

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Original Application No. 73 of 2010

Thursday, this the 21<sup>st</sup> day of July, 2011

**C O R A M :**

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER  
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Dr. S. Chandra Babu,  
T-6, Technical Officer,  
Division of Crop Protection,  
Central Tuber Crops Research Institute (CTCRI),  
Sreekaryam, Trivandrum : 695 017 .. **Applicant.**

(By Advocate Mr. T.H. Chacko)

versus

1. Union of India represented by the  
Secretary to the Government of India,  
Ministry of Agriculture, Krishi Bhavan,  
Rajendra Prasad Road,  
New Delhi : 110 001
2. Indian Council of Agricultural Research (ICAR),  
Represented by its Secretary,  
Krishi Bhavan, New Delhi : 110 001
3. The Director,  
Central Tuber Crops Research Institute (CTCRI),  
Sreekaryam, Trivandrum : 695 017
4. The Administrative Officer,  
Central Tuber Crops Research Institute (CTCRI),  
Sreekaryam, Trivandrum : 695 017
5. The Head of the Department,  
Division of Crop Protection,  
Central Tuber Crops Research Institute (CTCRI),  
Sreekaryam, Trivandrum : 695 017 ... **Respondents.**

(By Advocate Mr. T.P. Sajan for R2-5 and  
Mr. S. Jamal, ACGSC for R1)

This application having been heard on 05.07.2011, the Tribunal on 21.07.11... delivered the following:

**ORDER**

**HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

This O.A has been filed by the applicant for the following reliefs :

- (i) To call for the Annual Confidential Reports and connected records including minutes and recommendations of DPC held on 16.11.2006 and 27.05.2009 leading to the issuance of Annexures A-9 and A-12 and to quash the same for granting notional promotion to T-7-8 Grade with effect from 03.02.2005;
- (ii) To issue a direction to the 3<sup>rd</sup> respondent to expunge the non-communicative adverse remarks if any from the ACR in force;
- (iii) To declare that the applicant is eligible for notional promotion to T-7-8 Grade with effect from 03.02.2005 with all consequential monetary benefits;
- (iv) To grant such other relief(s) which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The applicant joined Indian Council of Agricultural Research (ICAR) as Technical Assistant in T-II-3 Grade on 15.01.1983. He received timely five yearly assessment promotions upto T-6 Grade. He was promoted to T-6 Grade on 03.02.2000 while he was on study leave from October, 1999 to October, 2002 for a Ph.D. Degree. He was recommended for promotion to the next grade of T-7-8 by the Assessment Committee based on the assessment for the period from 03.02.2000 to 02.02.2005 twice, but the competent authority had not granted the promotion first on the ground that he did not have the required bench mark and later, on the ground that a fresh assessment has to be made on the basis of the ACRs of 5 years excluding the study leave period. Aggrieved, the applicant has filed this O.A.



3. The applicant submitted that he has unblemished service at his credit during the period from 03.02.2000 to 02.02.2005. No communication in the nature of advise to improve the efficiency and quality of service has been received. In fact, he secured the Ph.D. Degree, which was appreciated by every one in the ICAR. The Council has taken part of his study leave period for promotion to T-6 Grade, i.e. 04.10.1999 to 03.02.2000. The remaining period of study leave from 04.02.2000 to 03.10.2002 can also be counted for promotion due on 03.02.2005. There is no rule to exclude the study leave period for promotion. If downgrading of the confidential reports from 'very good' to 'good' is considered as an adverse entry affecting his promotion, it ought to have been communicated to him. The non communicated adverse remarks must be ignored while considering the assessment for promotion. In the meetings of the Assessment Committee held on 16.11.2006 and for reassessment held on 27.05.2009, the Committee had recommended the applicant for promotion with retrospective effect. Hence, he prays that the O.A. should be allowed.

4. In the reply statement filed by the respondents, they submitted that the ICAR had prescribed the requirement of three 'very good' grades in the ACRs during the relevant 5 years of the assessment period for promotion from T-6 to T-7-8. With effect from 01.01.2006, this condition was changed for promotion from T-6 to T-7-8 Grade. One had to obtain 75% marks out of a total of 100 marks. A total of 80 marks was for ACRs and 20 marks for the performance report for the assessment period. As the applicant had not fulfilled the said condition, he was not considered eligible for promotion to



T-7-8 Grade. The competent authority of the council had not accepted the recommendations of the Assessment Committee for promotion of the applicant from T-6 to T-7-8 Grade as he did not fulfil the bench mark criteria during the relevant five yearly assessment period. There was no adverse CRs in respect of the applicant during the relevant period, therefore, communication if grading of CRs was not necessary. In view of the above, the O.A is liable to be dismissed.

