

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.614 of 2012
WEDNESDAY, this the 1st day of July, 2015

CORAM:

Hon'ble Mr. U.Sarathchandran, Judicial Member
Hon'ble Mrs.P.Gopinath , Administrative Member

A.J.Bhadran

Technical Officer

T-5, CPCRI

Regional Station, Krishnapuram P.O

Kayamkulam, Kerala – 690 533

..... Applicant

(By Advocate Mr.R.Rajasekharan Pillai)

V e r s u s

1. The Indian Council of Agriculture Research (CPCRI)
Represented by the Secretary
Krishi Anusandhan Bhavan, PUSA, New Delhi – 110 012
2. The Director , Central plantation Crops Research Institute
Kasargode – 671 124
3. The Assessment Committee for Technical Personnel
Category III represented by its Chairman the 2nd respondent
Pin 671 124

(By Advocate – Mr.P.Santhosh Kumar)

This Original Application having been heard on 03.06.2015, the Tribunal on 01.07.2015.. delivered the following:

ORDER

By Hon'ble Mr. U.Sarathchandran, Judicial Member

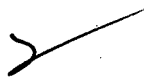
Applicant is a T-5 Technical Officer working in the CPCRI Regional Station, Kayamkulam. He was granted three advance increments on merit promotion by



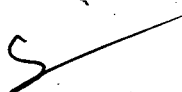
the Assessment Committee convened for the purpose of considering conferment of T-6 grade. The advance increment so granted to the applicant with effect from 01.01.2005 was unilaterally withdrawn and he was directed to submit fresh assessment report. Although, he had submitted fresh assessment reports, he was not considered for merit assessment promotion which ought to have been conferred on him with effect from 01.01.2005. As no action was taken in spite of repeated reminders, he filed O.A 190/2012 before this Tribunal. This Tribunal directed the respondents to convene Assessment Committee within three months from the date of the order. Accordingly, the Assessment Committee convened on 19.06.2012, but did not grant him either the higher grade or the advance increment. Applicant understands that this is because of the below bench mark grading in the Annual Confidential Report (ACR for short). According to applicant, if 'Very Good' is the bench mark, he should have been informed about the 'Good' grading given to him. Being aggrieved by the denial of promotion vide the impugned Annexure A-X memorandum dated 21.06.2012 applicant sent Annexure A-XII representation to respondent no.1 without avail. He seeks the following relief:

- "1. Call for the records leading to and culminating in Annexure X and quash the same as arbitrary, illegal and opposed the dictum laid down by the Apex Court.
2. Direct the 3rd respondent to confer the applicant T6 grade retrospectively with effect from 01.01.2005.
3. Direct the 1st respondent to consider Annexure AXII, and pass appropriate orders."

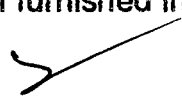
2. In the detailed reply statement filed by the respondents it is stated that the technical services under the respondents (ICAR) are grouped into three categories. Category I consists of grades T-1, T-2 and T-13. Category II consists of T-II-3, T-4 and T-5. T-6, T-7, T-8 and T-9 composed of Category III. Merit promotion from one grade to the next higher grade is granted on the basis of assessment of performance after 5 years service in each grade, irrespective of



the occurrence of vacancies in the higher grade or grant of advance increments in the same grade. Since merit promotions are restricted within the category, persons holding the highest grades viz. Grade T-1-3 in Category I, Grade T-5 in category II and Grade T-9 in category III are not eligible for further promotion. There is, however, no bar for grant of advance increment to such Technical personnel who are in the highest grade of category, subject to the maximum of three increments. Later, due to passage of time and on experiencing some anomalies by the overlapping of pay scales and their merger occurred with the implementation of Central Pay Commissions from time to time, the technical service rules were modified vide Annexure R-2 (b) circulated on 03.02.2000. As per the revised rules, the technical personnel in T-5 grade possessing essential qualifications for category III for direct recruitment shall be eligible for assessment promotion to T-6 grade after completing 5 years service in T-5 grade. But the T-5 technical personnel who do not possess essential qualifications for direct recruitment for category III shall be eligible for promotion to T-6 grade after completing 10 years of service in T-5 grade provided they possess qualifications prescribed for direct recruitment to category II (T-3). Revised qualifications were prescribed as per Annexure R-2(c), according to which, for category III Master's degree in the relevant field of Fine Arts/Commercial Art/Applied Art or equivalent qualifications from a recognised university with minimum 5 years experience in the relevant field was prescribed. For category II, Bachelor's degree was the revised qualification. Applicant after joining the ICAR service as T-II-3 in category II on 29.11.1983 was promoted to T-4 on 01.07.1989 and reached the highest grade of T-5 in category II with effect from 01.01.1995. Since, there was no bar for grant of advance increments within the grade, five years assessment for the period from 01.01.1995 to 31.12.1999 was considered by the Assessment Committee and which grant him three advance increments with effect from 01.01.2000. As per the option exercised by the applicant he was allowed to switch over to Annexure R-2(b) Modified Technical Service Rules (MTSR for short) which



