

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 980/97, 601/96, 1078/96, 1386/96, 675/97,
852/96 and 1244/96

WEDNESDAY, THIS THE 3RD DAY OF NOVEMBER, 1999.

C O R A M:

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

O.A. 980/97

1. P. Bahuleyan S/o V. Pappan
Telephone Operator,
(T-II-3) Central Institute of Fisheries Technology
Matsyapuri P.O.
Cochin-682 029
residing at Antu Vihar
House No. 26/854-A, Konturuthy,
Thevara, Cochin-682 013
2. K.B. Thilakan S/o Bava Kunju
Junior Laboratory Assistant,
(T.II.3), Central Institute of Fisheries Technology
Matsyapuri P.O.
Cochin-682 029
residing at Kalathil House,
Nayarambalam.

..Applicants

By Advocate Mr. P. V. Mohanan

Vs.

1. The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan,
New Delhi-110 001
2. The Director,
Central Institute of Fisheries and Technology,
Matsyapuri P.O.
Cochin-682029.

..Respondents

By Advocate Mr. P. Jacob Varghese

O.A. 601/96

V.A. Nasrayanankutty S/o V.N. Appu
Technical Assistant (T.II.3)
Central Marine Fisheries REsearch Institute
P.B. No. 1603, Tatapuram P.O., Kochi-14
residing at Venmanikkara House, Asari Lane,
Karikkamuri, Kochi-11

..Applicant

By Advocate Mr. P.V. Mohanan

Vs.

1. The Director General,
Indian Council of Agricultural Reserach,
Krishi Bhavan,
Dr. Rajendra Prasad Road,
New Delhi.
2. The Director,
Central Marine Fisheries Research Institute,
P.B.No.1603, Tatapuram P.O.
Kochin-14.

..Respondents

By Advocate Mr. P. Jacob Varghese

O.A. 1078/96

1. E.K. Balakrishnan S/o E.K. Kaayi, T.II.3 (Draftsman)
Central Institute of Fisheries Teachnology,
Matsyapuri P.O., Cochin-682029
residing at Edappully House,
Chinnam Parambu, Chalikkavattom,
Vennala, Kochi-28
2. S.R. Jethwa S/o Sundarlal Ratanji, Technician T.II.3
(Senior Mechanic), Veraval Research Centre of Central
Institute of Fisheries Technology,
Bhidiya Plot, Veraval,
residing at CIFT Staff Quarters, Veraval,
Junagadh District, Gujarat.
3. Smt. K. Sarasamma, D/o C.K. Madhavan
Technician (T.II.3) (Draftsman)
Central Institute of Fisheries Technology
Matsyapuri P.O. Cochin-682029
residing at Kootungal House, Ponnarimangalam
Mulavukadu, Ernakulam.
4. Sri T. Gopalakrishnan S/o late Ayyappan
Technician T.II.3 (Metal Worker),
Central Institute of Fisherries Technology,
Matsyapuri P.O., Cochin-682029
residing at Bijo Nivas, Chilnnam Parambu
Chalikkavattom, vennala, Kochi-28
5. Shri P.M. Joseph, S/o Mathew
Technician T.I.3 (Mechanic)
Central Institute of Fisheries Technology,
Mastsyapuri P.O. Cochin-682029
residing at Puthanchakkalakkal House,
21/44, perumpadappu, Palluruthy P.O.
Chochin-6.
6. Shri A.K. Jaisingh S/o Kunjappan, Technician T.I.3
Bosun, Central Institute of Fisheries Technology,
Matsyapuri P.O. ;Cochin-682029
residing at CIFT staff quarters, Kochi.
7. Shri T.K. Bhaskaran S/o Kannan
Technician T.I.3 (Jr. Laboratory Assistant)
Central Institute of Fisheries Technology
Matsyapuri P.O.
Cochin-682029
residing at CIFT Quarters,
3/4 Plerumanoor, Thevara, Cochin.
8. Shri A.R. Dharaneedharan S/o late Raman
Technician T.I.3 (Media Assistant) residing at
Aloor House, Tripunithura P.O. Puthiyakavu..Applicants



By Advocate Mr. P. V. Mohanan

VS.

1. The Director General
Indian Council of Agricultural Research,
Krishi Bhavan,
Dr. Rajendra Prasad Road,
New Delhi.
2. The Director,
Central Institute of Fisheries Technology,
Matsyapuri P.O.
Cochin-682020.

..Respondents

By Advocate Mr. P. Jacob Varghese

O.A. 1386/96

M. Gopinathan Nair S/o Madhavan Nair, T-I-3 (Driver-Motor)
National Research Centre of Central Institute of Brackish
Water Aquaculture (CIBA),
Narakkal, residing at Cochin.

..Applicant

By Advocate Mr. P.V. Mohanan

Vs.

1. The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan,
Dr. Rajendra Prasad Road,
New Delhi-110 001.
2. The Director,
Central Institute of Brckish Water Aquaculture
141 Marshalls Road,
Egmore, Madras-8.
3. The Joint Director,
National Research Centre of CEntral Institute of
Brackish Water Aquaculture, Narakkal,
Cochin.

..Respondents

By Advocate Mr. P. Jacob Varghese

O.A. 675/97

1. C. Rajendran S/o Chellilah
Refrigeration Mechanic (T-I-3)
Central Institute of Fisheries Technology,
Cochin residing at
Ragam, 22/447 S-B, Yacht Club Enclave
Konthuruty, Thevara P.O., Cochin-682 013
2. Jose Kalathil S/o K.J. Abraham
Refrigeration Mechanic (T-I-3)
Central Institute of lFilslheries Technology
Cochin residing at Type III/I
CIFT Staff Quarters, Perumanoor P.O.
Thevara, Cochin-682 015.

..Applicants

By Advocate Mr. P.V. Mohanan

Vs.

The Director General,
Indian Council of Agricultural Research
Krishi Bhavan, Dr. Rajendra Prasad Road,
New Delhi-110 001.



2. The Director,
Central Institute of Fisheries Technology
Matsyapuri P.O., Cochin-682 029

..Respondents

By Advocate Mr. P. Jacob Varghese

O.A. 852/96

K.E. Mani
Senior Mechanic T-I-3
Central Institute of Fisheries Technology,
Cochin-682 029

..Applicant

By Advocate Ms T.D. Rajalakshmi

Vs.

1. The director General,
Indian Council of Agricultural Research
Krishi Bhavan, Dr. Rajendra Prasad Road,
New Delhi-110 001.
2. The Director,
Central Institute of Fisheries Technology,
Cochin-682 029
3. The Secretary,
Indian Council of Agricultural Research,
Krishi Bhavan, Dr. Rajendraprasad Road,
New Delhi-110 001.

..Respondents

By Advocate Mr. P. Jacob Varghese

O.A. 1244/96

V.K. Ramachandran, Lab Technician T-II-3
(Voluntarily retired)
Central Institute of Fisheries Technology
Kochi-29 and now residing at
Krishna Nivas, Mulavukadu Post
Bolgatty-682 504

..Applicant

By Advocate Ms. T.D. Rajalakshmi

Vs.

1. The Director,
Central Institute of Fisheries Technology
Matsyapuri Post
Cochin-682 029
2. The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan,
Dr. Rajendra Prasad Road,
New Delhi-110 001.

..Respondents

By Advocate Mr. P. Jacob Varghese

The application having been heard on 3.8.1999 the Tribunal
delivered the following on 3.11.99:



O R D E RHON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

All these seven Original Applications have been filed by the employees working in the Central Marine Fisheries Research Institute, Central Institute of Fresh Water Aquatic Centre and Central Institute of Fisheries Technology, all working under the Indian Council of Agricultural Research (ICAR for short). As the question of law involved in all these O.As is the same, all these O.As were heard together. We have analysed the common issues involved in these O.As in O.A. 980/97 first. We have examined the other O.As one by one thereafter and recorded our findings separately under each of the O.As.

2. The facts which are common to all the O.As are as follows.

3. The ICAR introduced a new service called 'Technical Service' for its employees from 1.10.1975. The new service rules called Technical Service Rules (TSR for short) were framed and implemented initially from 1.7.77 but later given retrospective effect from 1.10.75. The Technical Service is grouped into three categories consisting of the following grades:

Category	Grade	Pay scale on	
		1.10.75	from 1.1.86
Category I	T-1	i)Rs.260-430	Rs. 975-1540
	T-2	ii)Rs.330-560	Rs.1200-2040
	T-I-3	iii)Rs.425-700	Rs.1400-2300
Category II	T-II-3	i)Rs. 425-700	Rs. 1400-2300
	T-4	ii)Rs.550-900	Rs.1640-2900
	T-5	iii)Rs. 650-1200	Rs.2000-3500
Category III	T-6	i)Rs. 700-1300	Rs.2200-4000
	T-7	ii)Rs.1100-1600	Rs.3000-4500
	T-8	iii)Rs.1300-1700	Rs.3000-5000
	T-9	iv)Rs.1500-2000	Rs.3700-5000

4. Different scales then available in categories I and II were merged in the new scales as indicated above the details of which are given in Appendix-I of the Hand Book of Technical Services (1995 Edition). The new scales were made applicable both to the future



recruits as well as the then existing incumbents from 1.10.75. However, the then existing incumbents were if they so desired to retain the then existing scales could do so as personal to them.

