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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.742/91.

Date of Judgement : 19.12.1994

Dr. Ish Kumar

.. Applicant

Vs.

1. The Project Director,
Dte. of Rice Research,
Rajendranagar,
Hyderabad-500030.

2. Indian Council of
Agricultural Research
(Rep. by its Director-
General), Krishi Bhawan,
New Delhi-110001.

.. Respondents

Counsel for the Applicant :: Shri C.Suryanarayana

Counsel for the Respondents:: Shri G.Parameswara Rao,
Addl. CGSC

C O R A M

Hon'ble Shri A.V.Haridasan : Member(J)

Hon'ble Shri A.B.Gorthi : Member(A)

J u d g e m e n t

{ As per Hon'ble Shri A.B.Gorthi : Member(A) }

The Applicant, who was Scientist S-3 in the scale of pay of Rs.4500-7300, was brought down to the lower scale of pay of Rs.3700-5700 vide memo dt. 16.10.90 issued by the Directorate of Rice Research, Hyderabad. Aggrieved by the same he has come up with this O.A. praying that the impugned memo dt. 16.10.90 be set aside and that he be restored to the scale of pay of Rs.4500-7300 with all consequential benefits.

2. The Applicant was initially appointed as a Research Assistant in Punjab Agricultural University in 1968. When he was in the post of Rice Breeder (Rs.1200-1300) he applied for and was selected for the post of Scientist S- (Plant Breeding) in the Directorate of Rice Research, Hyderabad (R-1). He joined the post on 31.12.88 in the scale of pay of Rs.1500-2000.

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3. Pay scales of the Agricultural Research Service Scientists of the Indian Council of Agricultural Research (R-2) were revised vide I.C.A.R. letter No.1-14/87-Per.IV dt. 9.3.89, giving effect to the revised pay scales from 1.1.86. There was also a corresponding change in the designations of the Scientists. Details are given below:-

Revised Pay Scales.

The revised pay scales and designations w.e.f. 1.1.86 will be as under:-

| S1. Grade. No. | Existing pay scale. | New designation. | Revised pay scale. |
|--|---------------------------|------------------------------|----------------------------|
| 1. 2. | | | |
| 1. xxxxx | | | |
| 2. xxxxx | | | |
| 3. Scientist S-2 (with total service in the ARS as on 31.12.85 (upto 8 years)). | Rs.1100-50-1600. | Scientist (Sr.Scale). | Rs.3000-100-3500-125-5000. |
| 4. Scientist S-2 (with total service in the ARS as on 31.12.85 (exceeding 8 years)). | Rs.1100-50-1600. | Scientist (Selection Grade). | Rs.3700-125-4950-150-5700. |
| 5. Scientist S-3 (with total service in the ARS as on 31.12.85 upto 16 years). | Rs.1500-60-1800-100-2000. | Scientist (Selection Grade). | Rs.3700-125-4950-150-5700. |
| 6. Scientist S-3 (with total service in the ARS or equivalent grades as on 31.12.85 (exceeding 16 years)). | Rs.1500-60-1800-100-2000. | Principal Scientist. | Rs.4500-150-5700-200-7300. |
| 7. xxxxx | | | |
| 8. xxxxx | | | |
| 9. xxxxx | | | |

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3. Qualifications and experience required for various grades of Scientists were formulated in 1989. The Applicant fulfilled the criterion requirement for the newly designated post of Principal Scientist in the grade of pay of Rs.4500-7000 in the revised scales. He, therefore, represented to the higher authorities urging them to give him the scale of pay of Rs.4500-7000. The representation was considered by the I.C.A.R. and it was agreed that the Applicant was "eligible to be placed in the revised pay scale of Rs.4500-7000", vide I.C.A.R. letter dt. 5.12.89 addressed to the Directorate of Rice Research with a copy endorsed to the Applicant.

4. The question regarding revision of pay scales of Scientists recruited directly on or after 1.1.86 against S-2 and S-3 position in the pre-revised scales under the old scheme was reconsidered by the I.C.A.R. in consultation with the Ministry of Finance (Dept. of Expenditure). The decision taken, as communicated to all concerned vide I.C.A.R. letter dt. 17.9.90 is as under:-

"It has now been decided that Scientists recruited directly in S-2 grade on or after 1.1.86 in the pre-revised scale of Rs.1100-1600 may be placed in the revised scale of Rs.3000-100-3500-125-5000. Scientists recruited directly in S-3 grade on or after 1.1.86 in the pre-revised scale of Rs.1500-2000 may be placed in the revised scale of Rs.3700-125-4950-150-5700. The pay in the revised scale will be fixed at the minimum of the scale on the date of appointment, except in those cases where advance increments are to be given or pay is to be protected as per the order of appointment originally issued. In such cases, pay will be fixed as per normal rules."

5. In compliance with the aforesaid decision, the pay of the Applicant was brought down and re-fixed at the minimum in the lower scale of Rs.3700-5700, effective from the date of his appointment, i.e., 31.12.88. The Applicant was neither heard nor given an opportunity to be heard before his pay was thus reduced.



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6. The facts of the case, as briefly stated above, are not disputed. The Respondents merely place reliance on the decision of I.C.A.R. taken in consultation with the Ministry of Finance and communicated to all concerned on 17.9.90. The reasoning in support of the decision is that the Applicant had not completed 16 years of service in A.R.S. as on 31.12.85, and that under the revised pay structure introduced on 9.3.1989 it was only the Scientist S-3 with total service in the A.R.S. exceeding 16 years as on 31.12.85 would be eligible to the designation of Principal Scientist and the pay scale of Rs.4500-7300. The Applicant was not even a member of the A.R.S. as on 31.12.85 and hence he would get only the minimum of the pay scale of Scientist S-3 in the scale of pay of Rs.3700-5700, so runs the argument advanced by the Respondents.

7. Heard learned counsel for both the parties. Shri C.Suryanarayana, learned counsel for the Applicant elaborately urged before us that the Applicant, prior to joining A.R.S. served in Punjab Agricultural University for about 20 years out of which for more than 16 years he was in the scale of pay of Rs.700-1600 (pre-revised). Immediately prior to joining A.R.S. he was already drawing salary of Rs.3950/- p.m. It was on account of the Applicant's qualifications, standing in the field of agriculture and his experience, the I.C.A.R. itself agreed, as would be evident from its letter dt. 5.12.89, that the Applicant was eligible to be placed in the revised scale of pay of Rs.4500-7300. The said decision was implemented also. The subsequent decision of the Respondents to reduce the pay of the Applicant was, it was contended by the Applicant's counsel, on flimsy technical ground that

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the Applicant had not served in A.R.S. for more than 16 years as on 31.12.85. The Respondents knew that the Applicant had not ^{even} joined A.R.S. ^{as} on 31.12.85. We find that there is considerable merit in the argument of the Applicant's counsel. The very fact that the I.C.A.R. considered the case of the Applicant, on his representation and came to the conclusion, obviously on merits, that the Applicant was "eligible" for being placed in the scale of pay of Rs.4500-7300 there can be no justification to unilaterally effect a downward revision of the same.

8. The Applicant had to face this situation for no other reason than that he was directly recruited to A.R.S. after 1.1.86 and before the revised scales of pay and designations were introduced. Admittedly, a promotee even if he had assumed the grade of Scientist S-3 later than the Applicant, would be placed in the higher scale of pay of Rs.4500-7300 merely on the length of service exceeding 16 years in A.R.S. This anomalous situation was noticed by the Supreme Court in the case of Dr.S.M.Ilyas & Ors. Vs. Indian Council of Agricultural Research & Ors. (1993) 23 ATC 340 to which our attention was invited by Shri C.Suryanarayana. An illustration drawn by the Appex Court in its judgement is reproduced below:-

Illustration.

| | <u>Date of Appointment</u> | | | | |
|----------------|----------------------------|---------------------|---------------------|---------------------|-----------------------|
| | Class II (Gazetted). | Scien- tist S-1. | Scien- tist S-2. | Scien- tist S-3. | Scale as on 31.12.85. |
| Scientist 'A' | 30.4.1965. | 9.10.1974. | 1.7.1976. | 1.1.1985. | Rs.1500-2000. |
| Dr.G.S.Sharma. | | | | | Rs.4500-7300. |
| Scientist 'B' | - | 1.7.1976. | 24.3.1979. | 6.12.1979. | Rs.1500-2000. |
| Dr.Sheo Raj. | | | | | Rs.3700-5700. |

It would thus be seen that although Scientist 'B' got the S-3 grade much before Scientist 'A' and both were in the same scale as on December 31, 1985, by the impugned notification Scientist 'A' has been given the higher scale of Rs.4500-7300 with effect from January 1, 1986 whereas Scientist 'B' has been put in the lower scale of Rs.3700-5700.

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9. It was observed by the Supreme Court that bifurcation of the post of Scientist S-3 into two grades, namely Scientist (Selection Grade) in the pay scale of Rs-3700-5700 and Principal Scientist in the pay scale of Rs.4500-7300 and laying down the requirement of service in A.R.S. exceeding 16 years, ignored the aspect of direct recruitment and selection of Scientists on the basis of merit. Consequently it was held that there was "no justification as to why the appellants or any other Scientists in I.C.A.R. placed in similar position like the appellants should be deprived the benefit of revised pay scales on the higher posts of S-2 or S-3, in case they were appointed by direct recruitment or by selection on merit-cum-seniority on the post of S-2 or S-3 prior to those who have now become entitled to higher pay scale under the impugned notification dt. 9.3.1989" (emphasis added). Admittedly, a Scientist S-2 having service exceeding 16 years in A.R.S. on being promoted to S-3, even on a date later than the date of direct appointment of the Applicant as S-3, would be placed in the higher scale of pay of Rs.4500-7300. There can therefore be no justification for denying the said scale of pay to the Applicant.


10. Learned counsel for the Applicant took us through the judgement of the Bangalore Bench of the Tribunal in Dr. Satyabrata Maiti & Ors. Vs. The I.C.A.R. & Ors. (O.A.Nos.531, 537 and 538 of 1993). He also referred to the appointment of Dr. Ashok Kumar Karal directly as Principal Scientist in the scale of pay of Rs.4500-7300. Those require no discussion as they are in consonance and conformity with what has been so clearly spelt out by the Apex Court in the case of Dr. Ilyas & Ors. (supra).

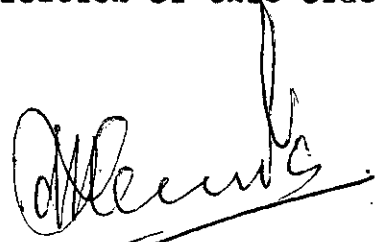
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11. In the result, we set aside the impugned memo dt. 16.10.90 issued by the Directorate of Rice Research, Hyderabad (R-1) and direct the Respondents to restore the Applicant to the scale of pay of Rs.4500-7300 from the date when he was initially brought into that scale by I.C.A.R. Consequential monetary benefits shall be paid to him within three months from the date of communication of this order.

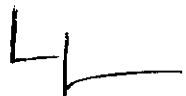
12. No order as to costs.


(A.B.Gorthi)
Member(A).


(A.V.Haridasan)
Member(J).

Dated: 19 Dec., 1994.

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DEPUTY REGISTRAR(12/12/94)

To

1. The Project Director, Dte. of Rice Research, Rajendranagar, Hyderabad - 500 030.
2. The Director General, Indian Council of Agricultural Research, Krishi Bhavan, New Delhi.
3. One copy to Mr.C.Suryanarayana, Advocate,CAT,Hyderabad.
4. One copy to Mr.G.Parameswar Rao, Addl.CGSC.,CAT,Hyderabad.
5. One copy to Library,CAT,Hyderabad.
6. One spare copy.

YLKR