

646

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.497 of 1996

DATE OF ORDER: 26 August, 1996

BETWEEN:

Dr. SATISH KUMAR .. APPLICANT

AND

1. The Indian Council of Agricultural Research,
Krishna Bhavan, New Delhi,
Rep. by the Director General,
2. The Centre for Cellular & Molecular Biology (CCMB),
Hyderabad,
Rep. by the Director. .. Respondents.

COUNSEL FOR THE APPLICANT: SHRI VILAS V.AFZALPURKAR

COUNSEL FOR THE RESPONDENTS: SHRI N.R. DEVARAJ, S.C.A.S.C.

CORAM:

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

JUDGEMENT

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

Heard Shri Vilas V. Afzalpurkar, learned counsel for the applicant and Shri N.R. Devaraj, learned senior standing counsel for the respondents.

2. The applicant in this OA was appointed as Scientist Grade S-1 in the Agricultural Research Service by Memorandum No.F.35(17)/81-Per I, dated 8.1.1982 (Annexure I) in the pay scale of Rs.700-1300 and reported for duty on 13.1.82. It is an admitted fact that in the old assessment scheme of ARS, the applicant would have become eligible for



assessment for grant of merit promotion to the next higher grade or grant of advance increments in the same grade on completion of five years' service in the Scientist Grade S1 on 12.1.1987. It is stated that he was asked to submit his five yearly assessment report for the period 1982-86 by Office Memorandum No.NBAGR/NIAG/87/(S1 PB), dated 18.7.1987 (Annexure-II). He submitted assessment statement immediately thereafter. It is averred that no action was taken for considering his case for promotion on the basis of the five yearly assessment. In the meantime, the revised pay scales of ARS Scientist of Indian Council of Agricultural Research (ICAR) and its research institutes was introduced by the letter No.1-14/87-Per.IV, dated 9.3.89 (Annexure-III). In para 16 of the above referred proceedings it has been stated that "As a result of the adoption of the U.G.C. pay package, the scheme of assessment, recruitments etc, is modified with effect from 1.1.1986. Comprehensive instructions in this regard will be issued shortly." In continuation of the above said para, the old scheme of assessment was replaced with the new Career Assessment Scheme of UGC with effect from 1.1.1986. In other words, the old assessment scheme of ARS was ceased to operate after 31.12.85. As per the new career advancement scheme, the Scientist in the Grade of S1 in the pay scale of Rs.2200-4000 will be placed in the senior scale of Rs.3000-5000 if he/she has completed 8 years of service after regular appointment as Scientist in the pay scale of Rs.2200-4000. The applicant in the meanwhile gave his option to come over to the revised pay scales by his option letter dated 8.6.89 with the rider that the option is subject to the clarification in regard to his career advancement after consideration of the five



67

yearly assessment which was in vogue in the year 1987 when he became eligible for consideration to the next higher post as per the five yearly assessment scheme. It is stated that no reply has been received by him in this connection.

3. The applicant left on study leave to U.K. on Government of India scholarship on 13.9.89. The new Career Advancement Scheme of ARS Scientists came into effect as stated earlier by the Memo No.F.1(14)/87-Per.IV dated 28.10.91 (Annexure-VI) with retrospective effect from 1.1.86. The applicant joined duty after the study leave on 30.11.93. On his joining, an Office Order No.F.7-1/89/Estt./2860 dated 17.3.94 (Annexure-VII) was issued placing him in the next higher grade of Scientist (Senior Scale) in the pay scale of Rs.3000-5000 with effect from 13.1.1990 under the Career Advancement Scheme for ARS Scientists. He submitted a detailed representation dated 11.5.94 (Annexure-VIII) for considering him for promotion on the basis of the earlier five yearly assessment when he completed the service of five years in the year 1987 and promoting him on that basis and fixing his pay in the revised pay scales in terms of the revised pay scales. That was forwarded by the letter No.1-5/88-Estt./184 dated 22.6.94 (Annexure-IX) with the remark that the earlier option submitted by him to come to the revised scales of pay was conditional and that the revision will be considered in that light. It is stated that there is no reply to that representation.

4. This OA is filed praying for declaration that the applicant is entitled to the cadre of Scientist Grade-II immediately after the five yearly assessment for the period

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1982-87 with all consequential benefits.