5. The posts classified as 'Technical' were functionally classified in to Groups as follows with separate qualifications for each group/category:

Group I	Field/Farm Technicians
Group II	Laboratory Technicians
Group III	Workshop staff including Engineering Workshop staff
Group IV	Library/Information Documentation staff
Group V	Photography Staff
Group VI	Artists
Group VII	Press & Editorial Staff including Translators
Group VIII	Driver (later reclassified as Auxiliary in 1982)

6. Initially induction of the existing employees to the Technical service from 1.10.75 was made according to the provisions in para 5.1, 5.2 and 5.3 of the Hand Book of Indian Council of Agricultural Research Technical Service Rules:

5.1 The existing permanent and temporary employees appointed through regularly constituted Departmental Promotion Committee/Selection Committee will be fitted into the grades specified in para 3.1 on point to point basis without any further screening irrespective of their qualifications. However, persons holding positions in the merged grade of Rs. 425-700 and possessing qualifications prescribed for Category II, will be fitted in grade T-II-3 (Rs. 425-700).

5.2 The existing employees in Grade T-5 may on the advice of Agricultural Scientists' Recruitment Board be considered for appointment to grade T-6 Category III in the initial constitution of the service if they possess the minimum qualifications prescribed for this category. For this



purpose the approved persons will be adjusted against the existing vacancies in the respective fields. Where however, no such vacancies exist, the existing posts in grade T-5 held by the approved incumbents will be upgraded to grade T-6 till such time as regular vacancies in the latter grade become available. On the absorption of persons against regular vacancies in grade T-6, the upgraded posts will be downgraded to grade T-5 and reverted to the cadre strength of Category II.

5.3- Government servants who are on notional foreign service and are holding technical posts under the Council are not eligible for appointment to the technical services until such time as they opt and are absorbed in the Council's service on a regular basis."

7. Technical Service Rules also provide for career advancement in their respective categories by way of grant of merit promotion to the next higher grade irrespective of occurrence of vacancy in the higher grade or grant of advance increments in the same grade (vide para 6.2 of Technical Service Rules) on the basis of assessment of performance, the person concerned will be eligible for consideration for such promotion or grant of advance increment after the expiry of five years of service in the grade. Technical Service Rules did not provide for assessment for grant of merit promotion from the grade T-I-3 in category I to T-II-3 in Category II since the career advancement was restricted within the respective category. That is to say that merit promotion were restricted within the category, and persons holding the highest grade in the category i.e. T.I.3 in category I and T-5 in category II and T-9 in category III were not eligible for further promotion. They are eligible for a maximum of three advance increments within the grade.

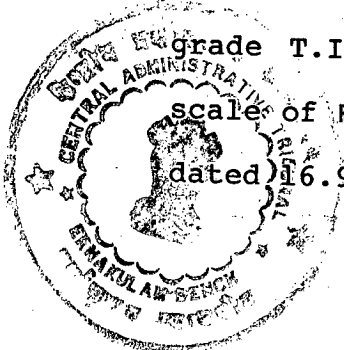
8. The Rules 7.2 and 7.3 provided for promotion of 33 1/3% (from September, 1989, 20% from 7.4.81 to September, 1989) vacancies in grades T-II-3 and T-6 by persons in grade T-1-3 and T-5 respectively possessing qualification prescribed for category



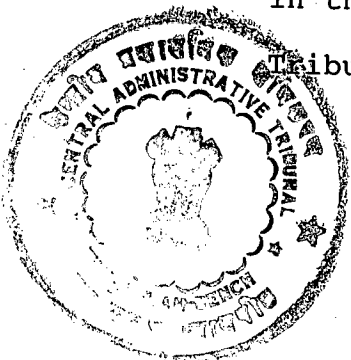
II and III respectively on the basis of selection. Direct recruitment was governed by Rules 8.1 to 8.5. The minimum educational qualification prescribed for different groups of the three categories were given in Appendix IV of the Technical Service Rules. Alternative qualifications were circulated vide Council's letter No.7(10)/78-Per III dated 27.1.79 and these were applicable to existing employees on 1.1.77. ICAR issued letter No.14(3)/94 Estt.IV dated 1.2.95 in connection with removal of category bar between category I and II. ICAR gave instructions vide letter No. 14(3)/94-Estt.IV dated 10.1.96 as to how the 5 years is to be reckoned for assessment of Technical personnel placed in T.II.3 from T.I.3 as a result of removal of category bar. The Council gave further instructions regarding applicability of relaxed educational qualifications in the context of removal of category bar between category I and II vide letter No. 14(3)/94-Estt.IV dated 8.8.96.

O.A. 980/97

9. The first of the two applicants in this O.A. whose qualification is SSLC was appointed as a Telephone Operator in the Central Institute of Fisheries Technology (CIFT) on 15.7.74. He was inducted in grade T.I in the functional group Workshop Staff on the commencement of Technical Service Rules. He was promoted to grade T.2 w.e.f. 1.7.81 and on subsequent assessment he was promoted to grade T.I.3 w.e.f. 1.1.86 in grade Rs. 425-700 by A1 order dated 16.9.96. He was placed in the grade T.II.3 w.e.f. 1.1.95 by A2 order dated 16.9.96. The second applicant with qualification of SSLC was appointed as Lascar on 13.3.72 in the Fishing Vessel of CIFT. He obtained B.A. later. He was appointed as Junior Laboratory Assistant on 31.1.74 in the scale of Rs. 260-400. He was inducted to grade T.1 under functional group Laboratory Technician. He was assessed on Five Yearly Assessment and promoted to T.2 grade w.e.f. 1.7.80 and promoted to grade T.I.3 (Junior Laboratory Assistant) w.e.f. 1.7.86 in the scale of Rs. 1400-2300 (revised scale of Rs. 400-700). By A2 order dated 16.9.96 he was placed in T.II.3 w.e.f. 1.1.95. He had filed



O.A. 600/96 seeking promotion to grade T.II.3 and pending that application he was promoted to T.II.3 w.e.f. 1.1.95 by A2 order. The applicants referring the qualification prescribed for their functional groups viz. Workshop and Laboratory Technicians, claimed that no diploma are awarded in these relevant fields. According to them, because of this the Technical Service Rules were amended by A3 letter dated 27.1.79 laying down modified qualification. They submitted that according to A6 proceedings dated 1.2.95 all Technical personnel in category I who had or who obtain qualilfications under the amended Recruitment Rules i.e. Matriculation with ten years experience in the relevant field should be adjusted to grade T.II.3 in Category II and also entitled for assessment for higher promotion. It was stated that A6 was issued by the Council with the approval of the Governing Body which was the rule making authority under clause 38 of the Bye-Laws of the ICAR. They submitted that it was later clarified by the ICAR by A7 dated 8.8.96 that the adjustment and fixation should also be inconsonance with the amended Recruitment Rules dated 27.1.79 with the approval of the Governing Body. They submitted that on the basis of this they were placed in T.II.3 w.e.f. 1.1.95. They submitted that they should have been placed in T.II.3 w.e.f. the date on which they became T.I.3. Referring to A8 clarificatory letter dated 10.1.96, they submitted that according to this letter the service rendered under T.I.3 would not be counted for the purpose of assessment promotion from T.II.3 to T4. They claimed that A8 was issued without concurrence of the Governing Body and thus the same had no legal efficacy and what was not stated in A6 was incorporated in A8. They submitted that the order issued by the Council on 1.2.95 was retroactive in nature and that they should be inducted in T.II.3 as and when they obtain the qualification of Matriculation with 10 years experience in the relevant field. They claimed that different Benches of the Tribunal had ruled that Technical personnel promoted to T.I.3 in



category I by way of Five Yearly Assessment and obtained qualification for T.II.3 maybe adjusted/placed in T.II.3 in category II from the date of promotion to T.I.3 and they claimed they were similarly placed. According to them, declining the benefit by A8 letter was arbitrary and as the same was not issued by the Governing Body, the same has no statutory force and thus A8 was illegal. They further submitted that the reasons contained in A8 were not valid in that all directly recruited Technical personnel in T.II.3 was automatically entitled for 5 years assessment for promotion to T.4. According to them there was no inter-se seniority for promotion to Technical Service. The benefit of Five Yearly Assessment would not be at stake in the event of computing the service rendered by the applicants in T.I.3 along with T.II.3 for assessment promotion to T.4. They sought the following reliefs:

"(i) To call for the records leading to A2 and set aside the same in so far as it does not grant promotion to the applicants to the grade of T-2-3 w.e.f. 1.1.86 (1st applicant) and 1.7.86 (2nd applicant)

(ii) To call for the records leading to Annexure A8 and set aside the same in so far as it does not authorise to count the service in grade in T-I-3 for the purpose of Assessment Promotion to grade T-4.

(iii) To declare that the applicants are entitled to get inducted to grade T-II-3 on obtaining alternative qualifications under Technical Service Rules as amended on 21.7.79.

(iv) Any other appropriate order or direction as this Hon'ble Tribunal may deem fit."

