

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA 121/2004

Wednesday this the 7th day of February, 2007

CORAM

**Hon'ble Mr.N. Ramakrishnan, Administrative Member
Hon'ble Mr. George Paracken, Judicial Member**

**N.P.Kunhikrishnan,
aged 61 years, Son of N.P.Mannan,
retired Technical Officer (T-6)
Central Marine Fisheries Research Institute,
Calicut Research Centre,
residing at Surabi, Near Guest House,
West Hill, Kozhikode.Applicant**

(By Advocate Mr. P.Ramakrishnan)

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- 1 Union of India, represented by the Secretary, Ministry of Agriculture, New Delhi.
- 2 The Director General, Indian Council of Agricultural Research (ICAR) Krishi Bhavan, New Delhi.1.
- 3 The Director, Central Marine Fisheries Research Institute (CMFRI), Cochin.682014.
- 4 Senior Administrative Officer, Central Marine Fisheries Research Institute, (CMFR), Cochin-682014.Respondents

(By Advocate Mr. P.Jacob Varghese)

The Application having been finally heard on 10/1/2007, the Tribunal on 7th February, 2007 delivered the following:



ORDER

Hon'ble Mr. Geroge Paracken, Judicial Member

The applicant has filed the present O.A under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the Annexures A2 and A3 letters dated 10.12.99 and 29.7.1990 respectively. By the aforesaid two letters, the respondents have rejected his request to reckon the amount drawn by him as advance increments of Rs. 600/- in the T- 5 grade post when he was promoted to the higher T-6 grade post and also to grant him all consequential benefits including difference in pay, pension and other retiral benefits.

2 The brief facts of the case relevant for the disposal of this O.A are that the applicant commenced service as Junior Technical Assistant in CMFRI and retired from there on superannuation on 30.6.2000 as Technical Officer (T-6). During the course of his service he was promoted to the rank of Technical Officer T-5 on 1.1.1987. Under the relevant rules of the CMFRI, the technical service grouped into three categories of different grades and the officials are provided merit promotion from one grade to the next higher grade or three advance increments in the same grade in lieu thereof based on a five year assessment. Accordingly, he was granted three advance increments in the T-5 grade with effect from 1.7.92, 1.7.93 and 1.7.94. The respondents in the meanwhile introduced the system of assessing 12 years performance of Technical Officers in T-5 grade for promoting them to the T-6 grade vide letter No.14(3)/94-Estt.VI Vo.II dated 3.1.1997. In terms of this



newly introduced scheme, the applicant was assessed after 12 years of service from 1.1.87 and he was promoted as Technical Officer grade T.6 in the scale of Rs. 8,000-275-13500 with effect from 1.1.99. At the time of his promotion, the applicant was drawing a basic pay of Rs. 9100/- in the scale of Rs. 6500-200-10500 attached to the scale of Technical Officer T-5 grade plus the advance increments of Rs. 300/- already granted to him.

3 On receipt of the Annexure A1 letter dated 24.9.99 promoting to the next higher grade of T-6 he requested the third respondent to fix his pay in the promoted post treating the advance increments granted as special pay. However, the 4th respondent vide letter dated 10.2.99 rejected his request referring to the letter dated 29.7.90 issued by the ICAR according to which the advance increments granted to Technical Personnel on the basis of five yearly assessment should not be counted for fixation of pay on promotion to the next higher grade as a result of subsequent assessment. Such a decision was taken by the respondents following an order of this Tribunal dated 8.1.1990 in OA 384/89 and they have inserted the following provisions in their earlier letter dated 29.7.1990 which was in operation::

"Under Para 6.2 of the Hand Book of Technical Services, some of the technical personnel have been granted advance increment(s) in the same grade, others have been granted promotion to the next higher grade, while some other have not been adjudged suitable either for the grant for merit promotion or advance increments. In order, therefore, to avoid an anomalous situation that is likely to arise on this account it has now been decided that the advance increment(s) granted to a technical personnel on the

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basis of five yearly assessment should not count for fixation of his pay on promotion to the next higher grade as a result of subsequent assessment in terms of the provisions of Para 10 of the Handbook of Technical Services, subject to the condition that the pay fixed on promotion after subsequent assessment without taking into account the advance increments earned in the lower grade should, however, be not less than the pay plus advance increments drawn in the lower grade and for this purpose the pay in the higher grade may be regulated where necessary, by the grant of personnel pay to be absorbed in future increments, so that the pay in the earlier post inclusive of advance increments, is fully protected."

