

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 278  
T.A. No.

199 2

DATE OF DECISION 21/10/92

K. Vasudevan Nair \_\_\_\_\_ Applicant (s)

Mr. P.V. Mohanan \_\_\_\_\_ Advocate for the Applicant (s)

Versus

The Director General, ICAR, Respondent (s)  
Krishi Bhavan, New Delhi-1 and another

Mr. P.V. Madhavan Nambiar \_\_\_\_\_ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. Dharmadan, Judicial Member

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1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

Mr. N. Dharmadan, Judicial Member

Applicant is a Technical Officer(T-6) in the Central Institute of Fisheries, Technology, CIIFT for short, Cochin which is under the first respondent, Director General, ICAR. He is aggrieved by the refusal of the first respondent to fix his pay under FR 22-C taking into account three advance increments granted to him while he was working in the lower post of Technical Officer (T-5).

2. There is no dispute in regard to the essential facts. Applicant was originally appointed as Sr. Laboratory Assistant in the year 1970. In 1972 he was appointed as Analyst and was promoted as Sr. Analyst (T-4) in 1976. After the commencement of the Technical Service Rules, he was promoted as Technical Officer (T-5) on 1.7.82. The

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revised scale of pay for the post is Rs. 2000-3500. Thereafter, since there was a promotion barrier after completion of five years he was assessed for promotion under the Technical Service Rules Annexure-I of ICAR and granted three advance increments as on 1.3.90. Accordingly, his pay was fixed at Rs. 3125/- (Rs. 2900 + 225-advance increments). A post of Technical Officer (T-6) in the scale of Rs. 2200-4000 arose in the Deptt and he was given appointment as per Annexure-III dated 21.7.90. After appointment, he opted to have his pay fixed initially under FR 22-A and w.e.f. 20.7.90 and under FR 22(c) w.e.f. 1.3.91 (the date of next increment in the lower post). Even though he opted as per letter dated 17.8.90, respondents did not take any steps. Hence, he filed reminders. Ultimately as per impugned order Annexure-IV dated 21.1.92 his pay was fixed at Rs. 3,100/- w.e.f. 1.7.91 without reckoning three advance increments earned by him in the grade of T-5. ~~XXXXXX~~ Later by Annexure-V proceedings, the Assistant Administrative Officer threatened to recover in instalment a sum of Rs. 2372 stated to be excess pay and allowances drawn by the applicant for the period 21.7.90 to 31.1.92. Annex. IV refers to a circular letter dated 28.12.79 which is produced as Annexure-VII. The applicant is challenging Annexures-IV V and VII as illegal and violative of FR 22(c) and Article 14 and 16 of the Constitution of India.

3. Respondents opposed the claim of the applicant for inclusion of three advance increments given to him in the lower post on the ground that the applicant was appointed to the post of Technical Officer (T-6) in the scale of Rs. 2200-75-2900-EB-100-4000 on 20.7.90 after a selection in the direct recruitment and not through the method of merit promotion. Hence, when the applicant opted for fixation of his pay a doubt arose as to whether protection of pay last

drawn should be given to him while fixing his pay in the T-6 grade and the matter was referred to ICAR during February 1991 for clarification. ICAR in its letter dated 24.12.91 clarified that fixation of the pay of the applicant was consequent on his appointment to the grade of T-6 and hence instruction contained in Annexure-VIII letter would apply. This letter clearly states that advance increments granted on the basis of five yearly assessment under the Service Rules are not to be counted for fixation of pay on the appointment to higher posts through open selection such as Examination, Advertisement, Interview, etc. i.e. other than five yearly assessment. Accordingly, the pay of the applicant consequent on his appointment to the post of Technical Officer (T-6) in the scale of Rs. 2200-4000 was fixed at Rs. 3000/- from 21.7.90 taking into account the normal increment. After the fixation, it was found that the applicant was given an amount of Rs. 2372/- as over payment. This was sought to be recovered by Annexure-V. As regards the option exercised by the applicant for fixation of pay respondents have stated that since he is only an appointee and not a promotee, his option for choosing his date for fixation of his pay under FR 22a w.e.f. 20.7.90 and under FR 22-c w.e.f. 1.3.91 could not be considered as the same is only applicable for the employees who have been promoted. They have also denied the cases cited by the applicant as parallel cases in which advance increments were taken into consideration while making fixation of the pay.

4. Learned counsel Shri P.V. Mohanan, appearing for the applicant raised two contentions:

i) Advance increments given to the applicant in T-5 grade is part of the pay, which was earned by him, cannot be denied to the applicant while fixing the pay in T-6 grade under FR 22-C.

ii) There is discriminatory treatment and the action of the respondents in denying the correct fixation of the pay in T-6 reckoning three advance increments given to him in T-5 grade is illegal because

identical reliefs were granted by respondents to M/s. P.K. Ibrahim, Smt. Annamma Mathew, etc.

5. Annexure-I rules provide for fixation of pay in the various categories. Rule 10 of Annexure-I reads as follows:

"The pay of a person appointed to any grade shall be fixed in accordance with such orders as may be <sup>4</sup> applicable to Council's employees from time to time."

Annexure-VIII is one of the circular letter issued by the ICAR dealing with/increments granted <sup>xxx</sup> on the basis of five yearly assessment in connection with the fixation of pay of appointees <sup>to</sup> to Technical Services from T-2 to T-9 grades. The relevant portion reads as follows:

"In this connection attention is invited to Council's letter No.8(28)Per.IV dated 18.9.79 according to which advance increments given on the basis of five yearly assessment are not to be taken into account for fixation of pay of scientist appointed in the Council to any higher grade, viz. S-1,S-2,S-3 of Agricultural Research Service, through open selection. It has now been decided that on the same analogy, the benefit of advance increment(s) given on the basis of five yearly assessment cannot be extended to such of the technical personnel as are appointed to any higher grade under the Technical Service of the Council viz. T-2 to T-9 through open selection such as examinations advertisements, interview,etc. other than five yearly assessment."

F.R. 22-C is also applicable to the fixation of the pay of Technicians. FR 22-C without proviso is extracted below:

"Notwithstanding anything contained in these Rules, where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued.."

6. Rule 10 of Annexure-I read with Annexure-VIII and FR 22-C applies to the facts of this case. The case of the applicant is that even though he has been appointed in T-6 grade after selection, his option for fixation of pay in the present grade can be fixed only after invoking FR 22-C protecting his last pay earned by him in T-5 grade. The applicant has exercised his option as stated above. The

pay in T-5 grade includes three advance increments which were given to him after xxx assessment of his merit. Hence when he was selected for T-6, his pay on 1.3.90 was Rs.3125/- (2900 + 225, three advance increments in the grade of T-5). In other words, the applicant was drawing a salary of Rs. 3125/- in the lower grade of T-5. If this pay in the lower grade is protected, he is eligible to fixation of pay as on 1.3.91 in the T-6 grade at Rs. 3200. Accordingly his pay as on 1.3.92 would be more than Rs. 3200. The same fixation was given to Shri V.K. Ibrahim, junior to the applicant in T-5 grade who is still holding the same grade. So also in the case of Smt. Annamma Mathew who is now holding the grade of T-5 was granted three advance increments and she is drawing the pay of Rs. 3200/- as on 1.7.88.

7. Learned counsel for the applicant submitted that the question whether the advance increments earned by the employees in the ICAR is to be treated as part of pay in the matter of fixation of pay in the higher post under FR 22 came up for consideration before this Tribunal in O.A. 384/89. In that case, the legality of the circular letter dated 26.5.89 came up for consideration. The said letter is extracted below:

"I am to invite a reference to the Council's letter of even number dated the 8/9th January, 1978 on the above subject and to say that it has been noticed that the words 'on subsequent promotion of the Scientists' appearing in the 6th line of the last para of the said letter are superfluous and, as such, may be deleted. The actual text of the said para is as under:

"In order to remove this anomaly, it has been decided in exercise of the powers embodied under Rule 18 of Agricultural Research Service Rules, that advance increment(s) granted to a scientist on the basis of five yearly Assessment will not be taken into account while fixing his pay on his promotion to the next higher grade as a result of subsequent assessment. These increments will also not count for calculation of allowances which are based on pay.

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2. As per the above instructions, the amount of advance increment(s) granted to Scientists/Technical personnel as a result of five yearly assessment is not to be treated as 'PAY' for purpose of fixation of pay on promotion/appointment to next higher grade/post, drawl of allowances, pension and other retirement benefits, etc..."

8. The specific question as to whether the advance increments granted to Scientists/Technical Personnel as a result of five yearly assessment is to be treated as part of pay for fixation of pay on promotion/appointment to the next higher grade was considered in O.A. 384/89 and this Tribunal held as follows:

" I am, therefore, of the view that the direction contained in Annexure-V and Annexure-X should be subject to the further condition that the pay fixed on promotion after subsequent assessment, without taking into account the advance increments earned in the lower grade, should however, be not less than the pay plus advance increments drawn in the lower grade and for this purpose, the pay in the higher grade may be regulated, where necessary by the grant of personal pay to be absorbed in future increments, so that the pay in the earlier post inclusive of advance increment, is fully protected.

It is necessary to point out that even before promotion, anomalies can arise. If A & B in the example cited in Ext. R-1(a) are respectively given merit promotion to the next higher grade and three advance increments in the same grade from 1.1.87, an anomaly would arise from that date itself. For, A's pay on promotion will be Rs. 1760 (vide Ext. R1(a)) but B's pay would be Rs. 1680 + 120 = Rs. 1800. This anomaly is inherent in the scheme of career advancement as contained in the Rules. In fact, there should have been a rider to effect that when advance increments are granted it should be ensured that the pay inclusive of the advance increments, does not exceed the presumptive pay that an employee would have drawn had he been promoted to the next higher grade on the date from which he is granted advance increments, and, that for this purpose, the quantum of the advance increments could be suitably adjusted. Such a restriction has not been imposed to cure the anomaly arising before B's promotion. Therefore, it would be unfair to B, if, on his subsequent promotion, his pay is fixed such that it is less than what he was drawing immediately before such promotion, inclusive of the advance increments, even if it happens to be more than that of the pay of A. Hence, the need for the direction as mentioned in the previous paragraph."

9. A more or less same view was taken by the Cuttack Bench of the Tribunal in O.A. 435/88 Annexure-VII judgment

dealing with the question of fixation of pay. Relevant portion of the judgment is extracted below:

" I am unable to countenance such a view. The expression 'ad hoc' has entirely a different connotation. It is something which is in the nature of stop-gap or purely temporary nature. On reading of Annexure A-1 it can never be conceived that at any time the applicant would have lost three increments. Therefore, the fixation of his pay taking Rs. 580/- as basic pay ignoring three advance increments which had been allowed in the existing scale prior to 1986 pay Rules is not justified."

10. This view gets support from the wording in FR 22 C. The last sentence under FR 22-C gives stress on the expression "such pay has accrued". This indicates that ~~including increment~~ any pay/which has been accrued in favour of the employee on account of his merit should be reckoned for the purpose of fixation of the pay of that employee in the higher post, ~~xxx whether he has been appointed by directed selection or promotion. The circular letter of the ICAR dated 26.5.89 considered in O.A. 384/89 takes in promotion &~~ when it contains the expression " fixation of pay on promotion/appointment to next higher grade/post."

11. In the instant case, the impugned order Annexure-IV shows that after the appointment of the applicant in the new post of T-6 in the scale of Rs. 2200-4000, respondents have invoked FR 22-C and fixed the pay of the applicant in the following manner:

" A.i) Provisionally in terms of Ministry of Home Affairs O.M. No. 7/1/80-Estt P-1 dated 26.9.81 i.e. next higher stage to 1(2) above.

B. Fixation/Refixation in terms of FR 22-C

- a) Pay after Notional increment-Rs 2975
- b) Next higher stage in the new scale-Rs. 3000/-

Pay is fixed at Rs. 3,000/- per month with effect from 21.7.90. Pay has been further raised to Rs. 3100/- w.e.f. 1.7.91. The fixation has been done as per Council's instruction contained in Circular letter No. 7(25)/79-Per.III dated 28.12.79. The pay fixation has been duly vetted by the Asst. Finance and Accounts Officer and this is issued with the approval of Director."

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12. Since the respondents invoked FR 22-C on his option xxxxxx there is no justification for denying the applicant advance increments of Rs. 225 earned by him in the lower post which is forming part of the pay of the applicant and which requires to be protected in the matter of fixation of the pay. If the respondents had not invoked FR 22-C, the applicant's xxxxxxxx, claim for inclusion of advance increments of Rs. 225/- would/ have taken a different turn. Since the option given by the applicant was accepted and a fixation has been effected as indicated in Annexure-IV there is no legal justification for the respondents to deny the inclusion of the advance increments as part of the pay in the light of the law laid down by the Tribunal. In this view of the matter, it is not necessary for us to go into the further argument of the learned counsel for the applicant based on the cases of M/s. Ibrahim and Annamma Mathew.

13. In the result, Annexures-IV, and V cannot be sustained and I quash the same. But in regard to the challenge of Annexure-VIII, I am of the view that it is not necessary to go into the legality of the same because in the instant case after the appointment of the applicant in T-6, he has exercised the option for fixation of his pay in the manner proposed under FR 22-A w.e.f. 20.7.90 and under FR 22-C w.e.f. 1.3.91 respectively. This option was given on 17.8.90 and the applicant has also filed number of reminders to the respondents. Accordingly, they have passed the impugned order Annexure-IV which also indicates that the fixation of the applicant's pay under FR 22-C. If FR 22-C is to be invoked, in fixing the salary of the applicant in T-6 grade, it shall only after be fixed/protecting his pay in the lower post which includes three advance increments accrued in his favour on account of Five-yearly assessment, as held by this Tribunal in O.A. 384/89 and the Cuttack Bench in O.A. 435/88. In the light

of these two decisions, ~~xxx~~ advance increments being part of pay and the respondents have applied FR 22-C, the fixation of the pay of the applicant in T-6 grade is to be made reckoning the advance increments earned by him. Annexure-VIII deals with specific cases in which direct appointment through open selection such as examination, advertisement, interview, etc. and fixation of pay without reference to the pay of the appointee in the lower post. Hence, under these circumstances, I am of the view that the applicant's pay has to be fixed in T-6 grade under FR 22-C and not in accordance with Annexure-VIII. In this view of the matter it is not necessary for me to go into the legality of Annexure-VIII as according to me it is not applicable.

14. In the result, the application is allowed. I quash Annexure-IV and V and direct respondents to fix the pay of the applicant in the scale of Rs. 2200-4000 after protecting his last pay drawn in the T-5 grade including the three advance increments earned by him, in accordance with law.

15. There will be no order as to costs.

  
24. p. 92.

(N. Dharmadan)  
Judicial Member

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