10. Respondents filed reply statement resisting the claim of the applicants. They submitted that by the issue of Council's letters A 6 dated 1.2.95 and A 7 dated 8.8.96, the applicants became eligible for placement in T.II.3 w.e.f. 1.1.95 by A2 order. Respondents stated that as per Technical Service Rules, the posts



in T-II-3 were to be filled up 66 2/3% by direct recruitment and 33 1/3% by way of promotion of persons from the grade of T-I-3 possessing the qualification prescribed for category II. There was no provision for grant of promotion to T.II.3 of category II from category I till the issue of A 6 and A 7 removing category barrier between category I and category II. They submitted that as per Rules 7.5 of the Technical Service Rules, the alternative qualification circulated by the Council letter dated 27.1.79 were applicable to Council's employees for purpose of promotion only against 33 1/3% vacancies reserved for departmental candidates and that these qualifications would not therefore be applicable to Council employees against quota reserved for direct recruitment. The question of direct recruitment did not arise in this case and as such the judgment of the Jodhpur Bench of the Tribunal in TA 177/87 (A4) and the judgment of the Hon'ble Supreme Court in SLP 14019/93 (A5) were not relevant in this case. They submitted that as per R1 judgment, the Hon'ble Supreme Court setting aside the order of the Cuttack Bench of the Tribunal in Khetra Mohan Das Vs. ICAR, the applicants were not entitled for induction in T.II.3 grade as demanded by them. They stated that the applicants were not holding posts in the scale Rs. 425-700 on 30.9.75 and hence they were not entitled for induction to T.II.3 from 1.10.75 and further the alternative qualification mentioned in ICAR's A3 letter dated 27.1.79 were applicable to promotion in terms of 7.1 and 7.3 of Technical Service Rules and were not applicable to induction. According to the first applicant, who was holding the post of Telephone Operator which has been reclassified as Administrative, but the applicant had been allowed to continue and derive the benefits of Technical Service Rules till he vacated the post. The minimum qualification prescribed for direct recruitment for the post of T.II.3 was Degree or Three Year Diploma in the relevant field and the applicant was only a Matriculate. The applicant had completed one year course of Diploma in Telegraphy, Wireless and Telephony conducted by Kerala Telegraphy & Wireless



Institute, Ernakulam. Applicant No.2 was not a Graduate in Science which was required for the post in the Laboratory and he was only a Graduate in Arts. They submitted that the applicants therefore did not possess the qualification prescribed for direct recruitment to the grade of T-II-3 and were not qualified for placement in T.II.3 in accordance with A6. Referring to ICAR's clarification dated 10.5.96 they submitted that alternative qualification of matriculation with 10 years of experience applicable to employees who were in position on 1.1.75 were not applicable to the placement in T.II.3. However, based on the further instruction issued by A7 order, the applicants became eligible for placement in T.II.3 in category II and accordingly A2 orders were issued placing the applicant and 4 others in T.II.3. They submitted that the rules did not provide for automatic promotion to higher grade on acquiring higher qualification. They submitted that as a number of Technical personnel represented that their seniority and promotion would be adversely affected if A6 letter was implemented and they would become juniors to many of the persons who were promoted as a result of counting their service in T.I.3, The matter was reconsidered and it was decided by the competent authority that on removal of category bar from category I to category II for the purpose of further 5 yearly assessment in category II their service rendered in T.II.3 will only be counted.

11. The applicants filed rejoinder and submitted that R1 judgment would not apply in their case. They submitted that they did not claim induction to T.II.3 but placement on acquiring qualification. Referring to the case of Smt. K.G. Sasikala who was working in T.2 and obtained qualifaications for the grade of T.II.3 was assessed and promoted to T.II.3 w.e.f. 1.1.95 by accelerated promotion without working in T.I.3. They submitted



that this was done based on clause 6.2.1(ii) of Technical Service Rules in support of which A9 proceedings dated 29.10.97 was produced. According to them after the amendment of the rules by A6 service conditions of the Technical personnel under went drastic changes and thus R1 judgment which interpreted pre-existing rule cannot be pressed into service. They further submitted that even though R2 dealt with personnel reverted from T.II.3 to T.I.3 de hors the letter dated 22.7.82, the principle contained therein would apply to the personnel who were not adjusted/placed to T.II.3 on due date. Those personnel were similarly placed to the incumbents referred to in R2. According to them the principle contained in A2 were in incorporated in the rule by A6. They submitted that pursuant to A7 and in implementation of A6 some of the institutes promoted the technical personnel to T.4 on the basis of the recommendations of the Assessment Committee without undergoing 5 years service in T.II.3 but taken into account the cumulative service in T.I.3 and T.II.3 respectively. In support of this, A10 proceedings dated 28.6.96 issued by the Central Avian Research Institute, Izatnagar was produced. They submitted that A6 is retroactive and continuous in nature dealing with a separate class of Technical personnel who were stagnated in service. They pleaded that their service conditions could not be equated with directly recruited technical personnel in T.II.3. It was submitted that prior to A6 they were technical personnel who remained in T.I.3 for more than 1½ decades though they obtained the qualification of Degree/Diploma or alternative qualifications and the case on hand dealt with service conditions of such technical personnel. They submitted that there was no inter se seniority and assessment promotion were made without reference to the occurrence of the vacancy.

12. Respondents filed additional reply statement wherein they reiterated that the alternative qualification circulated by



Council's letter dated 27.1.79 were applicable to the employees for the purpose of promotion only against 33 1/3% vacancies in T.II.3 reserved for departmental candidates in T.I.3. According to them, it was not stated in A10 order that the promotion of the technical personnel to grade T-4 were on the basis of recommendation of assessment Committee without undergoing 5 years service in the grade T-II-3 but taking into account the cumulative service both in grade T-I-3 and T-II-3 respectively. They gave the reason for issue of A8 orders dated 10.1.96. They also referred to R5 judgment of the Hon'ble Supreme Court in Civil Appeal No. 5502 and 5504 of 1997 (arising out of SLP (C) No. 16873 of 1995) ICAR Vs. Sri T.K.Suryanarayana & Others.

13. Applicants through a Miscellaneous Application No. 581/99 filed A 11 a true extract of the note presented by the Secretary, Staff side and A 12 a true extract of item No.12 presented before the Governing Body.

14. Heard learned counsel for the parties. The learned counsel for the applicants took us through the provisions of the Technical Service Rules at great length and submitted that the scale of pay of both the grades T-I-3 in category I and T-II-3 in category II carry the same scale of pay without functional differentiation. He submitted that prior to re-organisation of the Technical Services in 1975 there were only two categories and there was only one grade in the scale of Rs. 425-700 i.e. grade T-3 and the personnel could be promoted to Grade T-4 and T-5 in category-I. However, after re-organisation Grade T-I-3 (Rs. 425-700) was included in category I and grade T-II-3 (Rs. 425-700) was included in category II with a further rider of category barrier. Thus, a personnel in grade T-I-3 remained stagnated in spite of the amendment of the qualifications as per Appendix IV of the TSR by letter dated 27.1.79. This created discontentment and paved the way for setting up of expert Committees which endorsed



equivalation of grade T-I-3 and T-II-3. But the Governing Body approved the recommendations of the expert body only in 1995, thus setting right the anomaly and mistake which occurred in the Technical Service Rules. Therefore, according to him the orders issued in 1995 should be treated as retrospective in nature thus necessary conclusion to induct/place the Technical personnel in the category of T-II-3 as and when they obtained qualification of Matriculation with 10 years experience in the relevant field should follow. He referred to the decisions of the different benches of the Tribunal at Hyderabad (O.A. 541/88), Bombay (O.A. 270/91), Cuttack (O.A. 6/87) and Bangalore (O.A. 490/92 and 596/93) declaring that the applicants in the O.As were entitled to be placed in Grade T-II-3 based on the amended recruitment rules dated 27.1.79 and based on the acquisition of qualifications. According to him in the case of some of the applicants in the above O.As, the orders of the Tribunal had been implemented. He submitted that the applicants in this and other O.As before the Tribunal who were similarly placed should be treated likewise. He submitted that by granting promotion to grade T-II-3 from 1.1.95 without reckoning the service rendered in grade T-I-3 for assessment, no fruitful benefit would be conferred to the applicants. According to him, most of the beneficiaries of the order dated 1.1.95 had completed more than 15 years of service in T.I.3 and declining the benefit by the clarificatory letter A8 dated 10.1.96 was arbitrary. He submitted that A8 was not an order issued by the Governing Body and the Council and had no statutory force and hence A8 order was illegal. Further, he submitted that the reasons contained in A8 were also not valid as all directly recruited Technical personnel in grade T-II-3 will automatically be entitled to 5 yearly assessment for promotion to grade T-4 and there was no inter-se seniority for promotion in Technical Service. He pleaded that Five Yearly Assessment benefits of directly recruited personnel would not be at stake in the event of computing the service rendered by the applicants in the grade of T-I-3 along with grade T-II-3 for assessment promotion to grade



T-4.

15. The learned counsel for the respondents took us through the pleadings and submitted that the letter dated 10.1.96 had been issued with the approval of the Competent Authority. He further submitted that the removal of the category bar was effective only from 1.1.95 and cannot be given retrospective effect. He also submitted that the orders of the Cuttack and Hyderabad benches of the Tribunal relied upon by the applicants were reversed by the Hon'ble Supreme Court of India negating the orders of the Tribunal.

16. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and also have perused the documents brought on record.

17. We have framed the following issues which are raised in this O.A. and are ^{also} relevant in the other O.As before us.

(i) Are the applicants and similarly placed others entitled for being placed in grade T-II-3 from the date of being placed in T-I-3 by merit promotion on Five Yearly Assessment?

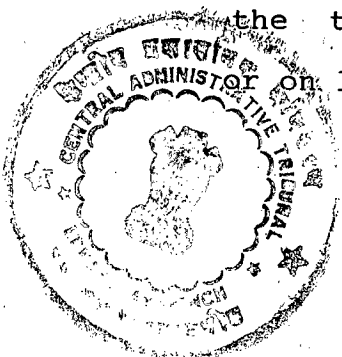
(ii) Is the Council's letter dated 1.2.95 is retrospective in nature?

(iii) Is the amendment to the letter dated 1.2.95 carried out by the letter dated 10.1.96 valid?

