

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
LUCKNOW BENCH,  
LUCKNOW.**

**Original Application No. 512 of 2005.**

Reserved on 15.5.2012

Date of Pronouncement 28<sup>th</sup> May, 2012

**Hon'ble Mr. Justice Alok K Singh, Member-J**

**Hon'ble Mr. S.P. Singh, Member-A**

Rajendra Gupta, aged about 43 years, S/o Sri Shyam Behari Gupta, R/o D-18 Ikshupuri Colony, Jail Road, Lucknow

.....Applicant.

By Advocate : Sri Y.C. Srivastava

Versus.

1. Union of India through the Secretary, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
2. Director, Indian Council of Agricultural Research Dilkusha, Lucknow.
3. Senior Administrative Officer, Indian Council of Agricultural Research, Dilkusha, Lucknow.

.....Respondents.

By Advocate :Sri Q. H. Rizvi

**O R D E R**

**By S.P. Singh, Member-A**

This O.A. has been instituted by the applicant for the following relief(s):

“8.1 That this Hon'ble Tribunal may kindly be pleased to set-aside the impugned order dated 13/20.9.2005 contained in Annexure no.1 filed alongwith Compilation no.1 to this Original Application and Council Corrigendum No. 6/25/2002 AV dated 5.9.2005 which was summoned and taken on record.

8.2 That this Hon'ble Tribunal may further be pleased to direct the Opposite parties not to give effect to the impugned order dated 13/20.9.2005 and further the applicant be treated as Senior Scientist with all consequential benefits.

8.3 To grant any other relief which this Hon'ble Court deems fit and proper in view of the case.

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8.4 To direct the Opposite parties to award the cost of the Original Application to the applicant.

2. Indian Council of Agricultural Research, an autonomous body of Government of India, is a society registered under the Societies Act. The applicant pleads that he was appointed as Scientist Scale I directly through All India Competitive Examination conducted by Agricultural Scientist Board for recruitment of Agricultural Research Service in ICAR vide order dated 18.2.1987 (Annexure-2 to this O.A.). He was promoted as Scientist (Senior Scale) vide order dated 24.5.1996 w.e.f. 18.2.1994 (Annexure -3 to this O.A.). The applicant was further promoted as Scientist (Selection Grade) vide order dated 2.3.2002, but soon thereafter the applicant came to know regarding formulation of Career Advancement Scheme for ARS Scientists under ICAR dated 19.7.2000 which made him eligible for being considered for promotion as Senior Scientist under the said career Advance Scheme as he possessed the published work equivalent to P.hd. A copy of Career Advancement Scheme for ARS Scientists under ICAR dated 19.7.2000 is annexed as Annexure no. 4 to this O.A. The service condition of the applicant are governed by this Scheme which was implemented w.e.f. 27.7.1998 as per order dated 6.12.2000 (page 30 of the O.A.) The applicant was accordingly considered by the duly constituted Departmental Promotion Committee (in short DPC). The above DPC was constituted under the provisions of Career Advancement Scheme for ARS Scientists under ICAR and considered the published research work of the applicant and recommended him for promotion to the post of Senior Scientist. The President, ICAR approved the recommendations of DPC and passed order dated 17.6.2002. The President, ICAR happens to be Union Agricultural Minister. A copy of order dated 17.6.2002 is annexed as Annexure no.5 to this O.A. The applicant was promoted accordingly as Senior Scientist w.e.f. 27.7.1998 vide order dated 17.6.2002. Suddenly, without any notice, the applicant was surprised to receive the impugned order dated

13/20.9.2005 on 24.9.2005 by which respondents unilaterally and arbitrarily modified treating the applicant to be promoted as Scientist (Selection Grade) instead of Scientist (Senior Scientist). This order dated 13/20.9.2005 also mentions a corrigendum issued in pursuance of the council's corrigendum No. 6-25/2002-AU dated 5.9.2005. No copy of council corrigendum dated 5.9.2005 was ever served upon the applicant. Later through amendment application bearing M.P. no. 726 of 2012 the applicant impugned corrigendum no.6-25/2002AV dated 5.9.2005 which was summoned and taken on record by this Tribunal on 9.4.2012.

