

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 599 of 2006

Wednesday, this the 27th day of August, 2008

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER**

P. Shanker,
S/o. P. Peeraji,
Hindi Translator,
(T4), Central Institute of
Fisheries Technology, Cochin – 29,
Residing at CIFT Quarters,
No. 3/20, Thevara, Cochin – 15. ... **Applicant.**

(By Advocate Mr. TCG Swamy)

v e r s u s

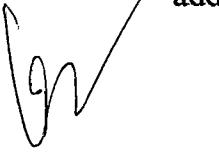
1. The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi
2. The Director,
Central Institute of Fisheries Technology,
Cochin – 29.
3. Dr. Jessy Joseph,
Assistant Director (OL),
Central Institute of fisheries Technology,
Cochin – 29.
4. The Senior Administrative Officer,
Central Institute of Fisheries Technology,
Cochin – 29 ... **Respondents.**

(By Advocate Mr. P. Jacob Varghese)

The Original Application having been heard on 21.07.08, this Tribunal on
27.08.08, delivered the following:

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant is presently functioning as Hindi Translator (T-4) in the scale of Rs 5,500 – 9,000 in the Central Institute of Fisheries Technology (CIFT). On the basis of the assessment made by the assessment committee, he was granted 3 advance increments with retrospective effect from 29-06-2001, vide Annexure A-1 order dated 07-10-2002. The applicant made representation dated 11-10-2002 (Annexure A-5) requesting for review of his case for promotion instead of advance increments granted but the same was rejected by the Sr. Administrative Officer stating that there is no provision for such review. The applicant submitted another representation dated 18-12-2002 (Annexure A-7) expressing his doubt as to whether the assessment by the assessment committee was influenced by the recommendations made in his assessment paper instead of assessing him on the basis of his confidential report for the assessment period and requested for review. Respondents had by Annexure A-8 reply stated that the Committee of experts had evaluated his work and all other relevant documents and then only recommended three advance increments for the assessed period and hence, the competent authority felt that no review is necessary. It was, however confirmed that re-assessment would be conducted in due course as per the provisions of Technical Service Rules. Undaunted by the successive rejection, the applicant submitted one more representation dated 23-04-2003 addressed to the Director General, ICAR for reviewing the result of his assessment (for promotion instead of three advance increments) vide Annexure A-9. As no response came from the addressee, various reminders were submitted by the applicant which were duly



forwarded to the higher authorities, vide Annexures A-10 to A-16. It was through Annexure A-17 letter dated 6th December, 2004, as sought for by the applicant under the R.T.I. Act that the applicant could come to know that the council had given its suggestion to the Director, CIFT to adopt an objective approach in this case by giving detailed cogent reasons for not recommending promotion, despite the fulfillment of prescribed benchmark. It was thereafter that the applicant was, with reference to his representation dated 25-10-2005 informed, vide Annexure A-2 order dated 25-10-2005 that his representation stood rejected after having been examined at the Council. In fact, in response to the applicant's application under the R.T.I. Act, the authorities had forwarded the minutes of the meeting of the Review Committee, containing its recommendation dated 07-10-2005 reaffirming its earlier recommendations. Another unsuccessful attempt was made by the applicant by preferring a representation dated 13-04-2006, which was also rejected and the issue was treated as closed, vide Annexure A-3. The applicant has preferred this OA on various grounds, which in nutshell are as under:-

- (a) Denial of promotion to the higher grade, despite the applicant having secured Bench Mark grading is illegal. No reason is given by the Assessment Committee to deny the applicant the benefit of promotion by varying or downgrading the prescribed benchmark granted to the applicant.
- (b) The very constitution of the assessment committee is contrary to Annexure A-4 Rules, particularly in the absence of an expert on the subject of Hindi/Hindi Translation. The entire process is arbitrary and contrary to law.

(c) Objective approach as suggested by the Council vide their letter dated 6th December, 2004 at Annexure A-17/1 has not been followed.

