

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO.159-of-1994

DATE OF ORDER: -----February, -1997

BETWEEN:

SARWAN DAS

.. APPLICANT

1. The Director General,  
Indian Council for Agricultural Research,  
New delhi - 110 001,

2. The Project Director,  
Directorate of Rice Research (ICAR),  
Rajendranagar,  
Hyderabad 500 030.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. C.SURYANARAYANA

COUNSEL FOR THE RESPONDENTS: Mr.G.PARAMESWARA RAO, CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGEMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Shri C.Suryanarayana, learned counsel for the applicant and Smt.Shakti for Shri G.Parameswara Rao, learned standing counsel for the respondents.

2. The applicant in this OA who was inducted in technical service from 1.10.75 in the grade of T-I-3 in the pay scale of Rs.425-700 is reported to have been promoted to the grade of T-II-3 some time in 1995. The facts of this

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case as submitted by the applicant are as follows:-

The applicant possessed the qualification of Matriculation obtained from the Punjab University in the year 1957. A copy of the certificate issued to him as having passed the Matriculation examination from the Republic High School, Jundiala (Jallundur) in March 1957 in the second division is enclosed as Annexure A-1 to the OA. Thereafter he joined the Dodsai Private Limited as Dozer Operator on 13.10.58 and worked in that organisation upto 10.12.60. Due to retrenchment in that organisation, he left that organisation as can be seen from the service certificate issued to him by Dodsai Private Limited on 12.12.60 (Annexure A-2). He joined the General Reserve Engineer Force (GREF) on 30.12.60 and worked in No.3 Formation Cutting Coy (GREF) as Artificer Excavating Machiner. From that job also he was retrenched from service on 20.7.68 due to reduction in the establishment as can be seen from the certificate dated 20.7.68 at Annexure A-3 issued by the Officer Commanding. It is stated that during his employment in GREF, the applicant had successfully completed the basic course of instruction in snow blast equipment from American Snowblast Corporation. Later from 25.7.68 to 8.8.72 he was employed in Upper Sindh Hydel Project, Mechanical Division, Kangan in J&K State as Dozer Operator in the scale of pay of Rs.210-425 on probation of two years. He took the charge of that post in the present organisation under R-2 on 21.8.72 (FN) as per the Office Order NO.PC/Estt/3387/72-73 dated 21.8.72 as can be seen from Annexure A-5.

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3. The Indian Council of Agriculture Research later introduced the Technical Service with effect from 1.10.75. The applicant who was designated as Bulldozer-cum-Grader Operator was inducted into the Technical Service in terms of the Office Order No.167/77-78 dated 23.1.78. Later the incumbent was redesignated as Driver (Heavy Vehicle) vide Office Order No.130/78-79 dated 13.9.78.

4. It is stated that as per Rule 5.1 of the Hand Book of Technical Services, persons appointed through regularly constituted Departmental Promotion Committees/Selection committees will be fitted into the grades specified in Para 3.1 on point to point basis without any screening irrespective of their qualifications. However, persons holding the positions in the merged grade of Rs.425-700 and possessing the qualifications prescribed for Category II will be fitted in the grade of T-II-3. The Council in their letter No.7(16)/78-Per.III dated 30.11.78 has further directed all Directors of ICAR Institutes to ensure that at the time of the initial adjustment of the existing employees in various grades of Technical services, it should be ensured that persons were adjusted against the posts for which they were qualified. Accordingly, the applicant was initially inducted into T-I-3 grade in Category I of Technical Service Rules vide Office Order dated 23.1.78. It is stated that the applicant had joined that post.

5. The applicant submits that even at the time of his initial induction, he was qualified for the fitment into T-

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II-3 grade in Category II and hence he represented his case by his representation dated 9.3.79 (annexure A-9 of the OA) to R-2 to review his case for induction into T-II-3 grade in Category II with effect from 1.10.75, and it is stated that the same was recommended for favourable consideration. The Administrative Officer by the letter No.1-35/Admn/443/92-93 dated 9.6.92 (Annexure A-13) to the Director (Personnel), ICAR for favourable consideration stating that the applicant possessed the requisite qualification/experience for induction into the grade of T-II-3 as on 1.10.75. Further the Administrative Officer has also informed in the above letter that after verification from the records, it is found that induction of the applicant in T-I-3 grade is a mistake due to oversight and hence the council to reexamine this issue and advice the matter to enable to rectify the mistake and also place the applicant in the respective grade according to his qualification/experience. The applicant also made representations subsequent to 1979 also as can be seen from his representations dated 1.5.91 at annexure A-10, dated 11.10.91 at Annexure A-11 and 10.1.92 at Annexure A12. The administrative Officer by his letter No.1-35/Admn/92-93/1448 dated 8.9.92 (Annexure A-14) furnished the educational qualification and experience possessed by the applicant to the ICAR at Delhi as desired by the Concil vide their letter No.F.9-54/92-E-IV dated 17.8.92. The educational qualification and experience given in the letter dated 8.9.92 by the Administrative Officer reads as below:-

"Passed Matriculation Examination from Punjab Univesity. Heavy Vehicle driving



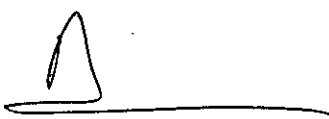
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License working as a Heavy Vehicle Driver (T-I-3) since 21.8.73 in the scale of Rs.1400-2300 (Pre-revised scale) and completed 3 years 2 months in that grade before introduction of Technical Services Rules i.e. 1.10.1975. Initially appointed as Bull Dozer-cum-Grader Operator and in accordance with the instructions contained in Council's letter No.F.9(1)/77-Per.IV dt.28.8.1978 the designation of the post of Bull Dozer-cum-Grader Operator has been redesignated as Driver (HV).

It is also stated in this letter that the action is being initiated to find out persons responsible for the lapse in inducting the applicant in the lower grade. The ICAR by the impugned letter F.No.9-54/91 E-IV dated 13.9.93 (Annexure A-15) rejected the claim of the applicant for induction to the Grade of T-II-3 with effect from 1.10.75.

6. This OA is filed praying for setting aside the impugned letter No.9-54/91 E-IV dated 13.9.93 (Annexure A-15) by holding it as an arbitrary order, and for consequential direction for fitment of the applicant in Category II i.e, T-II-3 grade retrospectively with effect from 1.10.75, the date from which he was inducted in T-I-3 grade admittedly by oversight instead of being inducted into T-II-3 grade and other benefits he is entitled to on that basis.

7. The respondents in their reply submit that the OA is barred by limitation as the applicant was inducted in T-I-3 grade with effect from 1.10.75 and he has also joined

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that post and kept silent for a long time. At this late stage he cannot ask for retrospective effect. The respondents also contend in their reply that the applicant did not possess the requisite qualification i.e, experience at the time of his induction in 1975 for fitting him in T-II-3 in Category II of the Technical Service Rules.

8. A rejoinder has been filed by the applicant contesting the rejection of his request on the question of limitation and also submit that he possessed necessary qualification and experience which was admitted by R-2 organisation in their note dated 7.4.79 (Enclosure-II to the rejoinder).

9. From the above, two relevant issues arise  
OA viz:-

(i) Whether the OA is barred  
main point as per the respondents

(ii) On merits  
to have qualified

that the applicant was appointed in the grade of T-I-3 in 1975. He kept quiet for a long time accepting induction in that grade without murmur and if he is aggrieved by induction in T-I-3 grade, he should have approached the judicial forum well in time immediately thereafter. As he failed to do so and approached this Tribunal only in 1994 after a lapse of 19 years, the OA is barred by limitation and cannot be entertained.

11. On the other hand the applicant relies on the reported judgments in 1990 SCC (L&S) 50 (S.S.Rathore v. state of Madhya Pradesh) and 1986 SCC (L&S) 757 (Raghubir Jha v. State of Bihar and others) and submits that he has approached this Tribunal well in time immediately after rejection of his case by the respondents (Annexure A-15). Limitation has to be counted only from the date of rejection and not from the earlier date. The respondents failed to reply him earlier and they replied him only in September 1993 and hence the OA cannot be rejected on the ground of limitation but has to be looked into on the basis of the merits.

12. The applicant submits that the respondents ignoring the rule have wrongfully inducted him in T-I-3 grade instead of T-II-3 grade. The failure or refusal of the respondents cannot be attributed as laches in this regard to the applicant. Further, the promotions in the ICAR Technical Wing are in-situ promotions. The employees are promoted after lapse of some time to the next higher grade as per the



rules subject to the suitability and it does not hurt or injure any body else. The question of seniority does not arise. Hence by inducting him in the grade of T-II-3 with effect from 1.10.75 as he possessed the necessary qualification/experience on that date, interest of the other employees will not be jeopardised. In that view, he submits that the question of limitation does not arise in his case.

13. The fact that promotion in ICAR Technical Services is in situ is not denied. Further, fixing the applicant in the grade of T-II-3 with effect from 1.10.75 may not affect the other employees, is also not controverted by the respondents. In that view, even if the applicant is given the grade of T-II-3 with effect from 1.10.75, it will in no way harm the interest of others and will not also unsettle the settled seniority position.

14. Fixation of pay and granting of increment thereafter is treated as continuous cause. In such a continuing cause, this Tribunal is consistently holding the view that in case of belated representation which involves fixation in a particular grade and granting of increment in that grade, it is to be treated as a continuing cause and the applicant approaching this Tribunal belatedly for such a relief if succeeds in his application, is entitled for arrears only one year earlier to filing of the OA.

15. The applicant herein prays for fitting him in T-II-3 grade with effect from 1.10.75 and grant him increment thereon. The applicant's above fitment in no way affect the

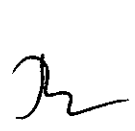
 

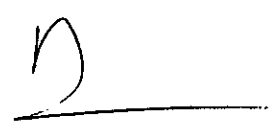


rights and interest of the other employees in view of the position explained in the previous paragraphs. His fitment in the grade as prayed for by him may enable him to get higher grades earlier. In that view, fitting the applicant in the grade of T-II-3 with effect from 1.10.75 and granting him increment in that grade subsequently is to be treated as a continuous cause.

16. Considering the facts and circumstances of the case as indicated above, this Tribunal admitted this application on 15.2.94 subject to the condition that "in case the applicant succeeds in this OA, he is entitled to the monetary benefit from 25.1.93 that is one year prior to filing of this OA." Hence the question of limitation was also in the mind of the Hon'ble Members of this Bench while admitting the application and taking the over all view this Tribunal admitted the application though the applicant approached this forum much later with the proviso as indicated above. Hence it has to be held that the question of limitation had already been gone into at the admission stage itself and that decision holds good even now.

17. The applicant possessed the matriculation qualification is an admitted fact. The experience of the applicant from 13.10.58 onwards has been given in Para 2 supra till 1.10.75. His service experience in the Dodsai Private Limited, GREF and Upper Sindh Hydel Project, Mechanical Division, Kangan and lastly in the present organisation has been authenticated by the true copies of





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"The existing permanent and temporary employees appointed through regularly

constituted D.P.C./Selection Committees will be fitted into the grades specified in para 3.1 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. As per this para, the employees in the merged grade of Rs.425-700 and possessing qualifications prescribed for Category II will be fitted in the Grade of T-II-3. The qualification required as mentioned in para 5.1 is to be seen from the Memo No.7(10)/78-Per.III dated 27.1.79 (Annexure A-8 at page 17 of the OA) issued by the Director (Personnel), ICAR, New Delhi. As per this memo, essential qualification for the Category II is in Page 6 of that letter. The essential qualification required for Category II is "matriculation with 10 years of experience in the relevant field". It is an admitted fact that the applicant passed matriculation examination. The question is whether he possessed the experience in the relevant field or not. The Administrative Officer in his letter to the concerned authorities in ICAR, Delhi in letter dated 9.6.92 had recommended his case on the basis that he possessed the requisite qualification and experience. R-2 organisation also found that the qualification and experience possessed by the applicant is sufficient for fitting him in T-II-3 grade under Rule 5.1 of the Rules indicated in the Hand Book of Technical Services as can be seen from the letter dated 8.9.92 at Annexure A-14. Even the internal note enclosed as Enclosure-II to the rejoinder which is approved by the



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possessed the necessary educational qualification as well as experience as laid down in the Hand book of Technical Services at the time of his induction in 1975 for fitment in T-II-3 grade. Probably by misconceived conception, he was fitted in T-I-3 grade initially with effect from 1.10.75 instead of in T-II-3 grade with effect from the said date.

20. In view of what is stated above, we are of the opinion that the mistake made needs amendment even at a later date. In that view, this application is to be allowed.

21. In the result, the following direction is given:-

The impugned order F.No.9-54/91 E-IV dated 13.9.93 (Annexure A-15) is set-aside. The applicant should be fitted in T-II-3 grade in the Category II with effect from 1.10.75. His further promotions should be considered on that basis. However, if any monetary benefit arises in view of the above direction, the applicant is entitled for the same only from one year prior to filing of this OA i.e, from 25.1.93 (this OA was filed on 25.1.94).

22. The OA is ordered accordingly. No order as to costs.



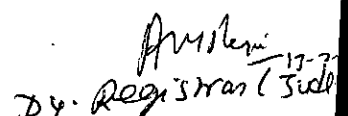
(B.S. JAI PARAMESHWAR)  
MEMBER (JUDL.)



(R. RANGARAJAN)  
MEMBER (ADMN.)

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DATED: 12<sup>th</sup> February, 1997

  
Dy. Registrar (Judl)

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SHRI R. RANGARAJAN: M(A)

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