

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 563 of 2008

Thursday, this the 10th day of September, 2009

CORAM:

Hon'ble Mr. George Paracken, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

Somy Kuriakose, aged 36 years,
 W/o Paul George, Senior Scientist,
 Central Marine Fisheries Research Institute,
 Cochin-18, Residing at : Flat No. I, Park Land
 Apartments, Kaloor - Kadavanthara Road,
 Cochin - 682 017.

Applicant

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. The Indian Council of Agricultural Research,
 Krishi Bhavan, Dr. Rajendra Prasad Road,
 New Delhi - 110 001, Through its Secretary.
2. The Director, Central Marine Fisheries
 Research Institute, Kochi-682 018.
3. The Senior Administrative Officer, Central
 Marine Fisheries Research Institute,
 Kochi-682 018.

Respondents

(By Advocate – Mr. T.P. Sajan)

The application having been heard on 10.9.2009, the Tribunal on the same day delivered the following:

O R D E R

By Hon'ble Mr. George Paracken, Judicial Member -

The applicant is presently working as Senior Scientist in the office of the 2nd respondent, namely, the Central Marine Fisheries Research Institute, Kochi. Vide Annexure A-3 office order dated 24.1.2008, on recommendation of the Departmental Promotion Committee, the competent

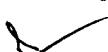


authority has approved her case for promotion along with those of two others, to the next higher grade. Thereafter, the applicant was promoted from the post of Scientist (Senior Scale) Rs. 10,000-325-15,200/- to Senior Scientist in the scale of pay of Rs. 12,000-420-18,300/- with effect from 23.5.2007. She was directed to exercise the necessary option regarding the date for fixation of her pay under FR 22 (1) (a) (1) in the promoted post within one month from the date of issue of the order. Accordingly, vide Annexure A-4 letter dated, she opted to fix her pay in the promoted post from the date of promotion. Since the option so made by her was not taken into consideration and not fixed her pay in the higher grade by the respondents, she made the Annexure A-5 representation dated 26.4.2008 requesting the authorities to look into the matter and to grant her the pay in the higher scale along with the arrears. However, the 2nd Respondent vide impugned Annexure A-6 letter dated 9.5.2008, informed her that the 1st Respondent, namely, the Indian Council for Agricultural Research has directed them to review the promotions to the post of Senior Scientist given to her under Career Advancement Scheme. Accordingly, the matter was taken up for review by her office and she was informed that the pay fixation will be taken up only after its completion.

2. The applicant has, therefore, filed this OA seeking a declaration that the refusal on the part of the respondents to grant her the benefit of promotion as Senior Scientist with effect from 23.5.2007 is arbitrary, discriminatory, contrary to law and hence unconstitutional. She has also sought a direction to the respondents to grant her the benefit of promotion

with all arrears of pay and allowances arising therefrom with interest at the rate of 9% per annum to be calculated from the date the arrears of pay and allowances fell due to her up to the date of full and final settlement. In this regard, the applicant has relied upon an earlier Order of this Tribunal in OA 92 of 2008 dated 27.8.2008 filed by another Scientist, namely, Smt. Rekha J. Nair working with the 2nd Respondent. In her case also, she was appointed as Scientist in the scale of pay of Rs. 8000-13,500/- w.e.f 24.6.1996. On the basis of the scheme of Career Advancement introduced with effect from 27-07-1998 whereby a scientist with Ph.D /M.Phil/M.Sc with four/five/six years of service would be eligible to ascend to the grade of Scientist (Senior Scale) in the pay scale of Rs 10,000 – 15,200/- subject to his being assessed meritorious. The next higher post is senior scientist/ Scientists (selection grade) for which the eligibility condition was Scientists (senior scale) with five years of service. The eligibility condition for further elevation to the post of Principal Scientist was eight years of service in the grade of senior scientist/Scientist Selection Grade. Vide order dated 13th February, 2008, the Council approved the promotion to Smt. Rekha J. Nair as Scientist (Selection Grade - Pay Scale Rs. 12,000-18,300/-) with retrospective effect from 24th June, 2007. However, said order was withdrawn by the respondents. This Tribunal after considering the arguments made by the counsel and perusing the pleadings allowed the OA. The operative part of the said order is as under:

"10. Arguments were heard and documents perused. The main question to be considered is whether Annexure R-1 is applicable to the case of the applicant or for that matter to any one who is governed by the current Assured Career Scheme.



11. Annexure R-1 clarification dated 27th August 1998 reads as under:-

"Attention is invited to the Council's letter No.1(14)/87-Per.IV dated the 28th October, 1991 regarding Career Advancement Scheme adopted by the Council w.e.f. 1.1.86 for the Scientists. According to this scheme every Scientist in the pay scale of Rs.2200-4000 will be placed in the Senior Scale of Rs.3000-5000 if he/she has:-

Completed 8 years of service after regular appointment as Scientist in the pay scale of Rs.2200-4000.

2 The Scheme further provide that every Scientist in the Senior Scale of Rs.3000-5000 will be eligible for promotion to the post of Scientist (Selection Grade)/Senior grade in the pay scale of Rs.3700-5700 if he/she has:

Completed 8 years of service in the Senior Scale provided the requirement of 8 years will be relaxed if his total service as Scientist is not less than 16 years."

3 This scheme also provides relaxation as follows:-

Scientists in the pay scale of Rs.2200-4000 for promotion to Scientist (Senior Scale) (Rs. 3000-5000) and/ or Scientist (Selection (Grade) Rs.1700-5700) will also be entitled to relaxation in the years of service by 3 years or one year respectively if they hold Ph.D. Or M.Phil degree.

4 Certain clarifications in this regard have been issued by the Council vide letter of even No. dated the 5th August, 1992 and 21st November, 1995. Para 2 of Council's letter of even no. dated 21st November, 1995 inter-alia clarified that a Scientist who is not found suitable for placement/promotion on a due date, may be re-considered after completion of one year qualifying service from the date from which he was considered earlier but not recommended for promotion. It was also clarified that in such cases, a Scientist cannot be recommended for promotion from back date. In other words, the unsuitability of a Scientist for promotion/placement on a due date will have the effect of postponing his promotion/placement for a period of one year (or more) as the case may be.

It is further clarified in this regard that the effect of postponement of promotion of Scientist for one year or more will also therefore have the effect of postponing his/her promotion on the second occasion for the next grade irrespective of whether it may have the effect of increasing the total period of service required for promotion/placement from

the Scientist scale to the scientist Selection Grade/Sr. Grade beyond 16/15/13 years as the case may be."

12. When the above clarification was issued, the scheme that was in force was the earlier scheme effective from 01-01-1986. The present scheme, though effective from 27-07-1998, in fact, was published only on 19th July, 2000. Once the present scheme came into existence, any clarification relating thereto alone should apply and not the one which related to the previous scheme. Of course, if the previous clarification is a basic condition precedent and is specifically extended to the new scheme, the same should certainly be applicable. If the said condition is scheme specific, application of the same has to be restricted to that scheme only and cannot be extended to the present scheme.

13. Respondents' contention is that the very purpose of clarification vide Annexure A-3 was with a view to ensuring that the scientists covered under the earlier scheme are not put in a disadvantageous position or put in other words, scientists in the new scheme should not derive undue benefits. If this were the intention, that would have been specifically mentioned in the very clarification that in order to mitigate hardship to those who were inducted when the earlier scheme was in existence, eligibility for promotion to the post of Scientists (Selection Grade) would be either five years of service as Scientist (Sr. Scale) or 11 years combined service of Scientists and Scientist (Sr. Scale). This was not so specified. The clarification as given in Annexure A-3 being unconditional, is universally applicable, both to those who were earlier governed by the previous scheme as well as to those who are governed by the current scheme. It must be pointed out here that the condition imposed vide Annexure R-1 has a significant and telescopic impact, as the same has the effect of postponing future promotions and thus, if it were to be kept under currency, it would have certainly been repeated as and when opportunity occurred, as for example, when further clarification had been issued vide Annexure A-9 as modified by Annexure A-8. This has not been the case here. Thus, viewed from any angle, when the scheme vide Annexure A-2 read together with clarification vide Annexure A-9 as modified by Annexure A-8 is analysed applicability of Annexure R-1 provision to the present scheme cannot be said to be existing.

14. Annexure A-9 is clear and unambiguous. It puts forth only two conditions for becoming eligible for consideration for higher post of Scientist (Selection Grade) which are as under:-

- (a) That the incumbent should be a scientist (sr. scale); and
- (b) That he should have either 5 years of service as Scientist (Sr. Scale) or a combined 11 years of service as Scientist and Scientist (Sr. Scale).



15. When the above two conditions are fulfilled, the individual should be considered for promotion to the next grade of Scientist (Selection Grade). Any further condition of postponement of promotion when initially at the time of promotion to the post of Scientist (Senior Scale) there had been a postponement, is beyond the scope of the above laid down conditions.

16. It is pertinent to point out here that while for promotion to the post of Scientist (sel. Grade), the minimum period of service as Scientist (senior scale) has not been prescribed when combined service of 11 years is considered, in so far as Principal Scientist is concerned, the stipulation of completion of 8 years of service has been re-emphasized. Thus, for promotion to Scientist (Selection Grade) there is no bar to consider the case when the aforementioned twin conditions are satisfied. Thus, the question of postponement of promotion on the ground that the earlier promotion was postponed does not arise.

17. The example given in the tabular form vide para 15 of the counter, as also extracted above, is totally misplaced.

18. In view of the above, we have no doubt in our mind that the earlier clarification vide Annexure R-1 cannot be extended to the present scheme. The applicant was rightly considered for promotion on completion of 11 years of service and no deviation from the rules had taken place when Annexure A-7 order has been passed and consequently, there was no need to keep the same either withdrawn or keep in abeyance. Annexure A-1 order dated 14-02-2008 is, therefore, quashed and set aside. Respondents are directed to operate the promotion granted to the applicant vide Annexure A-7 order dated 13-02-2008 and afford all consequential benefits to the applicant.

19. The O.A. is allowed on the above terms. Directions as above shall be complied with, within a period of 2 months from the date of communication of this order".

3. The learned counsel for the applicant Shri Mohan Kumar on behalf of Shri T.C. Govindaswamy has submitted that the applicant's case is fully covered by the aforesaid directions of this Tribunal. The learned counsel for the respondents have also agreed that the aforesaid order covers the case of the applicant. However, he has submitted that the said order of the Tribunal has been challenged before the Hon'ble High Court of Kerala in WP No.



33631 of 2008 and the same is pending.

4. In the above facts and circumstances of the case, we allow this OA. The respondents are directed to grant the applicant benefit of promotion of Senior Scientist with effect from 23.5.2007 with all arrears of pay and allowances arising therefrom with interest at the rate of 9% per annum to be calculated from the date from which the arrears of pay and allowances fell due to her up to the date of full and final settlement of the same. The respondents shall also issue necessary orders in this regard with the stipulation that the applicant shall be bound by the judgment of the Hon'ble High Court of Kerala in the Writ Petition No. 33631 of 2008 pending before it.

5. The OA is accordingly, allowed. There shall be no order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(GEORGE PARACKEN)
JUDICIAL MEMBER

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