

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.219/04

Thursday this the 12th day of January 2006

C O R A M :

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER**

P.T.Sebastian,
S/o.late Thomas,
Technical Officer (T-5),
Central Institute of Fisheries Technology,
Matsyapuri P.O., Willingdon Island, Kochi – 682 029.
Residing at Paliyakunnel, Nadalkavu P.O.,
Udayamperoor. PIN - 682 037

...Applicant

(By Advocate Mr.P.V.Mohanan)

Versus

1. The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, Dr.Rajendra Prasad Road,
New Delhi – 110 001.
2. The Director,
Central Institute of Fisheries Technology,
Matsyapuri P.O., Willingdon Island,
Kochi – 682 029.


...Respondents

(By Advocate Mr.P.Jacob Varghese)


ORDER

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


The applicant commenced service on 21.1.1971 as Junior Laboratory Assistant. He was inducted in the grade T-1 in the Technical Service Rules with effect from 1.1.1977 and was promoted to the grade T-2 after 5 yearly assessments with effect from 1.7.1977. He was selected and appointed to the Grade T-11(3) in category II by lateral entry on 29.11.1979. On 5 yearly assessments in grade T-11(3) he was promoted to the grade T-4 on 1.7.1985. On assessment in grade T-4 under Technical Service Rules he was promoted to grade T-5 with effect from



1.1.1991 under the functional group namely 'Field/Farm Technicians'. The applicant was assessed on completion of 5 years in grade T-5 and granted 3 advance increments in the same grade with effect from 1.1.1996 in lieu of merit promotion as a next best reward. He was not promoted to grade T-6 due to category barrier prevalent then in the Technical Service Rules though he was qualified for promotion to grade T-6 in category III. The Technical Service Rules, as it was originally framed, are grouped into three categories consisting of different grades stretching in 8 functional groups. There was category barrier in the sense that the incumbents working in highest grade in category I and II are not promoted to lower grade in category II and III respectively on assessment except 33 1/3% quota fixed for promotion depending up on the occurrence of vacancies. Based on the deliberation/recommendations of High Power Committee headed by Dr.P.N.Bhat, the Governing Body of the Indian Council of Agricultural Research decided to remove the category barrier and orders were issued by proceedings dated 1.2.1995 with respect to category I and II and by proceedings dated 4.8.1995 for removal of category bar between II and III respectively with effect from 1.7.1995 (Annexure A-1). Accordingly the technical personnel who had been put in not less than 12 years of service in grade T-5 and possessing minimum qualification contained in appendix IV of Technical Service Rules prescribed for category III may be considered for appointment to grade T-6. Different institutes of Indian Council of Agricultural Research sought clarifications with respect to the qualifications, method of recruitment etc. In Annexure A-2 it is not clarified that all qualifications are equivalent in the relevant field nor it is clarified the regularisation of erstwhile grade T-I(3) and T-II(3) which are merged into a single grade T-3. Few technical personnel had submitted conditional option, rest did not opt and are thus deemed to be opted modified



Technical Service Rules. However, a clarificatory order was issued on 20.11.2001 stating that the institutes concerned are required to apply the equivalent qualification wherever required as in the past as the concept of equivalence has not been changed or redefined and the same is provided for in the revised model qualifications (Annexure A-3) by which it is intended that the qualifications stipulated in appendix IV of the then Technical Service Rules namely Degree or 3 years Diploma in the relevant field does not change. However, another clarificatory order dated 6.2.2003 (Annexure A-5) has been issued stating that no option can be exercised after 30 days from the date of issuance of Annexure A-2 which visits the applicant and similarly situated technical personnel with adverse civil consequences. The applicant completed 10 years service in grade T-5 on 1.1.2001 and is eligible to be promoted to the grade T-6 as envisaged in Annexure A-3. The applicant filed a representation dated 27.9.2002 before the 2nd respondent who in turn referred the matter to the Council for clarification. The Indian Council of Agricultural Research directed the 2nd respondent to consider the claim of the applicant for promotion to T-6 after 10 years service in T-5 grade if the Diploma possessed by him is equivalent to BSc. Degree. However the 2nd respondent rejected the claim of the applicant by order dated 9.12.2002 stating that the Diploma possessed by the applicant is not equivalent to BSc. Degree. Thereafter, the applicant submitted another detailed representation on 10.1.2003 to the 2nd respondent seeking reconsideration of the decision which has been forwarded to the 1st respondent for consideration. The 1st respondent vide Annexure A-6 order dated 7.3.2003 clarified that 3 years Diploma which has already been considered as essential qualification for category II appointment should hold good for promotion to category III after completion of 10 years service. Aggrieved by the non consideration the applicant has



