

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 99/99

Dated the 11th Day of March 1999

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI R.K. AHOOJA, ADMINISTRATIVE MEMBER

M.K. George,
S/o Shri M.J. Kuriaippe,
Senior Scientist,
Central Marine Fisheries Research Institute,
Cochin - 14.

R/o Konthuruthi Lane,
Desabhimani Road,
Kaloor,
Kochi - 17.

.... Applicant

By Advocate: Shri M.R. Rajendran Nair

Vs.

1. Union of India, through
Secretary, DARE
(Ministry of Agriculture),
Krishi Bhavan,
Dr. Rajendra Prasad Road,
New Delhi.

2. The Indian Council of Agricultural
Research, through its
Secretary, Krishi Bhavan,
Dr. Rajendra Prasad Road,
New Delhi.

3. The Director,
Central Marine Fisheries Research
Institute (CMFRI),
Sali Ali Road,
Ernakulam, Kochi - 682 024.

Respondents

By Advocate: Shri Govindh K. Bharathan SCGSC
for Respondent no. 1

Mr. P. Jacob Varghese for
Respondent nos. 2 & 3.

Having heard the application on 3.3.1999,
the Tribunal delivered the following
Order on 11.3.1999:

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HON'BLE SHRI R.K. AHOOJA, ADMINISTRATIVE MEMBER

The applicant who was working as Senior
Scientist under the Indian Council of Agricultural

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Research (ICAR for short) has come before the Tribunal apprehending his retirement from service before attaining the age of 62 years. He submits that the service conditions of the University teachers as decided by the Government of India are applicable mutatis mutandis to the ICAR Scientists engaged in teaching, research and extension. This has also been affirmed by the Hon'ble Supreme Court in Dr. S.M. Ilyas and Ors. Vs. Indian Council of Agricultural Research and others (1993) 1 SCC 182 and Dr. T.S. Raman Vs. Union of India and Others (1984) 2 SCC 142. He states that the Central Government had decided by their letters dated 27.7.1998 and 6.11.1998 that the age of superannuation of University teachers as well as other University employees who are treated at par with the teachers will be 62 years instead of 60 years as hitherto. The applicant states that there is an administrative delay in the implementation of the above revised University Grants Commission Rules on the age of superannuation to the Scientists of Indian Council of Agricultural Research and because of this he was denied the benefit of the age of superannuation. Accordingly, he has prayed for a declaration that he is entitled to continue in service till he attains the age of 62 years.

2. The Respondents 2 and 3 i.e., the Indian Council of Agricultural Research and the Director Central Marine Fisheries Research Institute (CMFRI),

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with whom the applicant is working have filed a reply. They submit that the retired age for the Scientists in Indian Council of Agricultural Research is 60 years. Indian Council of Agricultural Research is ~~an~~ Society Registered under the Registration of Societies Act as an autonomous body and no notification of the Central Government is automatically applicable to the employees of the Indian Council of Agricultural Research till the same is approved by the Governing Body of the Society. They state that the matter was taken up with the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training) North Block, New Delhi who had advised that the proposal to increase the age of retirement of the Scientists in Indian Council of Agricultural Research may be dropped. Even after this advice, the Indian Council of Agricultural Research had recommended and submitted to the Cabinet this question and Only after the Cabinet approves the proposal then the matter can be placed before the Governing Body of the Indian Council of Agricultural Research for amendment of the Rules.

3. When the matter came up on 28.1.1999, the learned counsel of the respondents submitted that no instructions had been received by him, interim order was granted to the applicant directing the Indian Council of Agricultural Research to allow the applicant ^{to continue} in service until further orders.

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After the filing of the reply-statement by Respondents 2 and 3, the question of continuing the Interim Order was raised. It was decided with the consent of the counsel on both sides that the matter may be heard finally at the admission stage itself. Accordingly, arguments were heard.

