

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM**

O.A.No. 587/2013

Dated, *Thursday*, the ^{25th} day of March, 2016

CORAM:

**HON'BLE MR. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE MR. E.K. BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

Dr. P.K.Martin Thompson, S/o Late J. Thompson,
aged 66 years, residing at 28/2305,
Ponneth South Road,
Kochi 682 020,
Technical Officer T-9 (Retd.)
Central Marine Fisheries Research Institute,
(Indian Council of Agricultural Research),
Ernakulam North P.O.,
Kochi, 682018)

.... **Applicant**

(Applicant by Mr. P.K. Madhusoodhanan, Advocate)

v.

1. The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi 110 001.
2. Indian Council of Agricultural Research (ICAR)
represented by its Secretary, Krishi Bhavan,
New Delhi 110 001.
3. The Director, Central Marine Fisheries Research Institute,
Indian Council of Agricultural Research,
Ernakulam North P.O.,
Kochi 682 018.
4. Union of India, through the Secretary,
Ministry of Agriculture, Krishi Bhavan,
New Delhi 110 001.

.... **Respondents**

**(Respondents by Mr. P. Santhoshkumar, Advocate (R1-3
Mr. N. Anilkumar, Sr.PCGSC (R) (R4) rep.)**

This Application having been finally heard and reserved for orders on
25.02.2016 and the the Tribunal on 31.03.2016 delivered the following:

✓

ORDER**PER: MR. U. SARATHCHANDRAN, JUDICIAL MEMBER:**

The grievance of the Applicant, a retired Technical Officer (T-9) of the Central Marine Fisheries Research Institute ('CMFRI' for short) under Respondent No.3, is that as he was paid a lesser pay than he was entitled to at the time of his superannuation, he gets his pension and retiral benefits at a lesser rate than those in the comparable grades in the Agricultural Research Service (ARS), Finance and Accounts Wing of CMFRI and that the wrong committed by the respondents is continuing even now. Though he sent a representation to the respondents pointing out his grievances scant regard was given to it due to the unscrupulous, arbitrary and discriminatory treatment meted out to him.

2. The applicant contends that there has been a historical parity of pay of Technical Officers of Category III with Scientists upto the grade of S-3 and also with the Administrative/Finance Accounts Officers of comparable grade in CMFRI right from the time of the 3rd Pay Commission. But on the implementation of the subsequent Central Pay Commission reports, Scientists belonging to the ARS received a considerable upward revision of pay-scales and the officials in the Administrative/Finance Accounts Wing also received similar upward revisions. The Technical Service personnel like the applicant received a step-motherly treatment even though the service rendered by them was "similar, identical, most inevitable and inescapable" as they were actively involved in research, educational, teaching and extension activities of CMFRI. U.G.C. pattern of pay was introduced for the Scientists in the A.R.S. category and the administrative officials were given the scales recommended by the pay commissions from time to time.

3. According to the applicant, while he was at T-8 Grade, during the implementation of the 5th Pay Commission recommendations the grades of T.7 and

OA587/2013

T.8 were merged. Consequently those who were at T-7 got an advantage of upward mobility whereas he, after putting the requisite length of service at each grades, had to bear the brunt of the merger without getting any financial benefits when he was promoted to T-9 grade from which he retired. He says that the subsequent Pay Commissions and the anomaly committees set up after each Pay Commission reports to set aright the anomalies also ignored the pleas of the technical grade officials for maintaining the historical parity in Pay Scales they had with similarly situated categories in the ARS and also with the officials of the comparable grades in the administrative wing of CMFRI. Applicant states that it was due to the lack of adequate representation of technical officers in the Joint Consultative Committee (JCM)/Central Joint Council Committee (CJCC) to canvass parity the technical officials' pleas were ignored.

4. Applicant states that he is a post-graduate and also has a Ph.D and therefore he was given academic and teaching assignments, as could be seen from Annexure Nos. A/1 to A/5. He was a member in the committee to revise the syllabus of M.Sc course in Mariculture. He was a member of other responsible committees also as seen in Annexure nos. A/7 and A/8. According to him this indicates that the services he had put in could be equated with those rendered by the scientists in the ARS. He states that despite airing his grievances on the anomaly in the Technical Officers' pay, respondents did not pay any heed to him. He sent Annexure A/9 representation to respondent No.1 to which the impugned Annexure A/10 reply was received without indicating any reasons for the rejection of his representation.

5. The applicant prays for:

(a) Declare that the applicant is eligible and entitled to be granted and refixed his pay equal to that of his counter parts in Agricultural Research Services of Comparable grades in grades T-6, T-7, T-8 and T-9 restoring historical pay parity among equals of comparable grades in ARC & TSR/Administrative/Finance & Accounts Officers, and all other service benefits arising therefrom to him, including refixation of his pay and retiral benefits, including pension accordingly and also grant and disburse to him all consequential monetary arrears arising therefrom.



(b) Issue necessary directions to the respondents to grant the applicant refixation of pay in scales of pay as of that his counter parts of comparable grades, in Agricultural Research Service of the ICAR, and further refix his retiral benefits including monthly pension accordingly as per law and further direct the respondents to grant and disburse to him the difference in all monetary arrears arising therefrom to him within a time limit to be fixed by this Tribunal.

b(b) Set aside Annexure A/10.

(c) Issue necessary directions to the first respondent to consider and pass orders in accordance with law on Annexure A/9 in the light of the rules and rulings on this behalf within a time limit to be fixed by this Tribunal and disburse the benefits arising therefrom to him expeditiously.

(e) Award costs of these proceedings to the applicant.

And

(f) Grant such other and further reliefs as this Tribunal deems fit and proper in the interest of justice.

6. Respondents contend that the mandates of scientific cadre and technical cadre under the Indian Council of Agricultural Research ('ICAR' for short) (Respondent No.2) are entirely different. CMFRI is one of the constituents of ICAR. Scientists are engaged in research work and technical personnel assist the scientists in the research work. The scientists of the Council are governed by UGC scales whereas technical personnel and administrative officials are governed by the replacement scales as recommended by the Central Pay Commissions. Hence the demand of the applicant to grant him UGC pay scales as admissible to scientist is not justified. The service conditions of administrative, scientific and technical cadres also are different. Therefore, there cannot be comparison amongst these cadres. Applicant was appointed as T-6, grade on 5.2.1971. He was granted promotion as T-7 with effect from 1.1.1985, T-8 with effect from 1.7.1991 and T-9 with effect from 1.7.1997. He was granted three advance increments in T-9 grade with effect from 107-2002. T-7 and T-8 grades were merged into one grade vide order dated 3.2.2000 and therefore, the request of the applicant to place him in the pay scale of Rs.12000-16500 in the grade of T-8 on 1.1.1996 and Rs.14,300-18300 in the grade of T-9 on 1.7.1997 which are higher pay scales than the pay scales attached to the technical cadre cannot be accepted. Agricultural Technical Service Rules (TSR) and Agricultural Service

Rules (ARS) were introduced in 1975. The service conditions of Scientists of ICAR are governed by Agricultural Research Service Rules whereas the technical personnel of ICAR are governed by technical service (TSR) rules. Respondent No.1 adopted UGC pay scales for its scientists with effect from 1986. The pay scales of technical personnel have been replaced with the pay scales as recommended by the Central Pay Commission. Since both the services have their own functional identities, the demand of the applicant to re-fix his pay equal to his counter parts in ARS of comparable grades cannot be allowed. The applicant had accepted the terms and conditions of technical service. The technical employees are recruited on the basis of interview, but the scientists are recruited on the basis of All India Competitive Examination (ARS) conducted by the Agricultural Scientists Recruitment Board (ASRB) New Delhi. The technical staff are also free to compete in the ARS examinations if they fulfill the eligibility criteria, with relaxation in age to a certain extent. In the case of technical staff, career advancement is governed by five yearly assessments. Such facility for career advancement does not exist for the administrative and supporting staff. The applicant's statement that the qualifications and nature of work of technical personnel are similar to those of Scientists of ICAR is not correct. Scientists are directly involved in research work but the technical personnel are doing only support service such as laboratory support analytical laboratory support, data collection etc. Even persons with qualifications of B.Sc. are selected to the category III of technical cadre.

7. A detailed rejoinder was filed by the applicant pointing out the need for maintaining the historical parity between the technical personnel, scientific personnel and also with the administrative cadre of equal grades that existed from the time of the third Central Pay Commission which was upset by the 4th and subsequent CPCs. He points out that after the 5th CPC recommendations were implemented from

OA587/2013

1.1.1996, the ICAR constituted a Committee headed by Dr. K.L. Chadha to consider the anomalies in respect of the pay of the Scientific and technical staff of ICAR but the recommendations of the Chadha Committee were not pursued by the ICAR. According to the applicant ICAR has not adopted the UGC pattern and pay scales and it has promoted senior scientists without PhD. degree as Principal Scientists which is opposed to the UGC norms in appointing principals in the academic institutions. Applicant states that he was involved in the multi-disciplinary academic activities of CMFRI and was involved in many of its research projects.

8. Additional reply statement was filed by the respondents reiterating their contentions in the reply statement.

9. We have heard Shri Madhusoodhanan, learned counsel for the applicant and Shri P. Santhoshkumar, learned counsel for respondents No.1 to 3 *in extenso*. Shri Madhusoodhanan referred to Annexure MA/1 to MA/4 documents produced along with MA 747/2015 indicating the revision of pay of the different categories of personnel like administrative officials scientists and the technical personnel and granting advance increments to them, subsequent to the retirement of the applicant. The applicant has also referred to a decision dated 7.3.2012 of this Tribunal in O.A. 882/2010.

10. At the outset itself, it is to be noted that the applicant had retired from service as technical officer T-9 Grade on 30.09.2006. Respondents contend that the O.A. is highly belated and hence it is barred by limitation. It is settled law that wrong fixation of pay and pensionary benefits is a continuing wrong and hence no limitation can be ascribed to such matters in view of its nature as recurring-successive wrongs. [see *Union of India v. Tarsem Singh* 2008 (2) SCC (L&S) 765]. Nevertheless, we take note that the applicant has raised protest against the discrimination in the matter of grant of his pay and emoluments for the first time

✓

OA587/2013

only after his retirement by way of Annexure A/9 representation dated 23.11.2012. Annexure A/10 rejection of the said representation is the impugned document in this case. We further note that the applicant had taken extreme care in modulating his reliefs as if the alleged failure to grant parity in pay and emoluments with the other cadres has resulted in an invidious discrimination resulting in incorrect fixation of pay and leading to incorrect payment of pension and other retiral benefits, so as to bring his grievances outside the purview of limitation. Though it has been pleaded that he had pointed out his grievances to the respondent authorities while he was in service no documentary evidence was produced in support of it. Applicant laments that the case of technical officers were not forcefully taken up in the JCM/CJCC because there were no representatives of technical officials in such committees.

11. Applicant has made elaborate pleadings in the rejoinder justifying the need for maintaining parity in the matter of pay and other emoluments of technical officials and scientists of similar grades. According to the respondents the recruitment, service conditions and the functions of these two cadres are totally different. Respondents points out that the recruitment of scientists is made by the Agricultural Scientist Recruitment Board on the basis of an all India competitive examination for the Agricultural Research Service (ARS) and that the Technical officers are recruited on the basis of interview. They state that the Technical officers can participate in the competitive examination for ARS cadre if they are otherwise eligible for the same.

12. Applicant states that he is possessing high educational qualifications like M.Sc and PhD. He claims that as indicated in Annexures A/1 and A/4, he had been entrusted with academic assignments including revision of syllabus for the postgraduate M Sc course in Mariculture taught at the CMFRI. Exhaustive pleadings have been made by the applicants in his rejoinder highlighting the need for an equal treatment in the matter of pay and emoluments of the technical officers with those of

the scientists of ARS cadre. It is also stated by the applicant that the administrative/finance accounts officials of CMFRI of equal cadre also had been given a raise in pay and emoluments during the successive Pay Commissions but the respondent authorities have meted out a discriminatory treatment to officials of the technical officers cadre.

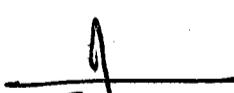
13. It is well settled that the concept of equal pay for equal work, though an off-shoot of the equality principles enshrined in the Constitution, has not been given the status of a fundamental right. It is a Constitutional ideal to be achieved, as envisaged in the Directive principles of State Policy. The Apex Court on various occasions had held that evaluation of the claims for equal pay for equal work has to be left to be determined by expert bodies like Pay Commission, as they would be the best judge to evaluate the nature of duties and responsibilities of the functionally comparable posts. It was also held by the Apex Court that if there is any determination of pay by a Committee / Commission the courts should normally accept it and the court should not try to tinker with such determinations unless it is shown that they were made with extraneous considerations. [see *Union of India and ors. v. Ram G. Gopal Agarwal and Ors.* 1998 (1) I.L.L.J 1233.] In *State of Haryana and Ors v. Charanjit Singh and Ors* 2006 (9) SCC 321 it was held that the proper forum/authority for determining parity in employment is an expert body. It was also held that the prayer of equal pay for equal work cannot be translated into a mathematical formula. In *S.C. Chandra and Ors v. State of Jharkhand and Ors* (2007) 8 SCC 279 the Apex Court held that the principle of equal pay for equal work can apply only if there is a complete and wholesale identity between two groups and that even if the employees in the two groups are doing identical work they cannot be granted equal pay if there is no complete and wholesale identity. The Apex Court observed that only because the nature of work is the same irrespective of educational

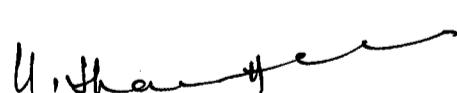
qualification, mode of recruitment, experience and other relevant factors, the principle of equal pay for equal work cannot apply. The court reiterated its earlier view that equation of posts and salary is a complex matter which should be left to an expert body and is a matter for the executive to discharge. The court warned that fixation of pay parity by the Court may result in cascading effect and reaction which can have adverse consequences.

14. In the light of the aforementioned pronouncements of the Apex Court, it appears to this Tribunal that the contentions raised by the applicant are matters which ought to have been dealt with by an expert body like Pay Commission. Now the 7th Pay Commission has submitted its report. We have not been informed whether the disparities pointed out by the applicant has been addressed by the 7th Pay Commission or not.

15. Learned counsel for the applicant submitted that the Annexure A/10 reply to his A/9 representation is cryptic and is bereft of any reasons. In view of the above observation that the grievances of the applicant are not to be dealt with by this Tribunal, the Tribunal need not look into aforesaid allegation of the applicant that Annexure A/10 is not supported with reasons.

16. In view of the above discussion, we hold that the O.A. is only to be dismissed. In the result, O.A. is dismissed. Parties shall suffer their own cost.


(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER


(U. SARATHCHANDRAN)
JUDICIAL MEMBER