

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO.143/2001

Thursday, this the 30th day of October, 2003.

CORAM:

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

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

1. Dr.S.Sundaresan,  
Senior Scientist, CTCRI,  
Trivandrum.
2. Dr.S.Ramanathan,  
Senior Scientist, CTCRI,  
Trivandrum.
3. Dr.C.S.Ravindran,  
Senior Scientist, CTCRI,  
Trivandrum.
4. Dr.James George,  
Scientist, Senior Scale,  
CTCRI, Trivandrum.

- Applicants

By Advocate Mr K.P. Dandapani

vs

1. Indian Council of Agricultural Research  
represented by its Secretary,  
Krishi Bhavan,  
New Delhi.
2. The Director,  
Central Tuber Crops Research Institute,  
Trivandrum-695 017.
3. The Deputy Director(P),  
Indian Council of Agricultural Research,  
Krishi Bhavan, New Delhi.
4. Union of India rep. by  
Secretary to Ministry of Finance,  
New Delhi.

- Respondents

By Advocate Mr P.Jacob Varghese(for R.1 to 3)

By Advocate Mr N.Mahesh, ACGSC(for R-4)

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicants, four in number, seek this Tribunal's orders setting aside A-7 order dated 25.1.2001 whereby the second respondent has withdrawn the two advance increments already granted to them as per A-6 order dated 9.10.2000 and a further declaration that respondents 2 and 3 have no power to issue the impugned A-7 order.

2. The relevant facts in a nutshell are: Applicants 1 to 3 are working as Senior Scientists at Central Tuber Crops Research Institute(CTCRI), Trivandrum under the 2nd respondent. The 4th applicant is a Scientist (Senior Scale) under the same respondent. In pursuance of the recommendations of the Vth Central Pay Commission, the Ministry of Human Resources and Development's notification for revision of pay scales of Teachers of Universities and Colleges and the recommendations of the ICAR Committee, the 1st respondent, revised the pay structure, incentives, reward for merit and other related service conditions as per A-1 dated 27.2.99. The following incentives are provided to the Scientists who are Ph.D/M.Phil degree holders:

(i) Four and two advance increments for those who hold Ph.D and M.Phil degrees, respectively, at the time of recruitment as Scientists.

(ii) One increment to those scientists with M.Phil degree who acquire Ph.D within two years of recruitment.

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(iii) Two advance increments to a Scientist with Ph.D when he moves into the Selection Grade or Sr.Scientist's grade.

(iv) Two advance increments to a Scientist as and when he acquires a Ph.D degree in his service career.

It is an admitted fact that all the four applicants obtained Ph.D degrees after 1.1.96, the date on which the Vth CPC recommendations came into force. The 1st applicant acquired Ph.D Degree on 20.4.96, the 2nd applicant on 20.1.96, the 3rd applicant on 13.6.97 and the 4th applicant on 23.4.99. Finding that two advance increments to certain similarly placed Scientists in other organisations under the 1st respondent were given (vide A-2, A-3 and A-4), the 3rd applicant made A-5 representation seeking the same benefit. Similar representations were made by the other three applicants also. By order F.No.1/99-Per dated 9.10.2000(A-6), the applicants herein were allowed two advance increments with effect from the date of acquisition of Ph.D qualification by each of them. However, as per A-8 letter dated 18.1.2001 from the 1st respondent addressed to the 2nd respondent, it was clarified that Senior Scientists are not entitled to the two advance increments on account of their acquiring Doctorate degrees. By the impugned A-7 order dated 25.1.2001, the 2nd respondent has withdrawn A-6 order citing A-8 clarification, and the applicants were individually informed of the decision to recover in lumpsum the amount of advance increments paid to them. According to the applicants, A-6 order having been

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passed with the final concurrence of the Finance Ministry, the benefit of advance increments cannot be withdrawn and recovered without a final decision from the Finance Ministry. There is no distinction between various levels of Scientists and Scientists generally have been extended the benefit with reference to the acquisition of the Ph.D after 1.1.96, the applicants would maintain. It is also stated by the applicants that A-1 remains unamended and hence the benefit allowed under it cannot be withdrawn. Since the same benefit had been given to similarly placed Scientists in other organisations, the applicants would plead that similarly placed persons cannot be treated dissimilarly. In any case, no notice prior to withdrawal of A-6 was given and hence A-7 was vitiated. The competence of the 2nd respondent to take away the benefit retrospectively is also under challenge.