(d) Review of the report by Head of the Division Shri Ravi Kumr shown in the assessment form was also not based on any relevant materials. This is mainly because Shri Ravikumar was never working in the Institute during the period of assessment.

2. The applicant has, therefore, challenged Annexure A-1 to A-3 order and asked for quashing of the same and for a declaration that the applicant is entitled to be granted the merit promotion in T-4 Grade scale of Rs 5,500 – 9,000 w.e.f 29-06-2001 with consequential benefits.

3. Respondents have contested the O.A. According to them, the post of Hindi Translator was one of the auxiliary posts and consequent to the abolition of auxiliary post, the post of Hindi Translator was re-classified as Technical in the Grade T-II-3 in 1996. The case of the applicant was considered for assessment by a duly constituted committee of Experts which had evaluated his work with all other relevant documents and made its recommendations for grant of three advance increments in the same grade with effect from 29-06-2001. For assessment of the performance of technical personnel, the professional performance in relation to the duties and tasks assigned, spirit of cooperation, and teamwork and support to scientific work, personal behaviour organizational abilities/attributes etc., are to be taken into account. Annexure R-3 is the assessment of the Assessment Committee. Vide Annexure R-1 dated 12th December, 1989, the procedure of conducting review was discontinued. However,

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re-assessment was possible and as such vide Annexure R-5 order dated 30th September, 2003, the applicant was promoted to the next grade of T-4 in the scale of Rs 5,500 – 9,000 with effect from 29th June, 2002. It has also been mentioned that earlier, in a similar case of one Shri C. Rajedran, the CAT has dismissed the claim of the applicant therein.

4. In the additional reply statement, the respondents have further stated that the Government had declined to grant post facto sanction for amendment for conversion of certain posts including the post of Hindi Translator as Technical post, vide Annexure R-7.

5. The applicant has filed his rejoinder meeting the contents/contentions of the reply as well as the additional reply. He has contended "*It is not the function of the reviewer who is not a member of the DPC to recommend the nature of career advancement to be provided under the Technical service rules because that is the function of the assessment committee.*" Again, it has been contended, "*the alleged Head of the Division was one Shri Ravi Kumar who had joined the CIFT hardly six months prior to the date of the submission of the remarks and his remarks pertains to period while he was never in the CIFT at Cochin. More over, as a Senior Administrative officer, with very limited qualification in Hindi, he cannot be expected to have a proper understanding of the applicant's work as a Hindi Translator.*" It has further been contended that Annexure R-3 "*is only a consolidated detail of the performance by the applicant for the preceding 5 years filled by the applicant. The entire performance for the preceding 5 years*

supported by the Annual Confidential Reports written by the concerned officers and accepted by the concerned Accepting/reviewing authorities cannot be washed down the drain by the remarks of the Assistant Director (OL) who is generally an Officer of the rank of Group G gazetted. The assessment committee did not apply its mind and it is simply guided by the so called recommendations of the ADOL who is neither expert nor a member of the committee. If decision is taken in that manner, that lone is sufficient to hold the entire exercise of power as arbitrary and without application of mind. It will be clear case where the Committee has absolved itself of its responsibilities and was guided by a so called recommendation of a very low authority. The very object of the requirement of an expert in the committee is defeated. At any rate, there was no expert in the committee, as alleged in the O.A. " As regards Annexure R-7, according to the applicant, the same shall have prospective effect and cannot take away the rights already accrued to the Hindi Translators in the meantime.

6. Parties were permitted to file written arguments as well. Respondents have, in addition to filing the written arguments, also made available the original A.C.R. of the applicant.