5. In the rejoinder, the applicant submitted that he is seeking promotion on the basis of the five yearly assessment period from 03.02.2000 to 02.02.2005. Hence the new rule of 75% of marks for T-7-8 Grade promotion as per Annexure R1(C) is not applicable as the said order was came into effect from 01.01.2006 only. The requirement of consistently three 'very good' ACRs during the five year assessment period from 03.02.2000 to 02.02.2005 was relaxed by Annexure A-13 order dated 27.03.2001. The study leave period was granted to the applicant as per the provision of ICAR Technical Service Rules, 1975 (TSR, for short). According to Rule 6:9(ii), the period of leave including study leave/EOL can be counted for the purpose of computing the prescribed period for assessment. The letter dated 05.10.2009 issued by the Under Secretary (TS) directing non consideration of the period of study leave for the purpose of reassessment is not sustainable in view of Rule 6:9(ii) of TSR. In a similar O.A. No. 190/2007, this Tribunal had allowed promotion to T-7 Grade to the applicant therein on 08.01.2008. The Writ Petition No. 14437/2008(S) filed by the respondents against the said order was dismissed by the Hon'ble High Court of Kerala on 20.06.2008. The Special Leave Petition CC No. 1911/2009 filed before Hon'ble Supreme Court was also

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dismissed on 06.11.2009. In view of the above, the O.A. is liable to be allowed.

6. We have heard Mr. T.H. Chacko, learned counsel for the applicant and Mr. T.P. Sajan, learned counsel for the respondents 2 to 5 and perused the records.

7. The recommendation of the Assessment Committee for promotion of the applicant to T-7-8 Grade was rejected by ICAR on the ground that he is not fulfilling the bench mark criteria during the relevant 5 yearly assessment period. However, during the period in question, if there was any adverse remarks in the ACRs of the applicant, the same was not communicated to him. The respondents have submitted that there was no adverse remark in respect of the applicant during the relevant assessment period. But as per the settled law, any grading which adversely affects the promotion of an employee is an adverse remark. The Hon'ble Supreme Court has laid down the law on this point in ***Dev Dutt vs. Union of India***, (2008) 8 SCC 725. When a bench mark of 'very good' is prescribed, any grading below the bench mark is adverse and must necessarily be communicated as held by the Apex Court in ***Dev Dutt's*** case. All gradings whether it is poor, average, good or very good or outstanding must be communicated to a public servant working in Govt Offices, Statutory Bodies, Public Sector Undertakings or other State Instrumentalities, where constitutional obligations and principles of natural justice and fairness apply. All non-communicated adverse remarks in the ACRs are to be ignored in the assessment made for promotion. Therefore, the denial of promotion to T-7-8 Grade on the ground that the applicant did

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not fulfil the bench mark criteria during the five yearly assessment period, is not sustainable.

8. The recommendation of the Assessment Committee in the meeting held on 27.05.2009 in respect of the applicant was not accepted by the ICAR as the relevant assessment period ostensibly included the study leave period. The applicant was granted the study leave as per TSR, 1975. The relevant Rule 6:9(ii) is reproduced below:

"For the purpose of computing the prescribed period for assessment, the period of ad hoc service in the same grade and also the period of leave, including study leave/EOL and the period spent on deputation will also be counted.

It is clear that as per Rule 6:9(ii) of TSR, 1975, the study leave period can be counted for promotion. The direction contained in Annexure R1-D letter dated 05.10.2009 from the Under Secretary (TS) to the effect that the ACRs for the period of 2000-01, 2001-02 and 2002-03 may not be considered for promotion of the applicant as he was on study leave during the period from 04.10.1999 to 03.10.2002 is arbitrary. No reason is shown why the study leave period of the applicant should be excluded from the relevant period for assessment of the applicant for promotion when Rule 6:9(ii) of TCR, 1975, allows it. Moreover, part of the study leave period was included in the relevant assessment period for promotion of the applicant to T-6 Grade. The direction given by the Under Secretary (TS) is contrary to the relevant provisions in the TSR, 1975, and is, therefore, illegal. We hold that as per the aforesaid rule, the study leave period of the applicant should be included in the relevant assessment period for consideration of the applicant for promotion to T-7-8 Grade.

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9. The Assessment Committee has assessed the applicant twice 'fit' for promotion twice. The rejection of the recommendation by the Council on both the occasions are not on grounds that can be sustained in law. Therefore, the impugned orders are liable to be quashed. Accordingly, it is ordered as under:

10. The Annexure A-9 order dated 19.02.2009 and the Annexure A-12 order dated 16.10.2009 in respect of the promotion of the applicant to T-7-8 Grade are hereby quashed and set aside. The 2<sup>nd</sup> respondent is directed to pass fresh orders in the case of notional promotion of the applicant to T-7-8 Grade with effect from 03.02.2005 with consequential monetary benefits in accordance with law within a period of two months from the date of receipt of a copy of this order.

11. The O.A is allowed as above with no order as to costs.

(Dated, the 21<sup>st</sup> July, 2011)



(K. GEORGE JOSEPH)  
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)  
JUDICIAL MEMBER

cvr.