

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 410/96

Thursday, this the 11th day of June, 1998.

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HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

HON'BLE MR S.K. GHOSAL, ADMINISTRATIVE MEMBER

1. K.V. Krishnan Nair, S/o G. Veluppillai,
Supporting Staff Grade III (Retired),
Central Plantation Crops Research Institute,
Kudlu, Kasaragod.
Residing at Post Kudlu, Kasaragod.
2. B. Damodaran, S/o K.P. Krishnan,
Supporting Staff Grade III,
Central Plantation Crops Research Institute,
Kudlu, Kasaragod.
Residing at Post Kudlu, Kasaragod.

...Applicants

By Advocate Mr P.V. Mohanan.

Vs.

1. The 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,
Post. Kudlu, Kasaragod.

...Respondents

By Advocate Mr C.N. Radhakrishnan.

The application having been heard on 11.6.98, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Applicants seek the following reliefs:

"(i) To declare that the applicants are eligible to be retained in service as Supporting Staff Grade IV till they attain the age of 60 in the scale of Rs. 825 - 1200.

(ii) To direct the respondents to extend the retirement age to the applicants as 60 years by retaining them in the grade of Supporting Staff Grade IV with all consequential benefits including the pay and allowances in the grade of Supporting Staff Grade IV till they attain the age of 60.

(iii) To call for the records leading to Annexure A4 and set aside the same.

(iv) To declare that the reversion of the applicant No.1 from Supporting Staff Grade IV to Grade III is illegal."

2. Applicants were promoted to the post of Supporting Staff Grade IV from Supporting Staff Grade III in the scale of Rs. 800 - 1150. The first applicant has retired from service after reverting him to the post of Supporting Staff Grade III. The second applicant continues in service as Supporting Staff Grade III. According to applicants, they are eligible to remain in service till they attain the age of 60 years as they were promoted insitu to Supporting Staff Grade IV and as per the order issued by the Government of India the Class IV employee who was granted insitu promotion to the scale of Rs. 825. - 1200 can continue in service till he attains the age of 60 years.

3. Applicants are also relying on Clause 33(b) of the Bye-laws of Indian Council of Agricultural Research.

4. Applicants along with another person approached this Tribunal by filing O.A. 385/94. That was disposed of by this Bench of the Tribunal directing respondent ICAR to take a final decision in the matter of retirement age of applicants in accordance with rules/Bye-Laws. It is in pursuance of that A-4 order was issued which is under challenge.

5. Respondents have filed a lengthy reply statement, but the averments made in the reply statement are not at all helpful to solve the question involved herein.

6. Learned counsel appearing for the applicants submitted that it is not necessary to grant any relief in respect of Relief Nos.1 & 2, since the Government of India has enhanced the retirement age to 60 and the same is applicable to the employees of ICAR also.

7. In A-3 order it is stated that the rules and Bye-Laws of the ICAR and more particularly Rule 38(b)(5) of the rules, invests the governing body of ICAR with the power of laying down the conditions of service, including conditions relating to retirement age and it is not for different officials to ventilate their views on such matters. It is also pertinent to note that in A-3 order it is stated that Standing Counsel for respondent ICAR submitted that 'no such rules have been issued under Rule 38(b)(5) governing the age of retirement of Class IV employees'. The direction contained in A-3 is to take a decision by the ICAR in accordance with rules/Bye-Laws. By a reading of A-4, by no stretch of imagination it is possible to say that the direction contained in A-3 has been complied with. There is no reference to any of the provisions of any rules/Bye-Laws. What is stated therein is that "it has been decided with the approval of competent authority in ICAR that there is no scope for deviation from the decision already circulated vide its letter No.2-57/75-Per.IV dated the 18th June, 1979 followed by further clarification vide No.9-2/88-Per.IV dated 5th September, 1989".