filed this application seeking the following reliefs :-

1. To call for Annexure A-9 and set aside the same.
 2. To direct the 2nd respondent to consider the assessment promotion of the applicant from grade T-5 (category II) to grade T-6 (category III) in terms of Annexure A-6 forthwith with all consequential benefits.
 3. To declare that the applicant is qualified for assessment promotion to grade T-6 in category III.
 4. To call for the records leading to Annexure A-5 and set aside the condition of clause I, namely there is, therefore, no question for exercising the option after the stipulated period as arbitrary, unreasonable and violative of Article 14 of the Constitution of India.
2. Respondents have filed a detailed reply statement contending that Central Institute of Fisheries Technology, Cochin is a research institute functioning under the administrative control of Indian Council of Agricultural Research, New Delhi. Indian Council of Agricultural Research is a Society registered under the Societies Registration Act, 1860 which has its own rules and regulations. The applicant had joined the institute as Junior Laboratory Assistant on 21.1.1971. Through the ladder of hierarchy he reached up to T-5 on 1.1.1991 and on completion of 5 years service in T-5, he was assessed and was granted 3 advance increments in the same grade with effect from 1.1.1996. The applicant had opted for the modified Technical Service Rules circulated vide letter dated 3.2.2000 and as such the provisions of the pre-modified Technical Service Rules are not applicable in his case. The contention of the applicant that for direct recruitment to grade T-6 there is no insistence of 12 years service with requisite educational qualification is true. However, this non insistence of 12 years service is applicable for existing incumbents also for direct recruitment. Hence there is no violation of Article 14 and 16 of the Constitution of India. The fixation of 12 years service for existing




incumbent in T-5 grade for promotion to T-6 is for the time bound promotion to T-6 grade holding the same post without any higher responsibility and not for direct recruitment. Moreover, this is not applicable for the applicant as he had not opted to be governed by these rules. As per modified Technical Service Rules, the T-5 Technical Personnel who do not possess the essential qualifications as for direct recruitment prescribed under the order for Category III shall be eligible for assessment promotion to T-6 grade after completing 10 years of service in T-5 grade provided such technical personnels are possessing the qualification prescribed under the order for direct recruitment to category II (T-3). However, such Technical personnel in T-5 grade who do not possess the qualifications prescribed under this order for direct recruitment to Category II (T-3) shall not be eligible for further assessment promotion to Category III of the Technical Services. A Bachelors Degree or equivalent qualification from a recognised university in the relevant field is essential for the assessment promotion to Category III (T-6) in the scale of pay of Rs.8000-275-13500. He had already agreed to this in his representation. The Bachelors Degree in the relevant field in his case is "Bachelors Degree in Electrical Engineering" or its equivalent qualification from a recognised university. Diploma in Electrical Engineering was sufficient for direct recruitment to Category II as per old Technical Service Rules. However, diploma in Electrical Engineering is not declared equivalent to Degree in Electrical Engineering by any statutory body in India. The applicant's contention that the equivalent qualification for Bachelors Degree in pre-modified Technical Service Rules is 3 years Diploma in the relevant field is not correct. Bachelors Degree/Diploma means either Degree or Diploma. Diploma is not equivalent to Degree but an alternate qualification is there in the pre-modified Technical Service Rules for Category II posts which he



has not opted. However, in the case of the applicant, he should have a degree in Electrical Engineering, if he is to be promoted to the grade of T-6 in the scale of pay of Rs.8000-275-13500/- as he has opted for modified Technical Service Rules. As per clarification dated 6.2.2003 of ICAR (Annexure A-5) the option was to be exercised within 30 days from the date of issue of the notification with the condition that the option once exercised shall be irrevocable and final. There is, therefore, no question for exercising the option after the stipulated period.

3. The applicant has filed a rejoinder reiterating his contention in the OA and further adding that when Annexure A-1 and Annexure A-19 were in force the qualification available in Appendix IV under pre existing Technical Service Rules for category III in the functional group I "Field/Farm Technicians" is (1) 3 years Diploma/Bachelors degree in Science/Agriculture/Animal Science relevant field. (2) 5 years experience in working in the relevant field." Desirable qualification is Masters Degree in the subject. Succinctly stated, the applicant was qualified for promotion to grade T-6 in category III under the pre modified Technical Service Rules.

