in two parts, the first part of the report in which "Average" report has been written by the same officer and the second part has been written by another officer giving the grade of "Good" and has been accepted by the Reviewing Officer. The remarks against the various columns relates to the applicant's knowledge of work and quality of output have been considered as

"Good" only in the report, but in the general assessment the grading has been given as "Average". Certain parameters have been rated as "Average" without giving any reasons. The same Reviewing Officer who accepted this remark has in the second part of the period ending 31.3.999 assessed his work ad "Good". If the DSC had assessed the report objectively instead of being merely led by the over-all grading entered in the ACR, these discrepancies would have been noticed. It is also a fact that the applicant's grading prior to 1995 and subsequent to 2000 are "Very Good". There is no indication in the reply statement whether the benchmark is "Good" or "Very Good". We assume that it was "Good" only. The post evidently falls under the Group-B category. The ACRs of the applicant also show that there was down- grading in the ACRs from "Very Good" to "Average" for some years from 1994-95 to 1995-96 and again from 1997-98 to 1998-99. These falls in gradings were not communicated to the applicant. The counsel for the applicant in the argument notes has made a reference to the decision in O.A. 27/2003 which also pertains to the assessment made by the DPC for promotion to the category of JTA in the same organisation i.e. CPCRI, Kasaragod under the ICAR. Prima facie we see that the respondents in that case has taken the stand that the DPC did not recommend the case of the applicant therein as she did not possess the required qualification as reflected by the overall performance assessed by the DPC by making an independent evaluation of the entries of ACRs in various attributes namely intelligence, discipline, honesty, etc. The stand of the respondents in the two cases are diametrically opposed because in the earlier case the DPC has made independent evaluation of the

ACRs whereas in the present case no such independent evaluation was found necessary. Thus, we find that the DSCs in this organisation are following different yardstick. It is also our finding that had the DSC made an independent evaluation, the evaluation in the ACRs would have been satisfactory.

13 On the question of non-communication of adverse entries, the applicant has relied on the judgement in UP Jal Nigam and Others Vs. Prabhat Chandra Jain and Others (1996) 2 SCC 363 and Udai Krishna Vs. Union of India (1996) 33 ATC 802). In the order of the Apex Court it has been held that downgrading of the overall grading below the "Bench Mark" should be considered as an adverse remark and the officer downgrading the remark should give specific reasons for doing so. However, on this question there is a plethora of judgments for and against, whether such a downgrading below "Bench mark" should be communicated. We do not think it necessary to go into the details of the case. Suffice it to say that though "Average" is not to be considered as an adverse remark, and therefore not communicable in accordance with extant instructions, such remarks when they have the effect of downgrading the entire performance of another for the year resulting in a steep fall from the benchmark for promotion, irreparable harm can be caused to the officer if they are not communicated and the officer put on notice. The judgment in UP Jal Nigam case, therefore has universal relevance in all such cases even though the Hon'ble Supreme Court has later clarified in Major Bahadur Singh's case that the said judgment is applicable only to the facts of that case.

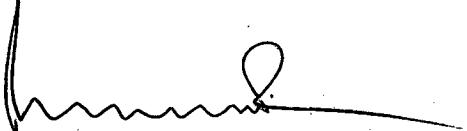


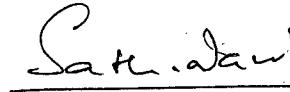
14 Prima facie we see that the "Average" Report for one year i.e. 1996-97 and that for the part of the year 1998-99 are not based on an objective assessment, which fact the DSC was empowered to examine and exercise its discretion whether to accept the "Grades" given by the competent authorities or to be guided by its own overall assessment of the ACRs. Apart from the above, even from the point of view that out of the 5 years reports the applicant had three "Good" Reports conforming to the bench mark, there was no reason to consider him unfit to be given ACP from the due date. It is also pertinent that the DSC did not furnish any reason why it considered to postpone ACP in the case of the applicant for one year. The respondents have also not controverted the specific contentions raised by the applicant regarding his juniors particularly Shri Alagamari Muthu whose ACRs contained "Average" gradings but was considered by a Committee in the year 2005 and granted the benefit from the due date. Evidently there is no consistency in the recommendations of the Committee as well as in the averments of the respondents in the OAs filed before us.

15 For the above mentioned reasons, we are of the view that the action of the respondents in arbitrarily postponing the due date of second financial upgradation of the applicant without furnishing proper reasons is illegal. We therefore set aside Annexure A-2 to the extent it prescribes 25.10.2001 as the date of second financial upgradation and direct the respondents to grant the second financial upgradation to the applicant from the due date on completion of 24 years regular service and make available all the monetary benefits

arising therefrom. This shall be done within two months from the date of receipt of this order. The OA is allowed. No costs.

Dated 3.8.2007.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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