3. It is further pleaded by the applicant that his service conditions are governed by Career Advancement Scheme for Agricultural Research Service Scientist under I.C.A.R. effective from 1.1.1996 but implemented w.e.f. 27.7.1998 as per order dated 6.12.2000. As per Rule 2.3. of the Career Advancement Scheme dated 19.7.2000, the person who has completed 5 years service in senior scale and had obtained a Ph.D. degree or equivalent published work, would be eligible for promotion to the post of Senior Scientist but subsequently vide another circular No. 21-10/99-Per.IV, dated 19.4.2001, the requirement of length of service of 5 years in Scientist senior scale was modified to the total 11 years of service for promotion as Senior Scientist. As said earlier, Career Advancement Scheme came in force w.e.f. 27.7.1998 and as such the matter of the applicant was reconsidered and the applicant was promoted as Senior Scientist vide order dated 17.6.2002 (page 31 and 32 of O.A.) by the President I.C.A.R. on the recommendation of duly constituted D.P.C. and the applicant was accordingly given promotion w.e.f. 27.7.1998 i.e. the date of implementation of Career Advancement Scheme in I.C.A.R. Consequently the applicant had been treated as Senior Scientist with effect from 27.7.1998 till all of a sudden, the impugned order dated 13/20.9.2005 was unilaterally passed, when during this tenure of 8

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years of service in the grade of Senior Scientist, the applicant had already earned all the benefits of the post of Senior Scientist. By impugned order dated 13/20.9.2005 passed without assigning any reason and without issuing any show cause notice and without giving any kind of opportunity, the applicant's promotion from the post of Senior Scientist was modified reverting him on the post of Scientist selection grade after about 8 years. The applicant pleads that unilateral change of status from Senior Scientist to Scientist Selection grade reverting him to a lower post without any kind of opportunity is patently illegal, arbitrary and violative of Article 14 of the Constitution of India and therefore, the impugned orders need to be quashed in light of the facts and circumstances stated above. According to him, the Career Advancement Scheme dated 19.7.2000 Rule 2.3. at page 23 of O.A. specifically provides that the eligibility of the post of Senior Scientist is Ph.D. degree or equivalent published work and the proforma for considering the cases under the Career Advancement Scheme at page 28 of O.A. specifically seeks the information at column 6 (II) regarding details of published work in case of those not holding the Ph.D. Degree. This fact was accordingly considered by the Departmental Promotion Committee which is the expert body for considering published work of the applicant equivalent to Ph.D. degree. DPC recommended him for promotion as Senior Scientist which was approved by the President I.C.A.R. It is very clear from the above that the promotion to the post of Senior Scientist, Ph.D. degree was not the only requirement as otherwise DPC would not have recommended the applicant for promotion to the post of Senior Scientist. The applicant claimed that several persons in Engineering discipline in the I.C.A.R who are non Ph.D had been selected as Senior Scientists and had also been promoted as Principal Scientist. Hence the action of the opposite parties is very discriminatory. The applicant states that the promotion order of Senior Scientist dated 17.6.2002 was issued by the



Director after the approval of the President of I.C.A.R who is appointing authority whereas, the impugned order modifying the promotion order has been issued by the Senior Administrative Officer which is patently not in order. No enquiry was ever conducted, no opportunity of any kind or show cause notice was ever given to the applicant before passing the impugned order. Thus the applicant was denied promotion as Principal Scientist for which he became entitled w.e.f 27.7.2006 on completion of 8 years of service as Senior Scientist if it would not have been unilaterally modified. Keeping in view the position as stated above, the applicant prayed that his original application deserves to be allowed with costs.

4. This O.A. was filed on 18.10.2005. However, it was directed by this Tribunal vide order dated 9.5.2006, after being convinced prima facie and after hearing the counsel for the parties that further operation of the impugned order 13/20.9.2005 (Annexure-1) would remain stayed till the next date to be fixed for hearing of the matter. The respondents were asked to file CA in this case expeditiously. However, the respondents filed their counter affidavit only in the month of October 2007 i.e. after elapse of more than a year.

5. In their counter affidavit, the respondents conceded that the applicant namely Sri Rajendra Gupta was considered by the Selection Committee for his promotion to the grade of Senior Scientist and the recommendation of the said committee were also inadvertently got approved by the Competent Authority and communicated to him. However, the said discrepancy was brought to the notice of the council, the orders to this effect were withdrawn as promotion of the applicant to the grade of Senior Scientist was found to be erroneous and not covered under the guidelines issued by the council. It is claimed that undue advantage of a mistake committed by the office of the respondents should not be permitted. They further claim that no



relaxation of the rules can be given in case of the applicant merely because his case was considered and recommended by DPC by mistake. It is now stated by the respondents that the case of the applicant for promotion to the grade of Senior Scientist has been considered inadvertently and the same is not covered under the guidelines of the Career Advancement Scheme. It is further claimed by the respondents that the applicant is trying to take undue advantage of erroneous orders by means interpreting the provisions of Para 2.3 (II) and ignoring provision of Para 1.2 and 2.2. as is now being claimed by respondents. They further claimed that in the entire system of I.C.A.R , no scientist have been promoted to the grade of Sr. Scientist without having a Ph.D Degree. It is further stated by the respondents that a Senior Administrative Officer of the Indian Institute of Sugarcane Research, Lucknow was fully competent to communicate with the said decision of the council to the applicant.

