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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.613/2012

Wednesday this the *2nd* day of ~~December~~, 2015

C O R A M :

**HON'BLE Mr.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE MRS.P.GOPINATH, ADMINISTRATIVE MEMBER**


1. I.V.Ajithkumar
Technical Officer (T-5)
Central Tuber Crops Research Institute
Sreekaryam, Thiruvananthapuram – 695 017
 2. V.L.Mathew
Technical Officer (T-5)
Central Tuber Crops Research Institute
Sreekaryam, Thiruvananthapuram – 695 017
 3. G.Venukumaran
Technical Officer (T-5)
Central Tuber Crops Research Institute
Sreekaryam, Thiruvananthapuram – 695 017
- ...Applicants

(By Advocate Mr.R.Rajasekharan Pillai)

V e r s u s

1. The Indian Council of Agriculture Reaseach
Krishi Anusandhan Bhavan, PUSA,
New Delhi – 110 012
Represented by the Secretary
 2. The Director, Central Tuber Crops Research Institute
Sreekaryam, Thiruvananthapuram – 695 017
 3. The Union of India represented by the Secretary
Ministry of Finance, South Block
New Delhi – 110 011
- ... Respondents

(By Advocate Mr.P.Santhosh Kumar for R1 &2, Ms.Deepthi Mary Varghese,
ACGSC for R3)



This Original Application having been heard on 6th November 2015 this Tribunal on 22.12.2015 day delivered the following :

ORDER

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

The applicants are working as T-5 Technical Officers in the 2nd respondent's institute. They have been initially appointed as Field Assistants as they possessed a Diploma in Agriculture from the Kerala Agriculture University, Thrissur. At the time the applicants were appointed, their service was governed by 1975 Technical Service Rules which was later amended in 1996 and further consolidated and modified with effect from 03.02.2000. As per Rule 3.3 it is provided that the modification set out in Para 2 of the Notification dated 3.2.2000 would take place with immediate effect from the date of issue of the notification. Existing Technical Employees who may like to governed only as per the existing service rules were required to specifically exercise individual option in writing to the Director of the Institute within 30 days from the date of issue of the notification. Option once exercised, shall be irrevocable and final. The anomalies arising in the implementation of these rules were identified and the solutions, as modification were notified on 03.02.2000 with prospective effect. As the applicants' better prospects was in the operation of 1975 TSR Rules they wanted certain clarification before exercising the option. The applicants accordingly sought certain clarification in respect of the



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equivalency of the qualifications prescribed for the functional groups in category II and category III which is provided under Rule 4(1) of the handbook. No response was received. After the Central Joint Service Council (CJSC) meeting held in April 2006, the following was issued:

“In the CJSC Meeting held on 26-27th April, 2006, the staff side requested for allowing of fresh option to the employees in Technical Category for opting either the Old TSRs (in force prior to 3.2.2000) or New TSRs. Similar references have also been received in the Council from the Institutes. The requests for fresh option were made on the ground that elaborate qualification have been notified by the Council vide Circular No.19(10)/04-E.IV dated 24.2.2006 and criteria for deciding the relevancy of a subject regarding assessment promotion was notified only in Jan., 2005 vide Council's Circular No.19(37)/2004-E.IV dated 20.01.2005.

This issue has been examined in the Council in detail and it has been decided to allow opportunity of fresh option to the employees for opting for either the Old TSRs or New TSRs. While exercising option, the employees may keep the following points of doubts, frequently raised in the past, as well as the clarification given against each, before exercising their option without having any misreading or misunderstanding of the TSRs. “

2. It was directed that employees may submit their option to their office within a period of 30 days from the date of circulation of the letter in the Institutes as per format prescribed. Option once exercised shall be irrevocable and final. The applicants have opted for TSR 1975 and this was accepted.



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3. Under the TSR-2000 the qualification prescribed in Annexure IV, for category III for all functional groups is Masters Degree in the relevant field or equivalent qualifications from a recognised university. In the old rules of 1975 the minimum educational and trade qualification for different groups in Category III is as follows:

(i) Three years Diploma/Bachelor's Degree in Science/Agriculture/Animal Sciences/relevant field/forest Rangers Course (for CAZRI & CSWCR & TI)

(ii) Five years experience of working in the relevant field. Minimum experience will be 7 years, 10 years and 12 years for lateral entry to posts, carrying scales Rs.3000-4500, Rs.3000-5000 and Rs.3700-5000, respectively.

4 In the old rules which are applicable to the applicants, under Rule 6.2 read 'Career Advancement' it is provided:

6.2. There shall be a system of merit promotion from one grade to the next higher grade irrespective of occurrence of vacancies in the higher grade or grant of advance increment(s) in the same grade, on the basis of assessment of performance. The persons concerned will be eligible for consideration for such promotion or for the grant of advance increment(s) after the expiry of five years service in the grade.

NOTE: Since merit promotions are restricted within the category persons holding highest grade viz, Grade T-1-3 in Category I, Grade T-5, Category II, and Grade T-9 in Category III are not eligible for further promotion. There is, however, no bar for grant of advance increments to such Technical Personnel who are in the highest grade of category subject to a maximum of three increments within the grade.

5. The applicants are aspirants to T-6, T-7, T-8 and T-9 of category III.



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They are entitled to merit promotion from one grade to the next higher grade irrespective of the occurrence of vacancies in the higher grade or grant of advance increments in the same grade on the basis of assessment of performance and on such assessment they can be granted either promotion or advance increments after the expiry of five years service in the grade. Therefore they have been assessed in 2005 and granted T-5 grade w.e.f July 2004.

6. Thereafter they have again been considered for the merit promotion to T-6 grade on completion of five years in T-5 grade and had been granted three advance increments w.e.f July 2009. Thereafter on receipt of VIth CPC, their pay has been fixed in the pay band of Rs.9300-34800 w.e.f 01.01.2006. While the applicants were enjoying the benefit of three advance increments the first respondent addressed the 2nd respondent as per letter dated 11.6.2012 to the effect that no advance increments shall be allowed to the Technical employees of the ICAR and only one increment is allowed to the Technical Employees in view of introduction of CCS Revised Pay Rules 2008. In Annexure -A VI O.M of ICAR, Delhi the advance increments granted before 01.01.2006 and after the said date upto 31.08.2008 are specifically made mention of and the pay to be fixed w.e.f 01.01.2006 is provided in a calculation sheet appended as an annexure.

7 Annexure – AVI does not refer to any amendment or modification



made to the TSR governing the Technical employees from T-1 grade to T-6 grade and since ICAR being an autonomous body, has its own rules and regulations governing the service conditions of the employees. The first respondent cannot unilaterally impose a further restriction governing their pay nor can they put on hold the benefits enjoyed by them in accordance with their service conditions. Their pay and allowances including increments already sanctioned is the property within the meaning of Article 300A of the constitution of India and any deprivation of that property shall be only in accordance with law governing the subject matter. The law relating to their service conditions is the TSR 1975, according to which they are entitled to be considered for promotion to the next higher grade and such entitlement was duly considered and they have been granted three advance increments. Therefore they cannot be deprived of the benefit by Annexure A-VI.

8 The applicants are governed by the 1975 Technical Service Rules and when such right has been exercised by the applicants which is statutory in nature they cannot be deprived of the said right by a mere letter addressed by the first respondent on the strength of an alleged interaction with the Ministry of Finance.


9 The applicant should have been put on notice before implementing Annexure A-VI and their submission regarding the same ought to have been



considered and only thereafter a speaking order should be passed.

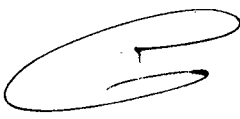
10 Applicants in their relief seek to quash Annexure A VII, A VII-A & A VII-B.

11 Respondents in their reply state that the recruitment of Technical Employee in Category I to II is as per the existing Technical Service Rules, with effect from 01.10.1975. The essential qualifications of Category I for Field/Farm Technicians was Matriculate with one year Certificate in relevant field, National Trade Certificate/5 years experience of working in respective fields. The 1st applicant, Sri.L.V.Ajithkumar, holds SSLC and Diploma in Agricultural Science from Kerala Agricultural University, Mannuthy. The 2nd Applicant, Shri.V.L.Mathew holds B.A in sociology, diploma in Agricultural Science. The 3rd applicant, Shri.G.Venukumaran, holds SSLC with Diploma in Agricultural Science. The 1st applicant was initially recruited as T1 Field man with effect from 17.01.1983, subsequently he was promoted as T2 Field man with effect from 01.01.1989 (the post was re-designated as T2 Junior Field Assistant with effect from 05.06.1990), T-I-3 Junior Field Assistant on 01.07.1994 (re-designated as T-I-3 Junior Technical Assistant on 01.07.1994) and T-II-3 Technical Assistant on 01.01.1995. Consequently, on five yearly assessment he was promoted to T4 Grade Technical Assistant with effect from 01.07.1999 and T5 Technical Officer Category II with effect from 01.07.2004.




12 The 2nd applicant was initially appointed as T1 Field man with effect from 25.01.1983. The post was re-designated as T1 (Junior Field Assistant) with effect from 05.06.1990. He was promoted as T2 Grade Junior Field Assistant with effect from 01.01.1990 and re-designated as T2 Junior Technical Assistant and T-II-3 Technical Assistant with effect from 01.01.1995. Consequent on the recommendation of the Assessment Committee, the Appointing Authority granted 3 advance increments to Sri.V.L.Mathew, the 2nd applicant, at the rate of Rs.590/- x 3 + Rs.1770/- p.m in the existing pay band and grade pay from 01.01.2010. An undertaking dated 23.09.2008 was submitted by him to the effect that any excess payment detected in the light of discrepancies noticed subsequently will be refunded by him. He was promoted to the next higher grade of T4 Technical Assistant with effect from 01.01.2000 and T5 Technical Officer with effect from 01.01.2005.

13 The 3rd applicant was appointed as Field man (T-1) with effect from 17.01.1983, T2 Fieldman with effect from 01.01.1989, the post re-designated as T2 Junior Field Assistant with effect from 05.06.1990. Consequent on the assessment, he was appointed to next higher grade of T-1-3 Junior Field Assistant of TSR with effect from 01.07.1994. On the basis of ICAR Letter No.F-14(3)/94-Estt. IV dated 01.02.1995 he is deemed to have been placed in Grade of T-II-3 (Technical Assistant) with effect from 01.01.1995, higher grade of T4 Technical Assistant with effect from



01.07.1999 and T-5 Technical Officer Category II with effect from 01.07.2004. It was clearly mentioned in Annexure A-2 letter that it has been decided to allow opportunity of fresh option to the employees for opting for either the old TSRs or New TSRs. It was also mentioned that option once exercised shall be irrevocable and final.

14 It is submitted that model qualifications for all functional groups and for 3 categories of Technical Services of ICAR in Category II is Bachelor's Degree in the relevant field or equivalent qualifications from a recognized University. The applicants are at present working as Category II T5 Technical Officers. In Category III, the required qualification is the Master's Degree in the relevant field or equivalent qualification from a Recognized University. The applicants do not possess the essential qualifications for Category III and they shall be eligible for assessment promotion to T-6 Grade after completing 10 years of service in T-5 as per the modifications issued as per Notification No.18-1/97-Estt.IV dated 03.02.2000. Under the provisions of Rule 6.1 to 6.9 of Old Technical Service Rules of ICAR and on the recommendations made by the duly constituted Assessment Committee, the Appointing Authority granted 3 advance increments at the rate of Rs.590/- x 3 = Rs.1770/- p.m to the 1st applicant, Shri.L.V Ajithkumar with effect from 01.07.2009 and to the 3rd applicant, Shri.G.Venukumaran with effect from 01.07.2009 in the pay of Rs.9300-34800-4600 (GP) as per Annexure A IV and Office Order No.7/83-



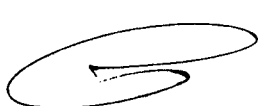
Per dated 28.12.2009. Pursuant to Annexure A VI order, the advance increments granted to Shri.L.V.Ajithkumar and G.Venukumaran, Technical Officers T 5 with effect from 01.07.2009 have been revised as Rs.279/- p.m (with effect from 01.07.2009) as per Annexures VII A and VII B Office Orders. The advance increment will be treated as a separate element distinct from basic pay. No increment/allowances will be earned on the element of advance increment. The first and 3rd applicants have submitted their undertakings dated 23.09.2008 and 22.09.2008 respectively to the effect that any excess payment detected in the light of discrepancies noticed subsequently will be refunded by them to the Government either by adjustment against future payments or otherwise to the 2nd applicant. Shri.V.I.Mathew, 2nd applicant T5 Technical Officer was granted with effect from 01.01.2010 at the rate of Rs.590/- x 3 = Rs.1770/- p.m. In pursuance of Annexure A VI letter of the ICAR Headquarter Office, the advance increment has been revised to Rs.279/- p.m with effect from 01.01.2010 as per Annexure A VII A Office Order. The 2nd applicant has also submitted an undertaking to the effect that any excess payment drawn by him will be refunded if noticed later.

15 It is submitted that applicants are T-5 employees of the 2nd respondent. They are possessing the qualification of Diploma in Agriculture from Kerala Agricultural University. They opted for old Technical Service Rules because they did not have the qualification of Bachelor's Degree or



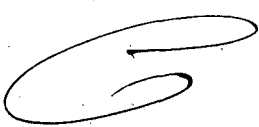
PG Degree for promotion to T-6 as per the new Technical Service Rules introduced with effect from 03.02.2000. It is also submitted that they have been given T-5 Grade with effect from July 2004. They have been considered for advance increments after completion of 5 years in T-5 Grade and had been granted 3 advance increments with effect from July 2009. The persons concerned will be eligible for consideration for such promotion or for grant of advance increments after the expiry of the prescribed number of years service in the grade. Applicants have opted for Old Technical Service Rules wherein employees with qualification of Diploma in the relevant field are eligible for promotion to T-6 Grade after completion of 12 years of service in T-5 Grade as per Annexure R2(g) dated 4.8.1995.

16 As far as the issue of instructions in Annexure A VI regarding regulation of advance increments to technical employees after implementation of the VI th Pay Commission, it is stated that the issue of advance increments as to how many and how much can be given to technical employees was referred to the Ministry of Finance consequent on the introduction of VI th Pay Commission. The Ministry of Finance approved the scheme of advance increments mentioned in Technical Services and the competent authority in the council decided that one increment may be granted to technical employees at the rates prescribed by the Ministry of Finance with effect from 01.01.2006. The advance increments so given will be treated as a separate element distinct from basic



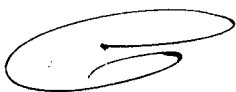
pay. No increments/allowances will be earned on this element of the increment. Before these instructions were issued some Institutes of ICAR paid advance increments to its technical employees at the rate of 3% of the basic pay in the running Pay Band as advance increment as a consequence of the recommendations of the Assessment Committee. Therefore, the over payment made to technical employees on account of advance increments was ordered to be recovered. It is submitted that all the three applicants have been assessed for advance increments after completion of 5 years in T-5 and have been granted 3 advance increments, which is irregular. The applicants are quoting Rule 6.2 of the old Technical Service Rules. It states that there shall be a system of merit promotion from one grade to the next higher grade irrespective of occurrence of vacancies in the higher grade or grant of advance increments in the same grade, on the basis of assessment of performance. The person concerned will be eligible for consideration for such promotion or for the grant of advance increment after the expiry of 5 years service in the grade.

17 It is submitted that Council vide its instructions issued in August 1995, i.e, after March 1995, has allowed T-5 employees to go to T-6 grade after completion of 12 years of service in T-5 grade. Therefore, as per old Technical Service Rules, T5 employees are allowed to go to T6 grade after completion of 12 years of service in T5 provided they have Bachelor's Degree/Diploma in relevant field. After 1995, there is no instruction or



provision in Technical Service Rules to assess T-5 employees after they complete 5 years of service in T-5 for their promotion to T-6 or advance increment in T-5 Grade.; Therefore, the advance increments granted to the aforesaid 3 employees after completion of 5 years of service in T-5 is not correct. Merit promotions are restricted to the persons holding highest grade i.e. Grade T-I-3 in category-I, Grade T-5 in Category II and Grade T-9 in Category III and they are not eligible for further promotion. There is however, no bar for grant of advance increments to such technical personnel who are in the highest grade of Category subject to the maximum of three increments within the grade.

18 Respondent submits that a bona fide mistake can be corrected by an authority without conferring any right on the employee and the respondents are within the legal bounds to correct the mistake they have committed as upheld by the Tribunal, High Court and Apex Court on many occasions. In **Sasidharan v. Reserve Bank of India**, reported in 1992(2) KLT 573, the Hon'ble High Court of Kerala has held that the power is inherent in any administrative authority to correct accidental mistakes committed by it, in ignorance or overlooking the facts. In **Chandri Prasad Uniyal v. State of Uttarakhand**, reported in 2012 (3) KLT SN 121 SC, the Apex Court has held that : " any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to



repay the money, otherwise it would amount to unjust enrichment." The few exceptions of extreme hardships pointed out therein are not applicable in the present case.

19 Heard the learned counsel for applicants and respondents and perused the records.

20. The applicants seek to quash Annexure A VI office order withdrawing the advance increments granted to them. The relevant portion of the same reads as follows:-

"Under Rule 6.1 of the ICAR Technical Service Rules, there is a system of merit promotion from one grade to next higher grade irrespective of the occurrence of the vacancies in the higher grade or grant of advance increment in the same grade, on the basis of the assessment of performance. Consequent to the implementation of CCS (Revised) Pay Rules, 2008, grant of advance increments to technical employees was reviewed in consultation with the Ministry of Finance. The pay of the employees who have been granted advance increment prior to 1.1.2006 may be fixed in the revised pay structure corresponding to the stage at which their basic pay was on 1.1.2006. In the case of employees who have been granted advance increment between 1.1.2006 and 31.8.2008 under the Revised Pay Rules, 2008, such employees will only be granted annual increments on 1st of July of every year. No advance increments, corresponding to the advance increments granted under the pre-revised pay scale will be granted to them during the period between 1.1.2006 and 31.8.2008 while making their due-drawn statement. During this period, advance increment will be given as per the fixed amount approved by the Ministry of Finance. Only one advance increment at the following rates may be



granted to those technical personnel who have been recommended/approved for grant of advance increment w.e.f 1.1.2006.

| <i>Grade</i> | <i>Pay Band</i> | <i>Grade Pay</i> | <i>Amount of one advance increment (3% of the minimum pay in the pay band)</i> |
|--------------|------------------|------------------|--|
| T-1 | 5200-20200/PB-1 | 2000/- | 156 |
| T-2 | 5200-20200/PB-1 | 2400/- | 156 |
| T-3 | 5200-20200/PB-1 | 2800/- | 156 |
| T-4 | 9300-34800/PB-2 | 4200/- | 279 |
| T-5 | 9300-34800/PB-2 | 4600/- | 279 |
| T-6 | 15600-39100/PB-3 | 5400/- | 468 |
| T(7-8) | 15600-39100/PB-3 | 6600/- | 468 |
| T-9 | 15600-39100/PB-3 | 7600/- | 468 |

4. The advance increment so given would be treated as a separate element distinct from basic pay. No increment/allowances will be earned on this element of advance increment.

5. In cases where more than one advance increments have already been paid from 1.1.2006 the same may be restricted to only one to be paid at the rates indicated at Sl.No.3 above and necessary recoveries be made for the excess payment, if any. "

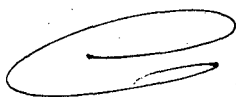
21 The above order of respondent following VI CPC has been issued to all units of the respondent in the country and is uniformly applicable to all. Applicants were working as T-5 Technical Officers in Central Tuber Crops Research Institute, a unit under ICAR. At the time of appointment they were governed by TSR 1975. These rules were modified on 3.2.2000 and applicants were given the option of being governed by TSR 1975 or TSR



2000. Applicants were fence sitters, not exercising the option in the guise of seeking clarification about their future prospects as the new TSR 2000 was not favourable to them. The respondent gave a second chance to those who had not exercised option in the first chance to submit option in 30 days. Applicants exercised option for TSR 1975.

22 The applicants have been given merit promotion from one grade to the next on completion of 5 years up to T5. In the case of optees for old TSRs as is the applicant's case, the rules provide that employees with qualification of Diploma in the relevant field are eligible for promotion to T6 after completion of 12 years of service in T5 as per instructions issued on 4.8.1995. Hence the applicants who were optees to the old TSR are bound by this instruction of '12 years service in T5 grade' as they are Diploma holders in the relevant field. Despite this they were given merit promotion to T6 and three increments w.e.f July 2009. The three advance increments were withdrawn on 11.6.2012. The applicants have given a written undertaking that in the event of any incorrect fixation or any excess payment detected, the same will be refunded to the government.

23 Hence they were made aware of a doubt about the correctness of the release of the increments or the undertaking would not have been asked by respondents or made by the applicants. In the meanwhile the VI th Central Pay Commission recommendations were received. Consequent to the VIth



CPC, the system of advance increments as it existed in pre-revised pay scale was reviewed and modified to a system of annual increments on 1st of July every year. Further, only one advance increment @ 3% of the minimum of the pay in the pay band was to be granted to those technical personnel approved for grant of the same w.e.f 1.1.2006. Wherever more than one advance increment is given the same was to be restricted to one and excess paid be recovered.

24 This is not only an issue of old and new TSRs as contended by applicants but is also a question of implementation of pay rules as per Vth CPC and VI CPC recommendations. Having accepted the VI CPC revised pay scales with 3% increment for which applicants would have exercised an option, the applicants cannot now ask for part application of V CPC recommendations of 3 advance increments which was granted on reaching the highest grade of category, namely grade T-5 in applicant's case. The VIth CPC pay bands are larger and the chances of stagnation are less and the 3% annual increment are benefits formulated by VI CPC to address the stagnation. Every Central Pay Commission comes with its own set of enhanced pay scales and associated recommendations and these have to be applied in toto to all similarly placed persons in all the offices in the country and the applicants cannot be made an exception to this. The entire system of pay scales was substituted by a system of running pay bands, where the existing system of 35 pay scales have been replaced by 4 running pay bands



containing 20 grades. The VI CPC created a system that primarily lays emphasis on delivery and end results, which continuously rewards performance. Applicants have nowhere stated why the 3 advance increments were given whether it was to compensate for stagnation or for possessing higher qualification. If it was for the former then the VI CPC has addressed the matter with its own set of recommendations which the applicant has to accept having opted for and accepted the VI CPC pay scales. The second option is not applicable in the applicants' case. Further as per old TSRs they were eligible for T6 after 12 years service in T5 grade.

25 Applicant refers to an order of this Bench in O.A 401/1996 which discusses recovery made on the recommendation of an internal audit wherein the respondent had not exercised his mind and acted on the dictation of the audit party. The case under consideration is different. The VIth Central Pay Commission recommendation implemented in the applicant's case was made by an expert body headed by a retired Supreme Court judge. Non application of mind as contended by applicants cannot be attributed to this expert body. This Tribunal cannot sit in Judgment over the wisdom of the Pay Commission. The respondents are at liberty to implement Annexure A-VI order of 11.6.2012 revising grant of advance increments post VI CPC. It is a case where the applicants with full knowledge executed the undertaking document stating that they will refund the amount if subsequently the order is reviewed. Therefore, this cannot be treated or



characterized as a mistake or inadvertent payment so as to contend that it should not be ordered to be recovered in view of the Apex Court judgment in Rafiq Masih (White Washer) and Others reported in (2015) 4 SCC 334. Having undertaken to repay the amount they cannot resile from the same. Solemnity and binding nature of undertaking given by a public servant at the time of receipt of money in anticipation of a subsequent reversal of the same cannot be nullified or obliterated. Therefore, the request so made by the applicants cannot be sustained. Applicants are not entitled to succeed in this Original Application. It is dismissed. No costs.



(P.GOPINATH)
ADMINISTRATIVE MEMBER



(N.K.BALAKRISHNAN)
JUDICIAL MEMBER