3. In their reply statement, the respondents have stated that Ph.D degree being a minimum qualification for a Senior Scientist, the mere fact that such degree was acquired after 1.1.96 would not entitle him(the Senior Scientist) for the benefit of two advance increments. Possession of Ph.D. degrees may help a Senior Scientist if he wants to advance further in his career, but that would not justify grant of any incentive. The benefit given to certain similarly placed Scientists in other institutions as per A-2, A-3 and A-4 was on the basis of incorrect interpretation of the provisions and called for rectification in the light of R-1 clarification dated 28.3.2001 read with the corrigendum dated 30.3.2001, according to the respondents. The O.A. was therefore, devoid of merits, the respondents would urge.

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4. In their rejoinder dated 17.10.2001, the applicants would submit that a Scientist would be eligible for two advance increments as and when he acquired Ph.D. in his service career even after 1.1.96. In their additional rejoinder dated 24.11.2002, filed when the hearing of the O.A. was in progress, the applicants would maintain that this Tribunal's common order in O.A.956/2001, O.A.1034/2001 and O.A.914/2000 dated 4.6.2002 was not applicable to the applicants' case, since as a matter of fact, promotion to Senior Scientists post is possible even for those Scientists without Ph.D as several people have been given such promotion. Even promotion to the post of Principal Scientists was also possible without Ph.D degree, according to the applicants.

5. In their additional reply statement dated 2.1.2003, inviting our attention to the relevant provisions in A-1, the respondents would maintain that when the minimum eligibility for direct recruitment for Senior Scientists was Ph.D/Doctorate, there was no justification for grant of advance increments to the Senior Scientists who acquired Ph.D after their placement in the grade of Senior Scientist. It is also stated by the respondents that promotion to the post of Senior Scientist/Principal Scientist without insistence of acquisition of Ph.D degree or equivalent thereof was under career advancement scheme for ARS Scientists of the ICAR as is evidenced by office orders R-3 and R-4 conferring the benefit of the next higher grade of Principal Scientists to certain Senior Scientists.

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6. The applicants in their second additional rejoinder have contended that incentive increments have been given to those Scientists who got Ph.D even before 1.1.96 and that all the applicants in this case like those Scientists in R-3 and R-4 were in service prior to the implementation of the present rules. They would therefore claim that all the Scientists including the applicants who have acquired Ph.D after 1.1.96 would be entitled to the two advance increments as provided under sub clause (d) of clause(ii) of para 1 of A-1.

7. We have perused the records and examined the facts. We have also heard Smt.Sumathi Dandapani, learned counsel for the applicants and Shri P.Jacob Varghese, learned counsel for the respondents 1 to 3. Shri N.Mahesh, learned ACGSC was present for respondent No.4.

8. Smt.Sumathi Dandapani, learned counsel for the applicants has contended that since the impugned order A-7 was passed before a final decision was taken by the Finance Ministry, the same was without proper authority. According to her, the expression 'Scientists' occurring under para 1 (ii) of A-1 should be construed as a generic expression connoting 'Scientist generally' irrespective of level differentiations. That was how other Scientists in different Institutes under the 1st respondent (ICAR) were given the benefit as per A-2, A-3 and A-4, she would explain. The respondents' action in withdrawing the legitimate entitlement already granted was therefore wholly unsustainable. The applicants' counsel would invite our attention to A-9 representation of the 3rd applicant against the impugned order and state that A-1

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circular letter, remaining unamended, cannot be rendered ineffective purely on the basis of the interim clarification referred to in A-8. Learned counsel would submit that the 4th applicant in any case is a Scientist (Senior Scale) who got Ph.D after 1.1.96 and that it is not known as to how the benefit could be withdrawn in his case.

9. Shri Jacob P Varghese, learned counsel for the respondents 1 to 3 on the other hand would argue that only Scientists were entitled to the incentive by way of two advance increments for acquisition of Ph.D degree as provided under sub clause (d) of clause (ii) of Para 1 of A-1. Learned counsel would state that A-1 made it clear that incentive is admissible by way of 4 and 2 advance increments to Scientists holding Ph.D and M.Phil respectively at the time of recruitment as Scientists, that one increment is admissible to those Scientists with M.Phil, who acquire Ph.D within two years of recruitment, that two advance increments are admissible to a Scientist with Ph.D when he moves into Selection Grade/Senior Scientist grade and two advance increments are admissible to a Scientist as and when he acquires a Ph.D in his service career. Reference to Scientist in clause(ii) of para 1 of A-1 would, according to the learned counsel, mean the specific category of Scientist, as distinct from Senior Scientists. All these incentives are applicable with reference to 1.1.96 or thereafter depending on the date of recruitment, date of acquisition of Ph.D, and movement into selection Grade/Senior Scientist grade, as the case may be. The applicants are not entitled to the two advance increments

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as their minimum qualification prescribed for direct recruitment to Senior Scientists and above is Ph.D. The applicants' case is squarely covered by this Tribunal's decision in common order dated 4.6.2002 in O.A.956/2001, O.A.1034/2001 and O.A.914/2000(R-2), maintain the learned counsel for the respondents 1 to 3.

10. We have carefully considered the matter. We find that the 1st three applicants being Senior Scientists stand on a common footing. The 4th applicant is a Scientist(Senior Scale). He is not a Senior Scientist. So his case is different. We notice that the very issue of legality of withdrawing the two advance increments allowed under identical circumstances to certain Principal Scientists/Senior Scientists received extensive consideration of this Tribunal in O.A.956/2001 filed by six Principal Scientists under the 2nd respondent, the CTCRI, O.A.1034/2001 filed by a Principal Scientist in CMFRI and O.A.914/2000 filed by 10 Senior Scientists under the CIIFT. It requires to be mentioned that all the respondent-Institutes in those three O.A.s come under the ICAR, the 1st respondent in this case. This Tribunal after examining the relevant material vide order dated 4.6.2002 came to the finding that the applicants who were senior Scientists and above whose basic essential qualification was Ph.D/Doctorate Degree were not entitled for two incentive advance increments as the incentive advance increments are not meant for their posts. The withdrawal of the wrong and excessive payment which the applicants were under an obligation to refund was held to be in order. The

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O.A.s were accordingly dismissed. As far as the applicants 1 to 3 herein are concerned, we are in agreement with the Tribunal's finding that the Senior Scientists and above are not entitled to two advance increments as incentive for acquisition of Ph.D degree. However, we consider it appropriate to record our specific reasons for our conclusion.

11. The relevant provisions with regard to incentives for Ph.D/M.Phil are contained in sub para (ii) of para 1 of A-1 which is reproduced below:

"1.(i)                   xxx                   xxx                   xxx

(ii) (a) Four and two advance increments will be admissible to those who hold Ph.D and M.Phil degrees, respectively, at the time of recruitment as Scientists.

(b) One increment will be admissible to those scientists with M.Phil degree who acquire Ph.D within two years of recruitment.

(c) A Scientist with Ph.D will be eligible for two advance increments when he moves into the Selection Grade as Sr.Scientists.

(d) A Scientist will be eligible for two advance increments as and when he acquired a Ph.D degree in his service career."

The first two clauses are irrelevant for the purpose of this O.A. Clauses(c) and (d) are relevant in the context of the case on hand. The first three applicants had already moved into senior scale with effect from 1.1.86 without Ph.D degree. So there is no case of any promotional movement for them on or after 1.1.96 that can be said to make them entitled to two advance increments as envisaged in clause(c). The 4th applicant, Dr.James George, is still a Scientist(senior scale). He too therefore cannot claim the benefit of two

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advance increments on account of his acquiring Ph.D degree as it is not occasioned by his movement into Selection Grade/Senior Scientist grade. Thus, clause(c) is inapplicable to all the 4 applicants. We now come to clause(d). As observed above, the first three applicants had moved from Scientist's grade to Senior Scientist's grade as early as in 1986. Their next grade is Principal Scientist subject to fulfilment of the required criteria. One of the conditions for promotion of a Scientist in the Senior Scale to the post of Senior Scientist is Ph.D qualification. A Selection Grade Scientist without Ph.D or equivalent achievement can also be considered for promotion as Senior Scientist if he fulfils the other requirements such as completion of five years in Scientist Senior Scale grade or verifiable achievement in areas of scholarship, research etc. Provisions regarding Career Advancement as contained in sub para(iii) of para 1 of A-1 are:

1.(i)	xxx	xxx
(ii)	xxx	xxx

(iii) (a) Minimum length of service for eligibility to move into the grade of Scientist (Senior Scale) would be four years for those with Ph.D., five years for those with M.Phil. and six years for others as a Scientist and for eligibility to move into the Grade of Scientist (Selection Grade)/Sr.Scientist, the minimum length of service as Scientist (Senior Scale) shall be uniformly five years.

(b) For movement into grades of Sr.Scientist and above, the minimum eligibility criterion would be Ph.D. Those Scientists without Ph.D. can go upto the level of Scientist (Selection Grade).

(c) A Sr. Scientist with a minimum of eight years of service will be eligible for consideration for appointment as a Principal Scientist.

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(d) For every upward movement, a selection process would be evolved, for which appropriate guidelines would be laid down by the ICAR in consultation with the Government."

From the above, it is clear that from 1.1.96, Scientists without Ph.D can go upto the level of Scientists(Selection Grade) and that for movement into the grades of Senior Scientists and above, the minimum eligibility criterion would be Ph.D. If a non-Ph.D Senior Scientist as on 1.1.96 acquires a Ph.D. qualification on or after 1.1.96 it may enure to his benefit for future advancement. As far as the organisation is concerned, there is nothing to be gained by giving applicants 1 to 3 advancement increment for possessing a qualification which is an essential qualification for Senior Scientist to which they had already been promoted long back i.e. in 1986. Whether he acquires Ph.D. or not a person who had attained the status of Senior Scientist prior to 1.1.96 would remain in the same position. If he wants to advance to the position of a Principal Scientist, he has to necessarily have a Ph.D. degree. Similarly, if any Scientist aspires to become Senior Scientist on and from 1.1.96, he has to be necessarily a Ph.D holder. That being so, the first three applicants are not entitled to two advance increments.

12. In our considered view the expression 'a Scientist' occurring in sub para(ii) of para 1 of A-1 denotes 'a Scientist who remains at the hierachial level of Scientist'. The expression cannot be construed as a generic term so as to include Selection Grade/Senior Scientist/Principal Scientist etc. as is clear from the wording of sub clause(c) quoted above. Sub para(ii) of para 1 of A-1, to our perception,

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refers to the basic position of Scientist for whom acquisition of Ph.D is relevant with regard to qualitative contribution to the organisation at the lower level itself, and hence such achievement has to be rewarded. A Senior Scientist need not be rewarded by any incentive specifically for his acquiring Ph.D qualification after he attains that status since such qualification is even otherwise an essential qualification for Senior Scientists from 1.1.96 and since it was, in any case, one of the prescribed criteria even prior to 1.1.96.

13. As we have already observed, the 4th applicant, Dr James George, who is a Scientist(Senior Scale) stands on a different footing. His case is covered by clause(d) of sub para (ii) of Para 1 of A-1 quoted supra as he is a Scientist who has acquired a Ph.D degree in his service career. He has not become a Selection Grade Scientist, not to speak of a Senior Scientist. Thus his position remains as Scientist only and in this view of the matter, he was eligible to get two advance increments for acquiring Ph.D after 1.1.96. Therefore A-6 order in so far as it related to the 4th applicant did not warrant cancellation.

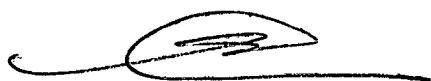
14. In view of the ~~the~~ facts and circumstances discussed above, we hold that A-7 order is perfectly valid in so far as it relates to applicants 1 to 3 in this O.A.. The applicants had given a clear undertaking that if any wrong or excessive payment to them was made, the same would be refunded. The respondents are legally competent to make and the applicants 1 to 3 are liable to comply with the order of recovery of the

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excessive payment made to them. We are in respectful agreement with the order of the Tribunal in O.A.956/2001, O.A.1034/2001 and O.A.914/2000 with regard to the findings in this regard. The interim order dated 7.2.2001 is vacated to the extent it applied to the applicants 1 to 3. However, with regard to applicant No.4, we hold that the impugned A-7 order cannot have force in his case as he is not a Senior Scientist and, as Scientist(Senior Scale), he is held to be eligible for two advance increments for acquiring Ph.D degree after 1.1.96 in accordance with A-1.

15. The O.A. is disposed of in the manner indicated above, leaving the parties to bear their respective costs.

Dated, the 30th October, 2003.



K.V.SACHIDANANDAN  
JUDICIAL MEMBER.



T.N.T.NAYAR  
ADMINISTRATIVE MEMBER

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