4. Respondents have filed an additional reply statement further contending that the T-5 Technical personnel who do not possess the essential qualifications as for direct recruitment prescribed under this order for category III shall be eligible for assessment promotion to T-6 grade after completing 10 years of service in T-5 grade provided such technical personnel possess the qualifications prescribed under this order for direct recruitment to category II (T-3). However, such Technical personnel in T-5 grade who do not possess the qualifications prescribed under this order for direct recruitment to category II (T-3) shall not be eligible for further



assessment promotion to category III of the Technical Services. Since the applicant does not possess the qualification for direct recruitment to category II (T-3) i.e. Bachelors Degree, he is not eligible for promotion to grade T-6 of category III.

5. We have heard Shri.P.V.Mohanan, learned counsel for the applicant and Shri.P.Jacob Varghese, learned counsel for the respondents. Counsel appearing for the parties has taken us to various materials placed on record. Learned counsel for the applicant argued that if Annexure A-9 is pressed into service, the applicant and similarly placed Diploma holders who had been working for longer years and stagnated will never get promotion. It is a cardinal principle that when new qualifications are prescribed, the right of the existing incumbent must be saved not only for continuing in the present post but also for promotion to the next higher post without insisting the new qualification. Based on these aspects the Annexure A-6 order is issued. It is something which is impossible for the existing personnel to acquire Degree qualification for promotion to the higher posts. Therefore it cannot be insisted upon. Counsel for the respondents, on the other hand, persuasively argued that the applicant will not in anyway face adverse consequences since he has been given 3 increments on the stagnated point and further argued that in view of Annexure R-2 to Annexure R-4 produced in MA 1199/05 the reliefs of Annexure A-6 goes and the applicant cannot take advantage of the same.

6. We have given due consideration to the arguments, materials and evidence placed on record. It is an admitted fact that the applicant joined the service on 21.1.1971 as Junior Laboratory Assistant and inducted in the grade T-1 from 1.1.1977. He was promoted to the grade T-2 after 5 yearly



assessments with effect from 1.7.1977. He was selected and appointed to the grade T-II(3) in category II by lateral entry on 29.11.1979 and further promoted to the grade T-4 on 1.7.1985. He was further promoted to grade T-5 with effect from 1.1.1991. The applicant was assessed on completion of 5 years in grade T-5 and granted 3 advance increments in the same grade with effect from 1.1.1996. The specific case of the respondents is that the applicant had opted for the modified Technical Service Rules circulated vide letter dated 3.2.2000 and as such the provisions of the pre-modified Technical Service Rules are not applicable in his case. Based on the deliberation/recommendations of High Power Committee headed by Dr.P.N.Bhat, the Governing Body of the Indian Council of Agricultural Research decided to remove the category barrier and orders were issued by proceedings dated 1.2.1995 with respect to category I and II and by proceedings dated 4.8.1995 of removal of category bar between II and III respectively with effect from 1.7.1995. Accordingly, the technical personnel who had been put in not less than 12 years of service in grade T-5 and possessing minimum qualification contained in Appendix IV of Technical Service Rules prescribed for category III may be considered for appointment to grade T-6. Appendix IV of Technical Service Rules fixing qualification for category I, II and III in the functional group "Field/Farm Technicians reads thus :-

Category III

Essential qualifications

Three years Diploma/Bachelor's Degree in
science/agriculture/animal sciences/relevant field/forest
rangers course (for CAZRI & CSWCR 7 TI)

Five years experience of working in the relevant
field/minimum experience will be 7 years, 10 years and 12
years for lateral entry to posts carrying scales Rs.3000-4500,
Rs.3000-5000 & Rs.3700-5000 respectively.



Desirable qualifications

Master's degree in the subject.

7. The applicant obtained the qualification of 3 years diploma in Engineering in the year 1977. Based on that qualifications and experience, the applicant was appointed to grade T-II-3 in category II. Even after removal of category barrier, there was no change in qualification except the fixation of requisite years of service. Counsel for the applicant argued that there is no reasonable nexus in fixing the qualification of 12 years service for consideration for promotion to grade T-6. When the original Recruitment Rules insisted only 5 years service for promotion from lower grade to higher grade of personnel who obtained qualification envisaged in Appendix IV. The methodology for promotion to grade T-6 in Technical Service Rules under clause 7.3 by proceeding No.7 dated 20.9.1989 read thus : 33 1/3% of vacancies in grade T-6 may also be filled by promotion of person in grade T-5 possessing qualification prescribed for category III. It is relevant to note that for direct recruitment to grade T-6, there is no insistence of 12 years service with requisite educational qualifications. The fixation of 12 years service for existing incumbents who obtained basic educational qualification conferred in Technical Service Rules for promotion to grade T-6 and fixation of only basic educational qualification with 5 years experience for direct recruitment to grade T-6 is perse arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India.

8. Now the question involved in this case is whether the applicant is qualified to be considered to T-6 category. Annexure A-1 was issued on 4.8.1995 in which it was made clear that in order to improve service



conditions of technical personnel in grade T-5 it has been decided with the approval of the G.B that the technical personnel who have put in not less than 12 years of service in grade T-5 may be considered for appointment to grade T-6 (Rs.2200-4000) of category III subject to their possessing minimum qualifications for category III as prescribed in Appendix IV of technical service rules and on the basis of clearance by ASRB. It is further clarified in Annexure A-2 letter dated 3.2.2000 wherein it is stated that the matter was considered by the Governing Body in its meeting held on 18th November 1999 and based upon the decision of the Governing Body, the competent authority has approved the following changes in the existing technical service rules.

The provisions relating to category barrier for assessment promotions from T-5 grade of category II to T-6 grade of Cat.III has been revised as under :-

The technical personnel in T-5 grade (Rs.6500-10500) and possessing the essential qualifications prescribed as herein further under this order for category III for direct recruitment, shall be eligible for assessment promotion to T-6 (Rs.8000-13500) grade after completing five years of service in T-5 grade, while

The T-5 Technical Personnel who do not possess the essential qualifications as for direct recruitment prescribed herein further under this order for cat.III shall be eligible for assessment promotion to T-6 grade after completing 10 years of service in T-5 grade provided such technical personnel are possessing the qualifications prescribed under this order for direct recruitment to category II (T-3). However, such Technical Personnel in T-5 grade who do not possess the qualifications prescribed under this order for direct recruitment to category II (T-3) shall not be eligible for further assessment promotion to category III of the Technical Services.

The minimum essential qualifications for direct recruitment of technical personnel in category I, II and III at the entry grades thereto would be as per the following model qualifications irrespective of the functional group :

Category I, matriculate with atleast one year certificate from recognised institution in the relevant field.

Category II, Bachelor's degree in the relevant field or equivalent qualifications from a recognised university

Category III, Master's degree in the relevant field or



equivalent qualifications from a recognised university.

Based upon the above minimum essential model qualifications prescribed for different categories, the specific qualifications covering the relevant fields, location-specific requirements of posts as well as desirable specialisation wherever required in case of posts of different functional groups should be finalised in case of direct recruitment in consultation with the concerned subject matter Divisions.

It is further clarified that the modifications, as set out under para 2 foregoing, would take immediate effect from the date of issuance of this Notification. Any existing technical employees who may like to be governed only as per the existing technical service rules may do so by specifically exercising an individual option in writing to the Director of the Institute within a period of 30 days from the date of issue of this Notification. Option once exercised shall be irrevocable and final. With the introduction of these modifications in the existing technical service rules, the 33 1/3% promotion quota will be operative only in Cat. I at the level of T-1. As under the existing procedure in force, the vacancy in the event of retirement/death/resignation of the technical personnel carrying whatever personal grade through assessment promotion in the technical service shall occur only in the initial grade of this appointment under the service. This continue to be regulated accordingly. However, in the meanwhile no post/grade of post under the category III of technical service would be filled up by Direct recruitment until further instructions from the Council.

9. Further vide Annexure A-3 issued by the ICAR dated 20.11.2001 regarding implementation of the council's notification No.18-1/97-Estt.IV dated 3.2.2000 it is stated that it was clarified by the official side that while prescribing the revised model qualifications through the notification dated 3.2.2000, the concept of equivalence has not been changed or redefined and the same is provided for in the revised model qualifications. Therefore, while implementing the revised model qualifications, institute concerned are required to apply the equivalent qualifications wherever required as in the past but as per the duly notified/recognised equivalent qualifications by the competent authorities such as Ministry of Human Resource Development or any other nodal Ministry/Department of the



Government of India. This is also reiterated in Annexure A-4 dated 5.1.2002 which is reproduced as under :-

Whereas it has been clarified by the ICAR vide letter No.14-4/2001-Estt.IV dated 20.11.2001 that the institute concerned are required to apply the equivalent qualifications wherever required as in the past but as per the duly notify/recognised qualifications by the competent authority in the matter of fixing "Eligibility Criteria for Category II under TSR" as the concept of equivalence has not been changed or redefined and the same is provided for in the revised model qualifications as prescribed vide notification dated 3.2.2000.

Now therefore, the Director has been pleased to give yet another chance to such of those technical personnel possessing appropriate diploma to exercise a fresh option, if so desired, in the light of the concept of equivalence clarified by the ICAR as above and such an option shall be exercised within 30 days of issue of this order.

10 Finally the ICAR specifically clarified the qualification to be considered for T-6 vide Annexure A-6 order dated 7.3.2003 which is reproduced as under :-

To

The Director
CIFT, Kochi.

Sub : Technical Service Rules – Career Advancement –
Clarification - reg.

Sir,

I am to refer to the Institute's letter No.4-1/2002-Admn. Dated 28.1.2003 on the subject cited above and to say that three years Diploma which has already been considered as essential qualification for Cat.II appointment should hold good for promotion to Cat.III after completion of 10 years of service. Para ii(b) of the Notification No.18-1/97-Estt.IV dated 3.2.2000 referred.

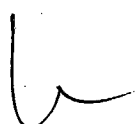
Yours faithfully,

Sd/-


(A.S.Sethi)

UNDER SECRETARY (FY)

11. The respondents have produced Annexure R-2, Annexure R-3 and



Annexure R-4 in which it is clarified that if the Diploma possessed by him is equivalent to B Sc. Degree, only then he may be considered for promotion to T-6 after 10 years service in T-5 grade. In Annexure R-4 dated 28.01.2003, it was requested that council may reconsider his case based on the representation and a decision be communicated at an early date. The clarifications sought are of prior to Annexure A-6 and it has to be considered that Annexure A-6 is an answer to this document and that this document may not have an over riding effect on Annexure A-6. Annexure A-6 is very clear on the point that the Diploma is equivalent to that of the Degree in the pre revised modified service rules which has to be extended to the applicant. Then the question comes whether the option which is said to be exercised is binding on the applicant or not. This Court while disposing of OA 921/03 made it clear that as the applicant did not furnish any option, he was deemed to have opted to new Technical Service Rules. If an employee is otherwise eligible for the benefit and deemed option is thrust upon his service condition which will have adverse consequences and denial of benefits we are of the view that such an option cannot be made effective in the given circumstances. The benefit which otherwise the applicant would have got, is being denied under the guise of this deemed option, for which he has not given anything in writing, cannot be a reason for denying the benefits. The fact that the applicant was granted three increments on stagnation does not mean that his career prospectus should stand in the way of further advancement of service conditions. We are also aware that the option once exercised, if permitted to be changed it will have a far reaching consequences in the service parlance. The cardinal principle in restructuring of service is when new qualifications are prescribed the right of the existing incumbents must be saved not only for continuing in the present post but also for the promotion to the next higher



posts without insisting the new qualification.

12. From the above discussion and in view of Annexure A-6 which governs the field, we are of the considered view that the applicant is entitled to be promoted to T-6. To a specific query to the counsel for the respondents as to whether any person who is holding the Diploma qualification, as that of the applicant, is promoted to T-6 counsel replied that those who have not opted to the new Recruitment Rules and continued in the old pre modified one have already been promoted. It appears to be an anomaly that on the question of some deemed option such a benefit is denied to the applicant which is not in the true spirit of rules available on the subject.

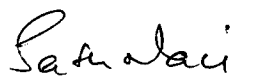
13. Therefore, we are of the view that the applicant is entitled to be promoted to T-6 subject to the condition that all the benefits that he has got by the three stagnation increments will be refunded to the Institute within a period of one month from the date of receipt of a copy of this order. We also set aside Annexure A-9 order and declare that the applicant is entitled to be considered for T-6 with available qualification with him as also consequential benefits out of such promotion. The entire exercise shall be completed by the respondents within a period of three months from the date the applicant refund the benefit that he derived by three stagnation increments. Appropriate order shall be passed within the said time frame. In the circumstances, no order as to costs.

(Dated the 12th day of January 2006)



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN