

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDRABAD

ORIGINAL APPLICATION NO.638 of 1996

DATE OF ORDER: JANUARY, 1999

BETWEEN:

K.SUBBA RAO

.. APPLICANT

AND

1. Indian Council of Agricultural Research,
reptd. by its Secretary,
Krishi Bhawan,
New Delhi - 110 001,
2. The Director,
Central Inland Capture Fisheries
Research Institute,
Barrackhpore 743 101,
West Bengal.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. C.SURYANARAYANA

COUNSEL FOR THE RESPONDENTS: Mr.V.VINOD KUMAR, Addl.CGSC

CORAM:

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

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

JUDGMENT

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

Heard Mr.C.Suryanarayana, learned counsel for the applicant and Mr.V.Vinod Kumar, learned standing counsel for the respondents.

2. In the ICAR, technical services are grouped into 3 categories consisting of the following grades:-

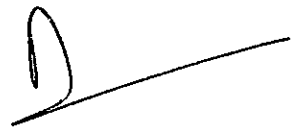
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<u>"Category</u>	<u>Grade</u>	<u>Pay scale</u>
CATEGORY -I	T-1	i) Rs.975-25-1150-EB-30-1540
	T-2	ii) Rs.1200-30-1560-EB-40-2040
	T-I-3	iii) Rs.1400-40-1800-EB-50-2300
CATEGORY-II	T-II-3	i) Rs.1400-40-1800-EB-50-2300
	T-4	ii) Rs.1640-60-2600-EB-75-2900
	T-5	iii) Rs.2000-60-2300-EB-75-3200-100-3500
CATEGORY-III	T-6	i) Rs.2200-75-2800-EB-100-4000
	T-7	ii) Rs.3000-100-3500-125-4500
	T-8	iii) Rs.3000-100-3500-125-5000
	T-9	iv) Rs.3700-125-4700-150-5000".

As per the career advancement scheme as provided under the rules 6.1 and 6.2 of ICAR Technical Services Rules, including the note below that, there is a system of merit promotion from one grade to next higher grade within the same category irrespective of occurring of vacancies in the higher grade or grant of advance increment in the same grade on the basis of the assessment of performance for promotions upto T-5. Persons concerned will be eligible for consideration for such promotion or for grant of advance increment after the expiry of five years of service in the grade.

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3. The applicant was in the Grade T-5 in the scale of pay of Rs.650-1200 with effect from 1.7.82 as per the Office Order No.2/101/82-Technical/12972 dated 23.11.82 (Annexure A-9 at page 27 to the OA). He was given two increments in the scale of pay of Rs.2000-3500 with effect from 1.1.88 as per the Office Order.No. 2/101/89/Tech/2144, dated 24.2.89 (Annexure A-10 at page 29 to the OA) on the recommendation of the Assessment Committee. One more merit increment was granted to him as Technical Officer T-5 with effect from 1.1.89 by the Office Order NO.2/101/89/Tech/9394 dated 8.9.89 (Annexure A-11 at page 31 to the OA). The applicant retired from service on 30.6.95.

4. As the applicant was in the Grade T-5, he cannot be considered for career advancement under Rules 6.1 and 6.2 of the Technical Service Rules. Apart from the career advancement scheme under Rules 6.1 and 6.2 of the Technical Service Rules, there is another scheme viz, career advancement scheme as ordered under Rule 7.3 of ICAR Technical Services Rules. According to that rule, "33 1/3% vacancies in the Grade T-6 may be filled by promotion of persons in Grade T-5 possessing qualifications prescribed for Category III". As there was no vacancy in T-6 in the scale of pay of Rs.2200-4000 in the discipline to which the applicant belongs^{ed} till date of his retirement on 30.6.95, his case for promotion did not arise at all (Annexure R-1 to the reply).

5. A fresh avenue of promotion of T-5 category employees was issued by letter No.F-14(3)/94-

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Estt.IV(Vol.II), dated 4.8.95 of ICAR, New Dlehi which is enclosed as Annexure R-II to the reply to the effect that "technical personnel who had put in not less than 12 years of service in T-5 may be considered for appointment to Grade T-6 (Rs.2200-4000) of Category III subject to their possessing minimum qualifications for category-III as prescribed in Appendix-IV of Technical Service Rules and on the basis of clearance by Agricultural Scientists Recruitment Board (ASRB)". The same letter further stipulates that "the above decision will come into effect from 1.7.95".

6. Since the applicant had retired from service on 30.6.95 and was not in service on 1.7.95 his case was not found fit for consideration. The applicant submitted representation on 28.8.95 for considering his case for promotion from Grade T-5 to Grade T-6 or one more merit increment in the Grade T-5 as he possessed additional qualification of Post Graduate Training Course in Fisheries Development and Administration during the year 1960-61 even at the time of his appointment in CICFRI in the year 1963 (11.3.63) as Survey Assistant. Earlier also he submitted representation on 20.4.95 for the above relief. In that letter, he stated that he has ^d stagnated in the cadre of T-5 since 1992 even though he was given one more stagnation increment in the year 1993 with effect from 1.7.93. After the issue of the letter dated 4.8.95 (Annexure R-II to the reply), the applicant submitted another representation dated 28.9.95 to promote him to the Grade T-6 in the Category-III even though he was not available in service on 1.7.95. He stated in that letter that he had put in 12

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years of service even earlier to 1.7.95 and the cut off date of 1.7.95 is arbitrary. The applicant was replied by the memo No.2/101/95-Tech/P.1/9492 dated 16.9.95 (Annexure A-18 at page 43 to the OA) rejecting his claim for promotion to the grade of T-6 or for grant of one more merit increment in the grade of T-5 in the light of the prevailing rules.

7. This OA is filed to set-aside the impugned order of R-2 dated 16.9.95 (Annexure A-18) and also striking down the alleged unreasonable restriction imposed by the order dated 4.8.95 (Annexure A-15) by way of the cut off date of 1.7.95 for implementing the decision on improving the service conditions of technical personnel in ICAR and for a consequential direction to the respondent-authorities to promote the applicant on his completing 12 years of service in the grade of Technical Officer T-5 and to recompute his pensionary benefits which he would have drawn but for the unreasonable restriction in prescribing the cut off date which leads to differential and discriminatory grant of pensionary benefits between those who had retired before 1.7.95 and those who had retired after 1.7.95.

8. An interim order was passed in this OA on 16.7.96. It was made clear in that interim order that the learned counsel for the applicant was pressing only for notional promotion upto the date of his retirement, and not the actual promotion as stated (erroneously) in para 8 of the OA. The respondents were directed to file their counter noting the above.

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9. A reply has been filed in this OA. The facts of this case as enumerated above are accepted by the respondents. It has been stated in the reply that "Every decision has to have an effective date. Accordingly, it was decided by the Council that the decision contained in ICAR letter dated 4.8.95 would take effect from 1.7.95. ~~Treating~~ ^{Treating} such an effective date/cut off date as unconstitutional is improper". It is also stated that "the contention as raised in this OA is misconceived and hence not tenable. The cut off and effective date, fixed as 1.7.95 is neither in arbitrary manner nor violative of Article 14 of the Constiution of India as alleged". In view of the above, the respondents prayed for dismissal of this OA.

10. The applicant relies on the 3 judgements of the Apex Court to state that the cut off date is arbitrary. The cases cited are, (i) AIR 1996 SC 2963 (M.C.Dhingra v. Union of India); (ii) 1997 SCC (L&S) 1153 (State of Punjab v. Justice S.S.Dewan) and (iii) 1983 SCC (L&S) 145 (D.S.Nakara v. Union of India). We have prused all the 3 reported cases. In all these reported cases, the controversy is in regard to prescribing cut off date for payment of revised pension. Pension and promotion are two different aspects. The cut off date prescribed for pension even if it is held to be arbitrary, cannot be treated as a reason not to prescribe the cut off date for promotion. All these cases, the applicant submits, have been decided following Nakara's case. But it is to be stated that "Nakara's case involved change of formula for determining average emoluments and it was treated as upward revision of

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existing pension scheme". In Nakara's case, it was held that "the existing instructions if revised then the cut off date is not to be prescribed" whereas in this case as there was no promotional chance for the Grade T-5 officials for being promoted to the Grade T6 on the basis of the number of years of service put in by them in the Grade T-5, the Governing Body gave the benefit of the promotion with effect from 1.7.95 with certain conditions for those who were in service as on 1.7.95 and had completed 12 years of service in T-5 Grade. The minutes recorded are reproduced below:-

"The Governing Body approved that the technical personnel who have put in not less than twelve years of service in Grade T-5 may be considered for appointment to Grade T-6 (Category III) on the advice of ASRB, if they possess the minimum qualifications prescribed for T-6. For this purpose, they will be adjusted against the existing vacancies in the respective fields. Where, however, no such vacancies exist, the existing posts in Grade T-5 will stand upgraded to Grade T-6 till such time regular vacancies in the latter grade become available. On the absorption of persons against regular vacancies in Grade T-6, the upgraded posts will be downgraded to Grade T-5 in the sanctioned strength of Category II. This was agreed to remove the existing frustrations due to stagnation. This decision will be effective w.e.f. 1.7.95."

Even in the cases of pension, the Apex Court had observed that "employees retired from service before coming into force of the rules, benefit cannot be given with retrospective effect if there is no expressed provision in

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the rules giving ~~these~~^e retrospective operation of the rule". It is further added that "Whenever a revision in pension takes place, a cut off date becomes imp^aertive because the benefit has to be allowed within the financial resources available with the Government" (1998(4) SLR (SC) 621 (Hari Ram Gupta v. State of Uttar Pradesh)).

11. When the cut off date can be prescribed even in pension cases, regulating payment of pension on that basis, there is no reason to contend against fixation of cut off date for promotion. No promotion can be considered if the rule does not provide for retrospective operation. The applicant herein cannot state that the cut off date given for promotion to the Grade T-6 is arbitrary. If no cut off date is given, retired employees retired even earlier to 30.6.95, when the applicant had ~~relieved~~^{retired} will also ask for promotion to the Grade T-6 and on that basis revision of the pension. This is not the intention as expressed in the minutes extracted above. Hence when a decision is taken for promotion to the Grade T-6, the respondents are within the rules to prescribe the cut off date, from which date the decision will be implemented. If such a cut off date is not given, then it will lead to whole-sale revision of pensionary benefits of the T-5 Grade officers who had put in 12 years of service and retired without being promoted to Grade T-6. That will lead to a very heavy financial burden and such consideration is not in the public interest. As seen from the OA affidavit and the reply, there is no vacancy available even against 33 1/3% quota for promoting the applicant to the Grade T-6. Hence he was allowed to retire as T-5 Grade Officer on 30.6.95.

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12. The other aspect to be considered in this OA is whether the promotion to the Grade T-6 is automatic, without subjecting the applicant to any selection procedure provided he possesses^{es} the minimum qualification prescribed for promotion to the Grade T-6. It is seen from the extracted minutes above that the promotion to the Grade T-6 is to be done on the advice of ASRB. When recommendation has to be obtained from ASRB, it would mean that fitness will be considered by ASRB before promoting a T-5 Grade officer to T-6 Grade. In the present case, the order for improving the service conditions was issued on 4.8.95 i.e, about more than a month after the applicant ~~had~~ retired from service and the cut off date was given as 1.7.95. Just because the cut off date is following immediately a day after his retirement, it does not mean that the applicant can be promoted without considering his eligibility and fitness. On the date when the scheme was introduced, the applicant was not in service. Hence considering his fitness after he had retired does not arise as he cannot be put to selection test as he was out of service. In this connection, the Apex Court in the reported case in 1998 (1) SCC 487 (Govt. of Orissa v. Haraprasad Das) had held that even the approved panel does not confer any right to candidates. Hence the question of considering the case of the applicant for promotion after his retirement does not arise as he was not even in the panel for promotion to the higher post on the date when the new promotion rule was brought into force.

13. In view of what is stated above, we find that there is no reason to relax the cut off date and promote

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the applicant. Hence the contention of the applicant that stipulation of the cut off date is arbitrary, is not tenable and his non promotion as he was not in service on the cut off date, is in accordance with the rules.

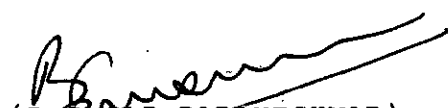
14. The applicant submits that he should be given stagnation increment and for that he relies on the judgement of this Tribunal in OA 401/92 (P.Yellamanda v. The Comptroller and Auditor General of India, New Delhi and others) decided on 2.12.92. In the OA 401/92, there was a clear date when the applicant therein was stagnating for more than one year before his retirement. In the present case, the applicant himself submits in his representation dated 29.6.95 that he had stagnated in the Grade T-5 since 1992. However, he was granted one more stagnation increment in the year 1993 i.e, on 1.7.93. Hence the stagnation increment has been granted to him in 1993. Whether he is entitled for another stagnation increment before his retirement, is a point for consideration. From the details available in this OA, we could not find any material to come to the conclusion that the applicant was eligible for stagnation increment even after he was granted one stagnation increment in the year 1993. Hence no direction can be given in this connection for want of sufficient material on record. The applicant may submit a detailed representation if he is so advised to the concerned authorities in this connection and pursue his case departmentally. No doubt, if he is going to be aggrieved by the reply for granting him stagnation increment as prayed for in this OA, he is at liberty to take such legal proceedings as are available to him.

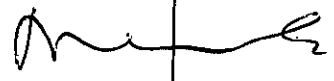
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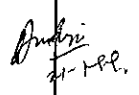
15. In the result, the OA is dismissed as regards to his relief for promotion to T-6 Grade. But the respondents are directed to reply his representation as and when received in regard to ^{grant of} ~~the~~ stagnation increment in accordance with law.

16. No costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)
21.1.99


(R. RANGARAJAN)
MEMBER (ADMN.)

sr.
DATED : 21 January, 1999


21.1.99

vsn

COPY TO:-

1. ~~MOHNS~~
2. ~~WHRP M(A)~~
3. ~~MOSSP M(J)~~
4. D.R.(A)
5. SPARE

29/1/99
1ST AND 2ND COURT

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR :
VICE CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (A)

THE HON'BLE MR. B. S. JAI PARAMESWAR :
MEMBER (J)

DATED: 21-1-99

ORDER/JUDGMENT

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

In

O.A. NO. 638/96

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED ✓

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR.

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