

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 13/1998
T.A. No.

199

DATE OF DECISION 20.4.2001

Dr. A.K.Mishra

Petitioner

Self

Advocate for the Petitioner (s)

Versus

Indian Counsel for Agriculture For Respondent
and anr.

Mr. V.S.Gurjar

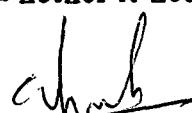
Advocate for the Respondent (s)

CORAM :

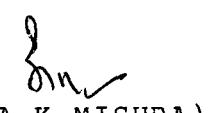
The Hon'ble Mr. A.K.MISHERA, JUDICIAL MEMBER

The Hon'ble Mr. U.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ? *✓ m*
4. Whether it needs to be circulated to other Benches of the Tribunal ?



(N.P.NAWANI)
Adm. Member



(A.K.MISHRA)
Judl.Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 20.4.2001

OA No.13/1998

Dr. A.K.Mishra s/o Shri Mehesha Chandra Mishra, Medical Officer, Central Sheep and Wool Research Institute, Avikanagar, Malpura, District Tonk.

.. Applicant

versus

1. Indian Council for Agriculture Research through its Director General, Krishi Bhawan, New Delhi.
2. Director, Sheep and Wool Research Institute, Avikanagar, Malpura, District Tonk.

.. Respondents

Applicant present in person

Mr. V.S.Gurjar, counsel for the respondents

CORAM:

Hon'ble Mr.A.K.Mishra, Judicial Member

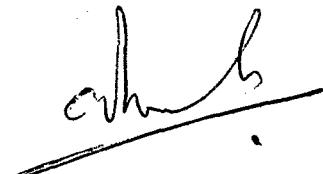
Hon'ble Mr. N.P.Hawani, Administrative Member

Order

Per Hon'ble Mr.N.P.Hawani, Administrative Member

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant prays that the respondents be directed to "award all the benefits of the technical service rules to the applicant keeping in mind the past services i.e. the length of service and accordingly on the completion of five years service, the applicant should be considered for his merit promotion on the higher pay scale as is being done in other matters". The applicant seeks further direction that on completion of every five years, he may be awarded promotion with all consequential benefits.

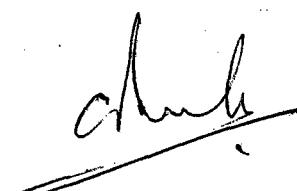
2. We have heard the applicant, Dr. A.K.Mishra in person, and



Shri V.S.Gurjar, the learned counsel for the respondents and have perused all the material on record including the rejoinder filed by the applicant in reply to the counter affidavit filed by the respondents.

3. We feel it necessary to mention at the very outset that in this particular case, we are constrained to mention that we are very much handicapped because of absence of ~~non-specific~~ ~~replies/pleadings~~ as well as grounds and consequently a ~~non-specific~~ reply from respondents too, with the result that we are unable to give any pointed finding on whether there were cases earlier when weightage of past service in ICAR was given on induction or absorption/transfer to Technical cadre and whether the applicant has been or is being discriminated against in any manner. However, the fact remains that the applicant, a qualified Doctor, remains at the pay scale of Rs. 700-1300 as revised to Rs. 2200-4000 since his joining ICAR way back in 1973, inspite of the applicant having approached this Tribunal on earlier occasions and the directions of the Tribunal, also way back in OA No.253 of 1992.

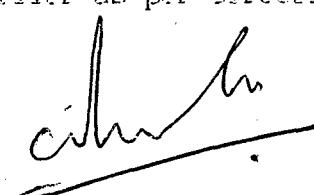
4. It may be useful to give some background to the case. The applicant was appointed as Medical Officer (scale Rs. 700-1300) in the Sheep and Wool Research Institute (for short, the Institute), Avikanagar under the respondent No.1, the Indian Council for Agriculture Research vide order dated 12.1.1973 (Ann.A6). In the face of absence of promotional avenues, he filed an OA No.253 of 1992 before this Bench of the Tribunal, which was disposed of with a direction to the respondents to consider the case of the applicant in view of the instructions dated 20.8.1987 and the observations of the Apex Court in the case of Paghunath Praised v. Secretary, Home, AIR 1988 SC 1033. A review petition against this decision was filed but it was dismissed. The applicant feeling



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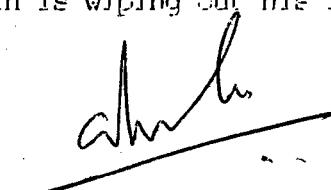
aggrieved with lack of any positive action by the respondents in terms of the direction of the said OA No.253/1992, filed a Contempt Petition No.22/94. But on respondents producing a copy of the rules framed by them, the Contempt Petition was dismissed. According to the applicant, the said rules were neither made effective nor implemented till 1996. However, three posts of Sr. Medical Officers were created in the then scale Rs. 3000-4500, the applicant being in the scale Rs. 2200-4000 then. The applicant, therefore filed OA No.164/96 during pendency of which the respondents issued order dated 21.9.1996 (Ann.A1) the subject matter of which is "Abolition of Auxiliary and Administrative (non-ministerial) category- Reclassification of posts". They also issued office order dated 29.3.1997 placing some official, including the applicant (at Sl.No.1) in Technical category. The applicant consequently withdrew the said OA No.164 of 1996. After issue of Ann.A1, the applicant made a representation to the Director General of the ICAR (respondent No.1), copy at Ann.A3 (date not given) objecting to only one promotion avenue under the said Rules and also submitting his option under protest.

5. The respondents by filing a counter-affidavit have denied the case of the applicant. The burden of song in their reply appears to be that they have implemented the directions of this Tribunal in OA No.253 of 1992 by providing promotional avenues to those working in Auxiliary category (including Dr. A.K.Mishra, the applicant) by reclassifying such category as Technical category and the applicant having opted for technical category, he was placed in such category vide order dated 29.3.1997 (Ann.A2) and that he will now get promotion as per the rules relating to "Technical Services of ICAR", copy of which was given to us and has been taken on record. It has also, simultaneously, been mentioned in the reply of the respondents that "earlier as per directions issued by this Hon'ble



Tribunal in OA No.253 of 1992 to provide promotional avenues to the applicant and similarly situated persons, it has been decided with the approval of the competent authority to revive three posts of Sr. Medical Officer in the pay scale of Rs. 3000-4500 in ICAR. Recruitment Rules for Sr. Medical Officer has been formed".

6. In the absence of any contention that with reclassification of the applicant into the Technical category, the line of promotion to the post of Sr. Medical Officer has been done away with, we feel that both the promotional avenues are available to the applicant although he has been deprived of a promotion under both. However, the bone of contention is whether the original grievance of the applicant regarding completely inadequate promotional avenues, and nothing like what is available to Doctors in the Central Health Service as prayed by the applicant in OA No. 253 of 1992, are available to him and there has been no positive development as far as denial of even one promotion to him is concerned, after serving the Institute through the Scientists, officers and staff of respondent No.2 for all these 22 years ! During the hearing, the applicant complained that with his inclusion in the Technical category vide ICAR's letter dated 20.9.1996 made applicable from 29.6.1996, absolutely no weightage of past services in the Auxiliary category in the very same organisation has been extended to him and thus his more than 18 years of service in ICAR till then has been wiped out for absolutely no fault of his and in other words, he is being asked to enter the Technical category as a fresh recruit w.e.f. 29.6.1996. The applicant contends that inspite of being a frustrated, demoralised and discriminated against Technical Officer, he is still providing health care to the staff, officers and Scientists of the Institute with best of his ability but this should not be taken to mean that his basic grievance should be met with a scheme which is wiping out his long 18 years' service in the



Institute and he is made to enter the Technical service as a fresh recruit.

7. We find lot of force in the contention of the applicant. We are, however aware of our limitations in the matters of policy and do not find ourselves in a position in the absence of any plea of discrimination or any junior to the applicant having been promoted, to direct the respondents to give a promotion to the applicant with retrospective effect after completion of 5 years' service, as it perhaps available to those who have been members of the Technical category since the inception of the Technical service Rules w.e.f. 1.10.1975. However, we do feel that it will not be fair and proper for respondent No.1 to place certain employees from one category to another in such a manner that wipes off their entire service in the earlier category, within the same ICAR. Obtaining an "option letter" cannot be itself justify such wiping out of the past services of an employee. In this case, we find from Ann.A3 that the applicant had opted for Technical Cadre only under protest. It is a sound principle of administration that isolated posts should not be created and if required, such posts should either be made a part of a larger cadre or filled up by taking officers on deputation from a large cadre. On equitable considerations, any public/model employer should neither exploit a situation of unemployment amongst a category of qualified persons nor appoint them and then make them lead a long service life of demoralisation and frustration. Confronted with a similar situation in the case of Raghunath Prasad Singh v. Secretary Home (Police) Deptt., Govt. of Bihar reported in AIR 1988 SC 1033, Hon'ble the Supreme Court had observed as under:-

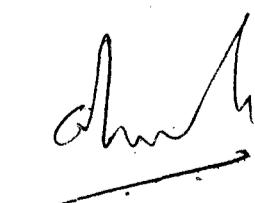
"Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for



achieving 'excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kill the desire to serve people".

We hope that after reading the observations of the Supreme Court as extracted above, the respondent No.1 will surely not like that the service rendered by the applicant, and those similarly placed, rendered should degenerate and desire amongst them to serve the people (in this case the staff, officer and Scientists of the Institute) is killed, and that too in case of medical Doctors, who perform not just a job but much more than that while dealing with patients, needing personalised medical attention and care.

8. It is precisely to protect government employees from such unacceptable situation of stagnation that the Central Government introduced the "Assured Career Progress Scheme" vide OM dated 9.8.1999 issued by the Ministry of Personnel, Public Grievances and Pensions whereunder, in order to mitigate hardship in case of acute stagnation in Group B,C, and D service and isolated posts in Group A,B,C and D categories, minimum two promotions, one on completion of 12 years and the other on completion of 24 years of service have been provided . We have also separately come across One Time Bound Promotion Scheme and Biannual Cadre Review Scheme providing for promotions after completion of 16 years and 26 years of service for Group 'C' employees of Department of Posts and Telecommunications. We are mentioning these two schemes only to bring home the point that it is in the organisation's interest itself that hardship caused by acute stagnation is removed. The respondents, no doubt, had good intentions in abolishing the Auxiliary categories and bring categories like Medical Officers etc. into Technical Services but in the absence of any weightage formula at the time of initial absorption of such officers/ employees in the Technical category, the intended benefit has actually not materialised, certainly not



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in the case before us. This being the case, we are of the considered opinion that the intention and spirit that was behind the issuance of direction in the earlier OA No.253 of 1992 has not been correctly appreciated by the respondents.

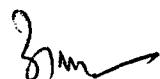
9. In the result, we dispose of this Original Application with a direction to respondent No.1 to consider devising and implementing a formula for weightage of past services at the time of transfer/absorption of the applicant, and similarly placed persons from Auxiliary category to the Technical category. This direction may be carried out within four months of the date of receipt of a copy of this order.

In the circumstances, parties to bear their own costs.



(N.P.NAWANI)

Adm. Member



(A.K.MISHRA)

Judl. Member