

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 536 of 2013

Tuesday this the 14th day of July, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mr. R. Ramanujam, Administrative Member

V.A. Sudhakaran, Plumber, T3,
Central Institute of Fisheries Technology,
Malsyapury PO, Cochin -29,
Residing at Vettukadavil House,
Nettor PO, Kochi.

..... **Applicant**

(By Advocate : Mr. Poly Mathai)

V e r s u s

1. Director General,
Indian Council for Agricultural Research,
Krishi Bhavan, Dr. Rajendraprasad Road,
New Delhi – 112 001.

2. The Director,
Central Institute of Fisheries Technology,
Matsyapuri PO, Cochin – 29.

..... **Respondents**

(By Advocate : Mr. P. Santhosh Kumar)

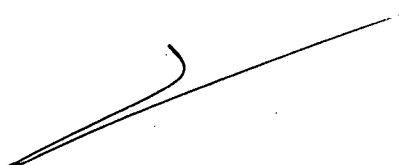
This application having been heard on 1.7.2015, the Tribunal on

14.07.2015 delivered the following:

ORDER


Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member -

This Original Application is filed by the applicant challenging Annexure A1 order passed by the 1st respondent. The applicant requested that the certificate produced by him should be treated as higher certificate as



per Technical Service Rules (for short TSR), by the 1st respondent. The case of the applicant can be stated as follows:


1.1. The applicant joined service in 1985 as a Plumber. At that time trade Plumber was classified auxiliary service. In 1996 the post of Plumber was again re-classified as Technical. Based on that reclassification the applicant claimed promotion claiming his prior service from 1985 onwards on the basis of 5 yearly assessment promotion. He approached this Tribunal filing OA No. 753 of 2001. His claim was allowed by this Tribunal entitling him for promotion for the services rendered prior to 1996, as evidenced by Annexure A2. That was challenged by the respondents by filing Writ Petition – WP© No. 24208 of 2004 which was dismissed as per judgment dated 29.9.2006 vide Annexure A3. That was again challenged by the respondents before the Hon'ble Supreme Court where it is now pending as Civil Appeal No. 3494 of 2008. The Recruitment Rules relating to Technical Services was amended in the year 2000. Prior to that amendment the qualification prescribed for promotion to category-II was degree, diploma, higher certificate which is more than one year duration vide Annexure A4. The applicant has completed the course in the trade of Plumber from Government I.T.I as evidenced by the certificate Annexure A5. There is no course available in the trade of Plumber under the I.T.I which is for a period of more than one year. The course underwent by the petitioner was only for a period of one year. A certificate was issued by the competent authority to show that there is no course available under the I.T.I, in the trade Plumber



which is of more than one year duration. When a similar question arose for consideration in OA No. 479 of 2010 it was held by this Tribunal that certificate showing one year duration is a higher certificate as required under old T.S.R in the case of Carpenter (vide Annexure A7). Therefore, the applicant made request before the 1st respondent to consider his certificate as a higher certificate and to grant him promotion based on the old T.S.R. He did not file any option to come under the new T.S.R. The request made by the applicant was rejected by the 1st respondent. A representation Annexure A8 was submitted by the applicant based on Annexure A7 judgment. But it was rejected as per Annexure A1. Hence, the applicant contends that the Annexure A5 certificate obtained by the applicant should be declared as a higher certificate under Annexure A4 rules and to give him all consequential benefits.

2. The claim made by the applicant was resisted by the respondents by filing reply statement raising the following contentions:

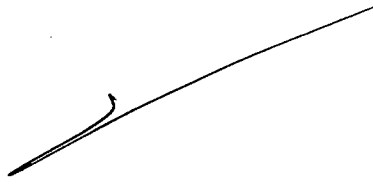
2.1. Indian Council for Agriculture Research (for short I.C.A.R.) is a society registered under the Societies Registration Act. The Governing Body of I.C.A.R. is empowered to exercise all executive and financial powers of the Society which also include creation of post and prescribing the conditions of service of the employees of the different units of the Council. The T.S.R. of I.C.A.R. were initially introduced in 1975 and were amended and modified subsequently from time to time. The technical staffs were



grouped into three different categories. The applicant was appointed as Plumber on 11.1.1985. He was inducted to category-I and adjusted as T-1 (Plumber) in the pay scale of Rs. 975-1,540/- and he was fitted under the functional grade-III "workshop including workshop staff" with effect from 29.6.1996. He was granted merit promotion to the grade of T-2 through career advancement scheme which was available under the TSR.

