

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
MUMBAI

ORIGINAL APPLICATION NO:644/95

DATE: 25-7-2000

CORAM: HON. SHRI B.S. JAI PARAMESHWAR, MEMBER (J)
HON. SHRI B.N. BAHADUR, MEMBER (A)

P.B. Gurjar
R/o. Nirmal Nivas,
Datar Colony, Bhandup (E)
Mumbai.

(By Advocate Shri S.S. Karkera)

.. Applicant

-versus-

1. Union of India
through
The Secretary,
Indian Council of Agricultural
Research,
Krishi Bhavan - 110 001.

2. The Director
Central Institute of Research
on Cotton Technology (ICAR)
Adenwalla Road, Matunga,
Mumbai.

3. Shri D.L. Upadhyaya,
C/o. Central Institute of
Research on Cotton Technology
(ICAR)
Adenwalla Road, Matunga,
Mumbai.

.. Respondents

(By Advocate Shri V.G. Rege)

ORDER

(Per Hon. Shri B.S. Jai Parameshwar, Member (J))

Heard Mr. SS Karkera, learned
counsel for the applicant and Mr. V.G. Rege, learned
standing counsel for the respondents. Notice to
Respondent No. 3 served. In fact on 8-6-2000 the
respondent No. 3 was present. The respondent No. 3

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has not chosen to file his written statement.

2. The applicant has passed SSC and ITI Certification course in Draughtsman trade. He was appointed as Draughtsman in the scale of pay of Rs.380-640 with effect from 4-5-1964, in the then Indian Central Cotton Committee. The Indian Council of Agricultural Research (in short the ICAR) came into force w.e.f. 1.10.1975. The applicant was promoted to T-II-3 with effect from 1-7-1976 in the scale of pay of Rs.425-700. He was promoted to T-IV w.e.f. 1-1-1986.

3. The respondent no.3 was appointed as Machine Operator w.e.f. 14-7-1975. It is stated that the grade of Machine Operator is lower than that of the Draughtsman. The respondent no.3 was appointed as T-I-3 in the scale of pay of Rs.425-600 w.e.f. 14-7-1975. As on 1-7-1976 the applicant was in T-II-3 grade. The respondent no.3 was in the grade of Machine Operator even as on 14-7-1980. The applicant submits that even when he was promoted to T-IV grade w.e.f. 1-1-1986, the respondent No.3 was still in T-II-3 grade.

4. The applicant submits that as per the Technical Service Rules of the ICAR promotion is to be granted in the following manner:

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"Promotion

7.1: 20% of vacancies in Grade T-I of Category-I may be filled by promotion of persons in supporting services possessing qualifications prescribed for Category-I

7.2: 20% of vacancies in grade T-II-3 may also be filled by promotion of persons in grade T-I-3 possessing qualifications prescribed for Category-II.

7.3 : 20% of vacancies in grade T-6 may also be filled by promotion of persons in Grade T-5 possessing qualifications prescribed in Category-III

(Councils Letter No.7-37/79
Per.III dt. 7-4-81)

It is clarified that promotions to Grades T-I, T-II-3 and T-6 under the Technical service Rules are to be made on the basis of Selection(s)

NOTE: Alternative qualifications required for promotions (by selection) against the 20% vacancies are contained in Council's letter No.7-10/78-Per.III dt. 27-1-79 and 7-11-83 Per.III dt. 22-8-84."

Further their career advancement is provided, which according to the applicant, is as under :

"Career Advancement

6.1. Career Advancement of persons will be in their respective categories and will be done in the following manner.

6.2. There shall be a system of merit promotion from one grade to

the next higher grade irrespective of occurrence of vacancies in the higher grade or grant of advance increment(s) in the same grade, on the basis of assessment of performance. The persons concerned will be eligible for consideration for such promotion or for the grant of advance increment(s) after the expiry of five years service in the grade.

