

CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM BENCH

Date of decision: 8.1.1990

Present

Hon'ble Shri NV Krishnan, Administrative Member

OA 384/89

- 1 Central Institute of Fisheries Technology Employees Federation, CIFT, Matsyapuri P.O., Cochin-682 029 rep. by its Secretary MK Kutty Krishnan Nair
- 2 MK Kutty Krishnan Nair S/o Krishnan Nair, aged 44 yrs., Senior Field Assis-tant, CIFT, Matsyapuri P.O., Cochin-682029.
- 3 AR Dharaneedharan S/o Late Raman, Aged 55 yrs. Media Assistant, CIFT, Matsyapuri P.O., Cochin-29. : Applicants

Vs.

- 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, Cochin-682 029. : Respondents
- Mr PV Mohanan : Counsel of Applicants.
- Mr PVM Nambiar, SCGSC : Counsel of Respondents.

O R D E R

Shri NV Krishnan, Administrative Member.

This application has been filed by the Central Institute of Fisheries Technology Employees' Federation, Cochin (Applicant-1) in a representative capacity and by two other applicants who have ^agrievance against Annexure IV and Annexure X orders.

2 The case arises thus:

2.1 The 2nd and 3rd Applicants are technicians in the Central Institute of Fisheries Technology, Cochin

(CIFT for short). The Institute functions under the administrative control of the Indian Council of Agricultural Research (Respondent-1). Rules have been framed for various services of which we are concerned with the Technical Service Rules (Rules for short) which were brought into effect from 1.10.75.

2.2 The Technical Services are grouped into three categories consisting of the following grades:

Category	Grade	Scale of pay	
		Pre-revised (Rs)	Revised. (Rs)
Category-I	Technician-I (T 1)	260 - 430	975 - 1540
	T 2	330 - 560	1200 - 2040
	T I 3	425 - 700	1400 - 2300
Category-II	T II 3	425 - 700	1400 - 2300
	T 4	550 - 900	1640 - 2900
	T 5	650 - 1200	2000 - 3500
Category-III	T 6	700 - 1300	2200 - 4000
	T 7	1100 - 1600	3000 - 4500
	T 8	1300 - 1700	3000 - 5000
	T 9	1500 - 2000	3700 - 5000

2.3 The salient feature of the Rules is that it provides for career advancement on a special basis. The rules provide either for a merit promotion from one grade to the next higher grade - irrespective of the occurrence of vacancies - or the grant of ^amaximum ^{of} three advance increments in the same grade. On the first occasion, such promotion/advance increments is given on completion of 5 years' of service in the grade, after a thorough review of the record of the employee. The employee may either be found fit for merit promotion to the next higher grade or for the grant of one, two or three advance increments or not found fit for either. The process is repeated subsequently every year.

2.4 The 2nd and 3rd applicants are technicians respectively in Grade T-2 and Grade T I 3 in category I. and they were given two advance increments.

2.5 The first grievance of the applicants is against letter No.7(10)/78 PER-III dated 27.1.79 (Annexure-X) directing that the advance increments granted to technical personnel should not count for fixation of pay on promotion to the next higher grade as a result of subsequent assessment. In regard to Scientists, an additional restriction was imposed by the letter dated 9.1.78 (Annexure-XIII) viz that "on subsequent promotion of the Scientists, these increments will not count for calculation of allowances based on pay". By the impugned order at Annexure-V dated 10.3.89, the words "on subsequent promotion of the Scientists" in the extract above were deleted. It was also clarified that the advance increments will not count for any allowances based on pay in respect of Technical personnel also. Hence, the applicants have impugned the Annexure-V order also.

2.6 The Applicants have contended that the directions in the impugned orders Annexure-V and Annexure-X are

arbitrary and violative of their constitutional rights.

It is also alleged that the impugned orders- which are executive instructions ^{seek illegally} - ~~to~~ abridge the rights given to them under the Rules, which are similar to rules made under Article 309 of the Constitution in respect of government employees.

3 The respondents have filed a detailed reply in which they have explained the circumstances in which the impugned instructions in Annexure V and Annexure X have been issued. It is pointed out by them that, but for these instructions, an anomalous position would arise as between the persons having the same service in a particular grade and assessed for merit promotion/ advance increments. An illustration of such an anomaly has been given in Ext.R1(a). That example aims at showing that as between two persons equally placed, of whom one is given a merit promotion to the next higher grade ~~is~~ and another only one advance increment in the same grade, the latter would be better off subsequently, when he is promoted to the next higher grade, if the pay on such promotion is fixed after taking into account his pay in the lower grade, inclusive of the advance increments earned by him. This anomaly could be avoided only if, in respect of the latter candidate, the pay on his promotion subsequently to the next higher grade, is fixed on the basis of his pay in the lower grade, but after excluding the advance increments earned by him in that grade. It is contended that it was to secure this

objective that the impugned orders were issued. The learned counsel, however, could not explain why orders are also issued in Annexure V that the advance increments will not also count for calculation of allowances which are based on pay.

4 I have carefully perused the records of the case and heard the learned counsel on either side.

5 The Respondents have a case that an anomaly would arise, as stated by them, unless it is corrected by the issue of certain instructions. For, in the statement exhibited by them at R1(a) it is clearly shown that a person who is promoted to the next grade from 1.1.87 will draw a pay of Rs 1800/- on 1.1.88, whereas another person, similarly situated but adjudged to be fit to ^{only} receive ~~only~~ one advance increment from 1.1.87, would draw a higher pay of Rs 1850/- from 1.1.88 on his promotion to the next higher grade from that date. The ^{anomaly} is entirely due to taking into account the advance increments earned by him in the lower grade, for the fixation of his pay in the higher grade. To the extent that such an anomaly needs to be redressed, it is necessary to issue instructions on the lines of the instructions at Annexure-V. However, there is another aspect of this matter which has been forgotten while the instructions at Annexure V order - or for that matter the instructions at Annexure X - were issued. It is because of that aspect that the applicants have a grievance.

6 As the instructions at Annexure V and Annexure X stand at present, a position may arise where, a person who has been given three advance increments in ^{his} grade after one assessment, may find himself drawing less pay on his promotion to the next higher grade, on the basis of a subsequent assessment. This can be made clear from the example cited in Ext.R1(a) itself. If three advance increments had been given, the person B would have drawn a pay of $1680 + 120 = \text{Rs } 1800/-$ w.e.f. 1.1.87. In the normal course he would have earned ^{an} increment of Rs 40/- on 1.7.87 ~~and making his pay equal to Rs 1,800/- + Rs 40/-~~ making his pay equal to Rs 1,800/- + Rs 40/- = Rs 1840/-. This will be his gross pay before his promotion on 1.1.88. If his pay is fixed on the basis of the instructions at Annexure V, it would have been fixed at Rs 1800/- w.e.f. 1.1.88 as mentioned in Ext.R1(a) i.e., less than the pay he was drawing immediately before such promotion. That would be meaningless because it cannot be that, on promotion, a person ^{should} get lesser pay than what he was getting earlier. This illustrates the need for a clause in the executive instructions issued at Annexure V and Annexure X directing that in no case could the pay on promotion be less than the pay, including advance increments, a person was drawing before such promotion.

7 I am, therefore, of the view that the direction contained in Annexure V and Annexure X should be subject ^{further} to the 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 increments, ^{is} fully protected.

8. It is necessary to point out that even before promotion, anomalies can arise. If A & B in the example cited in Ext.R1(a) are respectively given ~~xxx~~ 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 Ex.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 ^{be} exceed the presumptive pay that an employee would have ^{be} drawn, had he been promoted to the next higher grade on

the date from which he is granted advance increments, and, ^{u quantum} that for this purpose, the ~~question~~ 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. I am unable to understand & why the advance increment is not recognised as pay for any purpose. It could ^{u not} be clarified by either counsel whether the advance increments were treated as pay for the purpose of recovery of house rent. The Respondents have not been able to explain this discrimination in the treatment meted out to the advance increments. For, advance increment is only a substitute for merit promotion. After merit promotion, a person begins to draw a higher pay in the next grade and that pay is treated as pay for all purposes, inclusive of

allowances based on pay. The advance increment is, as it were, in lieu of promotion as a second best reward. That being so, there is absolutely no reason why advance increment should be treated differently from pay on promotion. There is no rationale for discrimination in ^{the} ~~this~~ treatment between similar kinds of ~~xx~~ financial benefits. The distinction is entirely unwarranted and is liable to be struck down.

10. For the aforesaid reasons, this application is allowed with the following directions:-

(a) The orders at Annexure-V and Annexure-X will be subject to the condition as mentioned in para 7 supra.

~~To~~ (b) Those portions of Annexure-V letter which direct that advance increments will not count for calculation of allowance which are based on pay are quashed.

(c) The 2nd and 3rd applicants will be entitled to all consequential benefits on the basis of this judgment.

(d) The respondents shall amend the instructions

at Annexure V and Annexure X to bring them in conformity with the directions at (a) & (b) above.

11 There will be no order as to costs.


8.1.90
(NV Krishnan)

Administrative Member

8.1.1990.