2.2. Since the applicant has not exercised option for old TSR and as he does not have the qualification of Bachelors Degree during the relevant period he would be eligible for promotion to the Grade T3 only after completion of ten years of service under the modified TSR. That was in fact granted to him with effect from 29.6.2001 on the recommendation of a duly constituted assessment Committee. The applicant has been availing the benefit of promotion to T3 grade granted under the modified TSR since then. Therefore, the fact that the service conditions of the applicant are covered under the provisions of the modified TSR applicable from 3.2.2000 has thus become absolute.

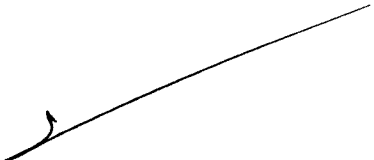
2.3. OA 479/2010 was dealt with on the strength of the option exercised by Shri Gopakumar the applicant therein for the old TSR while the service conditions of the applicant herein are covered under the provisions of the new TSR.



2.4. The question of deriving the benefit of one year course certificate on whatsoever reason would become necessary only when the applicant has exercised the option for old TSR applicable prior to 3.2.2000 and not thereafter. OA 479/2010 related to a case where the option in question was exercised under the old TSR. Since the applicant is covered under the provisions of the new TSR applicable from 3.2.2000 he cannot seek relief based on the order passed in OA No. 479/2010.

3. In the rejoinder filed by the applicant he further contends that the ICAR had issued further clarification on the new TSR, as per notification dated 5.1.2002 and has given similarly placed persons a chance for re-option. That was further modified as per Council letter No. 19(10)/04 Est., dated 19.10.2006 as per which a further chance of option was issued to concerned persons. Therefore, the contention that option once exercised will be irrevocable and final is not correct, since the ICAR has given three chances to similarly placed persons for exercising option.


3.1. The applicant availed his first promotion only on 29.6.2001 though he had joined service on 11.1.1985. During the entire span of 28 years of service the applicant got only two promotions one in 2001 and another in 2011 but similarly placed persons had been given three or more promotions in their career. Therefore, he contends that he has to be treated as an employee coming under pre-modified TSR and that he is eligible for all consequential benefits thereafter.



4. Heard the learned counsel for the applicant Mr. Poly Mathai and Mr. P. Santhosh Kumar, learned counsel appearing for the respondents and perused the pleadings and records.


5. The point for consideration is whether the applicant is to be treated as an employee continuing under old TSR (Annexure R4) and whether Annexure A5 certificate obtained by him is to be treated as a higher certificate under Annexure R4 Rules and whether he is entitled to get the consequential benefits ?

6. The applicant and two other persons had earlier filed OA No. 753 of 2001 before this Tribunal contending that their eligibility for five yearly assessment promotion should be determined with reference to their length of service. As per Annexure A2 order, this Tribunal directed the respondents to reckon the services rendered by the applicants therein for the five years ending with 29.6.1996 for the purpose of assessment promotion under the TSR in the relevant grades or for the purpose of any other incentive to which the technical service personnel are entitled as per the relevant TSR. The respondents therein challenged that order by filing Writ Petition No. 24208 of 2004. As per Annexure A3 judgment that Writ Petition was dismissed by the Hon'ble High Court. It was clarified in Annexure A3 that the services to be reckoned in terms of paragraph 6(2) of Hand Book of ICAR Technical Service is the service in the grade and not their entire



service. It is the admitted case that the respondents have filed Civil Appeal before the Hon'ble Supreme Court and it is pending there as Civil Appeal No. 3494 of 2008.