Note: Since merit promotions are restricted within the category person holding highest grades viz. Grade T-I-3 in Category-I, Grade T-5 in Category-II and Grade T-9 in Category-III are not eligible for further promotion. There is however, no bar for grant of advance increments to such Technical Personnel who are in the highest grade of category subject to the maximum of three increments within the grade (No.7-18/83-Per.III dt.16-7-84)

5. On 20-7-1992 the respondents the No.1 and 2 issued an order stating that Respondent No.3 ^{was} inducted into Grade T-II-3 of Category-II w.e.f. 14-7-1975 instead of 14-7-1980. The applicant submits that even such a retrospective promotion was given to ^{the} respondent No.3 before the commencement of the Rules. In fact ^{the} ICAR came into force w.e.f

1-10-1975. Thus he submits that the order dt. 20-7-1992 giving retrospective effect to the respondent No.3 w.e.f. 14-7-1975 is not in order.

6. The applicant submits that he possessed all the qualification and experience for the post of T-V, yet the respondents have considered the case of Respondent No.3 for promotion to the grade of T-V w.e.f. 1-7-1993 ignoring his case.

7. The applicant on knowing the order dt. 20-7-1992 made a representation for which the respondents replied that they took action in accordance with the rules.

8. The applicant submits that the appointing authorities of the grades of T-4 to T-6 posts (Lre) borne on the strength of the ICARCIS^{the} Headquarters and the appointing authority of the applicant is the Secretary^{the} ICAR. Hence it was beyond the power of the respondent No.2 to settle the issue and should have forwarded his representation to the headquarters i.e. to respondent No.1.

9. On 14-9-1993 the respondents issued office order No.449 partially modifying office order No.247 dt. 20-7-92 and in that they inducted^{the} respondent No.3 into grade T-II-3

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of Technical Services w.e.f. 1-10-1975. They further stated in the said order that the services rendered by respondent no.3 in the grade of Rs.425-600 from 14-7-1975 to 30-9-75 would be counted as service in T-II-3 grade for computing the period of 5 years for assessment purpose.

10. The applicant is being aggrieved by the order dt. 20-7-92 and 14-9-93 has filed this application for the following reliefs :

"(a) to accord placement of the applicant in the post of T.5 above the position of the respondent No.3

(b) Quash and set aside the order dt. 20-7-92 and promotion order dt. 1-7-93;

(bb) This Hon. Tribunal be further pleased to examine the legality and propriety thereof and be further pleased to quash and set aside the impugned order dt. 14-9-1993. "

11. The applicant has challenged the above orders on the following grounds :

(a) In the matter of promotion rules prescribed cannot be infringed as it may cause violation of service condition and acti.



constitutional rights guaranteed in the Constitution of India. The respondents indulged in an act which is evidently a discriminatory attitude that has been adopted to give undue favour to the respondent No.3. and

(b) The respondent No.3 is in junior to him/all respects. Further the respondent No.3 had not put in sufficient seniority and experience for promotion to T-5. The impugned orders granting promotion to respondent No.3 to T-5 are in contravention of the promotion rules and career advancement scheme. The respondent No.3 had not put in the requisite five years of service for being inducted into T-5. grade.

12. The respondents have filed the reply. They submit that no service rules were framed with respect to the post of Technical Services in the ICAR. The rules were framed by letter dt. 31-12-1976. The said rules came into force w.e.f. 1-1-1977. However by letter dt. 18-2-1978 the rules were amended and the said rules, ^{were} brought into force w.e.f. 1-10-1975. The Rule (4) of the said Rules indicate the classification of the posts into three categories. The pay scales attached to the post have been revised as indicated in the

Schedule II to the Rules. It is stated that as on 1-10-1975 the applicant was holding the post of Draftsman carrying the pay scale of Rs.380-640 while the respondent No.3 was in the scale of pay of Rs.425-600 as a Machine Operator.

13. It is submitted that 5 pay scales including the pay scale of Rs.380-640 held by the applicant came to be merged into a single scale of Rs.330-560. Similarly six of the scales ^{of pay} including the scale of Rs.425-600 held by the respondent No.3 were merged and new scale viz. Rs.425-700 came to be replaced in their places. Rule 4(6) provided that the new pay scales will be applicable both to the future as well as existing incumbents from the date these Rules were introduced. However, by the said rules the existing incumbents were given option to retain their existing scale as personal to them. The applicant retained the scale of pay of Rs.380-640 which he was holding on 1-10-1975. The Respondent No.3 was holding the pay scale of Rs.425-600 on 1-10-1975 and it was revised to Rs.425-700 and accordingly his pay was fixed in the revised scale of pay as in terms of Rule 4(6) read with Sub Rule(7) of Rule 8 of the said rules. These facts establish

that the applicant was holding a scale of pay on 1-10-1975 which was lower than the scale of pay of Respondent No.3. The respondents submit that the contention of the applicant that he is entitled to be treated as senior to respondent No.3 cannot be accepted.

