

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.139/2000

~~Tues~~ day, this the 28th day of May, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

S.Haja Najeemudeen
Senior Technical Assistant (T-4)
Central Marine Fisheries Research Institute (CMFRI)
Tatapuram P.O.
Cochin - 682 014.

Applicant.

[By advocate Mr.N.Sugunapalan]

Versus

1. The Director
Central Marine Fisheries Research Institute (CMFRI)
Tatapuram P.O.
Cochin-682 014.
2. Sri K.Narayana Kurup
Senior Scientist & Head
Fisheries Resources Assessment Division (FRAD)
Central Marine Fisheries Research Institute (CMFRI)
Cochin-682 014.
3. The Secretary
Indian Council of Agricultural Research (ICAR)
Krishi Bhavan, New Delhi-110 001
4. Union of India represented by the
Secretary
Ministry of Agriculture
Krishi Bhavan, New Delhi-110 001

Respondents.

[By advocate Mr.P.Jacob Varghese for R1 3 & 4]

The application having been heard on 14.3.2002, the
Tribunal delivered the following order on 28.5.2002.

O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

Indian Council of Agricultural Research (ICAR) is mandated to promote research and education in all fields relevant to agricultural progress in our country. This was introduced from 1st October, 1975 and came into effect from 1.10.1975. A1, A-2 & A3 are the copies of the handbook containing information on the rules and procedures relating to the recruitment, assessment, and promotion of staff belonging to the Technical Services and



service conditions. The Five Yearly Assessment form for the Technical personnel (Category II) of ICAR known as Proforma II supplied by the first respondent to the applicant was to be filled in by the concerned parties, copy of which was marked as Annexure A-4. It is alleged in the petition that some of the columns were left blank by the first respondent's office and the form duly filled in had been submitted to the first respondent through proper channel on 15.5.98. The five year assessment period was from 1.1.93 to 31.12.97. During this period, Head of the Division of Fisheries Resources Assessment Division (FRAD for short) under which the applicant was functioning was Dr.K.Alagaraja (for the year 1993 and 1994), Sri K.Balan (for subsequent years 1995 to 1997) and Sri K.Narayana Kurup, Senior Scientist is holding the Headship of the FRAD. On 3.8.1999 one Sri V.A.Narayanan Kutty, Senior Technical Assistant informed the applicant who was on casual leave that Sri K.Narayana Kurup, Head of the Division wanted the applicant to appear before the Assessment Committee and when he entered the room; he saw the Head of Division sitting along with other Committee members. At the gesture of the Head of Division that the applicant's presence there was unwarranted, the applicant immediately left the room and later when he met and enquired from the Head of Division about the happenings, the latter said "I have managed everything and not to worry". On the recommendations of the Assessment Committee, the applicant was granted two advance increments in the existing grade (T-4) Senior Technical Assistant in the pay scale of Rs.5500-175-9000 with effect from 1.1.98 vide office order dated 24.9.99 (Annexure A5). Aggrieved by the order, he filed a representation dated 29.9.99 (Annexure A6) which was replied on 8.11.99 vide A-7 order. A-5 and A-7 are the impugned orders which are under challenge. Applicant has contended that Sri Narayana Kurup was not fit to perform civil duties for which he produced A-8 document. He also contended that another person



who had been considered was not qualified as per A-9 assessment order. For non-sanctioning of leave, the applicant approached this Tribunal through OA No.1441/98 and by order dated 18.11.98 (A-10) it was granted. The applicant submitted that the documents produced would show that the respondents had ill will towards the applicant. A-11 dated 21.1.99 and A12 representation dated 20.3.99 by which he demanded an impartial inquiry were not being considered by the respondents. Aggrieved by the inaction on the part of the respondents, the applicant filed this Original Application for the relief mentioned in column 8 of the OA but the at the time of the argument, the counsel for the applicant submitted that he was pressing prayer (c) which is reproduced as under:

"(c) To direct the first respondent to treat the assessment period from 1993 to 1997 as qualifying period of professional performance and reconsider the case of the applicant by reconstituting afresh an Assessment Committee in terms of the provisions contained in the Technical Service Rules."