7. It is not disputed that the new TSR came into force with effect from 3.2.2000 as evidenced by Annexure R2(a). It is also not disputed that while circulating Annexure R2(a) among the technical staff members they were asked to exercise their option in writing within a period of 30 days to the Director of the Institute concerned whereby every individual staff member was given a chance to opt for the existing TSR. It was further specified therein that if a person does not exercise the option he will be deemed to have opted the new provisions of TSR applicable from 3.2.2000. It is not in dispute that the applicant was aware of Annexure R2(a) the new TSR and he was also aware of the fact that he has to exercise the option within 30 days as mentioned therein. Admittedly the applicant did not submit his option statement thereby he has opted to be governed by the new TSR [Annexure R2(a)]. It is also important to note that it was during the relevant time when new TSR was made applicable, the applicant has chosen to be governed by the new TSR (by not filling option statement to continue under the old TSR) than, Annexure A2 OA was filed seeking so many reliefs. Annexure A2 would also show that the applicant would be entitled to other benefits or incentives as per the relevant Technical Service Rules which can only be the new TSR applicable to the applicant as on date by his own conduct by not filing option statement to continue under the old TSR. At no time during the



pendency of Annexure A2 or subsequently during Annexure A3 he raised any claim that he should be governed by the old TSR or that he should be allowed further option to continue under the old TSR. Now this application has been filed in the year 2013 after about 13 years, on the premise that another similarly placed employee was granted relief in OA No. 479 of 2010 as per order dated 3.4.2012. Annexure A7 is that order. The argument proceeds on the footing that as per Annexure A7 this Tribunal has found that certificate of one year duration issued to that applicant in Carpentry was treated as a certificate equivalent to two years diploma course.


8. It is argued by the learned counsel for the applicant that as per Annexure A7 this Tribunal directed the respondents to consider treating the one year course of the applicant therein in Carpentry trade as higher certificate for the purpose of promotion to T-II(3) category as was done in the case of two other employees similarly placed as the applicant therein. But the respondents would point out that so far as the applicant in Annexure A7 is concerned he had opted to continue under the old TSR and so Annexure A7 cannot come to the rescue of the applicant herein who did not opt to be governed by the old TSR. If only the applicant is governed by the old TSR the question of treating the one year course certificate equivalent to two years diploma course certificate would arise, the respondents contend.

9. The applicant is a Plumber, who after promotion in the year 2011, falls, under the category T-3. It is vehemently argued by the learned counsel



for the applicant that the certificate issued by the competent authority would show that there is no course available in ITI for Plumber trade having a course of more than one year, in support of which he has produced Annexure A6. Therefore, according to the applicant the course certificate relied upon by the applicant in this case and the course certificate relied upon by the applicant in Annexure A7 are identical and so the applicant herein should be treated equally with the applicant in Annexure A7. But it is pertinent to note that the applicant therein was granted the relief because he was governed by the old TSR and since he had filed the option statement at the relevant period. It is contended by the applicant that even after the expiry of the 30 days period the Department has allowed option statement to be given in the year 2002 and 2006. That also does not come to the rescue of the applicant since the applicant did not file any such option statement in 2002 or 2006. Annexure A2 order was pronounced only on 30.3.2004. During that period of four years also the applicant did not think it proper to file option statement.


10. It is vehemently argued by the learned counsel for the applicant that the applicant was satisfied with the order passed by this Tribunal in Annexure A2 as per which the applicant was entitled to get his due promotion. Since that order was confirmed by the Hon'ble High Court as per Annexure A3 there was no occasion or necessity for the applicant to file option statement to be governed by the old TSR. The applicant now contends that since the respondents have filed Civil Appeal before the



Hon'ble Supreme Court and as the same is now pending, he will not be granted the relief given in Annexures A2 and A3 and that is the reason he has now chosen to come before this Tribunal seeking a relief akin to the one granted to the applicant in Annexure A7. But the applicant in Annexure A7 had filed the option at the relevant time. But the applicant herein continued to be governed in the new TSR.


