

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 579 of 2011

Thursday, this the 01st day of December, 2011

CORAM:

**Hon'ble Justice Mr. P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member**

P.K. Harikumar, S/o. P. Balakrishnan Nair,
T-7-8 (Technical Officer), Fishery Environment
Management Division, Central Marine Fisheries
Research Institute, Kochi-18.

..... **Applicant**

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

V e r s u s

1. Senior Administrative Officer, Central Marine Fisheries Research Institute, (Indian Council of Agricultural Research), Post Box No. 1603, Ernakulam North (PO), Kochi-682 018.
2. The Director, Central Marine Fisheries Research Institute, (Indian Council of Agricultural Research), Post Box No. 1603, Ernakulam North (PO), Kochi-682 018.
3. Chief Administrative Officer-in-charge, Central Marine Fisheries Research Institute, (Indian Council of Agricultural Research), Post Box No. 1603, Ernakulam North (PO), Kochi-682 018.
4. Indian Council of Agricultural Research,
Represented by its Secretary, Krishi Bhavan,
New Delhi-110 114.
5. Union of India, represented by its Secretary,
Ministry of Agriculture, Krishi Bhavan,
New Delhi – 110 114.

..... **Respondents**

**[By Advocates – Mr. Varghese M. Esso (R1-4) &
Mr. Sunil Jacob Jose, SCGSC (R5)]**



This application having been heard on 21.11.2011, the Tribunal on
01-12-11 delivered the following:

ORDER

Hon'ble Mr. K. George Joseph, Administrative Member -

The applicant in this O.A was initially appointed as Technical Assistant (T-II-3 grade) under Category-II of the functional group Field/Farm Laboratory Technician with effect from 16.12.1985 in the India Agricultural Research Institute. He has been transferred to Central Marine Fisheries Research Institute (CMFRI) under the Indian Council of Agricultural Research (ICAR) on 19.02.2001. The academic qualification of the applicant at the time of initial appointment was B.Sc. (Botany). On completion of 5 years service in the grade of T-II-3, he was promoted to the post of T-4 (Senior Technical Assistant) with effect from 01.07.1991 and thereafter, as T-5 (Technical Officer) with effect from 01.07.1998. The applicant had acquired M.Sc. Degree in Botany with effect from 04.03.2004. As per letter dated 20.06.2003, the Technical personnel in T-5 grade would become eligible for assessment promotion to the next higher grade of T-6 in Category-II by removal of category bar from the 1st January of the year following the year in which the prescribed qualifications were acquired by them, provided they had completed 5 years service in the T-5 grade on that crucial date. As per Technical Service Rules, the applicant was eligible for promotion from the grade T-5 under Category-II to grade T-6 under Category-III with effect from 01.01.2005. The Assessment Committee which met on 05.08.2005 recommended the applicant for promotion to T-6 grade in Category-III as he was having the minimum essential qualification, i.e. M.Sc. on the date of assessment, i.e. 05.08.2005. Accordingly, he was promoted to T-6 grade erroneously as per the say of the



respondents with effect from 01.07.2003, i.e. the date he completed 5 years service in T-5 grade instead of 01.01.2005, i.e. the 1st day of the year following the year in which the prescribed qualification was acquired by him. The applicant was given an opportunity for giving his explanation vide Annexure A-3 memo dated 05.02.2011 before taking corrective measures for changing the date of promotion of the applicant. After considering his representation, the competent authority issued Annexure A-7 corrigendum dated 06.06.2011 modifying the effective date of promotion of the applicant to T-6 and T-7-8 grade in Category-III. Aggrieved, he has filed this O.A for the following reliefs:

- (i) Set aside Annexure A-7;
- (ii) Declare that the assessment promotions already granted to the applicant in T-6 and T-7-8 grade in Category-III are perfectly valid and not liable to be varied as proposed in Annexure A-7;
- (iii) Issue necessary directions to the respondents not to change or modify the effective dates of assessment promotions granted to the applicant to T-6 grade as proposed in Annexure A-7;
- (iv) Issue necessary directions to the respondents not to alter or refix applicant's pay fixation already done on the alleged modification/change of effective date of promotion pursuant to Annexure A-7 and also not to recover from the applicant, at any rate, any arrears of pay already given to him on his promotions to T-6 and T-7-8 grade in Category-III.

2. The applicant submits that change in the date of promotion at this highly belated stage is illegal, unreasonable and unsustainable. He is not responsible for the alleged mistake or clerical error, if any, occasioned or committed by the respondents and he should not be penalised at this distance of time. At the time of consideration by the Assessment Committee, the applicant was fully qualified for Category-III. The applicant has not



misrepresented to the appointing authority or manipulated the records regarding his qualification for consideration for promotion in Category-III, T-6 grade. The office in which the applicant is working is bound to verify the service book periodically. So also, the higher authorities are duty bound to scrutinize the service records. For no fault of the applicant, he is being penalised by issuance of Annexures A-3, A-5 and A-7 after a lapse of more than 6 years and after granting him further assessment promotions to T-7-8 grade.

3. The respondents in their reply statement submitted that the applicant is not eligible for promotion to T-6 grade with effect from 01.07.2003 as he was not possessing the minimum required essential qualification as on that date. Therefore, it is essential to rectify the erroneous promotion granted to the applicant with effect from 01.07.2003 in accordance with his actual entitlement as per provisions contained in the Technical Service Rules. On introduction of new modified Technical Service Rules (new TSR) on 03.02.2000, those who have not submitted option by the stipulated date are deemed to have opted for the new TSR. As the applicant did not make his option, he was brought under the new TSR as per the provisions contained in the new TSR. The Assessment Committee considered only possession of required essential qualification by the applicant on the date of assessment, i.e. 05.08.2005. Even though the period of assessment is from 01.07.1998 to 30.06.2003, he is eligible for merit promotion to T-6 grade only from 01.01.2005 as he was not possessing the minimum required essential qualification on the date of completion of 5 years in T-5 grade. The respondents never intended penalise the applicant. As he was promoted erroneously with effect from 01.07.2003, it

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is essential to rectify the erroneous promotion in accordance with applicant's actual entitlement.

4. We have heard Mr. P.K. Madhusoodhanan, learned counsel for the applicant, Mr. Varghese M. Easo, learned counsel for the respondents No. 1 to 4 and Mr. Sunil Jacob Jose, learned SCGSC for respondent No.5 and perused the records.

5. As the applicant did not exercise his option to be governed by the then existing Technical Service Rules (old TSR) in writing to the Director of the Institute within a period of 30 days from the date of issue of notifying the new TSR on 03.02.2000, the applicant is to be deemed to have opted for the new TSR as per rules. As per the new TSR, essential minimum required qualification for promotion to T-6 grade is 5 years service in grade T-5 as well as possession of educational qualification of M.Sc. degree. The applicant has acquired M.Sc. degree only on 04.03.2004. Therefore, his date of assessment promotion to T-6 grade should be from 01.01.2005 as per clarification dated 20.06.2003. As admitted by the respondents, the promotion of the applicant to T-6 grade with effect from 01.07.2003 instead of 01.01.2005, is a mistake. A bonafide mistake can be corrected by the authority without conferring any right on the employee. Hence, the respondents are within legal bounds to correct the mistake they have committed. But the mistake is corrected at a highly belated stage, i.e. after a lapse of 6 years. The applicant is not to be faulted for the mistake committed by the respondents. He did not commit any fraud nor he did make any false representation misguiding the respondents. He cannot be penalised for the

mistake on the part of the respondents. Therefore, recovery, if any, on account of the correction of the date of promotion of the applicant in T-6 grade with effect from 01.01.2005 and subsequent correction in the date of promotion to grade T-7-8 should not be made from the applicant. Accordingly, it is ordered as under.

6. It is declared that the respondents are entitled to modify the effective date of assessment promotion granted to the applicant to T-6 grade as proposed in Annexure A-7 order dated 06.06.2011. The respondents may alter or refix his pay fixation already done on the change of effective date of promotion pursuant to Annexure A-7 order with prospective effect. The respondents are directed not to recover from the applicant the arrears of pay already given to him on his promotion to T-6 grade and T-7-8 grade in Category-III.

7. The O.A is disposed of as above with no order as to costs.

(Dated, the 6th December, 2011)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.