

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

OA 1007/98

MUMBAI, THIS THE 22<sup>nd</sup> DAY OF JUNE, 2001

HON'BLE SHRI S.L.JAIN, MEMBER (J)  
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Kundan Dhondiram Mohite  
aged about 50 yrs.,  
r/o C.T.R.L. Staff Qtrs  
Type 2-B, Block No.17  
Ground Floor, Mansala Tank Road  
Mahim, Bombay - 400 016.

...Applicant

(By Advocate Shri S.S.Karkera)

V E R S U S

1. Union of India through  
the Secretary,  
Indian Council of Agricultural  
Research, Krishi Bhawan,  
New Delhi.
2. Director  
Central Institute for  
Research on Cotton Technology (CIRCOT)  
(Indian Council of Agricultural Research)  
Adenwala Road, Matunga, Bombay - 400 019.

...Respondents

(By Advocate Shri V.G.Rege)

O R D E R

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

This application has been filed by Shri K.D.Mohite, challenging his regularisation from 22-7-1991 under order dated 16-10-1991, rejection of his representation by order dated 30-3-1993 and communication dated 24-6-1998 indicating that the procedure followed by the Institute/ICAR in matters of promotion and seniority was correct.

2. Heard Shri S.S.Karkera and Shri V.G.Rege, learned counsel for the applicant and the respondents respectively.

3. The applicant who joined as 'Laboratory Boy' on 12-9-1961 at Central Institute for Research on Cotton Technology (CIRCOT), Mumbai, an Institute under ICAR became an 'Operative' on 1-7-1968 in the pay scale of Rs. 210-290/- along with him S/Shri K.V.Nair and H.K.Pawar, who had also joined as 'Laboratory Boys' on 17-4-1962 and 6-6-1963 respectively. Since then, they had been working together in the Spinning Section, renamed as Mechanical Processure Division, performing the same duties, but w.e.f. 1-1-1977 Nair and Pawar came to be promoted as 'Senior Operatives' in the scale of Rs. 260-430/- in T-1 grade leaving behind the applicant. In terms of the ICAR's Technical Service Rules, which came into force on 1-10-1975 he was also entitled for merit promotion from one grade to the next higher grade, after completion of five years' service which has been denied to him. On 4-8-84 by order No. A-107/84, the applicant was appointed as Supporting Staff Gr.IV on ad hoc basis to the Auxiliary post of Senior Operative with the rider that post being re-classified as Technical, even the ad hoc employment was likely to be reviewed and reverted. Though the appointment was termed ad hoc, he had in fact successfully completed the probation for two years and declared so on 13-8-1986. Obviously, therefore, his was a regular promotion. In fact on 17-11-1987 he was also permitted to cross the E.B. He was, therefore, to be treated as technical staff with all benefits attached thereto. After having promoted him as a Senior Operative, subsequent reclassification of the post from Technical to Auxiliary cannot result in any denial of the benefits, which had continued to be given on

personal basis. The applicant who had already become a technical person could not have been classified as auxiliary and the respondents by doing so had acted improperly. The denial of the merit promotion was also improper as the said promotion was granted irrespective of occurrence of the vacancies or grant by advance increments in the same grade. In the circumstances, the respondents' action on 16-10-1991, reducing his scale of pay from Rs. 975-1540/to Rs.950-1500/- under the garb of regularisation was improper. What the respondents have done is the reversion which they were not entitled to do. The applicant represented against the same on 21-10-1991 and 16-9-1992, but the same was rejected on 12-11-1992. He was later informed on 14-12-1992 that the matter was referred to Delhi. On 30-3-1993 all the representations were rejected without assigning any reason. He was also denied the deemed date of promotion from 1976. His representation filed on 28-10-1997, following the decision of the Tribunal in OA 702/93 was also rejected. The denial of benefits due to him by a mere re-designation of the technical post to Auxiliary post was not correct, more so as the benefits had been given to his juniors Nair, Pawar and Bechain Nokhai. In spite of their being expressed provisions in the Technical Service Rules stating that all operative staff will be accorded a technical grade, the same was denied to the applicant who was really qualified. His promotion also came belatedly in 1984. Applicant had worked between 1961-66 as Laboratory Boy when he was transferred to Spinning Section. Any averment to the contrary is wrong. As a Laboratory Boy he was junior only to P.K.Gopalan. Therefore, if seniority accorded to the Laboratory Boys been considered impartially, he

would have secured the promotion as Operative and Sr. Operative at the proper time, which has been given to his juniors. He was denied his due only out of personal animosity of the Administration. It was only a intervention of the ICAR that he was promoted on 4-8-1984 as Sr. Operative (Auxiliary), but without grant of benefits like the advance increments and promotions granted to the other persons which shows that the applicant was being treated shabbily in a deliberate manner by the respondents' organisation. It is in these circumstances that he is forced to come to the portals of the Tribunal for justice, urges Shri Karkera, learned counsel for the appliant.

4. On behalf of the respondents it is submitted by Shri V.G.Rege, learned counsel that there was no cause of action for the applicant as he had requested for allowing him to retain him the pay scale of Rs. 975-1540/-. It was not a case as the applicant's being denied the benefits inspite of having unblemished record of service. According to him the applicant was junior to others in the grade of Operative as he was promoted only on 9-7-1968. Applicant was transferred from Laboratory to Spinning Section only in 1966, while the other two persons were working from earlier date. As he did not have the experience, others had in the Spinning Section he was promoted as Operative on a later date. Only Sr. Operatives could be inducted into Technical Services T-1 grade, while being into service. Therefore, four (4) others i.e. S/Shri H.K.Pawar, Bechan Nokhai, K.V.Nair, P.J.Ahire etc. who were promoted w.e.f. 16-2-1976 were placed in the Technical grade while the applicant being in the Operative grade

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was not so placed.

5. Total number of Sr. Operatives was only four (4) and, therefore, the applicant being juniors to others could not be appointed to that grade. It was further indicated that the applicant was never on the technical side and was not entitled for the benefit of the technical service rules. As the applicant was never holding the technical post, it is improper for him to make a plea that his rights had been violated. The procedure adopted by the respondents is correct and there cannot be any genuine ground for the applicant. Respondents also averred that the applicant's claim for seniority over Nair, Pawar, Nokhai & Ahire was not fully justified and the statements being made by the applicant were incorrect. It is also stated that the allegations of malafides made against the Administration was false. Respondents also state that having only been given the post of Sr. Operative which is an auxiliary post, he was not entitled to claim any technical service benefits. The above points were forcefully reiterated by Shri Rege, learned counsel for the respondents.

6. Having given careful and anxious deliberation in the matter, we are convinced that the applicant has a case on merit. It is on record that the applicant joined service as Laboratory Boy on 12-9-1961 in CIRCOT and worked in Microscopy and Fibre Testing Branches before he was transferred to the Spinning Section in 1966. On the other hand, S/Shri K.V.Nair and H.K.Pawar joined as Laboratory Boys on 17-4-1962 and 6-6-1963 respectively, on dates later than the date on which the applicant joined, even though they were posted straight away to

the Spinning Section. Bechan Nokhai was junior to those people also. Evidently, therefore, the applicant was senior to the others who were promoted as Operatives and Sr. Operatives earlier, denying the claim of the applicant. Finally after considerable representation he was made Sr. Operative in 1984, but he was put on auxiliary side while he also should have been put on the Technical Services like his juniors. By this order he was denied his due which had been given to his juniors. It is also seen that the applicant has time and again been representing that he should be given his due position in the Technical Service, with attendant facilities like five yearly assessments and advance increments, he has been unjustly denied the same. The plea taken by the respondents that he was never appointed to the Technical side was not correct as merely by reclassification of the post he was holding from Technical to Auxiliary side, the benefit could not be denied as clearly stated in the Note to Rule 4.2 of the Technical Services Rules, which reads as under :-

"Certain posts earlier classified as technical have been reclassified as auxiliary. However, the existing employees will continue to be governed by Technical Service Rules and the new incumbents will be recruited under the Auxiliary category.

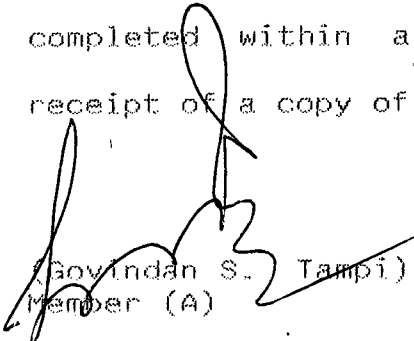
(ICAR letter No.9-1/82-Per.IV dated 28-5-1982 and ICAR letter No. 9-1/82 Per IV dated 28-5-1982 and ICAR letter No.9-1/82-Per IV dated 11-10-1982)."

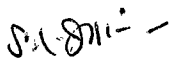
This makes it clear that only those persons who had joined service after 1982 in the re-classified posts could be considered as working in the auxiliary branch and not those like the applicant who were originally recruited and performing on the Technical side i.e. in the Laboratory in Microscopy Section, Fibre Testing Section and thereafter in the Spinning Section. The

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respondents have still tried to make out that the applicant was junior to others in the capacity as a Laboratory Boy and delayed his promotion while promoting the others as Operatives earlier. This action of the respondents was incorrect and had given them undue advantage to the private respondents over the applicant. This cannot be countenanced. The benefits which have accrued to his juniors should come to him as well, as of right. That is the only way justice can be done in this case.

7. In the circumstances, the application succeeds and is accordingly allowed. The respondents are directed to consider his services also as having been placed on the Technical Service from the dates on which his juniors Nair and Pawar were placed on Technical Service, with all consequential benefits. This exercise should be completed within a period of 3 months from the date of receipt of a copy of this order. No costs.

  
 Govindan S. Tampi  
 Member (A)

  
 (S.L. Jain)  
 Member (J)

/vikas/

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

C.P.No.105/2001 in  
O.A.No.1007/98

Dated this Tuesday the 18th Day of December, 2001

Hon'ble Shri Justice B.N. Singh Neelam, Vice Chairman  
Hon'ble Smt. Shanta Shastry, Member (A).

Kundan Dhondiram Mohite

.. Petitioner  
(Org.Applicant)

(By Advocate Shri S.S. Karkera)

, Versus

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

2. Dr.S. Sreenivasan,  
The Director,  
Central Institute for  
Research on Cotton Technology  
(CIRCOT), Indian Council of  
Agricultural Research,  
Adenwala Road, Matunga,  
Bombay - 400 019.

.. Respondents.

(By Advocate Shri V.G. Rege).

ORDER (ORAL)

{ Per : Justice B.N. Singh Neelam, Vice Chairman }

This contempt petition was filed on 15.10.2001 with a grievance as detailed therein with regard to non compliance of order so passed while disposing of the O.A.No.1007/98 on 22.6.2001. An M.P. for extension of time so filed on behalf of the respondents was disposed of on 2.11.2001. Respondents have filed their reply to the C.P. on 26.11.2001 to which applicants have also filed their rejoinder to the reply on 27.11.2001. In the show cause it has been detailed that with regard to

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directions given in O.A.1007/98 steps have already been taken to implement the judgment and payments are made. In all fairness, learned counsel for the applicant submits that the payments are made but while giving promotions from the date S/Shri K.V. Nayar and H.K. Pawar were given consequential benefits and there were discrepancies so incurred for which the applicant has filed representation before the concerned Respondent i.e. Respondent No.2 on 24.11.2001 which has not been disposed of. At this juncture on behalf of the respondents pointed that the discrepancies so raised cannot be said to be a matter of contempt and that way the same to be rather brought and a direction should be given to the respondents to settle the matter by giving opportunity to the applicant to be heard within a stipulated time.

2. After hearing the both sides, we find that there is much substance in the arguments so advanced on behalf of the respondents and that way this contempt petition so filed stands ~~withdrawn~~ <sup>discharged</sup> with a direction to the respondents concerned i.e. Respondent No.2 as to dispose of the matter in connection with the representation so filed on 24.11.2001 within a period of 60 days from the date of receipt of this order by giving an opportunity to the applicant also to be heard if so required. The

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representation be disposed of by passing a speaking order. The Contempt Petition stands disposed of, with no order as to costs.

3. After dictating the order a prayer is made on behalf of the applicant <sup>was</sup> that to grant liberty to file O.A. once again if being not satisfied with the order so passed on the representation, <sup>the applicant shall be</sup> <sub>at liberty to do so, if required.</sub>

*Shanta*

( Smt. Shanta Shastry )  
Member (A)

( B.N. Singh Neelam )  
Vice Chairman.

H.