6. The applicant filed rejoinder affidavit. It is stated by the applicant that the eligibility criteria in para 1.2. as referred in counter reply is not the part of eligibility criteria as provided in Career Advancement Scheme as is evident from perusal of the Career Advancement Scheme filed by the applicant along with Annexure 4 to the original application. Sub para 2.2. of para 7 of the counter affidavit subsequently provided that one can be given promotion to scientist (Selection grade) who do not have Ph.D degree or equivalent published work and Para 2.3 says that promotion to the post of senior scientists can be made from the scientists in senior scale who have either obtained a Ph.D degree or equivalent published work and since the applicant has the published work, equivalent to Ph.D degree and as such applicant was given promotion to the post of senior scientists by duly constituted Departmental Promotion Committee and it was also approved by the competent authority i.e. President, Indian Council of Agricultural

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Research vide order dated 17.6.2002 w.e.f. the date of eligibility i.e. 27.7.1998 and the petitioner was also paid the arrears as well as the increments accrued out of that promotion. It is, therefore, incorrect to say that any relaxation had been made in the case of the applicant whereas his published work has been found equivalent to the Ph. D. by the Departmental Promotion Committee so constituted under the guidelines. He states that the eligibility for promotion to the post of Senior Scientist having the Ph.D degree or the equivalent published work is provided not only in the Career Advancement Scheme of I.C.A.R but also in the career advancement scheme of U.G.C. notification. The applicant gives name of the persons Sri Jagdish Chandra, Sri B. L. Gaul, Smt. Sunita Lal, Sri Arun Kumar Srivastava, Sri . R. K. Pangasa and Sri P. R. Singh working as Principal Scientist under the same Career Advancement Scheme and they did not have the Ph. D degree. The applicant further states that the respondents have also appointed Smt. Sushma Sudhishri posted at W.T.C., I.A.R.I., New Delhi and Sri Er. A. K. Singh posted at I.C.A.R., Research complex for Eastern Region, Patna on the post of Senior Scientist who also do not possess Ph. D Degree under ICAR, Career Advancement Scheme. Hence the action taken by the respondents in case the applicant is not only illegal, arbitrary but also discriminatory in view of the position stated above. The applicant claimed that he was entitled for promotion to the post of Principal Scientist from the post of Senior Scientist which has been denied to him in view of impugned order issued unilaterally by ICAR.

7. We have heard the counsel for the parties and perused the material on record to assess the rival contentions.

8. We have perused the guidelines formulated in respect of Career Advancement Scheme for A.R.S. Scientists under I.C.A.R. This is available at Annexure-4 enclosing the proformee for furnishing

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information by concerned Scientists for promotion from one grade to another under the revised Career Advancement Scheme. Accordingly, further necessary action for promotion of the Scientists In ICAR was processed as per the revised Career Scheme to complete the entire process as early as possible. The revised Career Scheme was also circulated to all Scientists of the I.C.A.R widely.

As per para 5 of the guidelines mentioned above to judge the suitability for promotion to the post of Scientist (Selection Grade) Senior Scientist a Selection committee was constituted at the institute level and consisted of as under:-

- (i) Chairman : to be nominated by the ASRB.
- (ii) Two Experts to be nominated by DG, ICAR from outside the institute but not necessarily from outside ICAR System.
- (iii) DDG concerned with the institute or his nominee
- (iv) Director of the Institute.

Note II of the para 5.1 of the guidelines provides the quorum of Selection Committee would be four. The quorum of four should ensure that at least one member should be an outside expert.

From perusal of the constitution so provided under CAS, it is very clear that the merit of each candidate is determined by an higher powered departmental promotion committee whose constitution has been indicated above. The applicant was accordingly given promotion on the post of Senior Scientist w.e.f. 27.7.1998 and as such, he was also allowed to earn increments and consequent arrears of pay on account of increments on the post of Senior Scientist accrued on promotion. The promotion order of the applicant in the post of Senior Scientist was issued on 17.6.2002 by the Director of the institute after the approval of the President of ICAR who is the appointing authority for such officers under the Career Advancement Scheme. Considering

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the fact that Career Advancement Scheme was provided to encourage meritorious officers who are assessed in the manner prescribed under the guidelines of ICAR, it is very clear that the case of the applicant was considered by a duly constituted selection committee and finally approved by the President ICAR. After promotion of the applicant, arrangement was allowed to continue till 13/20.9.2005 when unilaterally and arbitrarily the recommendations of the above duly constituted committee <sup>ve</sup> has been modified for which there are no explicit provisions under the guidelines of the CAS circulated by ICAR to all the scientists.

9. Under the guidelines formulated by ICAR, there is also no provision of any peer review of the work done by a duly constituted Selection Committee. The second selection committee which considered the case of the applicant before issuing of the order dated 13/20.9.2005 modifying or correcting the assessment made by the first selection committee did not have any explicit jurisdiction to do in terms of existing guidelines as no such peer review is permissible to review the merit once assessed by first selection committee consisting of experts from inside ICAR system and outside experts. It is shocking to learn when an institute like Indian Council Agricultural Institute says that error occurred because some officials in the office of the respondents had furnished wrong particulars without naming any such person in the office and without indicating any follow up action taken against such irresponsible officers of the institute/ICAR who are responsible for causing such errors. However, the fact remains that the duly constituted first Selection Committee under the guidelines of Career Advancement Scheme has already considered the merit of the applicant and allowed him promotion and therefore we are not inclined to pass any order against the recommendations of duly constituted first



Selection Committee consisting of experts from within ICAR as well as experts from outside ICAR.

10. The applicant was neither given any opportunity to defend by way of issuing show cause notice nor any reasons were given before issuing of the impugned orders. As mentioned above work done by one selection committee cannot be reviewed under the existing guidelines of ICAR as it is merit based promotion where the eligibility is determined in terms of the guidelines Career Advancement Scheme of ICAR. As per the CAS guidelines, the work of one Selection Committee cannot be peer reviewed by another Selection Committee. Any such peer review by second Selection Committee which is not provided under the guidelines formulated by CAS is therefore, not permissible under facts and circumstances mentioned above.

11. It is further noticed that the applicant had filled up necessary proforma as was required for considering his case in CAS of ICAR. The same was found to be in order by ICAR. It is therefore, very clear that the information contained in the proforma by the applicant was found to be complete and correct. We do not, therefore, find any fault on the part of the applicant.

12. Unilateral change of his status from senior scientist to scientist selection grade reverting him on lower post without any kind of opportunity is not only illegal but also arbitrary and violative of Article 14 of constitution of India as no opportunity had been given to the applicant before passing the impugned order. Several persons in engineering discipline of ICAR who are non Ph.D degree but are working as Senior Scientists and also as Principal Scientist. Names of such scientists have been indicated in the foregoing paras. Although, ICAR has denied but it has not given any specific comment in respect of the position indicated by the applicant with specific names in this regard.

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13. The applicant has cited following case laws in support of his contention:

(i) 2009 (1) SCC (L&S), page 472 Balco Captive Power Plant Majdoor Sangh vs. National Thermal Power Corporation.

"NTPC being an undertaking of the Government of India and an instrumentality of the State is under constitutional obligation to act fairly with its employees, particularly, as the posts which were advertised from 1986 till 1988 were not in exercise in BALCO as BCPP was not fully commissioned. In those circumstances, NTPC was not justified in inserting impugned Clause 14 in the appointment letters and obtaining undertakings from the selectees. The words and phraseology used in the undertakings are same which are in a stereotype form. [This supports the inference that undue influence was exercised by NTPC.] The materials placed on record clearly show that Clause 14 is against public policy and contrary to Section 23 of the Contract Act as well as violative of Article 14 of the Constitution of India for the reason that undue influence was exercised by NTPC management and the selected candidates to accept the terms and conditions stipulated therein. By virtue of the aforesaid Clause 14 the status of these public servants have been sought to be changed which is again violative of Article 14. Even in the field of public law, the persons affected should be taken into confidence.

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The Government or its instrumentality cannot alter the conditions of service of its employees and any such alteration causing prejudice cannot be effected without affording opportunity of pre-decisional hearing and the same would be arbitrary and violative of Article 14."

(ii) 2010 L.C.D., page 502 Ram Milan vs. U.P. Subordinate Service.

(iii) 1999 (2) LBESR, page 147 Avadh Ram Vs. State of U. P.

14. In view of the submissions made by the applicant and the legal position as discussed above, the impugned orders dated 13/20.9.2005 and corrigendum No. 6/25/2002 AV dated 5.9.2005 are quashed and O.A. is allowed. The applicant be accordingly treated as Senior Scientist with all consequential benefits. No order as to costs.

*S. P. Singh*  
(S. P. Singh)  
28.5.12

**Member (A)**

*Alok Kumar Singh*  
(Justice Alok Kumar Singh)  
28.5.12

**Member (J)**