4. It was urged on behalf of the applicant that Supreme Court in the case of Dr. S.M. Ilyas and ors. Vs. Indian Council of Agricultural Research and Ors. (Supra) had decided that the Scientists in the ICAR were in a similar position as University teachers and were entitled to the same conditions of service. We have studied the aforesaid Judgement of the Hon^{ble} Supreme Court very carefully. The Apex Court noted that the ICAR is fully financed by the Department of Agricultural, Research and Education (DARE), Ministry of Agricultural and Cooperation, Government of India and it follows the rules of the Government of India mutatis mutandis. The issue before it was the pay-scales of Scientists S-2 or S-3: The Court directed as follows:

"18. We therefore allow this appeal and direct the respondents to issue appropriate orders so that any of the appellants or the like working as Scientists S-2 or S-3 on or before December 31, 1985 earlier to any one of the Scientists getting benefits of the revised pay-scales under the impugned notification dated March 9, 1989 also get a similar benefit of revised pay-scale of Rs. 4500-7300 in the case of S-3 and pay scale of Rs. 3700-5700 in the case of S-2. Such revised pay-scales shall be given from January 1, 1986 as given to S-2 and S-3 Scientists under the impugned notification. The respondents are directed to take suitable action in this regard and to pay the entire amount within six months from the date of this order. In the facts and circumstances of the case, we pass no order as to costs."

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We are unable to discern in this direction any declaration that all the service conditions of University teachers including those working in Central Agricultural Universities would apply Mutatis Mutandis to those working with the Indian Council of Agricultural Research. The issue in Dr. S.M. Ilyas & Others (Supra) was in any case of pay-scale and not of the age of superannuation. The learned counsel for the respondents submitted that the revised pay-scale have already been made applicable in respect of Scientists of I.C.A.R.

5. We are of the considered view that the principle of 'Equal Pay for Equal Work' does not extend to the same age of retirement for persons doing similar work. Even if, the nature of the work is ^{the or} same, the peculiar environment, ease or difficulty of obtaining replacement, scope of post retirement employment and numerous other factors have to be taken into account and this may lead to different age of retirement for different categories of workers. A Policeman served the State of Kerala ^a ~~merely~~ retired at the age of 55 but a Policeman under the State of Uttar Pradesh may superannuate at the age of 58 and in Delhi at the age of 60. It may well be desirable that there should be a ^{same} national age of retirement but to determine ~~the~~ ^{it} does not lie within the domain of the Court and Tribunal

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but is essentially a matter of Executive decision and policy.

6. The learned counsel for the applicant tried to persuade us to his proposition by pointing out that the present set of pay-scale as well as age of retirement are the same as applicable to the University teachers prior to issue of the letters of the Government of India enhancing the pay as well as the age of retirement of such University teachers. The argument is that if one part viz. the pay-scales have been raised on the same condition the age of retirement should also be raised. Secondly, he submits that as pointed out by the Supreme Court, the I.C.A.R. is nothing but a wholly government funded institution, historically an instrument for financing agricultural projects and hence ~~thus~~ an instrumentality of the State. To be an instrumentality of State does not mean that it is a government department and its employees are government servant governed by the Statutory Rules framed under Art. 309 of the Constitution. The Indian Council of Agricultural Research is admittedly a registered society under the Societies Registration Act with its own rules as well as bye-laws which determine the service conditions of the employees. There is no provision in the

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Rules brought to our notice that pay and allowances as well as the age of superannuation and other service conditions of Central Government or any category of the University teachers will automatically apply to the employees of the Indian Council of Agricultural Research. We, therefore, find ^{that} unless a decision is taken to amend the Rules by the competent authority, the Governing Body of the I.C.A.R, the age of superannuation cannot be enhanced merely on the strength of Ministry of Human Resource Development letters dated 27.7.1998 and 6.11.1998.

7. It was then urged before us that the respondents themselves have indicated that they have made a reference to the Cabinet proposing the enhancement in the age of retirement and since the Prime Minister had agreed as Minister of Agriculture to bring this matter before the Cabinet, there is every likelihood of the proposal being accepted. However, because of time factor many persons like the applicant would retire in the interregnum and lose the benefit of enhanced age of retirement. Obviously, we cannot anticipate the decision of the Cabinet. The applicant has no vested right to the enhanced age of retirement as he is governed by the existing rule of retirement at the age of 60 years. Till this Rule under goes a change, it will apply equally to all.

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8. In the light of the above discussion,
we find that the applicant has no case.
Accordingly, the O.A. is dismissed. The
Interim Order passed on 28.1.1999 consequently
also stands vacated.

Dated, 11th March, 1999.


(R.K. AHOOJA)
ADMINISTRATIVE MEMBER


(A.V. HARIDASAN)
VICE CHAIRMAN

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