5. A reply has been filed in this connection. The relevant portion of the reply based on which his representation was rejected is reproduced below:-

"It is submitted that under the old assessment scheme of ARS, the applicant would have become eligible for assessment for grant of merit promotion to the next higher grade or grant of advance increments in the same grade, on completion of five years service in grade S-1 on 12.1.1987. However, as a result of the adoption of the UGC pay package by the Indian Council of Agril. Research, the old scheme of assessment was replaced with the New Career Advancement Scheme of UGC w.e.f. 1.1.1986. In other words, the old assessment scheme of ARS ceased to operate after 31.12.1985. The benefit of old assessment scheme was admissible to ARS Scientists upto 31.12.1985 and not thereafter. The basic fact is that the Scientists of ICAR Have been allowed UGC pay package as on 1.1.1986. As per the decision of the Govt. of India, Ministry of Finance, Deptt. of Expenditure, the UGC Package will have to be applied without any alteration, viz. the recruitment qualifications, promotion policy and appointments at various levels on all India competition basis etc. The placement of the Scientists in the UGC revised scales was to be done strictly as per the position/scale held by the Scientists concerned as on 31.12.1985. Accordingly, the applicant was placed in the pay scale of Rs.2200-4000 w.e.f. 1.1.1986 according to his position of Scientist S-1 as on 31.12.1985 as per the

(69)

option for the revised pay scale (Rs.2200-4000) exercised by him."

According to the scheme, the Career Advancement Scheme of ARS Scientists under ICAR is effective from 1.1.86. The applicant completed 8 years of service on 12.1.90 after regular appointment in the pay scale of Rs.2200-4000. As he has completed eight years of service on 12.1.90 as per the new scheme, he was promoted to the senior scale with effect from 13.1.90 by Office Order dated 17.3.94 (Annexure-VII). The applicant having given his option to come over to the revised scales of pay by his option dated 8.6.89 (Annexure-V) he is deemed to have come into the new scale from 1.1.86 and as per the provisions in the new scheme, he was promoted after 8 years of service. No condition can be attached to the option form and hence the conditional option was rejected and his option was treated as an option without any pre-condition.

6. It is an admitted fact that in 1987, the five yearly assessment scheme was in vogue and on that basis he was also called upon to give his assessment report in the five yearly period 1982-86 which he had submitted. For unknown reasons, the report was not considered for placing him in the higher scale or granting him the advance increments. In the meantime, the new Career Advancement Scheme came into effect and on that basis he was promoted with effect from 13.1.90 without considering his case for promotion as per the earlier scheme in 1987.

7. The applicant in the year 1987 had acquired the vested right for consideration for placing him in the higher grade of Scientist (Senior Scale) in terms of the extant instructions at that time. By the amended rule

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70

which was given effect with retrospective effect from 1.1.86, the vested right already conferred on him for consideration for promotion cannot be taken away. The above is a well settled principle. In this connection, it was held by the Supreme Court in a reported case in (1994) 5 SCC 450 (Union of India v. Tushar Ranjan Mohanty) that "it is well settled law that accrued rights of an employee cannot be taken away by making amendment of rules with retrospective effect." The observation of the Apex Court in this connection in Paras 11 and 12 of the judgment is worth repeating. The relevant paragraphs are reproduced below:-

"This Court in Ex-Capt. K.C.Arora v. State of Haryana declared ultra vires retrospective amendments made to the Punjab National Emergency (Concessions) rules, 1965 as applicable to Haryana. Under the Punjab National Emergency (Concessions) Rules, 1965 ex-emergency commissioned officers were entitled to the benefit of their military service on their reappointment in the State Civil Service against the vacancies reserved for ex-army officers. The Haryana Government by a notification dated 9.8.76 amended the definition of the expression "Military Service" in the 1965 Rules thereby restricting the benefit of military service only upto 10.1.1968 with the result that the petitioners before this Court were deprived of their army service for the purpose of fixation of seniority in the civil service for the period 1969-1971. The amendment was challenged on the ground that it was ultra vires the Constitution insofar as it affected prejudicially persons who had acquired vested rights. This Court



71

following the Constitution Bench in "State of Gujarat v. Raman Lal Keshav Lal Soni (1984) 3 SCC 281)" struck down the amendment on the following reasoning: (SCC p.292, para 22; p.295, para 23)

"The question, however, has been pointedly considered recently by a Constitution of Bench of this Court in State of Gujarat v. Raman Lal Keshav Lal Soni.... In view of this latest pronouncement by the Constitution Bench of this Court, the law appears to be well settled and the Haryana Government cannot take away the accrued rights of the petitioners and the appellants by making amendment of the rules with retrospective effect.

For the foregoing discussion the writ petitions as well as the appeals are allowed and the orders of the High Court dated 10.10.1980 are quashed and the impugned Rule 4(ii) of the Punjab Government National Emergency (Concessions) Rules, 1965, as amended by the Haryana Government Gazette Notification No. GSR 77/Const./Art.309/Amend/(1)/76 dated 22.3.1976 and the Notification No.GSR 182/Const./Art.309/Amend/(2)/76 dated 9.8.76 amending the definition of the expression 'military service' in Rule 2 are declared to be ultra vires the Constitution, insofar as they affect prejudicially persons who had acquired rights as stated above".

