

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERAKULAM BENCH**

O.A. NO. 280/2005

WEDNESDAY THIS THE 8th DAY OF AUGUST, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER**

Dr. B. Sasi Kumar S/o Bhaskaran Pillai K.N.
Senior Scientist, Indian Institute of Spices Research
Marikunnu PO, Calicut-12
residing at Vallathu Kadavu Road,
Moozhikkal, Calicut.

..Applicant

By Advocate M/s TC Govindaswamy, Heera D.,
PN Pankajakshan Pillai and Sumy P. Baby

Vs

1 The Indian Council of Agricultural Research
through its Secretary, Krishi Bhavan
New Delhi.

2 The Director
Indian Institute of Spices Research (ICAR)
Marikunnu, Calicut.

3 Head (Social Science)
The Indian Institute of Spices Research (ICAR)
Marikunnu PO
Calicut-6773 012

...Respondents

By Advocate Mr. P. Jacob Varghese

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

Aggrieved by the non-grant of advance increments for Ph.D Degree as provided under Annexure A-1 orders, the applicant has filed this O.A. seeking the following reliefs:

(a) Call for the records leading to the issue of Annexure A-6 and quash the same.

(b) Declare that the applicant is entitled to be granted, in terms of Annexure A-1, four advance increments for possessing Ph.D degree prior to his appointment as a Scientist and two more advance increments while moving over to the post of Senior Scientist since he was a holder of Ph. D as on that date.

© Direct the respondents to grant the Applicant the benefits of the declaration in Para 8(b) above, and direct further to grant and pay consequential arrears arising there from within a time limit as may be found just and proper by this Hon'ble Tribunal.

(d) Award costs of and incidental to this Application

(e) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

2 Briefly the facts submitted are:- the applicant is presently working as a Senior Scientist in the scale of RS. 12000-18300 under the 2nd and 3rd respondents. He initially joined the Institute as a Scientist on 29.4.1985 and was promoted as Scientist – Senior scale w.e.f. 29.4.1990. He was further promoted as Senior Scientist w.e.f. 29.4.1998 and is continuing ever since. The applicant possessed Ph.D degree even prior to his initial appointment as Scientist. Annexure A-1 order dated 27.2.1999 bringing in an incentive scheme for acquiring Ph.D/M. Phil was introduced as a follow up action of the Vth Central Pay Commission recommendations. In terms of this order, advance increments will be admissible as given below:-

(i) 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 Scientist.

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(ii) One increment will be admissible to those Scientist, who acquire Ph.D within two years of recruitment.

(iii) A Scientist with Ph.D will be eligible for 2 advance increments when he moves into the selection Grade as Senior scientist.

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

3 In terms of the above order, the applicant is entitled to be granted four advance increments for having acquired Ph.D degree even prior to his appointment and another two advance increments while moving on to the post of Senior Scientist w.e.f. 29.4.1998. The applicant was granted two increments w.e.f. 14.1.1998 but they were later withdrawn and applicant's pay re-fixed by Annexure A-2 order dated 18.1.2003 and the alleged overpayment @ Rs. 2120/- per month is still being recovered from his salary. Several representations in person and otherwise are pending without any response. Pursuant to many such representations from all quarters the first respondent issued general clarifications on this subject dated 19th April, 2004 (Annexure A-3). According to the applicant Annexure A-3 clarifications should have been made applicable to him. However, the respondents extended the benefit of this order to many others by Annexure A-4, A-5, A-6, A-7 and A-8 orders while denying the benefit to him. It is further submitted that due to this discrimination he is suffering a recurring loss of basic pay of Rs. 2520/- per month.

4 The respondents have denied the averments of the applicant and have stated that the claims of the applicant are not based on the

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rules. It is submitted that prior to 1.1.1986 the Scientists of ICAR were having central pay scales and flexible complementing career progression scheme as provided under the Agricultural Research Service (ARS) Rules. The Government of India approved the adoption of the UGC pay scale and Career Advance Scheme applicable to teachers of Universities to Scientists of ICAR w.e.f. 1.1.1986. As per UGC guidelines effective from 1.1.1986, a Scientist who joined with Ph.D in the scale of Rs. 2200-4000 was entitled for three advance increments in the scale and was eligible for promotion to the post of Scientist Senior Scale after completion of five years service in the grade. The applicant joined service prior to 1.1.1986, he was placed in the UGC scale w.e.f. 1.1.1986 and was promoted as Scientist Senior Scale w.e.f. 29.4.1990 after five years from the date of joining. Therefore, the respondents submit that he has got relaxation in number of years at service for promotion as Scientist Senior Scale and also the designation of Senior Scientist owing to his Ph.D degree. According to the respondents the applicant is not entitled to the four advance increments for having Ph.D degree as it has been clarified vide clarification dated 28.3.2001 issued in consultation with the Government of India, on the eligibility of four advance increments for acquiring Ph.D. Degree during service career that it is admissible to all provided that the post held as on 27.7.1998 should not have Ph.D degree as must/minimum criteria for appointment. Since the applicant was holding the post of Senior Scientist for which Ph.D degree is an essential qualification as on 27.7.1998 he is not eligible for the four advance increments. With regard to the applicant's claim for two

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advance increments for moving to the post of Senior Scientist w.e.f. 29.4.1998 since the applicant became Senior Scientist prior to the coming to the effect of the Career Advancement Scheme, it is not possible to give him advance increment. The Scientists stated to have been granted two advance increment are those who have become Senior Scientist as per the revised scheme. It is further submitted that Annexure A-7 granting two increments to one Dr. K.K. Joshy of CMFRI is being looked in to for rectification as it appears to be a wrong order and admissibility of increments cannot decided on the be basis of such wrong orders.

5 The applicant has filed a rejoinder reiterating his earlier contentions and also filing Annexure A-9 order dated 14.11.2005 providing further clarification of the provisions of Para 1(ii)(d) of the Annexure A-1 letter. The applicant has also controverted the claim of the respondents that the Career Advancement Scheme is intended to come into effect only from 27.7.1998 and stated that it equally applies to those who are holders of Ph.D and those who are already in service.

6 An additional reply statement and a clarificatory statement have been filed by the respondents. By and large the respondents have adhered to the same contentions raised in the earlier reply statement. As regards the letter dated 14.11.2005 (Annexure A-9) the respondents have stated that it is not applicable to Scientists who are appointed to the post of Senior Scientists prior to 1.1.1996. As the applicant has become Senior Scientist as per the pre- revised

scheme, there was no provision for giving advance increment for becoming Senior Scientists, hence it is not possible to give him any advance increment. They also enclosed further clarificatory letters dated 28.4.2006 and 19.1.2007 (Annexure R-4(a) and R-4(b) which relates to rectification of anomalies in stepping up the pay of Seniors on par with Junior Scientists on account of grant of advance increments and they have reiterated that the benefit of these letters cannot be extended to the applicant as he had joined the ICAR prior to 1.1.1996.

7 We have heard learned counsel Shri TCG Swamy for the applicant and Shri P. Jacob Varghese appearing for the respondents.

8 It is an admitted fact that the applicant joined the ICAR service on 29.4.1985 and at the time of initial appointment itself he possessed Ph.D degree. The question arising for consideration is whether in terms of extant orders in Annexure A-1 and further clarifications issued in Annexure A-3 and also in Annexure A-9 and Annexure R-4 series, the applicant is eligible for four/two advance increments for holding Ph.D degree. The applicant joined ICAR on 29.4.1985, the UGC pay scale and career advancement scheme were applied to him according to the respondents themselves from 1.1.1986. It has been submitted in para 5 of the reply statement by the respondents themselves that as per the UGC guidelines also a Scientist who joins the service with Ph.D degree was entitled to four advance increments. There is no averment that this benefit was

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given to the applicant. On the other hand in all the replies filed the respondents have taken the stand that the Scientists who acquired Ph.D degree prior to 1.1.1986 cannot be granted the advance increments as no such provision existed before the introduction of the Career Advancement Scheme. The scheme was introduced in the wake of the recommendations of the Vth CPC and respondents themselves have admitted that the objective of the scheme was to award the Scientists with higher qualifications and encourage others to acquire the PhD qualification. The scheme was to come into effect from 1st August, 1996. However, the revised Career Advancement Scheme was notified by the ICAR vide circular dated 19.7.1997. Several clarifications were sought for in the implementation of these orders and Annexure A-3 order was issued on 19.4.2004 clarifying the issues point by point. The relevant portions are extracted below:

<i>Sl. No.</i>	<i>Points of Doubt</i>	<i>Clarifications</i>
1	What would be the effective date of 4/2 advance increments for possessing Ph.D/M.Phil degrees respectively at the time of appointment as Scientist in the pay scale of Rs. 8000-13500.	4/2 advance increments will be admissible to those who hold Ph.D and M.Phil Degrees respectively at the time of appointment as Scientist in the pay scale of Rs 8000-135000. these advance increments will be effective from 27.7.98 and not from 1.1.199. The notification dated 27.2.1999 and any other clarification issued by the Council in this regard will stand modified to this extent.
2	How to apply the provision according to which a Scientist with Ph.D becomes eligible for two advance increments when he moves in to the Selection grade as Senior Scientist.	A Scientist (Sr. Scale) with Ph.D will be eligible for two advance increments on appointment as Sr. Scientist through Career Advancement Scheme. On the same analogy a non Ph.D. Scientist (including those in Sr. Scale) who has been allowed the grade of Scientist (Sel. Grade) would be entitled to two advance increments for acquiring Ph.D.Degree as well as two advance increments for being designated as Sr. Scientist on acquisition of Ph.D. Degree. This will,however, be effective from 27.07.98 the date on which the revised career advancement scheme has been made effective

<i>Sl. No.</i>	<i>Points of Doubt</i>	<i>Clarifications</i>
3	Whether the pay of seniors can be stepped up at par with the juniors who get more pay as a result of grant of 4/2 advance increments granted for qualifications	The pay of seniors cannot be stepped up if a junior is drawing more pay on account of advance increments for acquiring Ph.D Degree/M.Phil Degree
4	Whether the service rendered in the pay scale of Rs. 12000-18300 or equivalent in other outside organisations such as CSIR, DRDO, UGC, ICSSR, ICHR etc. may be counted for grant of pay fixation benefit of Rs. 14,940/- in the pay scale of Rs. 12000-18300	The service rendered in the pay scale of Rs. 12000-18300 or equivalent in NAAS system may be counted for giving the benefit of pay fixation at Rs. 14940/- in the pay scale 12,000-18300 subject to fulfillment of other conditions as per rules.

9 In the reply to point No. 1 it was clarified that 4/2 advance increments will be admissible to those who hold Ph.D/M Phil degree at the time of appointment as Scientist, but the increments will be effective from 27.7.98 and not from 1.1.96. To that extent the notification at Annexure A-1 was modified. Similarly, against Point NO. 2 It was clarified that Scientists with Ph.D degree will be eligible for two advance increments for being designated as Senior Scientist but the financial benefit will be effected from 27.7.1998. According to these clarifications the applicant was eligible for both the four advance increments at the time of appointment in the scale of Rs. 8000-13500 and also to the two advance increments for moving into the post of Senior Scientist. In fact there was nothing in the earlier order at Annexure A-1 preventing the respondents from granting 4/2 advance increments to the applicant and there was no prohibition in the scheme it is not applicable to those who are already in service and those who possessed Ph.D degree already. The respondents however, gave such an interpretation of Annexure A-2 and A-3 orders and further relied on Annexure R-3 clarification dated

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28.3.2001 which is on an entirely different issue i.e. whether the benefit of advance increment for acquiring Ph.D degree can be given from the date from which the benefit was applicable i.e. 27.7.98 or from the date of acquisition of the degree whichever is later. The applicant does not fall within the purview of this circular for he was not one acquired the Ph.D degree but possessed the degree at the time of initial appointment. He is therefore governed only by the clarifications at points 1 & 2 referred above. Having been brought into the purview of the Scheme the benefits granted by the Scheme cannot be denied to the applicant by importing technicalities into the reading of the orders which are not present therein. Any order has to be read and understood in its plain meaning.

10 At the same time the applicant had submitted a representation Annexure A-5 for stepping up his pay with the juniors as his request for grant of increment has been consistently rejected by the respondents. The request for stepping up of pay was rejected by Annexure A-6 order relying on the clarification as per item No. 3 of the letter dated 19.4.2004. However, Annexure A-6 order has been now modified by Annexure R-4 letter dated 30.11.2004 which reads as follows:

"The matter has been considered in consultation with the Ministry of Finance. It has now been decided that the pay of a Scientist who joined ARS service with Ph.D degree prior to 1.1.1996 but drew less pay than his junior who joined ARS service with Ph.D degree on or after 1.1.1996 may be stepped upto an amount equal to the pay as fixed for his junior in the post. The stepping up will however be effective from 27.7.98 and thereafter as the benefit of 4/2 advance increments is effective from 27.7.98. The Scientists whose pay is stepped up at par with his junior will be entitled to the

next increment on completion of 12 months qualifying service from the date of stepping up of pay. With the above decision the clarification at Sl.No. 3 of circular of even numbers dated 19th April, 2004 stands modified to this extent."

11 This benefit has also been clarified in Annexure R-4 order dated 30.11.2005 wherein it is reiterated that stepping up will be allowed only in the grade of Scientists in the revised scale of Rs. 8000-13500 w.e.f. 1.1.1996 and not to any other grade. Thus the clarification at item 3 of para 9 in the Annexure A-3 order has also become redundant and the applicant is entitled to the stepping up of pay on par with his juniors mentioned in Annexure A-2 orders.

12 Viewed from all angles we find that the prayer of the applicant for grant of advance increments falls within the purview of the extant instructions and there was no dearth of clarity in the orders. The respondents have denied the benefits which were legitimately due to the applicant on the basis of wrong interpretations given to the instructions. There is no mention anywhere in the scheme of Career Advancement that the provisions therein are applicable only to those Scientists appointed after 1.1.1996 or after coming into effect of the scheme to the disadvantage of the earlier Scientists. If such was the intention of the Government, there was no need for clause (ii)(a) and © of the scheme. Hence the intention was at the same time to give the benefit and encouragement to those who already have Ph.D. degree and also an incentive to others for acquiring the Ph.D degree, only the financial benefits were made applicable from a later

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date.

13 In the light of the foregoing discussion, we are of the considered view that the applicant is entitled to be granted four advance increments for possessing the Ph.D degree prior to his appointment as a Scientist in terms of Annexure A-1 and two more advance increments for moving over to the post of Senior Scientist since he was holder of a Ph.D degree at that time, the benefits being effective from 27.7.98 as clarified by the orders from time to time. The respondents are directed to grant the applicant the above benefits and pay consequential arrears within a period of three months from the date of receipt of this order. The O.A. is allowed. No costs.

Dated 8th August, 2007


DR. KBS RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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