

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 64
T. A. No.

1991

DATE OF DECISION 24.3.92

Dr. A. K. Sadanandan Applicant (s)

Mr. K. Ramakumar Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
its Secretary, Ministry of Agriculture,
Deptt. of Agricultural Research & Education
Govt. of India, Krishi Bhavan, New Delhi and others

Mr. Mathews J. Nedumpara, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. MR. P. S. HABEEB MOHAMED, ADMINISTRATIVE MEMBER

The Hon'ble Mr. MR. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ye*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is at present working as Scientist
Sélection Grade in the National Research Centre for Spices,
Calicut, under the Indian Council of Agricultural Research
Centre, for short ICAR. The complaint of the applicant
is that his case has not been considered for promotion to
S-2 grade as per the rules in 1976. His representations
ultimately ended in Annexure-L order of the Director
dated 20.12.90. It reads as follows:

"Please refer to the ^uConcil's letter No.1-14/87-Per.IV
dated 9.3.89 intimating that the UGC pay package
has been extended to ICAR scientists with effect from
1.1.86. As indicated in para 16 of the letter,
as a result of adoption of the UGC pay package,
the practice of five yearly assessment under the

flexible complementing scheme has come to end with effect from 1.1.86. Accordingly, Government of India with the concurrence of the Ministry of Finance has decided that the benefit of assessment shall be admissible only upto 31.12.85. ^{As} on 1.1.86 in the revised scale will have to be fixed as per normal rules of fixation."

2. According to the applicant, he was inducted to S-1 grade w.e.f. 1st October, 1975 after he completed 7 years in the ~~S-1~~ ^{by} cadre, ^{and} ⁴ he was eligible for the next promotion in the grade S-2. He submitted that yearly assessment is to be made by the authorities as per the rules. Hence, he should have been considered for promotion to S-2 grade in December, 1976. However, he was not called for interview ^{was there any} nor ⁴ assessment with reference to his performance with other employees similarly situated who were interviewed in May, 1978. This, according to the applicant, caused injustice and he requested for making assessment and fresh interview. Later, the applicant was assessed in the interview held in November, 1979 for the period ending December, 1976, but the result was not communicated to him. ^{later} ~~later~~, the applicant was directed to submit information for the period ending December, 1977 for assessment and grant of merit promotion. As per Annexure-C, he was informed that in consequence of the assessment, he was granted advance increment for three years as per the rules. Not satisfied with that, the applicant submitted representation Annexure-D. This was duly forwarded to the competent authority with the recommendation that the applicant is entitled to be considered for assessment to the grade of Scientist S-2 as on 1.7.78 instead of 1.7.79. The relevant portion of the recommendation given by the Director is extracted below:-

"The facts furnished by Dr. A.K. Sadanandan, Scientist S-2 (Soil Science) of this Institute is correct as per records available. The supplementary information for five yearly assessment for the period ending December, 1976 in respect of Dr. A.K. Sadanandan, was furnished vide this office letter of even number dated 25.3.78 but he was not called for interview during May, 1978 along with others, but was called for interview only on 9.11.79 vide Dy. Director (RO, ASRB D.O.No. 21(17) /79-RI dated 8.10.79. All the other scientists whose supplementary information was furnished for the period ending December, 1976 have been assessed during May, 1978 and the results communicated in time.

For the subsequent assessment held on 14.5.80, the supplementary information was furnished by Dr. A. K. Sadanandan, for the period ending 1977 and was promoted to Scientist S-2 (social science) with effect from 1st July, 1979.

As per the rules the assessment benefit for the period ending 1977 would be given to the Scientist w.e.f. 1st July, 1978. In view of this the date of promotion to Scientist S-2 (Soil Science) in respect of Dr. A.K. Sadanandan may kindly be amended as 1.7.78 instead of 1.7.79."