7. Arguments were heard and documents perused. Before going into the merits of the case, a word about the contention in the rejoinder extracted above. The applicant is holding the post of Hindi Translator. His work was mainly translation of given material in Hindi for bi-lingual purposes, preparation of certain papers for Raj Bhasha Samaroh, assisting in preparation of news letter etc.,

as narrated by him in his self appraisal report in the A.C.R. The post of Hindi Translator had been categorized as Technical as the same which was originally a part of auxiliary cadre was to be recategorized as Technical due to abolition of the auxiliary post. Nothing less, nothing else. The post of Assistant Director (OL) has not been so categorized. Nonetheless, Assistant Director (OL) is certainly superior in post and status compared to that of the Applicant. The applicant has contended that the said ADOL has been clamouring for that post to be categorized as Technical so that she will also get career advancement as a technical person, which she is otherwise not entitled to in her present status. Such a contention and other contentions, "it will be clear case where the committee has absolved itself of its responsibilities and was guided by a so called recommendation of a very low authority is uncalled for, unwarranted. Even if some of the rights of the applicant get hampered by the act of the respondents, use of such language shall have to be avoided. One can be firm without being impolite. (see *Zunjarrao Bhikaji Nagarkar v. Union of India, (1999) 7 SCC 409*).

8. Now on merits. The contention of the applicant is that none in the assessment committee could be termed as experts nor can their assessment be independent of the assessments made in the Confidential Reports. We fail to understand as to on what basis does the applicant contends that none of the committee members is an expert. The Committee was constituted by the Chairman and the committee was led by an outsider. For assessing the merit of a Hindi Translator, does the applicant expect that the committee members should be Doctorates in Hindi or should have experience as Hindi Translators? The

contention that none of the committee members is an expert and as such the very constitution is violative of the rules is thoroughly meritless. We outrightly reject this contention of the applicant. In fact it is such a committee only which had recommended in the next assessment for promotion, which the applicant had zealously accepted!

9. As regards the next contention that the assessment committee report is not based on the ACRs, we have had occasion to peruse the A.C.Rs. Some of the remarks are as under:-

1997-98: Functions: "He is learning"

Quality of Technical Achievements: He is advised to improve the knowledge in the source of language, especially scientific and he is trying.

Remarks about Meritorious work: Nothing meritorious work done by him has come to my notice.

1999-2000

Has the Officer any special characteristics, or abilities which would justify his selection for special assignment or out of turn promotion?
'Nothing specific'

2000 – 2001

Overall assessment of the officer.... "Tone of the conversational language is to be improved, so that smooth functioning will be more easier in the section."



Has the Officer any special characteristics, or abilities which would justify his selection for special assignment or out of turn promotion?

NIL

10. The overall assessment for the above said five years was Good for 4 years and Very Good for one year. The Director Central Institute of Fisheries Technology had in his communication to the Secretary, ICAR has stated as under:-

“ Mere possession of benchmark in the CR alone is not the criteria for promotion to the next higher grade. If so there is no need for an Assessment Committee. When a duly constituted Assessment Committee made its recommendations – **the Chairman of the Committee is an outside expert nominated by the Chairman, Agricultural Scientists Recruitment Board** – it is not desirable for the Director to ignore its recommendations when the recommendations is within the framework of rules. It will also adversely affect the system and discipline of the Institute. “

11. The above gives full justification to the satisfaction of the Council which had rejected the claim of the applicant.

12. From the above, it is evident that the Assessment Committee's recommendations are based on the records of the applicant. Hence, the recommendations of the Assessment committee cannot be faulted with, either on the ground of non-fulfillment of the conditions in constitution of the committee nor on the ground that it had not applied its mind.

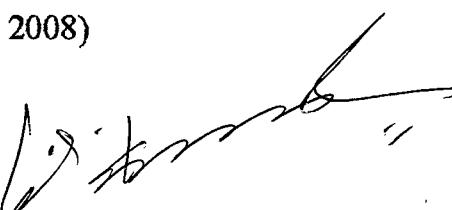
13. In view of the above, we have no hesitation to hold that no legal flaw could

be discerned in the decision of the respondents in not granting the applicant promotion w.e.f. 29-06-2001 and granting him only three advance increments. The OA thus fails. It is therefore, dismissed.

14. No costs.

(Dated, the 27th August, 2008)


(Dr. K S SUGATHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.