12. In T.R.Kapur v. State of Haryana (1987) 2 ATC 595)", three petitioners T.R.Kapur, Mahinder singh and V.D.Grover, who were diploma holders, were working as





Sub-Divisional Officers on regular basis under the unamended rule 6(b) of the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964. They were eligible for promotion as Executive Engineers in Class I service despite the fact that they did not possess a degree in engineering. By the notification dated 22.6.1984, Rule 6(b) was amended and it was provided that a degree in engineering was an essential qualification for promotion of Assistant Engineers (Irrigation Branch) to Class I service and thereby the petitioners were rendered ineligible for promotion to the post of Executive Engineer in Class I service. The amendment was challenged in this Court by way of a petition under Article 32 of the Constitution of India. This court came to the conclusion that the retrospective effect given to the amendment was violative of Articles 14 and 16 of the Constitution of India on the following reasoning: (SCC p.595, para 16):

"It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect: B.S.Vadera v. Union of India (1968) 3 SCR 575; Raj Kumar v. Union of India (1975) 4 SCC 13; K.Nagaraj v. State of A.P. (1985) 1 SCC 523 and State of J & K v. Triloki Nath Khosa (1974) 1 SCC 19. It is equally well-settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may



73

not be. It may further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well-recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights."

In view of the above law laid down by the apex Court, the accrued right of the applicant for consideration for promotion on the basis of the five yearly assessment in the year 1987 cannot be taken away by the amended Career Advancement Scheme which was introduced in terms of the proceedings dated 28.10.1991 (Annexure-VI). Hence it has to be held that the applicant's case has to be considered for promotion when he completed five years of service in the year 1987 on the basis of the relevant instructions at that time. The five yearly assessment report submitted by him immediately after he completed five years of service which was called for in terms of the O.M. dated 18.7.87 (Annexure-II) has to be considered and on that basis his fitness for placing him in the higher scale of Scientist (senior scale) has to be decided. If he is found fit on the basis of the above, he should be deemed to have been promoted from the relevant date when he completed five years of service and his pay should be fixed in the revised scale of pay as per the revised pay scales introduced by the proceedings dated 9.3.89 (Annexure-III) notionally. His actual pay in that scale shall be drawn on the basis of

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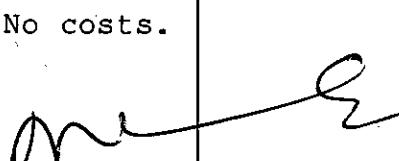


the notional fixation as above from the date he was promoted to the senior scale in the pay scale of Rs.3000-5000 by the Office Order dated 17.3.94 (Annexure-VII), i.e., with effect from 13.9.90. The arrears, if any, arisen on the above basis have to be disbursed to him.

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

The case of the applicant for promotion to higher grade of Scientist (senior scale) in the year 1987, on the basis of five yearly assessment scheme in existence at that time, has to be assessed based on the assessment report submitted by him in pursuance of the O.M.No.NBAGR/NIAG/87/(Sl PB) dated 18.7.87 (Annexure-II). If he is found fit on that basis, he should be promoted to the higher scale (senior scale) from that date and his pay from that date has to be fixed in the revised pay scales as per the proceedings dated 9.3.89 (Annexure-III) notionally. He is entitled for actual payment in that scale on the basis of the above fixation from 13.1.90 when he was actually promoted to that grade. The arrears, if any, arising in pursuance of the above direction should be given to him within a period of three months from the date of receipt of a copy of this order.

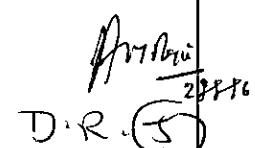
9. The OA is ordered accordingly. No costs.



(R.RANGARAJAN)
MEMBER (ADMN.)

DATED: 26 th August, 1996

vsn



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O.A.NO.497/96

Copy to:

1. The Director General,
Indian Council of Agricultural Research,
Krishi Bhawan, New Delhi.
2. The Director,
The Centre for Cellular & Molecular Biology(CCMB),
Hyderabad.
3. One copy to Mr.Vilas V.Afzalpurkar, Advocate,
CAT, Hyderabad.
4. One copy to Mr.N.R.Devraj, Sr.CGSC,
CAT, Hyderabad.
5. One copy to Library, CAT, Hyderabad.
6. One duplicate copy.

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Act
Typed By
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Approved by

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN: M(A)

DATED: 26/8/96

ORDER JUDGEMENT
R.A/C.P./M.A.NO.

in
O.A.NO. 497/96

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

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II COURT

No Spare Copy

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal
DESPATCH
- 3 SEP 1996
हैदराबाद बैच
HYDERABAD BENCH