3. The applicant submitted his representation Annexure-'G' dated 14.10.1988 before the Director (Personnel) ICAR for getting earlier date of promotion in the light of Annexure-E recommendation. Ultimately, the applicant received Annexure-I communication dated 1.9.90 informing him that the Council's decision will be communicated to the applicant. Later, he received Annexure-L dated 20.12.90 communication rejecting his request. Under these circumstances, the applicant has filed this application for quashing Annexure-L and also for a direction to the respondents to grant him promotion to the higher grade of S-2 w.e.f. 1.7.1977 and S-3 w.e.f. 1.1.84.

4. The respondents have filed detailed reply affidavit raising the question of limitation and also acquiescence. The applicant also filed a rejoinder reiterating the statement in the application and denying statements in the reply statement.

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5. Having heard the learned counsel appearing on both sides and also after perusing the documents, we are of the view that the respondents have not followed the rules governing the promotion in the light of Annexure-E recommendation of the Director. In this connection, it is necessary to peruse Rule 19 of the 'Service Rules for Agricultural Research Service of ICAR Society. The relevant portion is quoted below:

"19(2) A scientist will be eligible for screening for promotion or advance increment after the expiry of a period of five years' service in the grade.

19(3) The first screening of scientists for promotion or advance increment shall be made within one year of the introduction of Agricultural Research Service and thereafter, once a year as early as practicable after 1st January in respect of all who have become eligible for consideration for promotion on or before the last day of the previous year ending on 31st December.

19(4) Promotion or grant of advance increment to the successful scientist shall be given with effect from 1st July of the year in which the assessment is made."

6. According to the rule, screening of the Scientists for promotion or for grant of advance increment shall be made within ^{five} ~~one~~ year of the introduction of ACR Service and thereafter, once in every year. In the case of the applicant, he being qualified for promotion to the grade of S-2 in 1975, he submitted that he is entitled to be considered for screening and for next promotion in the year 1976. Without conducting any screening as provided in the rules, his case has been assessed and he had been granted three advance increments as indicated in Annexure-C office order. After accepting this promotion, he again submitted representation for getting the benefit of further

assessment in connection with the promotion to the grade of Scientist S-2. This, according to the applicant, was delayed. If the assessment had been conducted properly in his due turn, either in 1976 or in 1977, he would have ^{got} the benefit of getting further promotion in that line. However, his representation was recommended taking into consideration his performance stating that his case would have to be screened and assessed w.e.f. 1.7.78 instead of 1.7.79. The respondents have not stated anything in respect of the recommendation of the Director contained in Annexure-E. They have also no case that this recommendation cannot be acted upon for the purpose of granting relief to the applicant.

7. The main contention urged by the learned counsel for the respondents is that the application is highly belated and barred by limitation under section 21 of the Administrative Tribunals' Act. According to him, the recommendation Annexure-E is dated ~~21~~ 31.7.1982 and ~~his~~ ^{his} first representation was submitted by him only on 4.12.1988. If he was really aggrieved, he should have approached the Tribunal without waiting for a long time.

8. Of course, the applicant has not chosen to come to this Tribunal after waiting for a reasonable period from the date of the recommendation. The learned counsel for the applicant explained the delay by stating that the applicant relied on the recommendation and bonafide believed that the Department will correct the mistake by granting him the

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benefit of earlier assessment and promotion taking into consideration the recommendation of the Director in Annexure-E. However, when he found that the Department is not correcting the mistake, he filed representation and started agitating the matter. Ultimately, he received Annexure-I and then only he approached the Tribunal.

9. When this application came for admission, a copy of the application was served on the learned counsel for the respondents. The application was admitted as per order dated 11.2.91 taking into consideration the ^{fresh order} order impugned in this case Annexure-'L' ^{is} dated 20.12.90. Hence, we are of the view that the application is not belated for entertaining the same under section 19 of the Administrative Tribunals' Act.

10. The further contention of the respondents is that the recommendation Annexure-E is dated 31.7.82 and the applicant submitted his first representation only in 1988 ^{without giving any valid explanation}. Hence, there is a long delay. This contention cannot be appreciated on the facts and circumstances of the case particularly when the respondents have chosen to consider the representation and pass orders dated 20.12.90. The applicant has all the right to challenge the order Annx.-L received by him raising all the points in his favour which includes the recommendation in Annexure-E. Hence, in the light of the facts and circumstances of the case, we are not inclined to accept the contention of the learned counsel for the respondents that the application is belated.

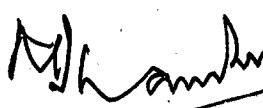
11. The learned counsel for the respondents also submitted that the applicant has acquiesced himself by satisfying with the grant of three advance increments which is to be treated as equivalent to grant of promotion. He has argued that the applicant having acquiesced for assessment in grade S-2 for the period ending 31.12.84 and on this basis he has been recommended three advance increments and having enjoyed such benefit, he cannot now raise the contention that he was eligible to be assessed for promotion to S-2 grade for the five years period ending 31.12.83.

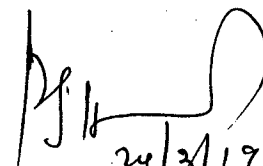
12. Rules 19 specifically provides yearly assessment for grant of promotion from one category to another. This is a statutory obligation and this can^{not} be^{be} bypassed^{only} by giving advance increments. The respondents have not given any satisfactory explanation to the belated yearly assessment for the promotion. In the case of the applicant, the applicant contended that he is entitled to be screened in the year 1976 but he had been screened only in the year 1979. There is no proper explanation for the long delay in the case of the assessment of the applicant. Since the applicant has submitted his representation even after the grant of three advance increments, the applicant cannot be considered as a person who^{has} acquiesced himself and satisfied^{with} the grant of increment as contended by the learned counsel for the respondents. Having regard to the facts and circumstances of the case, we are not prepared to go along with the learned counsel for the respondents ⁱⁿ ~~in~~ ^{the} ~~the~~

^{accepting} the plea that the applicant has acquiesced himself and satisfied with the grant of three advance increments granted to him.

13. In the result, having considered the matter in detail, we are of the view that this application is to be allowed by setting aside the Annexure-L impugned order and directing second respondent to consider the claim of the applicant for grant of promotion to the higher grade of Scientist S-2 w.e.f. 1.7.78 as stated in Annexure-E recommendation. If he is found suitable in the assessment he may also be granted consequential further benefits. The respondents shall implement the direction as expeditiously as possible, at any rate within three months from the date of receipt of a copy of this judgment.

14. The application is allowed to the extent indicated above. There will be no order as to costs.


24.3.92
(N. DHARMADAN)
JUDICIAL MEMBER


24/3/1992
(P.S. HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

knn

CPC 11/93 u.

on 64/91

no order

11)

Mr. VRR Nair
Searched by my.

The petitioner will serve a copy of
the CCP on the learned counsel for ICAR also.
Post for final hearing on 29.1.93.

(RN)
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(ND)
2/1

29-1-93
(14)

Mr VRR Nair
Mr Mathews J Nedumpara (by proxy)

The learned counsel for the original respondents
seeks 2 weeks' time to file reply to the CP(C). List for
further direction on 3.3.93

(AVH)

(SPM)

29-1-93

3-3-93
(35)

Mr VRR Nair
Mr Jacob Varghese for respondents

The learned counsel for the respondents prays for a
month's time for reporting compliance of the judgement of
this Tribunal in OA-64/91. Accordingly, list for further
direction on 7.4.93. In the cause list the name of Shri
Mathews J Nedumpara may be deleted and ^{Mr J} Shri Jacob Varghese
be indicated as learned counsel for the respondents.

(AVH)

(SPM)

3-3-93

ND JMR

Mr VNR Nan

Mr Jacob Varghese

Learned counsel for original
respondents prays for a month's time for
implementation of the judgment. Time
granted. Post on 24.5.93.

(nr)
7/5

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Mr. K. Ramakumar

Mr. Jacob Varghese

The learned counsel for respondents submitted
that the directions contained in judgement dated
24.3.92 have been complied with. We record his
statement and discharge notice. ~~discharged.~~
The CCP is closed.

(R. Rangarajan)
Administrative Member

(N. Dharmadan)
Judicial Member

24.5.93

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