The contention of the applicant is that the stipulation for not reckoning the advance increments granted as pay should not have been made applicable for promotion from T-5 to T-6, firstly because the promotion is made after 12 years and there would not arise any anomaly in fixing the pay by treating the advance increment as part of pay. Secondly, the impugned Annexure A2 letter is against the fundamental rules and therefore, the same is not sustainable.

4 The respondents in their reply admitted that the ICAR vide their letter dated 29.7.90, decided not to count the advance increments granted to Technical Personnel on the basis of five yearly assessment for fixation of pay on promotion to the next higher grade based on the order of this Tribunal dated 8.1.90 in OA 384/89. Further, they submitted that in terms of FR 22, only non-practicing allowance and stagnation increments are taken into account while fixing the pay of the employees on promotion to the next higher grade. They have also submitted that the advance increments granted to Technical Personnel on the basis of five yearly assessment as per the provisions contained in Technical Service

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Rules of ICAR are different from the special pay stipulated in the Fundamental Rules and hence the contention of the applicant to equate the advance increment with special pay was not sustainable.

5 The applicant has filed a rejoinder denying the contentions of the respondents and reiterating his submissions already made in the Original Application. The applicant has also contended that the 5 yearly assessment for promotion from lower grade to higher grade and 12 yearly assessment for promotion from T-5 grade to T-6 grade are different from each other. While the 5 yearly assessment from lower grade to the higher grade envisages grant of advance increments, 12 yearly assessment is only for the purpose of promotion and not for grant of any advance increments. He has also submitted that the increments granted to him for more than three years was in lieu of promotion and the benefits so derived cannot be taken away on his regular promotion to the next higher grade.

6 The respondents filed an additional reply to the rejoinder of the applicant and submitted that as per the existing provisions of the Technical Service Rules of ICAR, advance increment is a separate entity not to be clubbed with the basic pay. According to the provisions contained in the letter dated 29.7.90 produced as Annexure.R.1 issued by the Council, advance increments to Technical Personnel on the basis of assessment should not be counted for fixation of pay on promotion to the post in the higher grade. They have also submitted that the career advancement scheme for Technical Personnel grade T-5 for putting in less than 12

years in the grade was introduced by the Council as per the guidelines issued vide letter dated 4.8.95 (Annexure.R.3) with a view to improve their service conditions and the same procedure prescribed for conducting 5 yearly assessment has been followed in the case of 12 year assessment also. They have also clarified that even for fixation of pay in the revised scale on the recommendation of the Vth Central Pay Commission, advance increments granted to the Technical Personnel under the flexible complimenting scheme are not taken into account as per the Annexure.AR.4 instructions dated 12.4.99.

7 The respondents have filed argument note reiterating their submissions made in their reply and additional reply to the rejoinder.

8 We have heard Advocate Mr P.Ramakrishnan for the applicant and Advocate Mr.P.Jacob Varghese for the respondents. The issue regarding counting of advance increments for the purpose of fixation of pay in the higher grade on promotion has been considered by this Tribunal in OA 384/89 decided on 18.1.1990, a copy of the same was made available with the OA as Annexure.A6. The argument of the respondents in that case was an anomalous position would arise as between the persons having the same service in a particular grade and assessed for merit promotion/advance increments. As an example, two persons equally placed, of whom one is given the merit promotion to the next higher grade and the other only one advance increment in the same grade, the latter would be better off subsequently when he is promoted to the next higher grade, if the

pay on such promotion of fixed after taking into account his pay in the lower grade, inclusive of the advance increments earned by him. It was to avoid this anomaly in respect of the latter categories of employees the pay on promotion subsequently to the next higher grade is fixed on the basis of the lower grade but after excluding the advance increments earned by him in the grade. In our considered opinion, the applicant's claim for reckoning the advance increments earned by him for fixation of pay on his promotion to the higher grade is devoid of any merit. Grant of advance increments on a five yearly assessment is in accordance with the policy of the Council to give a financial support to the Technical Staff before they are actually promoted. Once they are promoted, their pay has to be fixed in the higher grade and the support already given to them by way of advance increments has to be removed. It is not the intention of the respondents Council to give the Technical Personnel the benefits of both the advance increments as well as the promotion. We, therefore consider that there is no merit in the OA and accordingly the same is dismissed. There shall be no order as to costs.

Dated this the 7th day of February, 2007


GEORGE PARACKEN
JUDICIAL MEMBER


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER