

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.157/03

this the ...24th. day ofMay..... 2006

C O R A M :

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

K.N.Pankajakshan,
Driver – T2, C.P.C.R.I.,
Post Kudlu, Kasaragod.
Residing at Sreepadmmam,
Kalakkara, Post Kuttikole,
Via. Chengala, Kasaragod District.

...Applicant

(By Advocate Mr.P.Shrihari)

Versus

1. Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, Dr.Rajendra Prasad Road,
New Delhi – 110 001.
2. The Director,
Central Plantation Crops Research Institute,
(Indian Council of Agricultural Research),
Kasaragod – 671 124.Respondents

(By Advocate Mr.P.Jacob Varghese)

This application having been heard on 29th March 2006 the Tribunal
on24..5..2006..... 2006 delivered the following :-

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

This application has been filed seeking the following reliefs :-

1. To direct the respondents to count the service of the applicant from 1988 onwards and to treat him on par with the drivers who were appointed prior to 1986.
2. To declare that the applicant is entitled for promotion in 1993 itself on completion of 5 years of service.
3. To direct the 1st respondent to grant the applicant the arrears of pay and allowances from 1993 onwards with interest @ 18% per annum.

4. To grant such other reliefs which may be prayed for and this Hon'ble Tribunal may deem fit and proper to grant under the facts and circumstances of the case.
5. To quash Annexure A-4 and to direct the respondents to count the service of the applicant from 1988 onwards and to treat him on par with the drivers who were appointed prior to 1986.

2. The applicant joined the service of the ICAR under the 2nd respondent as Driver on 3.5.1988. The respondents had taken a decision to convert the category of Drivers into technical category in 1996 and from that year the Drivers were brought under the Technical Service Rules and treated as technical staff. Under the Technical Service Rules the benefit of 5 yearly assessment promotion is available whereas the applicant's service prior to 1996 which was in the auxiliary category does not qualify for promotion. The prayer of the applicant is, therefore, to consider the service in the auxiliary category for promotion under the 5 yearly assessment scheme. He has also claimed that his initial appointment orders were made to T-1 (technical category) and if he had been given consideration of his earlier service under the Technical Rules he could have obtained the promotion in 1993 itself.

3. The respondents have denied the averments of the applicant. According to them the applicant was appointed as Driver under the auxiliary category on 3.5.1988 and not under the technical category. They have stated that the applicant's contention that he was appointed as T-1 Driver is not correct and that due to oversight his designation was shown as T-1 Driver in the appointment order and when the mistake was detected the designation was changed as Driver (auxiliary) vide amendment dated 20.2.1989 and the copies of the appointment order as well as the

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amendment have been filed as Annexure R-1 (d) & (e) respectively. It is also pointed out that the applicant was appointed in the scale of pay of Rs.950-20-1150-EB-25-1400 whereas the scale of pay of T-1 (Driver) was Rs.975-25-1150-EB-30-1540. Initially when the Technical Service Rules were framed in 1975 the Drivers were classified under a separate functional group and they were given the benefits of 5 yearly assessment system but in 1982 for the first time some of the posts were reclassified as auxiliary vide amendment to the Appendix II of Technical Service Rules 1975. However, the benefits of 5 yearly assessment was continued in respect of the Drivers appointed under technical category prior to the reclassification. The applicant was appointed on 3.5.1988 as Driver (auxiliary) as per the Recruitment Rules then in force and the 5 yearly assessment system was not existing under the auxiliary service at the time of his joining the service under the ICAR. In 1996, a policy decision was taken to reclassify the auxiliary cadre including the post of Driver into technical category and these orders were made effective from 29.6.1996 and accordingly the applicant was brought under the technical category and redesignated as T-1 Driver with effect from 29.6.1996 on the basis of the option exercised by the applicant and he was also granted the appropriate scale of Rs.975-1540. The benefits of these Rules was admissible only prospectively i.e. from the date from which the posts were included in the Technical Service. Accordingly he had been considered for merit promotion to the next higher grade on completion of 5 years of service in T-1 grade and promoted to grade T-2 with effect from 29.6.2001. Hence no discrimination has been shown to him and the parallel drawn by him with the staff of KVKs (Krishi Vigyan Kendras) is not applicable as the staff under the KVK was not classified in any of the

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functional group when the KVK was taken over by the ICAR, the staff was not classified under any category. Therefore considering their qualification and technical nature of work it was decided by the competent authority to treat them on par with technical staff.

4. The applicant has filed a rejoinder stating that the nature of duties of Drivers both under the Technical Service Rules and Auxiliary are same but there is discrimination in service conditions and the benefit of career advancement is being extended to Drivers who were appointed prior to 1986 and who are also doing the similar work as that of Drivers appointed after 1996. He also relied on the case of Ganeshchandra Biswas & Ors. Vs. Union of India & Ors. in O.A.1359/95. The Calcutta Bench of the C.A.T has allowed the prayer of the applicants in granting retrospective effect of revision of pay.

5. We have heard the learned counsel on either side and perused the records. Admittedly the applicant joined the service under the 2nd respondent on 3.5.1988 i.e. after the posts of Drivers were brought under the auxiliary category by the amendment dated 28.5.1982. He was fully aware of the fact that 5 yearly assessment system was not existing under the auxiliary service at the time of joining of service under the ICAR. Prior to 1982 the Drivers were covered under the Technical Service Rules and therefore the benefits of 5 yearly assessment was continued in respect of those who had been recruited under the Technical Service Rules prior to 1982. This cannot be a ground for raising a claim by the applicant to the benefits available under the Technical Service Rules when he was recruited under a different set of Rules in force. In 1996 on the basis of

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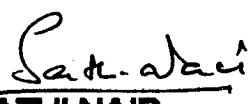
the recommendations of the Expert Committee named as Kirti Singh Committee, the Drivers were again reclassified as technical service. The applicant, therefore, became eligible for higher pay scale after due option furnished by him. He was brought into the technical service in the higher pay scale and also became eligible for 5 yearly assessment scheme which was given to him after completion of 5 years in 2001. The applicant at no time challenged the reclassification brought about by 1996 Rules and in fact had opted to come under the same and derive the benefits therefrom. At this stage, we cannot put forth the claim for giving retrospective effect to the scheme of 5 yearly assessment which became available to him only after conversion into technical category. His contention that he has been discriminated and that he has lost his promotional opportunities under the ACP Scheme which was available for the auxiliary category also do not carry any conviction as the ACP Scheme would have given him the benefit of 12 years promotion only in the year 2000 whereas in 1996 he has got the benefit of fitment into a higher pay scale and has been awarded the next grade of T-2 with effect from 29.6.2001. Hence coming into technical category has only conferred more benefits in his career progression and the action taken by the respondents in our view is in accordance with the relevant rules. The point raised by him regarding equal treatment to equals discharging similar duties and responsibilities has also to be rejected against the background submitted by the respondents that the Drivers who were recruited prior to 1982 under the Technical Service Rules were given the continued benefits of the Rules even after the reclassification of the post into auxiliary category as the rights already accrued to them under the Rules in force at the time of recruitment could not be curtailed by such reclassification. In the applicant's case there has been no curtailment of

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opportunities but the conversion has opened up the further avenues of promotion . In this view of the matter we do not find any merit in the prayer of the applicant. The O.A is, therefore, dismissed. No order as to costs.

(Dated the 24th day ofMay..... 2006)


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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