Issue (i):

18. Prior to issue of A6 letter dated 1.2.95 a Council employee's career advancement by way of assessment promotion was restricted to within the category. The applicants in this O.A. were admittedly not possessing the educational qualifications laid down in Appendix IV of the Technical Service Rules nor the amended qualification laid down by letter dated 27.1.79 for category II at the time of their appointment on 16.7.94 and 13.3.72

on 1.10.75 the date on which Technical Services were



reorganised in the institutes under the I.C.A.R. because the amended qualification for category II of the two groups to which the applicants belong is matric with 10 years experience in the relevant field. Moreover, the applicants were inducted into grade T-I (Rs. 260-430) on re-organisation of Technical Services with effect from 1.10.1975. T-I is in category I as per the Technical Services Rules. Therefore, as per the Technical Service Rules 6.1 and 6.2 they can progress upto T-I-3 by way of merit promotion, which they reached on 1.1.86 and 1.7.86 respectively and after five years they were granted three advance increments. We find that A4 order of the Jodhpur Bench of the Tribunal in T.A. No. 177/87, SLP against which was dismissed, had set aside the impugned notification for direct recruitment because the same did not contain the amended qualification. Respondents' plea before the Tribunal was that the amended qualification was only for promotion. In our view, the order in T.A. 177/87 does not in anyway alter the position as far as the applicants' claim for induction to grade T-II-3. We note from the reply statement in O.A. 1244/96 that after the introduction of Technical Service, ICAR by letter No.4 22/75-RA & Per III dsated 31.12.76, provided that the vacancies in grade T-II-3 of category II would first be filled up by appointment of person in category I possessing the qualifications prescribed for category II and only the balance vacancies if any would be filled by direct recruitment. This was the position till 7.4.81 when a specific quota of 20% vacancies (33 1/3% from September, 1989) in grade T-II-3 was earmarked for being filled up by promotion. Thus, after 7.4.81 and prior to 1.1.95, personnel possessing the qualification could be considered for promotion



to grade T-II-3 against 33 1/3% promotional quota after their entry into grade T-I-3. The other method of entry into grade T-II-3 is by direct recruitment. It is not the case of the applicant that there was a notification for direct recruitment for grade T-II-3 in their respective groups i.e. Workshop and Laboratory Technician and they possessing the amended qualification were not considered.

19. Further, in Civil Appeal No. 5502 and 5504 of 1997 arising out of the order of the Hyderabad Bench of the Tribunal in O.A. 992/91 (AIR 1997 SC 3108) the Hon'ble Supreme Court in R5 judgment held:

"Except in case of fitment of grade T-I-3 of category I and consequential accelerated promotion to grade T-II-3 of category II, on the basis of the qualification in no other case accelerated promotion on the basis of educational qualification is permissible. If relaxation of educational qualification is made effective on the date of enforcement of the said service rules it will be a case of review of initial fitment. In all other cases, promotion is to be given in accordance with the said service rules and not otherwise. The respondents in these appeals were not entitled to get initial fitment in grade T-I-3. As a matter of fact, they got initial fitment in grade lower than grade T-I-3 of category I. Therefore, they are not entitled to accelerated promotion on the basis of education qualification consequent upon the initial fitment in grade T-I-3 of category I. The impugned decisions of the Tribunal, therefore, cannot be sustained."

20. In the light of the above law laid down by the Hon'ble Apex Court, the plea of the applicants for grade T-II-3 with effect from 1.1.86 and 1.7.86 on the basis of amended qualification fails.



21. It was pleaded by the applicants that the Council with approval of the Governing Body by its letter R-2 dated 10.7.87 allowed restoration of Technical personnel who were reverted by the Council's letter dated 22.7.82 to T-II-3 and similar benefits should be extended to the applicants as they were similarly placed. They also referred to the decisions of different benches of this Tribunal. Hon'ble Apex Court in the judgment referred to above held:

"We are, however, unable to accept the submission made by the learned counsel appearing in both these SLPs. Even if in some cases, erroneous promotions had been given contrary to the said Service Rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee can not base his claim for promotion contrary to the statutory service rules in law courts. Incorrect promotion either given erroneously by the department misreading the said service rules or such promotion given pursuant to judicial orders contrary to service rules cannot be a ground to claim erroneous promotion perpetrating infringement of statutory service rules."

22. In the light of the law laid down by the Hon'ble Apex Court, the plea of the applicants also fail.

23. In the light of the detailed analysis above, issue No.(i) is answered in the negative.

Issue No.(ii)

24. It was submitted by the learned counsel for the applicants that A6 letter dated 1.2.95 should be retrospective in nature. We have already mentioned the detailed arguments putforth by him in support of his claim;. Further, he cited para 5 of the judgment in the case of Channan Singh and Another Vs.



Smt. Jai Kaur reported in AIR 1970 SC 349 wherein the Hon'ble Supreme Court held " It is well settled that if a statute is curative or merely declares the previous law retroactive operation would be more rightly ascribed to it than the legislation which may prejudicially affect past rights and transactions." Further, he also cited para 35 of the judgment of the Hon'ble Supreme Court in Madras Marine and Co. Vs. State of Madras (AIR 1986 SC 1760) as under:

Mr. Desai sought to urge that this was declaratory and was valid for all the relevant years. Whether a law is a declaratory or not, depends upon the Act and the language used. There was nothing in the Act or object of the Act which stated that it was further to amend the Central Sales Tax Act, 1956 that it was declaratory and not prospective in nature. Our attention was drawn to certain decisions whether the Act is retrospective and declaratory in operation or prospective and declaratory upon the purpose of the ACT the object of the Act and the language used."

25. He further relied on the Apex Court's judgment reported in AIR 1997 SC 3108 which held:

"It may however, be indicated that the question of unmerited hardship, if any, and need for amendment of the rules to remove such hardship, are matters for consideration of rule making authority. It is reasonably expected that the concerned authority will be sensitive to unmerited hardship to large number of its employees, if occassioned by introduction of service rules so that appropriate remedial measures may be taken."

He submitted that the amendment of the rules dated 1.2.95 may be read as mitigation of hardships and the removal of category



barrier is clarificatory in nature and therefore has to be read retrospectively as if no category barrier for assessment promotion from category I to category II existed right from inception of the rules i.e. 1.10.75.

The letter A6 reads as under:

"The question of removal of Category Bar between Cat.I and Cat.II has been under consideration of the Council for some time past. It has been decided with the approval of the Governing Body to remove the Category Bar between Cat.I and Cat.II in the following manner:

(i) The existing employees at level T-I-3 who possess qualifications prescribed for entry to Cat.II by direct recruitment will be placed in Grade T-II-3 of Cat.II with effect from 1.1.95. The employees who do not possess such qualifications will in the event of improving their qualification and acquiring degree / diploma / any other qualification prescribed for entry in Cat.II by direct recruitment will be placed in Grade T-II-3 from the 1st January of the year following the year in which degree/diploma/certificate is awarded. For subsequent merit promotion from Grade T-II-3 to T-4 the service rendered in T-I-3 Grade will count towards computation of five years of service for merit promotion.

(ii) The employees with five years of service in Grade T-2 and possessing qualifications prescribed for entry to Cat.II by direct recruitment, in the event of merit promotion through five yearly assessment in terms of Rule 6.2 will be placed in the Grade T-II-3.

(iii) The employees with five years of service in Grade T-2 and not possessing qualifications prescribed for entry to Cat. II by direct recruitment will be placed in Grade T-I-3 in the event of merit promotion through Five Yearly Assessment. Such employees in the event of improving their qualification and acquiring degree/diploma/any other qualification prescribed for entry in Cat.II by direct recruitment will in case of merit promotion be placed in grade T-II-3 from 1st January of the year following the year in which degree/diploma/certificate is awarded.

2. Direct Recruitment in grade T-II-3 will continue to be made as in the past."

26. It is evident from the first sentence of para 1(i) that the decision of the General Body was to remove the category bar between category I and category II only with effect from 1.1.95.

27. Moreover, the penultimate para of A-12-"Note on Item 12 presented before the Governing Body" which reads as under:

"The General Body is requested to kindly approve the above proposal so that the problem of stagnation and consequent frustration among the Technical staff is reduced."



28. It is evident from the above that the intention of removal of category bar was to reduce xxxxxxxxxxxxxxxx the problem of stagnation and consequent frustration of technical staff. It was not for removing the problem of stagnation. This also leads us to hold that the removal of category bar is only with prospective effect. Further, if the intention of the Council was to give retrospective effect to the removal of category bar we feel that the language used in A6 order should have been different.

29. At the same time, by the third sentence of para 1(i) of A6, the category bar was being removed with retrospective effect by giving the benefit of removal prospectively¹. However, the Council vide the impugned letter dated A8 dated 10.1.96 have modified the 3rd sentence of para 1 (i). This will also indicate the A6 letter is prospective in nature. Further, the judgment reported in AIR 1997 SC 3108 was delivered on 5.8.97 whereas A6 was issued on 1.2.95. Therefore, A6 cannot be taken as issued pursuant to the judgment of the Hon'ble Supreme Court. Thus, we are of the considered view on the basis of the ratio of Channan Singh and Madras Marine Co. cases relied on by the learned counsel for the applicants that A6 letter cannot have retrospective effect.

Issue No.(iii)

30. The applicants challenging A8 have submitted that A8 letter is arbitrary and illegal because it had been issued without the approval of the Governing Body. The learned counsel for the applicants apart from the various submissions made by him as stated earlier, also relied on the following two judgments of the Hon'ble Supreme Court and submitted that the instructions issued on 10.1.96 by A8 are illegal:



(i) Sant Ram Sharma Vs. State of Rajasthan & Others

(AIR 1967 SC 1910)

(ii) Lalit Mohan Deb and Others Vs. Union of India and

Others (AIR 1972 SC 995)

31. In both these cases it had been held that in the absence of statutory rules for regular promotion to selection grade posts, the Government was competent to issue administrative instructions as long as those instructions were consistent with the rules framed. According to him, the competent authority in this case - the Governing Body had framed rules by A6 letter dated 1.2.95 laying down as to how for Five Yearly Assessment the services of the employees placed in T-II-3 on and after 1.1.95 is to be counted and the same cannot be modified by letter dated 10.1.96 by an authority lower than Governing Body. The learned counsel for the respondents without producing any evidence that the letter had the approval of the Governing Body submitted that the letter dated 10.1.96 was issued because a large number of technical personnel represented that their seniority and promotion would be adversely affected if Council's instructions contained in A6 were implemented and they would become junior to many of the persons who would be promoted as a result of counting of service rendered in T-I-3 and therefore, the matter was reconsidered and it was decided by the competent authority that on removal of category bar from Category I to Category II i.e. on placement of technical personnel from T-I-3 to T-II-3 their service in T-II-3 alone would be counted for further assessment promotion to T-4. Our attention was also drawn to the order dated 16.3.99 in O.A. 91/98 of the Jodhpur Bench of this Tribunal which had upheld the validity of A-8 order dated 10.1.96. The learned counsel for the applicants relied on the ratio of the judgment of the Hon'ble Supreme Court in ICAR Vs. Satish Kumar and Another (1998) 4 SCC 219 and submitted that the competent body of the



ICAR i.e. the Governing Body could amend the eligibility conditions for grant of higher grades to employees.

32. We have given our anxious consideration to the rival submissions. As already held by us it is evident from a reading of A6 and other documents placed before us that the intention of the Council to remove the category bar was only prospective. Para 3.2(i) of A-12 'Note on item No. 12 presented before the Governing Body' reads as under:

"(i) The existing employees at level T-I-3 who possess qualification prescribed for entering category II by direct recruitment will be placed/adjusted in grade T-II-3 of category II with effect from 1.1.95. The employees who do not possess such qualification will in the event of improving their qualification and acquiring degree/diploma/any other qualification prescribed for entry in category II by direct recruitment will be adjusted/placed in grade T-II-3 from the 1st January of the year following the year in which diploma/degree/certificate is awarded. In respect of technical personnel so adjusted in grade T-II-3 the service rendered in grade T-II-3 will also count towards computation of five years service for merit promotion."

33. It is evident from the above that according to the note put upto the Governing Body, the services rendered in grade T-II-3 was to be counted towards computing 5 years service for merit promotion. Therefore, the letter issued on 10.1.96 appears to be in order as per this note. It had been stated in the letter dated 10.1.96 that the decision therein had been taken by the competent authority. Similar wording has been used in A7 letter dated 8.8.96 by which the Council employees in service on 1.1.77 possessing alternative qualifications had been made eligible for category jump. When the applicants can have no objection against A7 letter dated 8.8.96 and the benefits arising out of the letter has been acceptable to the applicants, they cannot raise objection against the use of same language in A8. In any case, the provisions of A6 would result in employees who have reached T-II-3 prior to 1.1.95 getting considered for further career advancement when they complete five years in grade T-II-3 whereas those coming in grade T-II-3 on or after



1.1.95 on the basis of A6 letter dated 1.2.95 being allowed to count their services in grade T-I-3 also for the purpose of 5 years assessment. We are of the view that this would be discriminatory. By the impugned letter dated 10.1.96 this discrimination has been removed. Moreover, by the provisions as contained in A6 letter, the performance of the service rendered in T-I-3 will be considered for placement in T-II-3 on or after 1.1.95 and thereafter the performance of same service will be considered for placement in T-4 also. This does not appear to be the intention as we see from para 3.2(i) of A-12.

34. In the judgment reported in 1998 (4) SCC 219 cited by the learned counsel for the applicants, the Hon'ble Supreme Court had held that the Council's action could not be treated as violative of Article 14 and 16 of the Constitution whereas in the present O.A. such a situation would arise in the absence of A-8 letter dated 10.1.96. Therefore, we are of the view that the ratio of the judgment reported in the above case relied upon by the learned counsel for the applicants will not be applicable in the facts and circumstances of this O.A.

35. In the light of the detailed analysis as above, we in line with the decision dated 16.3.99 of the Jodhpur Bench of the Tribunal in O.A. 91/98 hold A-8 letter dated 10.1.96 as valid.

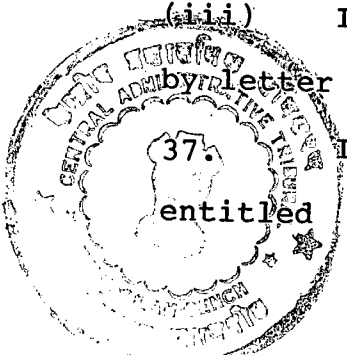
36. In view of the foregoing we decide the issues (i), (ii) and (iii) as follows:

(i) Are the applicants and similarly placed others entitled for being placed in T-II-3 from the date of being placed in T-I-3 by merit promotion on 5 years assessment? - No

(ii) Is the Council's letter dated 1.2.95 (A-6) retrospective in nature? -No.

(iii) Is the amendment to the letter dated 1.2.95 carried out by letter dated 10.1.96 valid? - Yes

37. In the result, the applicants in this O.A. are not entitled to any of the reliefs sought for and as such the O.A.



is liable to be dismissed. Accordingly, we dismiss this O.A. with no order as to costs.

O.A. 601/96

38. The applicant in O.A. 601/96 having qualification of B.Sc (Zoology) commenced service as Lab/Field Assistant on 21.9.70 in the scale of Rs. 260-430 in the Central Marine Fisheries Research Institute (CMFRI) Cochin. He was promoted as Junior Scientific Assistant in the scale of Rs. 380-560 on 28.1.76. He was awarded Junior Fellowship for inservice research works for the year 1977. He also passed M.Sc. Marine Biology and Oceanography with I class on availing study leave. Applicant claimed that consequent on the introduction of the Technical Services Rules by ICAR with effect from 1.7.75, out of the 92 Junior Scientific Assistants, 42 were inducted as Technical Assistant (T-II-3) of Category II and the remaining 50 were put as Junior Technical Assistant (T-2) of Category I in the pay scale of Rs. 330-560 without assigning any reason with effect from 1.10.75. He stated that while reverting 50 Junior Scientific Assistants to Junior Technical Assistants (T-2), five Computers in the pay scale of Rs. 330-560 were given promotion to Technical Assistant (T-II-3). As a result of five yearly assessment in Grade T-2 of Category I under Technical Service Rules, the applicant was promoted as Technical Assistant (T-I-3) in Category I w.e.f. 1.7.82. On completion of 5 years service in Grade T-I-3 the applicant was assessed and granted 3 advance increments w.e.f. 1.1.88 in the scale of Rs. 1400-2300 in lieu of promotion due to category barrier. The applicant was further promoted in the Grade T-II-3 in Category II in the 33 1/3% quota set apart for promotion w.e.f. 28.12.91 by the DPC. According to the applicant as the pay scale of T-I-3 in Category I and T-II-3 in Category II are the same, the promotion did not give any benefit to him. The applicant pleaded that Technical



Service Rules Appendix IV fixed minimum qualification for appointment to the respective categories according to which the essential qualification for a post in Category II are Three Years Diploma/Bachelors Degree in the relevant field which was modified by notification dated 27.1.79 fixing the alternative qualification namely 10 years experience in the relevant field and since the applicant obtained qualification for induction in Grade T-II-3 in Category II as early as on 1.10.75, he should be inducted to Grade T-II-3 w.e.f. 1.10.75 or at least from 1.7.82 the date on which he was promoted as T-I-3 or in the alternative for subsequent merit promotion to T-4, the service rendered in T-I-3 grade should be counted towards computation of 5 years. He relied on the decision of the Cuttack Bench of the Tribunal in Chandra Mohan Das Vs. I.C.A.R. and the order in O.A. 956/93 of the Bangalore Bench of the Tribunal.

The applicant sought for the following reliefs:

- "i) To declare that the applicant is entitled to be inducted as Technical Personnel T-II-3 in Category II w.e.f. 1.10.75 or in the alternative
- ii) To declare that the applicant is deemed to have been promoted to Grade T-II-3 in Category II w.e.f. 1.7.82, the date on which he was promoted as T-I-3 in Category I in terms of A5 (i.e. letter dated 1.2.95)
- iii) To direct the respondents to adjust the applicant as Grade T-II-3 in Category II w.e.f. 1.7.82 and to grant 5 yearly assessment in the respective grade with all consequential benefit including promotion to higher grade and
- iv) Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice."



39. Respondents filed reply statement resisting the claim of the applicant. They submitted that the reliefs sought by the applicant for induction to T-II-3 w.e.f. 1.10.75 is a belated one being made after 21 years just because some other employees have made their claims in other Benches of the Tribunal. They submitted that the O.A. is barred by limitation and is liable to be dismissed. They stated that merit promotion by assessment is restricted to within the category and he was promoted to grade T-I-3 based on such assessment with effect from 1.7.82. Subsequently from grade T.I.3 of category I, the applicant was promoted to Grade T.II.3 in category II by the Departmental Promotion Committee under 33 1/3% promotion quota as per Rule 7.2 of Technical Service Rules w.e.f. 26.12.91. According to the respondents A3 order was applicable only to those who were promoted and adjusted in grade T.II.3 and subsequently reverted on the advice of the Council and the said order was not applicable in the case of the applicant. Regarding the order in O.A. 956/93 of the Bangalore Bench of the Tribunal, according to the respondents the same was subject to the final outcome of the Special Leave Petition filed before the Hon'ble Supreme Court in the case of K.M.Das and when the case of K.M.Das was decided by the Hon'ble Supreme Court in favour of the I.C.A.R. the finding of the Cuttack Bench of the Tribunal was set aside, the benefit given to the applicant in O.A. 956/93 was withdrawn and he was reverted to his original position of Technical Assistant in Grade T-.I-.3 in category I, as per R1 dated 4.5.95. They further submitted that as the applicant had already been promoted to T-II-3 by the DPC on 26.12.91 against 33 1/3% vacancy A5 letter dated 1.2.95 will not have any effect on the applicant.

40. We have given careful consideration to the rival pleadings and submission. The applicant was in grade Rs. 260-430



on 1.10.75 and was promoted to grade Rs. 380-560 on 28.1.76. Thus, even if he possessed the qualification for Category II grade T-II-3 on 1.10.75, as he was not in grade Rs. 425-700 on 1.10.75, he is not entitled for fitment in grade T-II-3 as per rule 5.1 of the Technical Services Rules. Further, the Hon'ble Apex Court has reversed the order of the Cuttack Bench of the Tribunal in K.M.Das's case (AIR 1995 SC 122). Reliefs sought under (ii) and (iii) are similar to the reliefs sought by the applicants in O.A. 980/97. We have examined the matter in detail under issue (i) in that O.A. The applicant's case is similar. On the basis of our finding in O.A. 980/97, the applicant is not entitled to the reliefs sought under (ii) and (iii). Thus, the O.A. fails and is liable to be dismissed.

41. Accordingly, the O.A. is dismissed with no order as to costs.

O.A. 1078/96

42. Eight applicants have approached this Tribunal through this O.A. for the following reliefs:

(i) To declare that the applicants are entitled to be inducted as technical personnel, T.II.3 in category II w.e.f. 1.10.75 or in the alternative

(ii) To declare that applicants are deemed to have been promoted to grade T.II.3 in category II w.e.f. the date on which they were promoted in the grade T.I.3 in Category I with all consequential benefits including promotion from Grade T.II.3 to T4 by reckoning the service rendered in grade T.I.3

(iii) To set aside A7 in so far as it declares that "for the purpose of 5 yearly assessment their service rendered in T.II.3 Grade will only be counted, the service rendered in T.I.3 for the purpose of computation of 5 years of service for grant of merit promotion/advance increment from T.II.3 to T4 shall not be counted.



(iv) Any other appropriate order or direction as this Hon'ble Tribunal deemed fit in the interest of justice."

43. All the applicants are working in the Central Institute of Fisheries Technology, Cochin. Their service particulars are given below:

44. The 1st applicant E.K. Balakrishnan obtained the qualification of SSLC and Diploma in Mechanical Engineering (three year course). He was appointed as Draftsman (T-2) in the pay scale of Rs. 150-240 on 19.10.72 and confirmed to that post. He was inducted as T-2 in Technical Service w.e.f. 1.10.75 and he was assessed by the Assessment Committee in grade T-2 under functional group 3 and granted merit promotion to the next higher grade of T-I-3 in category I w.e.f. 1.7.79 by order dated 28.2.81. The applicant was assessed on completion of 5 years service in Grade T-I-3 and was granted 3 advance increments w.e.f. 1.1.85. He was promoted to Grade T-II-3 in category II in the Departmental Promotion quota with effect from 26.11.93. The applicant claimed to be inducted/promoted to Grade T-II-3 in Category II with effect from 1.10.1975 based on the qualification set in Appendix IV or the date on which he was promoted as T-I-3 viz., with effect from 1.7.1979.

45. The second applicant obtained the qualification of SSLC and Diploma in Mechanical Engineering and was appointed as Senior Mechanic on 2.3.70 in the scale of Rs. 380-560. He was inducted as Grade T-2 with effect from 1.10.1975 in the scale of Rs. 330-560. On assessment in Grade T-2, he was promoted as Grade T-I-3 in Category I with effect from 1.7.1977. He was



eligible for adjustment in the light of the order by ICAR dated 1.2.95 but not so far done. He claimed that he was eligible to be inducted to grade T-II-3 in Category II either with effect from 1.10.75 or with effect from 1.7.77 the date on which he was promoted as T-I-3 in Category I.

46. The third applicant obtained the qualification of SSLC and ITI Certificate of Draftsman. She was appointed as Draftsman (T-2) with effect from 26.3.76 in the scale of Rs. 380-560. She was assessed in the Grade T-2 and was found fit for promotion and was promoted to Grade T-I-3 with effect from 1.7.82. She was assessed in Grade T-I-3 and was granted three advance increments with effect from 1.7.88. She was promoted to Grade T-II-3 in Category II with effect from 16.3.94 in the 33 1/3% promotion quota set apart for departmental candidates. She claimed to be promoted/posted to grade T-II-3 in category II with effect from 1.7.82, the date on which she was promoted to the grade T-I-3.

47. The 4th applicant acquired the qualification of SSLC, National Trade Certificate in Sheet Metal Work (ITI) and National Apprentice Certificate in Sheet Metal work for two years (higher certificate). He submitted that there was no Diploma being awarded in Sheet Metal Work. He was appointed as Metal Worker on 26.5.71 and was promoted to Grade T-2 in the scale of Rs. 330-560 with effect from 1.7.77. He was assessed in Grade T-2 under the Technical Service Rules and was promoted to Grade T-I-3 with effect from 1.1.83 in the pay scale of Rs. 425-700. He was assessed in Grade T-I-3 and was granted two advance increments from 1.7.88 and three advance increments (including two already granted) from 1.7.89. Due to category



barrier, he was not promoted to Grade T.II.3. However, he was adjusted to Grade T.II.3 in Category II in the light of the order passed by the ICAR on 1.2.95. He claimed that he was liable to be inducted to Grade T-II-3 w.e.f. 1.10.75 based on qualification or w.e.f. 1.1.83 the date on which he was promoted as T-I-3 in the pay scale of Rs.425-700.

48. The 5th applicant was appointed as Mechanic on 9.3.72 in the scale of Rs.380-560 and was inducted as Grade T-2 w.e.f. 1.10.75 in the scale of Rs.330-560. According to him he obtained the qualification of Matriculation and also obtained the experience of 7½ years as Mechanic before he was appointed in CIFT. Hence, he claimed that as on 1.10.75, he was having 10 years experience in the relevant field. However, on assessment he was promoted to Grade T-I-3 w.e.f. 17.78. He claimed to be eligible to be inducted in Grade T-II-3 w.e.f. 1.10.75 or w.e.f. 1.7.78 the date on which he was promoted as T-I-3.

49. The 6th applicant obtained the qualification of Syrang Certificate issued by Mercantile Marine Department, which was claimed as equivalent to Diploma. He was initially appointed as Lascar on 5.11.1962 and thereafter as Deck Hand on 22.6.1967. He was appointed as Bosun on 16.2.72 in the scale of Rs.425-600. He was inducted as T-I-3 in the scale of Rs.425-700 w.e.f. 1.10.75. He was assessed in the grade T-I-3 and was granted three advance increments with effect from 1.1.78.



50. The 7th applicant acquired the qualification of SSLC. He was appointed as Junior Laboratory Assistant (T-I) on 1.1.73. On assessment he was promoted to Grade T-2 on 1.1.80 and he was promoted to Grade T-I-3 w.e.f. 1.1.86. On assessment in T-I-3 he was granted three advance increments w.e.f. 1.7.92. He claimed to be entitled to be inducted as Grade T-II-3 w.e.f. 1.1.86 the date on which he became T-I-3.

51. The 8th applicant having been appointed in 1959 as Laboratory Attendant was further promoted as Junior Laboratory Assistant on 11.8.65. He was inducted as Grade T-2 (Rs.330-560) w.e.f. 1.10.75. On assessment in Grade T-2 he was promoted to T-I-3 w.e.f. 1.7.78. He was assessed in the Grade T-I-3 and was granted three advance increments. He retired on superannuation as T-I-3 on 31.1.94.

52. Respondents submitted reply statement resisting the claim of the applicants. They advanced the same reason and arguments as given in O.A.980/97 and O.A.601/96. They submitted that the applicants 1 and 3 had been promoted against 33 1/3 % quota to Grade T-II-3 prior to 1.1.95 and applicants 2, 4, 5 and 7 had been placed in the grade T-II-3 with effect from 1.1.95 as per ICARS Letters dated 1.2.95 and 8.8.96. They submitted that 6th applicant being a non-matriculate and 8th applicant having retired prior to 1.1.95 were not eligible for Grade T-II-3 from 1.1.95.

53. On a careful consideration of the service particulars of the applicants, the reliefs sought for and the rival pleadings and submissions, we find that this O.A. is similar to the O.A.980/97 and O.A.601/96. We note that ground for the reliefs sought for are identical in nature. In the light of our findings in O.A.980/97 and O.A.601/96, we find no merit in this O.A. and the applicants in this O.A. are not entitled for the reliefs sought for. Accordingly, we dismiss this O.A. with no order as to costs.



O.A.1386/96

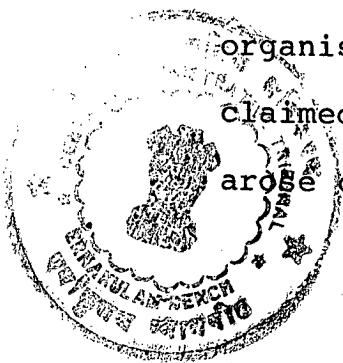
54. The applicant in this O.A. is seeking the following reliefs:

(i) To declare that the applicant is entitled to be promoted as Technical personnel Grade T.II.3 in category II w.e.f. 1.1.89 the date on which he was assessed and promoted as Grade T.I.3 with all consequential benefits including further promotion.

(ii) To direct the respondent to promote the applicant to the grade T.II.3 in category II in terms of A6 circular No.F.14(3)/94-Estt.IV dated 1.2.95 with all consequential benefits.

(iii) Any other appropriate order or direction as this Hon'ble Tribunal deems fit in the interest of justice."

55. The applicant passed SSLC and obtained I.T.I. (Automobile Engineering) in 1969. He obtained National Trade Certificate in 1977 which he claimed as equivalent to Diploma. He completed two years apprenticeship. He had obtained Heavy Duty Driving Licence in 1970. He was appointed as Motor Driver in the scale of Rs. 260-430 (T-I) in the Central Marine Fisheries Institute w.e.f. 14.10.77. On assessment he was promoted to Grade T-2 on 1.7.83. The Central Institute of Brackish Water Aquaculture was formed in 1987. Applicant along with others were absorbed in the said Institute by A-3 proceedings dated 30.9.87. The applicant was given merit promotion on assessment to grade T-I-3 w.e.f. 1.1.89. On subsequent assessment he was granted 3 advance increments from 1.7.94. According to the applicant the post of driver was included in Group VIII for which the qualification is good general education and appropriate driving licence and 3 years experience in an organisation of repute for appointment in category-2. Applicant claimed that 7 vacancies of the post of driver in Grade T-II-3 arose on 1.1.89 for being filled up under 33 1/3%. But he -the



seniormost was not promoted and juniors were promoted. Other grounds advanced by the applicant for claiming the reliefs are similar as in other O.As.

56. Respondents filed reply statement resisting the claim of the applicant. They submitted that as the applicant had joined as Driver on 14.10.77 i.e. after 1.1.77, the alternative qualifications would not be applicable to him and the applicant could be considered against 33 1/3% quota for promotion in the same functional area only if there was a vacancy of the post of Driver in T-II-3. Since there was no vacancy in the functional group 'Driver' the question of filling up under rule 7.2 of the TSR did not arise. They submitted that the applicant had been placed in grade T-II-3 w.e.f. 1.1.95 and there was no legal force in his subsequent representation (A-8) for promotion to T-II-3 w.e.f. 1.1.89. They further stated that a Committee under the chairmanship of Sri Kirthi Singh had decided to abolish the auxiliary/administrative category which had been approved by the ICAR on 29.6.96. The post of drivers had not been reclassified as technical under the functional group of 'Workshop'. In view of the Committee's report, the applicant who had opted for the Technical Service Rules will continue to be extended all the benefits enshrined in the TSR. They further stated that the order dated 27.1.79 did not provide alternative qualifications for Drivers as stated by the applicant. They prayed for the dismissal of the O.A.

57. After carefully considering the rival pleadings and submissions, we are of the considered view that the applicant is not entitled for the relief under (i) above. Relief (ii) had already been extended to the applicant by the respondents vide letter No. 33-2/92-Admn dated 13.11.96 of Central Institute of Brackish Water Aquaculture, Chennai. Accordingly, we dismiss this O.A. as it is devoid of merits with no order as to costs.



O.A. 675/97

58. Two applicants working in the Central Institute of Fisheries Technology in this O.A. sought the following reliefs:

- " (i) To promote the applicants to the Gradae T.II.3 in category II forthwith with all consequential benefits including assessment in Grade T.II.3
- (ii) To direct the respondents to consider and dispose of Annexure A3 and representation filed by 2nd applicant forthwith in accordance with law;
- (iii) Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice."

59. The applicants were recruited in Grade T-2 as Refrigeration Mechanics on 24.8.78 their qualifications being 'S.S.L.C. and ITI in the trade of Mechanic Refrigeration and Air Conditioning (one year Certificate course). They were promoted on assessment to grade T-I-3 w.e.f. 1.7.84 and on subsequent assessments granted 3 advance increments one each w.e.f. 1.1.90, 1.1.91 and 1.1.92. According to the applicants by the amendment of the TSR in 1979, the qualification fixed for the post of T.II.3 was 'Matriculation with 10 years experience in the relevant field and the applicants having entered into service on 24.8.78 and having the qualification of SSLC with ITI in the trade of Refrigeration and Air-Conditioning and promoted to T-I-3 after assessment were eligible to be promoted/posted in T-II-3 at least w.e.f. 1.1.95 on the basis of A2 order dated 1.2.95. According to them similarly situated persons in other institutes of ICAR have been already posted in T-II-3 post w.e.f. 1.1.95. Further, they submitted that by circular letter No. 19-13/95-Admn dated 14.3.95 the personnel in Group III Workshop Staff including Boat Crew who acquired the qualification of Higher Certificate in the trade with 5 years experience in the relevant field were ordered to be



placed/promoted to Grade T-II-3. So also drivers in Group VIII in TSR who acquired the qualification of 3 years experience and good general education and appropriate driving licence were also ordered to be placed/posted in T-II-3 in category II. They stated that there were no diploma course in the field of Refrigeration & Air Conditioning. According to the applicants, one year course of pre-1976 was made equivalent to two years National Trade Certificate of Mechanic Refrigeration and Air Conditioning Trade of post 1976 in support of which A-1 letter dated 11.11.96 from Director Training, Department of Industrial Training, Kerala State addressed to CIFT was quoted. They submitted that the fact of non-availability of the diploma course in the relevant field was taken note of and the technical personnel holding posts of Refrigeration Mechanic who possessed the qualification of Certificate were promoted in the institutes like Central Plantation Crops Research Institute, Indian Institute of Horticultural Research, etc. They claimed that they were similarly placed but denied promotion to T-II-3. Enclosing a copy of a representation dated 4.12.96 of the 2nd applicant as A3 they stated that similar representation was made by 1st applicant also and the same had been forwarded to the first respondent by the second respondent on 17.1.97.

60. Respondents filed reply statement resisting the claim of the applicants. According to them the minimum educational qualification prescribed for direct recruitment to the post of T-II-3 was three years diploma/Bachelors degree in the relevant field. However, in fields where the duration of diploma course available were only two years, ICAR has accepted two years diploma instead of 3 years diploma. The applicants not being diploma/degree holders did possess only SSLC and National Trade Certificate in the trade of Refrigeration and Air-Conditioning.



They were not eligible for promotion to T.II.3. They admitted that the first applicant had produced letter No.E.3/24428/96 dated 11.11.96 from the Department of Industrial Training, Govt. of Kerala that the two year National Trade Certificate in Mechanic Refrigeration and Air Conditioning was equivalent to the pre -1976 one year certificate as Mechanic Refrigeration and Air Conditioning of the NCVT. As this letter was not issued on the basis of any reference of the Institute and the same was not issued by the competent authority- the Department of Education, Govt. of India, the respondents had not accepted the same. The amended/alternative qualifications were not applicable to the applicants as they were not holding the posts on 1.1.77. Referring to the case of Sri K.N. Rajagopalan referred to by the applicants the respondents stated that he possessed two year certificate in the field of Refrigeration & Air Conditioning and he has been placed in category II according to the provisions of the ICAR letter dated 1.2.95. As the applicants were not qualified for placement to T-II-3 as they did not possess the required qualification of diploma/degree in the relevant field were even not possessing a two year diploma were not entitled for promotion/placement to T-II-3.

61. On a careful consideration of the rival pleadings in this O.A., we are of the considered view that the applicants are entitled for the reliefs sought under (ii) above in view of the fact that the respondents have not given any reply in their statement as to the disposal of the representation forwarded to the first respondent by the second respondent on 17.1.97. Accordingly this O.A. is disposed of with a direction to the first respondent to dispose of A3 representation of the second applicant within three months from the date of receipt of the copy of this order by a detailed order. No order as to costs.



O.A. 852/96

62.

The applicant in this O.A. working in the Central Institute of Fisheries Technology has sought the following reliefs through this O.A.

"(i) To issue appropriate direction or order calling for the records relating to A3 dated 15.9.95 and to quash the same;

(ii) To issue appropriate direction or order, directing the respondents to give suitable promotion to the applicant to T.II.3 from the date of acquiring the prescribed qualification.

(iii) To issue such other appropriate direction or orders to the respondents which this Hon'ble Tribunal may deem fit just and proper in the circumstances of the case.

(iv) To award cost to the applicant."

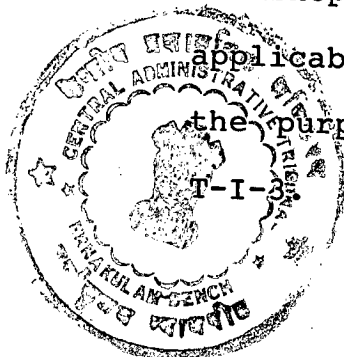
62.1 The applicant is a SSLC holder and is also having higher certificate, passed Sea Going Engine Drivers Training (15 months) besides undergoing 3 weeks training conducted by the M/s Kirloskar Cummins Pvt. Ltd. at Poona. He joined the insitute on 10.5.66 as Laboratory Attendant and was working as driver in charge of the Vessel. He was promoted as Senior Mechanic on 14.2.72 and was appointed in the Grade T.I.3 from 1.7.78 and is continuing in that post. According to the applicant the qualification fixed for T.II.3 was SSLC and 10 years experience in the relevant field and he was fully qualified for the same. The applicant had approached this Tribunal through O.A. 118/94 which was disposed of by this Tribunal with the direction to the first respondent to pass appropriate orders in the light of the decisions rendered in TAK 593/87, O.A.379/93 and O.A. 1074/93 by A1 order dated 10.2.95. Pursuant to that the applicant filed A2 representation dated 6.3.95 which was rejected by the 1st respondent by A3.

Aggrieved by A3 applicant filed this O.A. Applicant referred to the cases of S/Sri Kuttykrishnan Nair, T.K. David, P.S. Alias,



V. Gasper, G. Retnakaran Nair and T. Gopalakrishnan who were junior to him and who were inducted to T-II-3 as per the amended TSR and submitted that he had been discriminated. According to the applicant, he acquired the qualification on 10.5.76 and therefore he was entitled to promotion to T-II-3 w.e.f. 9.5.76. The denial of the said promotion on the ground that the applicant did not have the scale of pay of Rs. 425-700 was not valid. According to the applicant as per Rule 7.2, 33 1/3% vacancy in T-II-3 should be filled by promotion by persons in the category of T-I-3 possessing qualifications prescribed for T-II-3. Thus, the acquisition of qualification alone was the criterion for promotion to T-II-3 and fitment into the grade was not relevant and therefore the denial of promotion to the applicant was arbitrary and violative of the Articles 14, 16 and 21 of the Constitution of India.

63. Respondents filed reply statement and resisted the claim of the applicant. Referring to Rule 23(c) of the ICAR Rules, they submitted that the proper party in this O.A. should have been the Secretary, ICAR representing the ICAR and that the Director General had no authority to represent the Council. They submitted that as per the directions of the Tribunal the representation submitted by the applicant was disposed of by the Council by A3 order dated 15.9.95. According to them when the TSR was introduced the applicant was holding a post in the scale of Rs. 330-560 and as per the provisions he was engaged on point to point basis to T-II of category I and on assessment promoted to grade T-I-3 w.e.f. 1.7.78 and further he was assessed and was granted three advance increments w.e.f. 1.1.89. The applicant comes under the functional group 'Workshop including Engineering Workshop Staff' and the alternative/amended qualification were applicable to the Council employees in position as on 1.7.77 for the purpose of promotion only against 33 1/3% in T-II-3 from T-I-3. These qualifications were not applicable either for



direct recruitment or initial induction. Promotion under 33 1/3% quota was to be made from within the functional grade only. Merit promotion/advance increments was restricted within the respective category and there was no provision for granting merit promotion from T-II in category I to T-II-3 in Category II. However, in the light of the orders R1 dated 1.2.95 and R2 dated 10.1.96 and R3 dated 8.8.96, since the applicant possessed the alternative qualifications prescribed by the ICAR, the applicant had been given placement in the grade T-II-3 of category II from 1.1.95 by R-5 order dated 16.9.96. Referring to Sri Kuttikrishnan Nair's case they submitted that he was given promotion to T-II-3 on the basis of the Tribunal's direction in O.A. 189/91. They distinguished the case of David which was covered by ICAR letters dated 22.7.82 and 10.7.87. They submitted that the applicant became eligible for placement to grade T-II-3 from 1.1.95 in accordance with A3 order and hence grant of benefits with retrospective effect was not admissible.

64. We have given careful consideration to the rival submissions. In pursuance to A-1 directions of this Tribunal in O.A. 118/94 the first respondent has passed A3 orders dated 15.9.95. We find that the Civil Appeal referred to in A3 order is the case of Sri K.M. Das whose case is similar to that of the applicant in this O.A. Hon'ble Supreme Court in that Civil Appeal set aside the findings of Cuttack Bench of the Tribunal that Sri K.M. Das should be held to have been appointed to grade T-II-3 of category II in the pay scale of Rs. 425-700 with effect from 1.10.75. Hon'ble Supreme Court also held "Even as per unamended rule, the respondent (Sri K.M. Das) cannot claim induction into grade T-II-3 of category II straightaway from Grade T-2 of Category I merely on the basis of qualification. He can only claim promotion to category II Grade T-II-3 provided he was holding a position in the next lower grade namely Grade



T-I-3 of category I." Once the Hon'ble Supreme Court has laid down a law, the findings of the Tribunal rendered earlier cannot become a precedent. Therefore, we do not find any infirmity in A-3 order. In the light of the above and our finding in O.A. 980/97 and other OAs above, the applicant is not entitled to the reliefs sought for. Accordingly, the O.A. is dismissed with no order as to costs.

O.A. 1244/96

65. The applicant in this O.A. aggrieved by A-10 order issued in accordance with the orders of this Tribunal in O.A. 118/94 has sought the following reliefs:

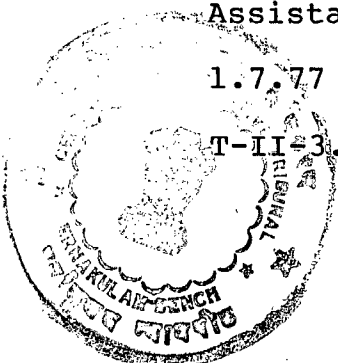
"(1) To issue Appropriate Direction or order calling for the records relating to Annexure A-10 dated 15.9.95 and to quash the same;

(2) To declare that the applicant is eligible to have been promoted to Grade T-II-3 in Category II with effect from 1.10.75 or 1.1.77 or at least from 1.7.77, the date on which he was promoted as T-I-3 and

(3) To direct the respondents to adjust the applicant as Grade T-II-3 category II with effect from 28.11.83 and to grant five yearly assessment in the respective grade with all consequential benefits including promotion to higher grades;

(4) Grant any other appropriate order or direction as this Hon'ble Tribunal deem fit and proper in the interest of justice."

66. The applicant joined CIFT as Lab Attendant on 25.7.59 and was promoted as Lab Assistant on 30.8.63 and Senior Lab Assistant on 7.1.71 and he was given the posting as T-I-3 on 1.7.77 and from 22.7.88 he was promoted as Lab Technician in T-II-3. According to the applicant, he was entitled to be



inducted to T-II-3 in category II on 1.7.75 itself as was done in the case of Technical personnel working in NDR II. According to the applicant by virtue of the amendment of the rules read with Appendix -IV of the rules, the applicant was entitled to be inducted to T-II-3 grade w.e.f. 1.10.75 which view was also adopted by number of benches of this Tribunal in T.A. 6/88 by Cuttack Bench, O.A. 541/88 by Hyderabad Bench, O.A. 270/91 by Bombay Bench. According to him A-3 order dated 19.2.80 was issued disregarding his seniority and he was also entitled to be promoted to T-II-3 along with them as he was only junior to Sl. No. 1 in A-3. According to him the posts were against promotion quota and not considering him because he had not applied was not correct. He submitted that his representation for promotion from 29.11.79 were not replied till 11.11.91. Further, according to the applicant, A-7 proceedings were issued based on the recommendation of the Committee headed by Sri P.N. Bhatt in the matter of review of Technical Service on the basis of which 55 technical personnel were inducted to T-II-3 w.e.f. 1.1.95. Applicant relied on clause 2 of the proceedings dated 1.2.95 and submitted that even though he obtained the relevant qualification of 5 years service he was discriminated against. Also he relied on memorandum dated 22.7.82 and 10.7.87 and sought the reliefs prayed for.

67. The respondents filed reply statement resisting the claim of the applicant. According to them, the applicant was holding the post of Senior Laboratory Assistant in the scale of pay of Rs. 380-560 on 30.9.75 when TSR were introduced and as per para 5.1 of the Rules he was inducted in T.2 of category I from 1.10.75. However, he was allowed to continue in the old scale as personal to him. On completion of 5 years service in T.2 he was assessed for and merit promotion was granted to T-I-3



from 1.7.77 and again on completion of 5 years in T-I-3 he was assessed and granted 3 advance increments w.e.f. 1.1.83. The applicant was promoted to T-II-3 of category II under 20% promotion quota from 22.7.88 and continued in the post till he voluntarily retired from service on 1.12.93. Respondents submitted that the Institute had 24 posts in grade T-II-3 lying vacant in August, 1979 and as provided for in ICAR's letter No. 4.22/75-RA & Per II dated 31.12.76 the Institute decided to fill up the same by appointing persons in category I possessing the qualifications prescribed for category II before resorting to direct recruitment. Accordingly, posts were identified and circulated indicating qualification and duties among departmental candidates calling for bio data by R-1 circular dated 9.8.79. Departmental Promotion Committee considered the bio data of the employees received pursuant to R-1 circular dated 9.8.79 and recommended 14 employees for appointment to T-II-3. Accordingly, promotion order A-3 dated 19.2.80 was issued. When R-1 circular dated 9.8.79 and A3 promotion order dated 19.2.80 were issued no representation was received from the applicant against the same and his first representation was only in 1989 which was also considered and replied vide A-6 order dated 11.11.91. As the applicant did not avail of the opportunity for R1 for the reasons best known to him and referring to the judgment of the Hon'ble Supreme Court in Civil Appeal No. 4729 of 1991 (R-2) they submitted that impugned letter A-10 is in order. They submitted that the existing employees could be fitted only on point to point basis of the existing scale of pay on that date. According to them A-7, R-3 and R-4 orders were not applicable to the applicant as he had voluntarily retired on 1.12.93. They further submitted that the O.A. is time barred and not maintainable and prayed for its dismissal.



68. We have given careful consideration to the rival pleadings and submissions. We find that in the facts and circumstances of this O.A., the O.A. is fully covered by our order in O.A. 980/97, O.A. 601/96 and O.A. 852/96. Accordingly, we dismiss this O.A. with no order as to costs.

69. Thus, the Original Applications No. 980/97, 601/96, 1078/96, 1386/96, 852/96 and 1244/96 stands dismissed with no order as to costs as per orders contained in paras 37, 41, 53, 57, 64 and 68 above respectively and O.A. No. 675/97 stands disposed of with no order as to costs as per direction contained in para 61 above.

Dated the 3rd November, 1999.

Sd/-
G. Ramakrishnan
Administrative Member

Sd/-
A.V. Haridasan
Vice Chairman

kmn

