

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.751/11 & O.A.No.70/11

Tuesday this the 14th day of August 2012

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

O.A.No.751/11

M.Eswaran,
S/o.Mariappan,
T-6, Technical Officer, Field Investigator,
Division of Social Sciences,
(now under order of reversion to T-5 Grade),
Central Tuber Crops Research Institute (CTCRI),
Sreekaryam, Thiruvananthapuram – 695 017.
Residing at H.No.45-B, Sreelakshmi,
Santhi Nagar, Sreekaryam, Trivandrum – 17.

...Applicant

(By Advocate Mr.T.H.Chacko)

V e r s u s

1. The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, Rajendra Prasad Road,
New Delhi – 110 001.
2. The Director,
Central Tuber Crops Research Institute (CTCRI),
Sreekaryam, Thiruvananthapuram – 695 017.
3. The Administrative Officer,
Central Tuber Crops Research Institute (CTCRI),
Sreekaryam, Thiruvananthapuram – 695 017.
4. The Head of the Department,
Division of Social Science, CTCRI,
Sreekaryam, Thiruvananthapuram – 695 017. ...Respondents

(By Advocate Mr.P.Santhosh Kumar)

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O.A.No.70/11

K.Manikandan,
S/o.A.Kunhambu Nair,
Programme Assistant (T-6),
Krishi Vigyan Kendra, CPCRI,
Kasargod, P.O.Kudlu.
(under order of reversion to T-5).
Residing at Pavitra, Arjal Road,
Chowky, P.O.Kudlu – 671 124.

...Applicant

(By Advocate Mr.P.V.Mohanan)

V e r s u s

1. The Director General,
Indian Council of Agriculture Research,
Krishi Bhavan, Dr.Rajendra Prasad Road,
New Delhi – 110 001.
2. The Director,
Central Plantation Crops Research Institute,
Indian Council of Agriculture Research,
Kasargod, P.O.Kudlu – 671 124.

...Respondents

(By Advocate Mr.P.Santhosh Kumar)

These applications having been heard on 6th August 2012 this
Tribunal on 14th August 2012 delivered the following :-

O R D E R

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

As the legal issue involved in these two cases happens to be one
and the same, these two O.As are dealt with in this common order.

Brief facts of the case in OA No. 751 of 2011

2. The applicant joined ICAR as a senior Mali on 14-10-1976.
Later on in March 1981 he was appointed as field man (T1) and thereafter,
as T2 (Field Technician) in 1987. The applicant was appointed as T-3

(T-II-3 Field investigator) in 1988. His next promotion was T-4 in 1994 followed by T-5 promotion on 01-07-1999. There is no quarrel upto this part of his career progression. On 01-07-2004, on completion of five years of service in the T-5 grade, the applicant was considered for T-6 grade in July 2004. He was, no doubt, promoted to the said grade as on 01-07-2004. However, when his next promotion to T-7 was considered, according to the respondents, it was detected that the promotion to the grade T-6, granted to the applicant in 2004 was found to be erroneous. By Annexure A-16 memorandum dated 08-06-2011 the applicant was informed that his promotion to T-7-8 has not been approved by the competent authority of the Council which had intimated that MA (Sociology) which the applicant possesses and on the basis of which he was considered and promoted to T-6 grade may not be treated as qualification in the relevant field in respect of the individual who was appointed in category II. Accordingly, the council has intimated that his promotion to T-6 Grade w.e.f. 01-07-2004 was erroneous and the competent authority directed to revert the applicant from T-6 to T-5 grade. The applicant was asked to submit his representation in this regard within seven days from the date of receipt of the said Memorandum.

3. The applicant gave his explanation asserting that his qualification of MA (Sociology) is relevant subject in respect of the functional responsibilities assigned to him – i.e. close collaboration with farmers, farm women, extension personnel etc., in the society and a sound knowledge in

social functions, social institutions, group approach and theories etc., and a degree in Sociology would be of immense help in the efficient performance of his official duties. He has also submitted that his main job was collection of data, survey and field investigation, arranging group meeting and the discussions and visit to farm and home. His explanation was not, however, accepted and by Office order dated 01-08-2011 the earlier promotion order dated 24-10-2005 to the T-6 grade w.e.f. 01-07-2004, was cancelled and the applicant was reverted to Grade T-5. Annexure A-19 refers. And, by Annexure A-20, his pay also underwent a downward revision. The applicant has challenged Annexure A-16, Annexure A-19 and Annexure A-20 and sought for the following reliefs :-

1. To call for the records leading to the issuance of Annexure A-16 proceedings dated 8.6.2011, Annexure A-19 proceedings dated 1.8.2011 and Annexure A-20 proceedings dated 8.8.2011 to quash or to set aside the cancellation of promotion already granted to T-6 Grade w.e.f. 1.7.2004.
2. To declare that the promotion granted to the applicant to T-6 Grade w.e.f. 1.7.2004 is absolutely correct and legally valid and hence the applicant is entitled to be promoted to T-7 Grade on completion of 5 years service in T-6 Grade in category III with all consequential benefits w.e.f. 1.7.2009.
3. To grant any other appropriate order, direction or relief which this Hon'ble Tribunal may deem fit and proper in the interest of justice.
4. Respondents have contested the OA. They have stated that MA (Sociology) may be useful and may be relevant, but it is not the prescribed qualification for promotion to T-6 Grade. The essential qualification as per

the Recruitment Rules is Masters degree in Agriculture as his diploma was only in Agriculture. Respondents have also contended that promotion if made wrongly and continues for a substantial period can be rectified and no protection could be given by virtue of officiation for a long time. They have also justified that the recovery of excess payments made to the applicant on account of such erroneous promotion is also equally possible.

5. The applicant has filed his rejoinder stating that the promotion granted to him was not on account of any error, instead is the outcome of a conscious decision arrived at by the competent authority, after taking into account the due recommendations of the Departmental Promotion Committee in which one of the Members happens to be from the very Headquarters. His promotion was scrutinised at three levels, viz., DPC, Director Level and the ICAR level. He has relied upon various decisions of the Apex Court that the experts committee's recommendations cannot be upset by judicial intervention. As regards recovery, again, the applicant has relied upon certain decisions of the Apex Court.

6. Respondents have filed their additional reply and reiterated their contention as already made in their reply. In his statement filed by the counsel for the respondents, certain decisions of the Kerala High Court as well as of the Apex Court have been mentioned.

Brief facts of the case in OA No. 70 of 2011

7. The applicant commenced his service as technical personnel in grade T-4 (training assistant) in category II. He was promoted to the grade T-5 (Technical Officer) w.e.f. 01-01-1990. Again, he got his Advance Increments w.e.f. 01-01-1996 as there was a category barrier for promotion, i.e. the incumbents in the highest grade in category I would not be eligible for assessment promotion to the lowest grade in category II except by lateral entry of 33-1/3% promotion on acquisition of prescribed qualification for appointment to the post in the lowest grade in the next higher category. The Technical Service Rules underwent certain amendments in 1995 and 2000. Qualifications for category III in the field/farm Technician Group I, vide Appendix IV of the Rules reflected as under :-

1. Three years Diploma/Bachelor's Degree in Science/Agri./Animal Science/relevant field/Forest Rangers Course (for CAZRI and CS and WCR and T1.)

2. Five years experience of working in relevant field. Minimum experience will be 7 years, 10 years and 12 years for lateral entry to posts Carrying scales of Rs.1100-1600, 1300-1700 and 1500-2000 respectively.

3. Desirable qualification is Masters degree in the subject.

8. In fields where the duration of diploma courses available in the country is one of two years, the minimum qualification will be two years diploma instead of three years Diploma.

9. The Recruitment Rules for promotion to grade T-6 underwent a modification in that technical personnel who have put in not less than 10 years of service in grade T-5 may be considered for appointment to grade T-6 in category III by assessment promotion irrespective of occurrence of vacancy. Annexure A-1 refers.

10. Another modification to the Rules carried out in 2000 is that Technical Personnel in Grade T-5 who do not possess the essential qualifications as for direct recruitment prescribed in the modified TSR shall be eligible for assessment promotion to T-6 grade after completing 10 years of service in T-5 grade provided such technical personnel are possessing the qualifications prescribed for direct recruitment to Category II (T-3). By this modification, the applicant and certain others became eligible for promotion to grade T-6 in Category III and the applicant had opted for the modified TSR dated 03-02-2000. Annexure A-2 refers. It was under the above modified rules that the applicant was promoted to the grade T-6 (Technical Officer) w.e.f. 01-01-2000. Annexure A-3 refers. Annexure A-4 is a clarification given to the extent that while prescribing the revised qualification in modified TSR, the concept of equivalent has not been changed or redefined and the concerned Institutes are required to apply the equivalent qualification contained in the Technical Services Rules 1975 (Appendix IV) wherever required in the past. The ICAR by circular letter dated 07-03-2003 declared that three years diploma which is already considered as essential qualification for category II should hold good for

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promotion to the category III after completion of 10 years of service vide paragraph ii(b) of the modified TSR dated 03-02-2000. After his promotion to Grade T-6 w.e.f. 01-01-2000, the applicant became eligible for consideration for promotion to the next higher grade T-7-8, on completion of five years of service in grade T-6. However by Annexure A-7 order dated 05/16-03-2010, the respondents directed the applicant to be reverted to grade T-5 w.e.f. 01-01-2000 in the lower timescale of pay. This order, which visited the applicant with civil consequences, landed on the lap of the applicant without any pre-notice. The applicant filed a detailed representation, vide Annexure A-8. This representation was rejected by Annexure A-9 order dated 18-11-2010. The respondents are also informed that as per order dated 19-10-2006, option once exercised became final and the applicant had already exercised his option for being governed by Modified Technical Services Rules introduced w.e.f. 03-02-2000 and he would not be permitted to exercise a fresh option for being governed by the Modified Technical Service Rules.

11. The applicant has now come up with this O.A. challenging Annexure A-7 and Annexure A-9 orders on various grounds and relying on a decision by this tribunal in O.A. No. 219 of 2004 decided on 12-01-2006 (Annexure A-11), which was upheld by the High Court in Writ Petition No.9827 of 2006-S (Annexure A-12). Reliefs claimed are as under:-

1. To call for the records leading to Annexure A-7 proceeding dated 16.3.2010 and Annexure A-9 proceeding dated 18.11.2010 and set aside the same.
2. To declare that the promotion of the applicant to Grade T-6 with effect from 1.1.2000 is perfectly legal and the applicant is entitled to be promoted to Grade T-7 on completion of five years service in the Grade T-6 and promotion to Grade T-8 (T-9) on completion of seven years service in Grade T-7 in category III with all consequential benefits.
3. Any other appropriate order or direction as Hon'ble Tribunal deem fit in the interest of justice.

12. Respondents have contested the OA. According to them, T-5 technical personnel who do not possess the essential qualifications as for direct recruitment prescribed for category III shall be eligible for assessment promotion to T-6 Grade, after completing 10 years of service in T-5 grade provided such technical personnel are possessing the qualifications prescribed for direct recruitment to category II (T-3). The applicant opted for modified TSR and as per this option he was due for merit promotion on completion of 10 years of service in grade T-5 and his case was placed before the assessment committee for such promotion w.e.f. 01-01-2000 and the committee accordingly recommended his promotion. By order dated 19-10-2006 opportunity was given to all concerned for exercising fresh option with a rider that option once exercised shall not be varied. The applicant chose not to avail of this opportunity. The case of the applicant was earlier referred to the Council seeking certain clarifications vide Annexure R2(f) and the Council directed to deal with the assessment promotion as per TSR. Thus the competent

authority ordered to review the assessment promotion granted to the applicant in grade T-6. As the applicant did not possess the requisite qualifications, the committee recorded that the earlier promotion granted to the applicant was erroneous and hence the applicant could not be promoted to grade T-6. Respondents have justified their action stating that erroneous promotion could be easily cancelled.

13. The applicant has filed his rejoinder, enclosing Annexure A-13 proceeding dated 03-03-2006 in respect of technical personnel working in Sugar Cane Breeding Institute, Coimbatore. He has asserted that option made available to others was not made available to him.

14. Respondents have filed their additional reply to the rejoinder. Counsel statements have also been filed by the respondents.

15. The arguments advanced on behalf of the applicants : Counsel for the applicants in both the O.As presented their case which struck a symphonic sound emphasising the fact that promotion granted a decade ago, after due deliberation by the departmental promotion committee and accepted by the competent authority, cannot be subject to review on the ground that the applicants did not possess the requisite qualifications, especially when the applicants do possess the requisite qualifications. It has been argued that P.G. Degree in Sociology is a relevant subject in respect of the functional requirement of applicant in OA No.751 of 2011. In

so far as the applicant in the other OA is concerned, according to the counsel for the applicant, the applicant did possess the qualifications as per Appendix IV which provide for qualification as for a lower category (T-3) plus ten years of service as T-5.

16. Counsel for the applicant in OA No.70 of 2011 relied upon the qualification as prescribed in Appendix IV and also the amendment of the Recruitment Rules and stated that the applicant having fulfilled the requisite qualifications had been rightly promoted is w.e.f. 01-01-2000 and it cannot lie in the mouth of the respondents to turn around and say that the applicant does not possess the requisite qualifications.

17. The counsel for the applicant referred to a number of decisions in regard to the impermissibility to review the promotion order granted a decade ago. The following are the decisions referred to by the counsel for the applicant in OA No.751 of 2011 :-

1. (2010) 8 SCC 372
2. (1994) 2 SCC 521
3. (2001) 9 SCC 261
4. Case No.119 KLT 2002 (2)
5. 1992 (1) KLT 458
6. (2000) 10 SCC 166
7. 2000 (2) KLT 798
8. Case No.18 KLT 1998 (1)
9. 1995 2 SCC 377
10. 1993 (1) Kerala Law Journal 633
11. 2001 5 SCC 482

18. Arguments were heard and documents perused. The question for consideration is whether the reversion order passed by the respondents of the promotion granted to the applicants years ago is legal.

19. The respondents have stated that the DPC committed a mistake in holding that the applicants possess the qualifications as for the post of Grade T-6, whereas it is not so. This is misconceived. There are two stages in holding the DPC – (a) preparation of list of eligible candidates and (b) preparation of list of suitable candidates. In so far as (a) above is concerned, the DPC has no role to play. It is purely a matter for the administrative to see who are all the persons eligible as per the Rules. In respect of applicant in OA No.751 of 2011, the individual had the qualification of M.Sc. (Sociology). The qualification requirements as contained in the order dated 24-02-2006 in respect of Field/Farm Technicians clearly stipulate the following :-

Existing qualifications : Master's Degree in the relevant field or equivalent qualifications from a recognized university.

Amended qualification : Master's Degree in Agriculture or any other branch of science/social science relevant to agriculture or equivalent qualifications from a recognized university.

20. The preamble to the above include that model qualifications for different functional groups of technical employees are given in Appendix IV. These were notified vide letter No. 18(1)/97 Estt IV dated 3.2.2000. To overcome the difficulties arising out of the implementation of these

qualifications, it has been decided by the GB of the Council to amend the model qualifications to the extent indicated in the Annexure. The amendments will come into force with immediate effect.

21. The applicant in the said OA was promoted to Grade T-6 on 24-10-2005 and as such, it was the qualifications prior to amendment that would be relevant. The said qualifications contain, "Master's Degree in the relevant field or equivalent qualifications from a recognized University." That Master's Degree in Sociology is a relevant qualification has been confirmed by Dr.M.Anantharaman, the Head, Section of Extension and Social Sciences vide order dated 13-06-2011. In fact this is the reiteration of the said authority's earlier endorsement dated 22-09-2003, wherein it has been stated "M.Sc. (Sociology) is very much relevant to the job assigned by the Social Sciences Division." Again, at the time of forwarding the qualification details of the applicant, the same authority has confirmed that the qualifications of Post Graduate Degree in Sociology is very much related to Field Extension Work and the Survey Work. The Assessment Committee had duly recommended the applicant for promotion to Category III w.e.f. 01-07-2004, vide order dated 24-10-2005. The recommendation of the Assessment Committee has been forwarded for consideration and approval of the Competent Authority of the Council, vide Annexure A-12 communication dated 28th December, 2009.

22. In their reply, the respondents have stated that M.A. Sociology may be useful and may be relevant, but it is not the prescribed qualifications in his case for promotion to the T6 Grade. Para 8 of the reply refers. It is to be pointed out, at the cost of repetition that the qualification prescribed states only, "Master's Degree in the relevant field or equivalent qualifications from a recognized university." It has not specified that the Master's Degree should be of a particular faculty. When admittedly, it has been recognized that M.A. Sociology is useful and relevant, and when the qualifications prescribed did not confine to a particular Master's Degree, there is no doubt that the applicant fulfilled the prescribed qualifications and consequently he had been promoted to Category III (Grade T-6).

23. In so far as the applicant in the other OA (No.70 of 2011) is concerned, vide Annexure A-2, the provisions relating to Category Barrier for assessment promotions from T-5 Grade of Category 11 to T-6 Grade of Category III has been revised as under :-

(a) x x x x x

(b) The T-5 Technical personnel who do not possess the essential qualifications, as for direct recruitment prescribed hereinafter under this order for Cat. III shall be eligible for assessment promotion to T-6 grade after completing 10 years of service in T-5 grade provided such technical personnel are possessing the qualifications prescribed under this order for direct recruitment to Category II (T-3).

24. The applicant was promoted to the Grade T-5 as on 01-01-1990 and thus as on 01-01-2000, he had at his credit 10 years of service in that grade. Now, regarding his possession of qualification as for Direct Receruitment to Category II, Appendix IV prescribes the qualifications for the three categories, of which for Category II, the qualification is three years Diploma/Bachelor's Degree in the relevant field and in fields where the duration of Diploma Courses available in the country is only two years, the minimum qualification will be Two Years' Diploma instead of three years Diploma. It is this part of the qualifications that has been recognized by the Assessment Committee and the applicant has been promoted to Grade T-5. It is pertinent to mention here that if the respondents expect the applicant to possess the revised qualifications, they are not right, for, in the order dated 12-01-2006, this Tribunal in a similar matter has held :-

The cardinal principal in restructuring of service is when new qualifications are prescribed the rights of the existing incumbents must be saved not only continuing in the present post but also for the promotion to the next higher posts without insisting the new qualifications.

25. Now, reference to the authorities relied upon by the counsel for the applicants may also be looked into.

26. In *Basavaiah v. Dr. H.L. Ramesh, (2010) 8 SCC 372*, the Apex Court has, highlighting the value to be given to the opinion of Expert Committee consisting of distinguished experts in the field held as under :-

It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, the experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made.

27. The above decision was cited to hammer home the point that the applicant's promotion was duly recommended by the august Assessment Committee. The above view has been also earlier held in the case of Shyam Babu Verma vs Union of India (1994) 2 SCC 521.

28. As to the impermissibility in resorting to reversion after a lapse of more than a decade, the applicant relied upon the decision of the Apex Court in the case of M.A. Hameed vs State of A.P. (2001) 9 SCC 261 wherein the Apex Court has commented :-

We are of the view that the reversion of the appellant after he held the higher post for more than a decade was wholly unjustified. If his appointment was temporary or irregular in any manner he should have been reverted within a reasonable period.

29. Similarly, such a reversion, when a conscious decision was taken to promote years ago, was criticized by the Apex Court in the case of Balbir Singh vs State of HP (2000) 10 SCC 166 wherein, the Apex Court has stated :-

4. It is surprising to note that prior to the disposal of the Writ Petition filed by Shri.Walia, the appellant herein was reverted vide order dated 02-07-1988 allegedly on the ground that he had been promoted erroneously under a mistaken belief. The record reveals that the respondent State had taken a conscious decision to promote the appellant and was, therefore, not justified in reverting him allegedly on the ground of non-availability of reservation as per instructions of the Government.

30. Yet another case relied upon by the counsel for the applicant is M.S. Usmani and others vs Union of India and Others (1995) 2 SCC 377. The Apex Court in this case has stated, "The reversion order issued by the Railways appears not only to be ungust but vitiated by error of law."

31. The applicant has also cited many a judgment of the High Court of Kerala on the subject matter of reversion. One of them Rajalekshmi vs State of Kerala (1992) 1 KLT 458, wherein, reversion was sought to be effected on the ground of not being qualified. This was not permitted by the High Court which has held,

Admittedly, petitioner was allowed category change on 11-06-1979. She was promoted to the cadre of First Grade Executive Officer on 20-6-1984 and then as Panchayat Inspector on 11-02-1987..... petitioners appointment can only be treated as irregular and not void. Petitioner is not to be blamed for what had happened. There was no misrepresentation on her part. The entire mistake, if there was any, appears to have been committed by the respondents. For such a negligent conduct, the petitioner is not to be penalised. So, at this distance of time, she cannot be reverted back to the cadre of....

32. Again, as regards impermissibility of the respondents to resort to any recovery of excess payment of salary on account of the reversion, the counsel relied upon various judgments.

33. As regards recovery, the counsel for the applicants again relied upon many a judgment, including the decision of the Apex Court in the case of *Sahib Ram vs State of Haryana 1995 (Supp) 1 SCC 18*.

34. Counsel for the respondents too referred to the decision of the Kerala High Court in the case of *V.V. Prakasini vs K.P.S.C. And others, 1993(1) KLJ 632* which stipulated, 'power to correct apparent mistake is an absolute necessity and has to be found in every authority even without any specific provision....'

35. Taking into account the overall conspectus of the case, this Tribunal is of the considered opinion that there is no question of the applicants' not having possessed qualification as contended by the respondents. Therefore, the question of reversion does not arise.

36. In view of the above, the O.As are allowed. The impugned orders referred to in the prayer column (extracted above) are all quashed and set aside. It is declared that the applicants cannot be reverted to T-5 grade and they are entitled to be considered for the post of T-7-8 in their turn. Consequently, no recovery too could be effected.

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37. Under the above circumstances, there shall be no orders as to cost.

(Dated this the 14th day of August 2012)

K.NOORJEHAN
ADMINISTRATIVE MEMBER

 Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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