2. Respondents 1, 3 & 4 have filed a joint reply statement contending that the Hand Book on Technical Service published in 1978 had been revised in 1985 and modified thereafter. Many amendments had been brought out to the rules already published. As per the Hand Book of Technical Service Rules 1978, there was a system of giving opportunity to assessee for a personal discussion which was limited to Category III only. A copy of the revised guidelines given in the Hand Book published in 1985 is marked as Annexure R-1. The assessment form that was printed earlier was issued to the applicant without striking out the Col.No.10 which was inapplicable to Category II by oversight. As per the procedure for Five Yearly Assessment, after the proforma has been completed by the Technical personnel being assessed, it would be sent to the Reviewer who was the immediate supervisor of the Technical personnel concerned and the proforma would be sent



to the Head of Division who would record his remarks after going through the self appraisal given by the reviewee and the report of the reviewer. The Director would finally countersign the proforma with his recommendation. The Five yearly Assessment was done by an "Assessment Committee" constituted by the Appointing Authority for each professional group/discipline and the Chairman of the Assessment Committee for category I & II should be a person from outside the Institute who would be nominated by the Chairman of the Agricultural Scientists Recruitment Board, New Delhi and the Committee would include experts in the particular professional group and Head of Divisions concerned in the Institute. The applicant's case for Five Yearly Assessment as on 31.12.97 was placed before the assessment committee for merit promotion to the next higher grade of Technical Officer (T-5)/grant of advance increments. After considering the following documents the Committee recommended for 2 advance increments with effect from 1.1.98:

1. His professional performance in relation to the duties and tasks assigned to him.
2. His spirit of cooperation and teamwork and support to the scientific work.
3. His personal/behavioural abilities/attributes.
4. His organizational abilities/attributes.
5. The material furnished by him in the prescribed proforma.
6. His Confidential Character Rolls for the past five years.

3. On the basis of the assessment, the Technical personnel would be given merit promotion or advance increments as the case may be. There was no personal discussion for category I & II. If there was personal interview the individual would have been intimated about the date, time and venue of the Assessment Committee Meeting to enable him to appear before the Committee as had been done for Category III staff. A-6 representation was



replied through A-7 order explaining all details. A person who was not found fit for grant of merit promotion to the next higher grade or grant of advance increments may be considered again at the subsequent stage or stages. Sri K.Narayana Kurup was holding the position as Head of the Division and hence he was a member in the Assessment Committee. There was no rule that a person who was on leave should not attend a committee, as a Member especially when his presence was already available in the office as stated by the applicant. The Assessment Committee had considered 38 cases pertaining to the Division. Out of these 38 cases, 25 cases were recommended for merit promotion, 6 cases recommended for three advance increments, 3 cases for two increments, 0 case for one increment and 4 cases were not recommended either for promotion or for increments. Only the applicant had challenged the result of the Assessment. There was no procedural lapse in conducting the assessment. The statement that Sri K. Naryana Kurup took along with him one Sri C.Yohannan and allowed the latter to be present throughout the proceedings was false. Since the applicant himself was not available in the office on that day, the allegation was without any base and he was trying to mislead the Tribunal. The applicant was recommended for two advance increments based on the assessment of his overall performance. The gradings given in the Confidential Reports were "Outstanding/Very Good/Good/Average/Below Average. Below Average only was considered as adverse remarks. The Confidential Report of the applicant had been written by his immediate supervisor and reviewed by the Head of the Division in accordance with the procedure laid down by the ICAR. There was no adverse remarks to be communicated to the applicant. But absence of adverse remarks in his CRs as evidenced from non-communication of the same did not confer him any right to claim for promotion. Assessment was based on overall performance for the five year period. He was given assessment promotion till



1992 based on his performance during that period only. On the basis of that performance the applicant could claim merit promotion for the subsequent 5 yearly period. The respondents were not aware of the activities of the CMFRI Employees Federation and the Federation was not a recognized one by the respondents. At least 33 applications of the applicant for employment in other Govt. organizations were forwarded by the respondents through proper channel. The applicant was instructed to proceed on tour to Veraval Research Centre of Central Marine Fisheries Research Institute for giving technical assistance to OIC, in analyzing the data and when was on long leave he filed OA No.1526/98 praying for cancelling the tour, which was dismissed. The allegation that the applicant was consistently harassed and victimized from various angles was not correct and absolutely false.

4. Applicant filed rejoinder.

5. The procedure contained in Swamy's Compilation on Confidential Reports published in page 21 dated 22.5.75 which was marked as A-14 and which had to be followed by the respondents stood violated in the case of the applicant. It was further contended that one of the reasons for filing this OA itself was against the inclusion of the second respondent as member in the Assessment Committee without any reasons. The two documents which should have been considered by the Assessment Committee for deciding the performance of the technical personnel were (i) the material furnished in the five year assessment form and (ii) CCRs for the past five years. The first respondent ignored the order of the third respondent as per A-15. There was provision for reviewing the assessment done if it was established that there had been miscarriage of justice. The second respondent acted with malafides which was evident from A-16 letter dated 6.7.98.



The ACRs of the applicant which were not properly written and maintained by the respondents was placed before the Assessment Committee with ulterior motive of denying promotion. Respondents knew about the federation, its office bearers and members as per the order in OA 1274/97 (Annexure A18). Applicant's representation was marked as A-20. Council's order dated 13.1.98 was not implemented whereas it was implemented in other Institutes without any delay which was evident from A-21. A-24 is the copy of the representation dated 21.11.98 submitted by the applicant to the Director General, ICAR. A-25 is the compliant dated 3.3.2000 submitted to first respondent. Another representation dated 14.7.2000 (A26) was submitted by the applicant to the first respondent. Dr.Devaraj when he was functioning as the Director, CMFRI, declared Dr.Peer Mohammed as Director in Charge whenever he was away from Head Quarters, Kochi. Dr.Devaraj due to retire on 31.3.99, all of a sudden named Dr.V.Narayana Pillai as Director in Charge with effect from 20.11.98 vide office order No.11-3/98-Adm dated 13/20.11.98 changing Dr.Peer Mohammed (Annexure A27). Dr.V.Narayana Pillai was nominated by Dr.Devaraj as Chairman for various recruitment committees for selecting the candidates already chosen by Dr.Devaraj. One such appointment was challenged through OA No.171/2000 and pending before this Tribunal. Annexure A-28 dated 5.1.99 was produced to show that the applicant was ordered to proceed to Veraval immediately without further delay. With all these materials the applicant contended that A-5 & A-7 were vitiated by malafides and were liable to be set aside and he may be considered for promotion as prayed for.

6. The question to be considered is whether the applicant is eligible to be considered for promotion treating the assessment period from 1993 to 1997 as qualifying period of professional performance and reconsider the case of the applicant by



reconstituting afresh an Assessment Committee in terms of the provisions contained in the Technical Service Rules. The procedure for grant of merit promotion or advance increments to technical personnel for category I and how the assessments are made is laid down in the guidelines given in the Hand Book published in 1985 i.e. R-1. The procedure for Five yearly assessment is laid down as follows:

"Procedure for Five yearly Assessment.

3. Assessment of the Technical personnel shall take into consideration:-
 1. The material furnished in the Five yearly Assessment proforma (enclosed).
 2. CCRs for the last 5 years.
4. The Technical personnel being assessed shall carefully fill in the enclosed proforma keeping in mind their activities in the past five years.
5. The Reviewers shall be the immediate supervisors of the Technical personnel concerned. In cases where the Reviewer has supervised the work of the Reviewee for a very short period of time, say less than six months, he shall be required to consult other scientists/technical personnel who may have also supervised or worked with the Reviewee for longer periods. Directors will issue separate orders indicating clearly the Reviewer for each post.
6. After the proforma has been completed by the Technical personnel being assessed (Reviewees) they will pass it on to the Reviewer. The Reviewer shall then carefully go through the information provided by the Reviewee and the evaluation done by him/her and shall fill in items intended for him/her. Such a completed proforma will, then be sent to the Head of division/Research Station/Project for his remarks.
7. The Head of Division/Research Station/Project shall then carefully look through the proforma and in case he notices marked discrepancies between the Reviewer and the Reviewee's evaluation on the list item of part II, he may give his comments on the discrepancies. In case the Head of Division/Research Station/Project disagrees with the assessment of both the Reviewer and the Reviewee, he may give his reasons for disagreement. He shall then countersign the proforma with his recommendations.
8. The Director will then place the proforma relating to all Technical personnel before the Assessment Committee and obtain their recommendations for the grant of promotion or advance increment(s) as the case may be.



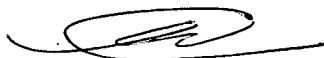
Assessment System

9. The Assessment Committees will be constituted by the Appointing Authority and will comprise not less than 3 and not more than 5 members including the Chairman. The Chairman of the Committee would be a person from outside the Institute and would be nominated by the Chairman of the ASRB. Separate Assessment Committees will be constituted for each professional group/discipline and will include experts in the particular professional group/discipline in addition to Head of Division/Research Station/Project concerned in the Institute.
10. The Committee shall decide on the performance of the Technical personnel by taking into consideration the documents mentioned in para 3 above. The Technical personnel will be given merit promotion or advance increment(s) as the case may be. The number of advance increments to be given will not exceed three. One advance increment means one increment over and above the normal annual increment."

7. It is a fact that the applicant was given merit promotion in the year 1992 which cannot be the criteria for considering promotion for 1998. On perusal of the rules with reference to the procedure adopted by the respondents in this case, it is very clear that the applicant's case for Five yearly assessment was placed before the Assessment Committee for merit promotion to the higher cadre/grant of advance increments. After considering the merit of the applicant, the Committee had recommended two advance increments on 1.1.98 considering various aspects such as his professional performance, spirit of cooperation and teamwork and support to the scientific work, personal/behavioural abilities/attributes, organizational abilities/attributes, the material furnished by him the prescribed proforma and his confidential character rolls for the past five years. The same committee had considered 38 cases pertaining to the Division including the applicant and the decision was taken by the Committee to consider the applicant for the incentives. We hold that there was no procedural lapse in conducting the committee. The very fact that the applicant was considered and recommended for two increments would show that there was no bias against the applicant by the Committee. This is based on the assessment of the applicant's overall performance. Had there been bias, they



would not have recommended for the two increments for the applicant. The applicant is not able to establish the alleged ill will feeling that the third respondent had against the him. The very fact that the committee met while he was on leave does not constitute bias. We have perused the letter dated 28.7.99 addressed by the Central marine Fisheries Research Institute addressed to Sri K.Narayana Kurup to attend the scheduled meeting nominating him as Member of the Assessment Committee to assess the work of the technical personnel in different categories/grades for promotion to the next grade/grant of advance increment(s) in the existing grades. This would show that Sri Narayana Kurup was invited as Member of the Committee in his official capacity and he attended the meeting. As such there cannot be any bias. Moreover the mistake in furnishing assessment from that was issued earlier to the applicant without striking out column No.10 which was inapplicable to Category No.II by oversight will not vitiate the entire procedure and it cannot be said that it is a procedure lapse. It is the admitted fact that the form had been filled by the applicant. Regarding the personal interview it is only meant for category No.III staff and not category No.II in which the applicant was considered. We are also convinced that the assessment was made for the Five yearly period ending 31.12.97 in due consideration of the relevant documents including Five years assessment submitted by him. it is also the well settled position in the Administrative parlance that absence of adverse entry of an employee as is evidenced from non-communication of the same does not confer on the applicant any right to promotion because only the entries which are below average are considered adverse entries and communicated to the employees. It is quite evident in the case of the applicant that there is no entry as below average. Then the question comes why he has not been considered for promotion. It is because there are different grades and the assessment is based on the overall




performance for 5 years. Therefore, it cannot be said that the Assessment itself is not in terms with any committee and therefore it is biased. Therefore the applicant cannot claim promotion as a matter of right. As laid down in A-7 the applicant's case for reassessment for the period from 1.1.98 to 31.12.98 will be placed before the assessment Committee at least in the next meeting as per the Technical Service Rules. As per dictum laid down in Union of India and another Vs. Ashutosh Kumar Srivastava and another [(2002) 1 SCC 188], it is the well settled proposition of law that bias, prejudice and malafides are matters to be proved by the person who alleges the same. In this case we hold that the procedure adopted by the respondents in not considering the applicant for promotion is in conformity with the procedure laid down as per the Rules and any interference by this Tribunal is not called for.

8. In the conceptus of the facts and circumstances, we do not find any merit in this Original Application and hence we dismiss the same with no orders as to costs.

Dated the 28th of May, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the salient feature on "Career Advancement" (Rule 6.1 to 6.9) of the Hand Book of Technical Service Rules published by the 3rd respondent.
2. A-2: True copy of the salient feature on "Promotion" (Rule 7.1 to 7.5) of the Hand Book of Technical Service Rules published by the 3rd respondent.
3. A-3: True copy of the salient feature on "Assessment Procedure" of the Hand Book of Technical Service Rules published by the 3rd respondent.
4. A-4: True copy of the 5 yearly Assessment Form supplied by the 1st respondent to the applicant for duly filling and for submitting.
5. A-5: True copy of the Order No.27-1/98-Adm. dated 24.9.1999 of the 1st respondent issued to the applicant.
6. A-6: True copy of the representation dated 29.9.99 of the applicant submitted to the 1st respondent.
7. A-7: True copy of the Order No.27-1/98-Adm. dated 8.11.1999 of the 1st respondent issued to the applicant.
8. A-8: True copy of the Leave Sanctioning Order No.35-3/99-Adm. dated 4.10.99 issued by the Office of the 1st respondent to the 2nd respondent.
9. A-9: True copy of the Memorandum No.3-6/94-Adm. dated 11.2.97 issued to Sri.S.Sankaralingam, T.A (T.II.3) by the Office of the 1st respondent.
10. A-10: True copy of the judgement O.A No.1441/98 dated 18.11.98 pronounced by this Hon'ble Tribunal.
11. A-11: True copy of the Fax message dated 21.1.99 sent to the Director General, Indian Council of Agricultural Research (ICAR), Krishi Bhavan, New Delhi-1.
12. A-12: Copy of the representation dated 20.3.99 of the applicant submitted to the Director General, Indian Council of Agricultural Research, New Delhi-1.
13. A-13: True copy of the Judgment O.A 1526/98 dated 16.11.98 pronounced by this Hon'ble Tribunal.
14. A-14: True copy of the relevant page of the Government of India Order No.G.I., D.P.& A.R., O.M.No.51/3/74-Estt.(A) dated 22.5.197, as published in Swamy's Compilation on Confidential Reports.
15. A-15: True copy of the ICAR Order No.7(2) 86-Per.III/Estt.IV dated 21.12.90 issued by the 3rd respondent to the 1st respondent.
16. A-16: True copy of the memorandum No.10-32/97-FRAD dated 6.7.98 issued by the second respondent to the applicant.
17. A-17: True copy of the D.O.letter No.7-21/99-Estt.I dated 20.6.2000 addressed to the 1st respondent by the 3rd respondent.

18. A-18: True copy of the relevant page (page No.11) of the judgment in O.A.o.1274/97 pronounced by the Hon'ble C.A.T., ERNAKULAM Bench.
19. A-19: True copy of the memorandum No.PF.478/Adm. dated 12.9.97 issued by the 1st respondent to the applicant.
20. A-20: True copy of the representation dated 18.7.97 submitted by the applicant before the 1st respondent.
21. A-21: True copy of the Office Order F.No.18(D)-10/78-E.II dated 16.4.99 issued by the Indian Veterinary Research Institute, Izatnagar, to its Sr.Computers.
22. A-22: True copy of the request dated 29.8.98 submitted by the applicant before the 1st respondent.
23. A-23: True copy of the representation dated 21.2.2000 submitted by the applicant before the 1st respondent.
24. A-24: True copy of the representation dated 21.11.98 submitted by the applicant before the 3rd respondent.
25. A-25: True copy of the letter dated 3.3.2000 submitted by the applicant before the 1st respondent.
26. A-26: True copy of the representation dated 14.7.2000 submitted by the applicant before the 1st respondent.
27. A-27: True copy of the office order No.11-3/98-Adm. dated 13/20.11.98 issued by the 1st respondent.
28. A-28: True copy of the memorandum F.No.5-4/98-Adm. dated 5.1.99 issued by the 1st respondent to the applicant.
29. A-29: True copy of the office Circular No.12-3/96-Adm. dated 18.5.99 issued by the Office of the 1st respondent.
30. A-30: True copy of the Judgment in O.P.No.12537/99 dated 25.5.99 pronounced by the Hon'ble High Court of Kerala.
31. A-31: True copy of the reply statement filed by the respondents in O.A.No.171/2000 dated 30-6-2000 before this Hon'ble Tribunal.

Respondents' Annexures:

1. R-1: Copy of the revised guidelines given in the Handbook published in 1985 for Grant of Merit Promotion or Advance Increment(s) to Technical Personnel.

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