were brought into effect from 03.02.2000. As per the academic qualification of the applicant he was due for merit promotion on completion of 10 years service in the grade of T-5 under Annexure R-2(b) MTSR. His assessment for 10 years in the T-5 grade was considered for merit promotion to the Grade T-6 in category III by the Assessment Committee held on 21.08.2009. The Committee did not find him fit for promotion but granted three advance increments. This was done due to an inadvertent mistake. Therefore, on 23.04.2010 the competent authority issued Annexure A-IV order withdrawing three advance increments granted to him. In the meantime, applicant approached the Public Information Officer of CPCRI for some information under the Right to Information Act, 2005. Thereafter he approached this Tribunal with O.A. 190/2012. This Tribunal vide Annexure A-IX order dated 26.03.2012 directed the respondents to convene the meeting of the Assessment Committee for the purpose of considering promotion in accordance with the rules. Accordingly, the Assessment Committee was convened and again found that the applicant was not fit for promotion/placement to the next higher grade T-6 in category III. It was also noted by the Committee that he is not fit for grant of advance increment during the reporting period from 01.01.1995 to 31.12.1999. With effect from 11 June 2010 the bench mark for assessing the technical staff under the ICAR is as per Annexure 2(d). Therefore, the mere completion of 10 years of service in the grade does not confer the applicant an indefeasible right for granting promotion with effect from the due date. The expert committee has the discretion to devise the methods and procedures for objective assessment for the suitability of the candidates. The employee is considered for promotion based on his hard work, good conduct and result oriented performance as reflected in ACR and the overall grading in the ACR. Applicant was asked to furnish supplementary assessment report for the period up to 31.12.2011 for the purpose of supplementary assessment as he was found unsuitable for promotion in the first assessment. The Assessment Committee assessed the case of technical personnel on the basis of (a) the material furnished in the five/ten yearly



assessment proforma, (b) performance record files maintained by the Technical personnel, (c) bio-data and career information of the technical personnel throughout in their service in the ICAR and (d) CCRs for the past 5/10 years.

3. We have heard Shri.R.Rajasekharan Pillai, Advocate for applicant and Mr.P.Santhosh Kumar, Advocate for the respondents.

4. Shri.Rajasekharan Pillai relied on the decisions of the Apex Court reported in *Dev Dutt v. Union of India and Others* (2008) 8 SCC 725 and a five judges Bench decision of the Apex Court in *S.N.Mukherji v. Union of India* AIR 1990 SC 1984.

5. Shri.Rajasekharan Pillai submitted that the below bench mark grades in the ACRs of the applicant were not communicated to him. He pointed out that although the applicant's grades were 'Good', as the same was considered by the Assessment Committee for promotion, as below bench mark the same ought to have been communicated to him before being relied on. In *Dev Dutt's* case the issue was whether the 'Good' entry in the ACR which adversely affected the appellant's promotion ought to have been communicated to him so as to afford him opportunity to make a representation against it. It was held by the Supreme Court :-

" In this situation the "good" entry is in fact an adverse entry because it eliminates the candidate from being considered for promotion. Nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. Grant of a "good" entry is of no satisfaction to an incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances. "Good" entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-1994 should be upgraded from "good" to "very good". After considering such a representation it was open to the authority concerned to reject the representation and confirm the "good"



entry (though in a fair manner), but at least an opportunity of making such a representation should have been given to the appellant, and that would only have been possible had the appellant been communicated 'good' entry. Non-communication of 'good' entry was arbitrary and hence illegal."

6. Annexure A-X is the official memorandum issued to the applicant intimating the decision of the Assessment Committee for technical personnel category III convened on 19.06.2012. It reads as follows:

MEMORANDUM

" Shri.A.J.Bhadran, T5 Technical Officer (Artist) is hereby informed that his Ten yearly Assessment for the period 01.01.1995 to 31.12.2004 was considered by the Assessment Committee for Technical Personnel Cat. III (Artist) held at this Institute on 19.06.2012. However, the Committee has not recommended his case for placement/promotion to the next higher grade T-6 (Cat.III) with the observation that "Not found fit either for grant of merit promotion to the next higher grade or grant of advance increment during the reporting period".

However his case will be considered again at a subsequent stage or stages for which he may submit supplementary reports relating to the subsequent periods up 31.12.2011 (year wise) for consideration by the Assessment Committee. "

7. Shri P.Santhosh Kumar, learned counsel for respondents submitted that applicant was under the misconception that the assessment was based on the old Rules He submitted that under the earlier bench mark for assessment was 'Good' for category I and II and 'Very Good' for category III; but as per Annexure R-2(d) modified rules with effect from 11.06.2010 the new assessment procedure was as per Appendix to Annexure R-2(d) amendment guidelines. It reads:

"(i) The existing promotion benchmark shall be revised in the manner indicated below:-



Grade	Existing benchmark as per Council's circular No.18 (1)/2004-Estt.IV dated 26.12.2005 (approved by GB in its 202 nd meeting dated 23.11.2005	Revised benchmark	
		For SC/ST	For others
For promotion from T-1 to T-2 grade and T-2 to T-3 grade	60%	55%	60%
For promotion from T-3 to T-4 grade, T-4 to T-5 grade and T-5 to T-6 grade	67%	62%	67%
For promotion from T-6 to T-(7-8) and from T(7-8) to T-9 grade	75%	70%	75%

These amendments shall be effective from the date of issue of these instructions. Cases decided as per earlier instructions shall not be reopened. "

8. Shri.P.Santhosh Kumar argued that the Assessment Committee which considered the case of the applicant as per Annexure A-IX order of this Tribunal and assessed him based on the aforesaid bench mark, not based on the guidelines prescribed by the DoPT vide Annexure AXI Office Memorandum dated 08.02.2002. According to Shri.P.Santhosh Kumar, since the applicant belongs to technical category, the guidelines in Annexure A-XI O.M of DoPT cannot be used because of the technical nature of the work done by him. Therefore, according to Shri.P.Santhosh Kumar, the Assessment Committee evaluated him based on Annexure R(d) amended guidelines. He further pointed out that the applicant had opted for the Modified Technical Service Rules.


9. It is settled law that the Courts/Tribunals cannot interfere with the decisions

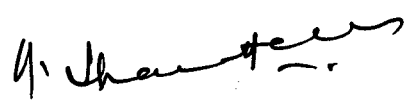
taken by the specialised bodies like Technical Assessment Committee. This position has been made clear by the Apex Court in *State Bank of India v. Jaspal Kaur* (2007) 9 SCC 571 and also in *Union Bank of India v. M.T.Latheesh* (2006) 7 SCC 350. Only if arbitrariness or violation of the Constitutional limitations or any violation of the extant rules is made, courts/ tribunals will interfere with the decisions of the assesment committee.

10. Shri.Rajasekharan Pillai submitted that Annexure A-X is cryptic in nature and that no reasons are discernable for the finding that the applicant is not fit for promotion. Referring to *S.N.Mukherji's* case (*supra*) he submitted that the decisions of the administrative authority shall disclose the reasons.

11. On going through the records of this case, we find that the applicant had already approached respondent no.1 being aggrieved by the Assessment Committee's decision in Annexure A-X. Annexure A XII is the copy of the representation so made by the applicant, addressed to the first respondent, which is a self speaking one. It appears to us that the ends of justice will be met if a direction is given to respondent no.1 to consider Annexure A-XII representation and to take a decision thereon within a time frame fixed by this Tribunal.

12. Accordingly we dispose of this OA directing respondent no.1 to consider Annexure A XII representation and take a decision thereon within two months from the date of receipt / presentation of a copy of this order and to communicate the same to the applicant. No order as to costs.


(P.GOPINATH)
ADMINISTRATIVE MEMBER


(U.SARATHCHANDRAN)
JUDICIAL MEMBER