11. It was pointed out by the respondents that since the applicant did not exercise his option to continue under the old TSR he would get promotion only after completion of 10 years service under the modified TSR. The applicant does not have the qualification of Bachelors degree in the relevant field required under the new TSR. It is not disputed that after the completion of ten years service under the modified TSR the applicant was granted one promotion with effect from 29.6.2011.

12. The applicant does not forego the promotion so granted to him under the new TSR. According to the respondents since the applicant has been availing the benefit of promotion to T-3 grade granted under the modified TSR he cannot come with a request to unsettle the position on the pretext that he could not get the benefit under Annexures A2 and A3 because of the pendency of the Civil Appeal before the Hon'ble Supreme Court. It is submitted by the learned counsel for the applicant that pursuant to the direction issued in Annexure A7 the applicant therein was granted the relief treating the 'one year course certificate' as equivalent to the diploma course



certificate (higher certificate) but according to the respondents it was granted as the applicant therein had chosen to continue under the old TSR. It is also contended by the applicant that three other persons namely S/Shri/Smt C. Rajendran, Jose Kalathil and V.C. Mary who have also one year course certificate in their respective trade were given promotion by the respondents and they were in fact promoted to the grade T-5 treating their service as equal to two years diploma certificate/higher certificate. But the respondents would contend if the applicant is allowed to have an option now to be governed by the old TSR it will be opening flood gates of litigation since there would be thousands of similar employees who had opted to come under the new TSR, to have a rethinking now to opt for the old TSR. The applicant who did not file any option statement and who allowed himself to be continued to be governed by the new TSR without any demur for more than 12 years cannot be now allowed to have a re-option to come under the old TSR.

13. It is important to note that even during the pendency of Annexures A2 and A3 the applicant was governed by the new TSR. That matter is now pending before the Hon'ble Supreme Court. For the reasons aforesaid we are not inclined to allow the applicant at this stage to have a re-option to choose old TSR. To that extent this OA must fail. But considering the peculiar circumstances of this case, the respondents could, perhaps sympathetically consider the request of the applicant and all those similarly placed to switch over to the old TSR provided they give up the benefits if



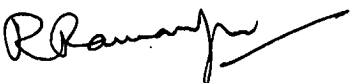
any obtained under the new TSR. The respondents may keep in view the fact that they had granted relief to the applicant in Annexure A7 and three other persons though of course they had filed option statement at the relevant time. The fact that the applicant could get only two promotions during the whole period of 28 years of service though other similar employees were granted three or more promotions could also be kept in view.

14. In matters of pay fixation or channel of promotion, the purpose of granting an option to the employee is to enable him to choose the most beneficial course. The time limit prescribed for giving such an option is for administrative convenience as it is not possible for the administration to wait endlessly for the employee to make his option. Further the provision that the option once exercised cannot be changed is also for administrative convenience. However, there could be instances where an employee is not in a position to make an informed choice or in extreme cases, the choice made turns out to be not beneficial to the employee for reasons entirely beyond his control. If an employee has reasonably opted for what he perceives to be beneficial based on normal circumstances and if the circumstances completely change, a reconsideration may be called for. However, if such reconsideration is given only in cases of particular individuals, it could lead to a charge of favoritism or bias. But a review could always be made for a class or category of persons who had made options which subsequently turned out to be not beneficial because of

unforeseen events. In such a situation, the authorities would be fully within their rights to allow a revised option for all such persons similarly placed as a class or a category. We do not want to comment whether the applicant's case would necessarily fall into one such category. It is for the respondents to consider if the circumstances submitted by the applicant call for such a review and whether more than one person is affected by the unforeseen events subsequent to the exercise of the option and whether they form a distinct class or category that deserves a sympathetic consideration.

15. We clarify that this is not a direction to consider the case of the applicant exclusively for a revised option. Administrative convenience and repercussions of permitting the likes of the applicant to exercise a revised option must equally weigh with the authorities while taking a final decision.

16. We dispose of this OA with the aforesaid observations. No order as to costs.


(R. RAMANUJAM)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

“SA”