8. In the reply statement it is stated that the representations of Grade IV employees have been considered in detail in consultation with the Ministry of Finance and a proposal for enhancing their age of retirement was placed before the Governing Body of the Council in its meeting held in August, 1978. What is stated is only it was placed before the Governing Body. It is not specifically stated whether the Governing Body accepted the proposal or rejected the proposal. Now we are not concerned with what has transpired in 1978, but what has transpired subsequent to A-3 order dated 17th of January, 95. A-4 is conspicuously silent of this aspect. From A-4 it is not possible to know who has taken the decision which has already been circulated as per letter dated 18th of June, 1979. If any decision was taken by the ICAR in accordance with the provisions contained in Bye-Laws that fact should have been

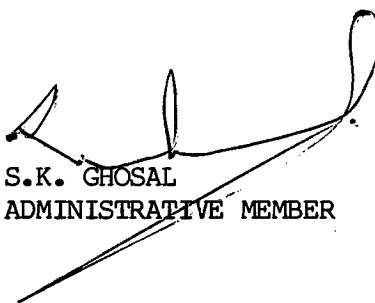
brought to the notice of the Tribunal at the time of hearing O.A. 385/94. Nothing was done by the respondents. In such a case the respondents now cannot rely on an alleged decision circulated as per letter dated 18th of June, 1979 and further clarification circulated as per letter dated 5th of September, 1989. Any decision can only be taken according to the provisions contained in the Bye-Laws by the Council. From A-4, as already stated, it is not possible to know who has taken the decision. If any decision was taken by the Council of the ICAR in accordance with the provisions contained in the Bye-Laws, there would have been no difficulty to mention the same in A-4 and also to bring it to the notice of this Bench of the Tribunal while hearing of O.A. 385/94. From a reading of A-3 it is very much clear that the Standing Counsel for the respondents has submitted that no such rules have been issued governing the age of retirement of Grade IV employees. A-4 is directly in conflict with this submission made by the learned counsel for the respondents in O.A. 395/94. We are, therefore, unable to uphold A-4 and left with no alternative, but to set aside the same.

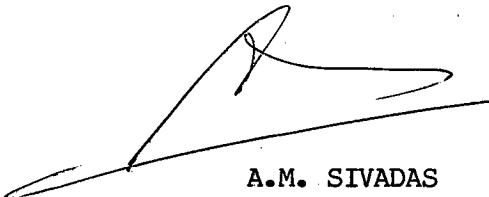
9. The other prayer is to declare that the reversion of the applicants from Supporting Staff Grade IV to Grade III is illegal. Learned counsel for the applicants submitted that the applicants opted for reversion from the post of Supporting Staff Grade IV to Grade III, but it was based on illegal order for the reason that the order was issued by an authority who was not competent to issue the same prescribing the age of retirement. So, according to the learned counsel for the applicants, though the applicants opted for reversion, that cannot stand in their way or to their detriment since it was based on an order which is not valid in the eye of law. We do not have sufficient materials to arrive at a conclusion in either way. The observations in A-3 order that the Standing Counsel for ICAR submitted that no such rules have been issued governing the age of retirement of Grade IV employees would *prima facie* show that the

order issued fixing the retirement age is not an order which is valid in law and sustainable. In the absence of sufficiency of materials before us to come to a conclusion on this aspect, it is only proper to direct the first respondent to consider this aspect and pass appropriate speaking order, in accordance with the rules and Bye-Laws in force.

10. Accordingly, we dispose of the O.A. setting aside A-4 and directing the first respondent to consider and pass appropriate speaking order on the question whether the reversion of the applicants from Supporting Staff Grade IV to Grade III is illegal or not, in accordance with the rules and Bye-Laws in force, within a period of three months from the date of receipt of a copy of this order. No costs.

Dated the 11th of June, 1998.


S.K. GHOSAL
ADMINISTRATIVE MEMBER


A.M. SIVADAS
JUDICIAL MEMBER

LIST OF ANNEXURES

1. Annexure A3: Order of the Hon'ble Central Administrative Tribunal, Ernakulam Bench in OA.385/94 dated 17.1.1995.
2. Annexure A4: Proceedings No.F.No.6(8)/95-IA.V. dated 29.8.1995 issued by the first respondent.

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