14. It is submitted that in terms of the provisions of Rule 8, of the Rules, respondent No.3 has been fitted in the pay scale of Rs.425-700 in grade T-II-3 in category II vide order dt. 14-9-1993 and the said action of respondent No. 1 to 2 is legal and valid. The applicant was fitted in grade T-2 in category I carrying pay scale of Rs.330-560 and as such the applicant is not entitled to claim that he should be given grade T-II-3.

15. The order dt. 20-7-1992 was modified and superseded by order dt. 14-9-93. The Service Rules under the ICAR came into force w.e.f. 1-10-1975. In the context of Rule 8 the contention of the applicant with regard to appointment/promotion in the grade of T-II-3 grade in the pay scale of Rs.425-700 and the appointment of the Respondent No.3 as Machine Operator in grade T-II-3 is totally irrelevant. The induction of Respondent No.3 in the grade of T-II-3 in category II in the scale of pay of Rs.425-700 w.e.f. 1-10-1975 is valid. They deny that respondent No.3 has been

granted retrospective induction in the manner as alleged in the application. It is submitted that respondent No.3 has been granted induction w.e.f. 1-10-1975 under the order dt. 14-9-1993. The initial induction in the case of the applicant and the respondent no.3 was in the grades in category I & II. Neither of them was inducted to the grades of T-4 to T-5 and that the contention of the applicant that the respondents have no power in the matter has no substance. Thus they justify the impugned order dt. 20-7-1992 and 14-9-93 and pray for dismissal of the OA.

16. As regards entry into service with regard to ^{the} applicant and respondent No.3 there is no dispute. The applicant appears to be senior to ^{the} respondent no.3. The respondents attempted to give retrospective induction to the respondent No.3 into T-II-3 ~~grade of category II~~ from 14-7-1975.

17. The grievance of the applicant is that his case has not been considered on par with the respondent No.3. The respondents No.1 and 2. issued the order dt. 20-7-92 inducting the respondent No.3 into Grade T-II-3 of Category-II w.e.f. 14-7-1975 instead of 14-7-80. At that time they had not considered whether the respondent No.3 had the requisite number of years for induction into T-II-3 category. With a view to overcome the said lacuna the impugned order dt. 14-9-93 was issued to

indicate that the services rendered by him
in the grade Rs.425-600 from 14-7-75 to 30-9-75
would be counted as service in T-II-3 for computing
the period of five years for assessment purpose.

18. The respondents have produced
the rules which came into force w.e.f. 1-1-76
in the first instance and by way of amendment,
came into effect from a retrospective date
w.e.f. 1-10-1975. The rules are at page 26 to 37
to the reply. Rules 4.6, 5, 6(2), 7(5) and 8 are
relevant. We reproduce the same here :

"4(6)

The new pay scales will be applicable
both to the future entrants as well as
to the existing incumbents, from the
date these rules are introduced.
However, the existing incumbents may,
if they so desire, retain their
existing scales as personal to them.

5. Appointing Authority

The appointing authorities for different
grades will be as under :-

- (i) Director General, ICAR: Grades T-7 to T-9
- (ii) Directors of) Grades T-1 to T-6 of
Institutes) posts borne on the
strength of Institutes.
- (iii) Secretary, ICAR: Grades T-4 to T-6 of
posts borne on the
strength of ICAR
headquarters.
- (iv) Additional
Secretary, ICAR: T-1 to T-II-3 of posts
borne on the strength
of ICAR Headquarters.

6(2)

Recruitment to grade T-II-3 in category II
may also be made subject to availability
of vacancies, by promotion of persons in
category I possessing qualifications
prescribed for category II.

7(5)

The assessment of eligible persons for merit promotion/grant of advance increment in categories I and II will be done by a Selection Committee to be constituted by the appointing authority. The Chairman of the Committee would be a person from outside the Institute/ Headquarters to be nominated by the Chairman of the Board.

8.(1)

The existing permanent and temporary employees appointed through regularly constituted DPCs/SCs will be fitted into the grades specified in rule 4 on point to point basis without any further screening, irrespective of their qualifications. However, persons holding positions in the merged grade of Rs.425-700 and possessing qualifications prescribed for category II, will be fitted in grade T-II-3 (Rs.425-700).

19. Schedule-II to the rules prescribe the qualification and experience. In the schedule experience required is five years in the relevant field. Further for implementing career advancement scheme experience is also included in the schedule.

20. The appointing authorities mentioned in Rule-5 have to consider and assess the suitability of the technician for promotion to the next higher category. Nothing prevented the respondents to produce the necessary papers and materials on the basis of which they considered proper to induct respondent No.3 into grade T-II-3 by order dt.20-7-92 which was later modified by order dt.14-9-93.

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When the applicant submitted that the said induction of the respondent No.3 into the T-II-3 grade was not in accordance with the promotion rules it was for the respondents to justify their action. Further we fail to understand how the services rendered by the respondent No.3 was subsequently considered for purpose of assessment. Whether the said services could have been considered as a qualifying experience had to be explained by the respondents. They have not done so. They have not produced the file relating to the induction of respondent No.3 into T-II-3 grade by the impugned orders dt. 20-7-92 and 14-9-93.

21. Admittedly the applicant joined the service much earlier than the respondent no.3. The respondent could have explained how they considered the case of the respondent no.3 earlier to the case of the applicant. We would not have probed further, had they specifically and clearly stated that the case of the applicant was also considered along with the respondent no.3. As stated earlier it is for the appointing authority to consider these aspects. The respondents No.1 and 2 have not placed any material to justify their action in giving induction to T-II-3 grade to the respondent No.3. The respondents No.1 and 2 should have considered the case of the applicant as he is



admittedly senior to the respondent No.3. The applicant entered into service w.e.f. 4-5-1964 whereas the respondent No.3 entered into service w.e.f. 14-7-1975. The applicant is senior to the respondent No.3 by more than 10 years. It cannot be said that while retaining the old scale of pay, the applicant became junior to the respondent No.3. The applicant is senior in service and experience. Seniority has to be reckoned on the basis of length of service of an employee.

22. They are expected to adhere to the rules which came into force w.e.f. 1-10-1975. They cannot discriminate any official in the matter of promotion. It cannot be said that merely because the applicant had not opted for the revised scale of pay at the time of revision had lost his seniority. Admittedly the applicant was appointed into service 11 years earlier to the respondent No.3. Had this 11 years been considered for the purpose of experience under the rules we feel that the applicant stands better chance than the respondent No.3. It is too much for the respondents to contend that the applicant having put in more than 11 years of service than the respondent no.3 became junior to the respondent no.3. Had they placed the service records of the applicant and respondent no.3 we would have appreciated their stand. It is not their


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case that the service record of the applicant is not upto the mark. The applicant in the application has clearly stated that his service records are clear. This aspect has not been traversed by the respondents in their written statement.

23. In that view of the matter we feel that the respondents by the impugned order dt. 20-7-92 and 14-9-93 have conferred favour on the respondent no.3

24. In that view of the matter we feel it proper to set aside the impugned orders and to direct the respondents No.1 and 2 to consider the case of the applicant and the respondent no.3 for promotion to the T-5 grade strictly in accordance with the rules.

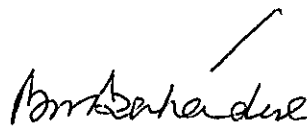
25. Hence the following directions are issued :


- (a) The impugned orders dt.20-7-92 and 14-9-93 are hereby set aside;
- (b) The case of the applicant and respondent No.3 shall be considered for promotion to T-5 grade in accordance with the rules;



- (c) The competent authority shall assess the qualifications and experience of the applicant and the respondent no.3 and decide the issue impartially, in case both are senior-most and are otherwise eligible;
- (d) Time for compliance ^{is} four months from the date of receipt of a copy of this order.

26. No order as to costs.


(B.N. BAHADUR)
Member (A).


(B.S. JAI PARAMESHWAR)
Member (J)
25.7.2000

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