

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 136/2003

DATED, THIS THE 11TH NOVEMBER 2005

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

- 1 T.K. Antony, Lift Operator
Central Marine Fisheries Research Institute
Cochin-14
- 2 S. Mohanan, Lift Operatoar
Central Marine Fisheries Research Institute
Cochin-14. Applicant's

By Mr. N.N. Sugunapalan

Vs

- 1 The Director
Central Marine Fisheries Research Institute
Cochin-14
- 2 Indian Council of Agriculture Research
represented by its Secretary
Krishi Bhavan
Dr. Rajendra Prasad Road
New Delhi-110 001.
- 3 The Director General
Indian Council of Agricultural Research
Krishi Bhavan
New Delhi-110 001
- 4 Union of India
represented by the Secretary
Ministry of Agriculture
New Delhi. Respondents

**By Advocate Mr. P. Jacob Varghese for R 1-3
Advocate Mr. TPM Ibrahim Khan SCGSC for R-4**

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants herein are working as Supporting Staff Grade-I (Lift Operators) under the Central Marine Fisheries Research Institute (CMFRI for short) under the Indian Council of Agricultural Research (ICAR), New Delhi. They were working since 1988 as Lift Operators and their claim now is that they are entitled to the revised pay scale of Rs. 950-1500 which is granted to other Lift Operators in the various Ministries/Departments w.e.f. 1987 onwards vide Ministry of Finance OM No.19/3/16/90 dated 5.7.1991 (Annexure A5). The applicants were earlier constrained to approach this Tribunal by OA No. 797/1997 in which the respondents were directed to consider and dispose of the representations preferred by the applicants. Since the representations were rejected the applicant again challenged the same in O.A. 781/2000 and this Tribunal declining to grant the reliefs sought for by the applicant directed the respondents to reconsider the case of the applicants. Now without stating any reasons the respondents have again rejected the applicants' case vide the impugned order at Annexure A-15. It is the case of the applicants that they are carrying out exactly the same functions of Lift Operators as in the various Ministries/Departments of the Central Government and they were initially engaged through Technical Employment Exchange duly taking into account their qualification and experience in the grade of SSG-I (Lift Operator) and were granted the pay scales. When the revised scale of pay of Rs. 950-1500 has been granted to the Lift Operators in the Ministries/Departments, the ICAR ought to have adopted the same in their service also and they seek a declaration that they are entitled to draw the revised pay scale and a direction to the respondents to grant them the revised pay scale with all consequential benefits including arrears.

2 In the reply statement the respondents have stated that the CMFRI is one of the constituent units of ICAR, an autonomous organisation registered under the Societies' Registration Act, 1860 under the categorisation of various posts

prescribed in the Bye-Laws of ICAR Society, one of the categories is termed as 'Supporting' Category which includes all those personnel who generally help and support the scientific, technical, administrative and auxiliary categories. There are separate Recruitment Rules for the supporting staff Grade-I under the Council and the applicants were appointed against the sanctioned posts against this category and designated as SSG-I (Lift Operators) for the purpose of identification of their functions. The qualification prescribed for SSG-I is efficiency in the appropriate trade. The pay scales of various posts are prescribed by the Ministry of Finance, Government of India for adoption by the Organisation, when specific orders in this regard are issued by the Ministry of Finance for similar implementation, only the pay scale prescribed by Government of India are adopted by the ICAR. The duties of the supporting staff in the SSG-I are inter-changeable whenever such necessity arises. It is further submitted by the respondents that the minimum qualification prescribed for Supporting staff is proficiency in the trade only whereas the minimum qualification prescribed for Group-C posts is Matriculation with trade certificate. The applicants at the time of appointment have produced experience certificate and they do not posses the educational qualification of Matriculation. They have also denied that the applicants were appointed from the Technical Employment Exchange as they were only recruited through local Employment Exchange. The posts of Lift Operators as employed in the government departments do not exist in the ICAR. The representations of the applicants were forwarded to the higher authorities, after examination and after due consideration it was intimated that they were initially appointed as supporting staff against sanctioned posts under the group-D category and that the duties of the applicants are not equal to the work of the Lift Operators deployed in the Government of India Ministries/Departments and hence the pay scale of the Lift Operators in the Ministries/Departments of Government of India cannot be extended to them. The earlier OAs filed by them before this Tribunal in the same context were dismissed. The applicants have also been promoted from the SSG-I to SSG-II on the recommendation of the duly constituted DPC under the existing rules as is evident from the office order dated 24.4.1998. Hence the OA is devoid of any

merit and deserved to be dismissed.

3 The applicants have filed a rejoinder stating that the ICAR and all its subsidiaries such as CMFRI are Departments of the Government of India and hence the benefits extended to the Lift Operators in other Departments of Govt. Of India have to be extended to the applicants as well. They are performing the same functions as those working in the Government Departments and they are not required to undertake repair/overhauling or maintenance of the lifts which is being done by giving annual maintenance contracts to companies. The so called promotions granted to the applicants is nothing but a time bound promotion which is normally granted to employees who have completed 12 years of service in a grade without promotion.

4 We have heard the learned counsel for the applicants Shri N. N. Sugunapalan. The learned counsel for the applicants argued that the contention of the respondents that the applicants are not at par with those Lift Operators working in the Ministries/Departments of Government of India on the basis of qualification and nature of functions, has to be summarily rejected as the rules do not provide for any such qualifications. We have also heard the learned counsel for the respondents Shri P. Jacob Varghese who reiterated the averments taken by the respondents in the reply statement. As directed by us the applicants' counsel also produced a copy of the Recruitment Rules to the post of Lift Operators in the CPWD and that for the non-industrial cadre of Lift Attendants in the Ministry of Defence. We have perused the same.

5 It is seen from the above narration of facts that this is a third round of litigation as far as the applicants are concerned. Though it was not denied that the applicants are doing the work of Lift Operators, the distinction that is made is that they were appointed as Supporting staff in the SSG-I which is a category under Group-D in the CMFRI and that these posts under the SSG-I are not exclusively sanctioned as Lift Operators and in this category posts like Lab Attendant, Binder, Khalasi, Saffaiwalla, etc. and these posts are also included



and they are interchangeable. It is also the contention of the respondents that the pay scale of Rs. 950-1500 now being claimed by the applicants falls in Group-C and the applicants do not possess the prescribed qualification for the Group-C posts. We find that all the above contentions were elaborately considered by this Tribunal in O.A. 781/2000 and the Tribunal had come to the conclusion that in the respondents' organisation there are number of SSG-I posts with specific functions such as SS Grade-I Watchman, Safaiwala, Lift Operator, etc. and that the applicants were recruited as SS Grade-I and not as a Lift Operator per se. The judgment had also considered the case of the applicants that they are Government servants and that the scales of pay applicable to Government Departments should be automatically made applicable to them. It was also observed that the Courts/Tribunals have to satisfy themselves whether the principle of equal pay for equal work had been violated and in this case no materials have been brought to the notice of the Court to come to the conclusion that the posts in the Government and in the CMFRI are similarly placed. It was also held by this Tribunal in the above judgment that the scales of pay indicated in the Ministry of Finance OM do not automatically apply in the case of ICAR. Against this background only this Tribunal had directed that the representation of the applicants to be considered by the ICAR. The issue of granting higher pay scale to the applicants was considered by the ICAR and they have come to the conclusion that the employees have not been specifically appointed as Lift Operators in the ICAR and appointments are made in SS Grade-I only and it is not possible to grant higher pay scale to SS Grade-I Lift Operators as SS Grade-I, II and III are Group-D employees and not Group-C employees.

6 Since the other contentions of the applicants regarding their functions, duties and responsibilities have also been considered and rejected by the Tribunal we are not considering those aspects while examining the validity of the decision taken by the competent authority in the Council as conveyed in the impugned order. The reason given in the order is that the applicants have not been specifically appointed to the post of Lift Operators as such the posts do not exist in the CMFRI and SS Grade-I, II and III, all fall under Group-D in the

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ICAR and not in Group-C. It is not a disputed fact that the applicants are appointed in SS Grade-I and the posts held by the applicants in the CMFRI are failing under that category and not under the designation of Lift Operator per se. This position has been noted in the earlier judgment of the Tribunal also. The respondents have clarified that the term Lift Operators used along with the SS Grade-I is only to denote the functions discharged by the employees and that does not entitle them to be considered as Lift Operators on par with the Lift Operators in the Government Departments. In the light of the factual position and the finding in the earlier OA, this contention is accepted.

7 Another contention raised by the applicants is that the ICAR and its subsidiaries such as CMFRI are Departments of the Government of India and the pay scales granted to their counter parts in the Departments have to be automatically extended to them. This contention has also to be rejected because ICAR is an autonomous organisation registered under the Societies Act and hence is not a Government Department, it is only the Governing Body of the ICAR which is the competent authority to decide the applicability of the Government orders issued from time to time to its employees. It is on the basis of this reasoning that this Tribunal in its earlier order in O.A. 781/2002 had directed the ICAR to consider afresh and decide the scale of pay of the posts in the SS Grade-I earmarked for Lift Operators in the respondents' organisation. The competent authority in the Council has considered the matter and taken the decision that higher pay scales cannot be granted. We do not find any illegality in this decision to necessitate our interference. In fact it is not within the competency of this Tribunal to determine pay scales and it is purely an administrative decision to be taken on the basis of the Expert Committee Reports like Pay Commissions keeping in mind various aspects. The Courts and Tribunals can intervene only if any discrimination is proved between similarly placed employees. The applicants' counsel put forward the argument of "equal pay for equal work" on the ground that they are discharging the same functions as Lift Operators in other Departments of Government of India. The principle of "equal pay for equal work" has been considered by the Apex Court in various

judgments and it has been held that this doctrine cannot be applied in all situations without examination of facts regarding duties and educational qualifications, experience, recruitment process, etc. In the case of Pradeep Kumar Dey Vs Union of India (2000 (8) SCC 580 the Apex Court had occasion to observe as follows:

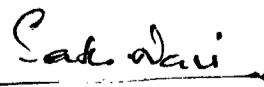
"The person who asserts that there is equality has to prove it. The equality is not based on designation or nature of work alone. There are several other factors like responsibility, experience, confidentiality, functional need and requirements commensurate with the position in the hierarchy, which are equally relevant."

8 Therefore the principle of equal pay for equal work cannot be applied in a mechanical manner just because the applicants are also operating the lifts. The respondents have clearly stated in their reply that the said post belonged to Group-D category in the hierachial structure of the ICAR Society and the persons who are appointed against the Supporting Staff category were inter changeable in their functions requiring the respondents to redeploy them according to need. Therefore the Recruitment Rules and the hierachial structure existing in the ICAR and its units are important factors to determine the pay scales. In the light of the above observation of the Apex Court and the factual position submitted by the respondents we do not find any strong reason to up set this classification and the structure existing in the organisation. Moreover, the applicants have been granted further promotion in the SSG category to grade II and III and they cannot claim there is stagnation in their grade to seek financial upgradation of the pay scale itself.

9 In the result we do not find any merit in the OA it is only to be dismissed.
No costs.

Dated: 11.11.2005


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN