

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00290/2014

Order Reserved on: 16.11.2016

Date of Order: 22/12/2016

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Dr.Ajit Gupta Son of late Shri Dhanendra Gupta, aged 67 years, resident of 101, Pearl Passion, Goverdhan, B-78, Rajendra Marg, Bapu Nagar, Jaipur.

.....Applicant

(By Advocate Mr. Amit Mathur)

VERSUS

1.The Union of India through its Secretary, Department of Agriculture Research and Education, Ministry of Agriculture and Farmers' Welfare, Krishi Bhawan, New Delhi.

2. The Indian Council of Agriculture Research, through its Director General, Krishi Bhawan, New Delhi.

.....Respondents

(By Advocate Mr.S.S.Hassan)

ORDER

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order dated 12.09.2013 (Ann.A/1) passed by the respondents wherein the claim of the applicant for the grant of advance increments for acquiring Ph.D. Degree during service has been rejected and thereby seeking the following reliefs:-

8.(i) the present original application may kindly be allowed and order Ann.A/1 may kindly be quashed and set aside and directions may be issued to the respondents to grant two advance increments to the applicant w.e.f. 27.07.1998. The respondents may be further directed to give all consequential benefits accordingly along with the interest @ 12% per annum.

- (ii) Any other or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant.
- (iii) Cost of this original application also may be awarded in favour of the applicant.

2. The main issue in this OA relates to whether the applicant is entitled to the incentive of grant of two advance increments on acquiring Ph.D. degree during his service career. When the matter came up for consideration and hearing, Ld. counsel for the applicant (Shri Amit Mathur) submitted that the applicant initially joined the service as Junior Agronomist in Indian Council for Agriculture Research (ICAR) on 1st November, 1971 and thereafter obtained the Ph.D. degree in the year 1972 on 19.3.1972. Counsel for applicant clarified that the Ph.D. was not a necessary or essential qualification for the post of Junior Agronomist. He further submitted that vide circular dated 27.02.1999 (Ann.MA/1) which relates to 'revision of pay scale of the scientists of ICAR following the revision of pay scale of Central Government employees on the recommendation of 5th CPC' it was provided under Para 1 (ii)(d) that 'A Scientist will be eligible for two advance increments as and when he acquires a Ph.D. degree in his service career', and as the applicant was appointed in 1971 and obtained the Ph.D. degree in his service career in 1972 he was entitled to get two advance increments in view of the aforesaid provisions. However, vide Ann.A/5 dated 10.12.2007 (which is an internal official correspondence) his case was rejected on the basis of circular of respondents No. 1(15)/98-Pers.IV dated 12.12.2006 and circular dated 14.05.2007. Thereafter the applicant, after trying to get some information under RTI, but to no satisfactory avail and on getting a copy of this letter only in May, 2011 submitted a representation to the respondents. He further filed OA No.470/2013 which was decided on 04.07.2013 with the directions to decide the pending representation of the applicant dated

30th May, 2013 within 3 months from the date of receipt of the order. Therefore, the respondents decided his representation vide Ann.A/1 dated 12th September, 2013 (he also clarified that the reference to the order of the Tribunal of CAT Bench, Jodhpur instead of Jaipur in Ann.A/1 is an error, because he himself as counsel had filed the OA in Jaipur Bench itself) rejecting his claim with reference to certain circulars.

3. In this regard continuing the arguments, counsel for applicant submitted that circular of respondents dated 27.02.1999 has been filed by him as Ann.MA/1 and circular dated 12.12.2006 has been filed by him as Ann.A/6 and circular dated 14.05.2007 as Ann.MA/2. He further submitted that letter dated 14.05.2007 (Ann.MA/2) refers to another circular dated 14.11.2005 which has also been filed as Ann.A/7.

4. Counsel for the applicant contended that the case of the applicant is not covered by circular dated 12.12.2006 Ann.A/6 as mentioned in Ann.A/1 as the ground for rejecting his representation but is actually covered by circular dated 14.11.2005 (Ann.A/7) by which, after due consideration the matter was decided as under:-

"The matter regarding grant of advance increments to the scientists for acquiring Ph.D degree during service career was reviewed in consultation with the Ministry of Finance, Dept. of Expenditure in terms of UGC notification No. F5-3/2001 (PS) dated 31.08.01 and it has now been decided to allow the incentive to all those who acquired Ph.D degree during service career in an uniform manner, with actual benefits from the cutoff date viz. 27.07.98. Accordingly all the Scientists (including Sr. Scientists, Principal Scientists and RMPs) who acquired Ph.D degree during service even prior to 1.1.96 and who were not given the benefit of any advance increments as per earlier Career Advancement Scheme (CAS) may now be given the benefits of two advance increments. This shall however be applicable from 27.07.98 and only to those who were in ICAR service as on 27.07.98."

He further submitted that provisions of circular dated 12.12.2006 (Ann.A/6) on the basis of which his claim has been rejected are not applicable in the case of applicant and this has been clarified by the

respondents themselves in the letter dated 14.05.2007 (Ann.MA/2) which provides as under:-

"References have been received from some of the institutes enquiring as to whether in the light of ICAR circular No.1(15)/98-Pers.IV dated 12.12.2006 the scientists who acquired Ph.D degree during service prior to 1.1.86 were eligible for the incentive of two advance increments w.e.f. 27.7.98 in pursuance to circular dated 14.11.2005.

In this connection, it is stated that the two circulars cited above have dealt with separate issues. The circular No.1(15)/98-Pers.IV dated 14.11.05 referred to the cases of Scientists who had acquired Ph.D degree during service period and is applicable in the administration of the incentive of two increments for acquiring Ph.D degree any time during service period introduced w.e.f. 27.7.98. The circular dated 12.12.2006 has communicated Council's decision in reference to the representations of such of the Scientists who had joined with Ph.D degree at S-1 level prior to 1.1.86 or on senior posts for which Ph.D was an essential qualification. The contents of the circular dated 12.12.06 have no bearing on those Scientists who had acquired Ph.D degree during service period."

Counsel for applicant submitted that from this it is clear that circular dated 14.11.2005 (Ann.A/7) is applicable in the case of applicant because it referred to the cases of scientists who had acquired Ph.D degree during the service period and is applicable in the administration of the incentive of two increments for acquiring Ph.D degree any time during service period introduced w.e.f. 27.7.98 and the applicant acquired Ph.D in 1972 after joining the service in 1971. He further submitted that the circular dated 12.12.2006 Ann.A/6 relates only to those cases of "scientists who had joined with Ph.D degree at S-1 level prior to 1.1.86 or on senior posts for which Ph.D was an essential qualification. The contents of the circular dated 12.12.06 have no bearing on those Scientists who had acquired Ph.D degree during service period." In this way in view of applicability of circular of 14.11.2005 to the case of the applicant who acquired Ph.D during service period (as clarified by 14.05.2007 circular), the applicant is entitled to two advance increments and the rejection of his representation vide Ann.A/1 dated 12.09.2013 (pursuant to earlier OA No.470/2013 filed by

him) is not justified. Counsel for the applicant contended that the reason given in his case in order dated 12.09.2013 (Ann.A/1) that there was no incentive for those having Ph.D degree at the time of appointment to the post of Scientist Gr.I prior to 01.01.86 and that the incentive is only from 01.01.86 in the UGC package, is not correct because in the initial circular dated 27.2.1999(Ann.MA/1) there is no reference that only those who have joined service after 1.1.86 will be entitled to two advance increments if they acquired Ph.D. degree in the service career, and reiterated that Circular Ann.MA/2 dated 14.05.2007 also clarifies very clearly that incentive of two increments is applicable in the case of scientists who acquired Ph.D degree any time during the service period and prayed that in view of entitlement of the applicant who acquired Ph.D during his service career, the OA be allowed.

5. Per contra, Ld. counsel for respondents Shri S.S.Hassan argued that in the first place as brought out in the reply, the MA is not maintainable because of certain preliminary objections especially regarding limitation and delay and latches. Counsel for respondents submitted that admittedly the applicant joined service in ICAR on 1st November, 1971 and he got Ph.D. Degree in March, 1972 and retired on 31.10.2007 and he has filed the OA after 7 years of retirement. Further the scheme of incentives was introduced in 1999 and after more than 15 years of introduction of the scheme he has raised the issue and therefore, it is time barred and successive representation cannot extend the period of limitation and prayed for dismissal on the ground of limitation itself.

6. Counsel for respondents further contended that as per directions of the Hon'ble CAT in OA No.470/2013 the representation of the applicant was decided vide order dated 12.9.2013 Ann.A/1 which is a

clear, reasoned and speaking order and on merits also the OA does not deserve to be allowed. He submitted that, as brought out in the reply and also mentioned in the order dated 12.09.2013 (Ann.A/1) the applicant was appointed as Junior Agronomist in ICAR on 01.11.1971 and acquired the Ph.D. degree in March, 1972 i.e. prior to formation of Agriculture Research Service (ARS) the Scientific Service of ICAR which came into effect w.e.f. 01.10.1975. The applicant was inducted in it as Scientist S-1. He further submitted that initially there was no provision in the ARS Rules for grant of advance increment for acquiring the Ph.D degree. The ICAR adopted the University Grants Commission (UGC) package and Career Advancement Scheme (CAS) for scientists w.e.f. 01.01.1986 with the approval of Government of India pursuant to 4th CPC recommendations. As per UGC package a scientist who joined with Ph.D degree on or after 1.1.1986 was eligible for 3 advance increments. Later, pursuance to 5th Central Pay Commission (CPC) Notification No.1(15)/98/Pers.IV dated 27.2.1999 (Ann.MA/1) was issued in which as per para 1 (ii) (d) "A scientist will be eligible for two advance increments as and when he acquires the Ph.D. degree in the service career" but later on vide circular dated 12.12.2006 it was clarified that "there was no incentive for having Ph.D degree at the time of appointment to the post of Scientist Grade S-1 prior to 1.1.1986 as per instructions in vogue. The incentive came only from 1.1.1986 in the UGC package with the specific objective of attracting Ph.D. holders to join service as Scientist and to encourage non-Ph.D's in the service to acquire Ph.D degree. So, there does not seem to be any justification for extending them as incentive which did not exist in their case." As the applicant joined prior to 1.1.1986 and at that time there was no provision of incentive for acquiring Ph.D degree, the circular dated 12.12.2006 is applicable in the case of applicant and his case has been rightly rejected.

7. In rebuttal, counsel for the applicant submitted that in the first place delay and limitation will not apply in this case because this is a matter of grant of advance increment which is a recurring cause of action and in this regard he relied upon the judgment of Hon'ble Apex Court in the case of M.R.Gupta Vs Union of India & Ors. decided on 21.8.1995 and further submitted that his representation was rejected vide order dated 12.9.2013 Ann.A/1 and therefore, he has filed this OA which is within the limitation and there are no delays and latches.

8. Regarding the issue raised by the counsel for applicant of eligibility only for those who acquired Ph D. on or after 1.1.1986, counsel for applicant reiterated that circular dated 27.2.1999 Ann.MA/1 does not say anything about the incentive being applicable to only those who joined on or after 1.1.1986 and first paragraph of circular Ann.MA/2 dated 04.05.2007 makes it amply clear that circular dated 14.11.2015 is applicable in the case of applicant.

9. Considered the aforesaid contentions and perused the record. It is an admitted fact that the applicant joined as Junior Agronomist in ICAR on 01.11.1971 and he got his Ph. D degree on 19.03.1972 (though a perusal of Ann.A/3 also indicates that the viva-voce was held on 14.11.1971 i.e. just about 14 days after his joining on 01.11.1971 and that research work and thesis were submitted prior to his joining as Scientist in ICAR). Further, admittedly that for the post of Junior Agronomist Ph.D was not an essential qualification.

10. Counsel for respondents has raised the question of substantial delay in filing OA but in this regard it is seen that earlier also the applicant had filed OA No. 470/2013 and in pursuance of the orders and directions of this Tribunal dated 12.09.2013, in the said OA, the

representation of the applicant has been decided by the respondents vide order dated 12.09.2013 (Ann.A/1) and therefore, rejecting this OA only on the ground of limitation does not appear just and reasonable.

11. As far as merit of the case is concerned it is also noted that scientific service in the ICAR, named Agro Research Service (ARS) came into existence w.e.f. 01.10.1975 and the applicant was inducted in the ARS w.e.f. 01.10.1975 as Scientist (S-1). It has been brought out by the respondents that initially there was no provision of any incentive in ARS Rules for grant of advance increment for acquiring higher education of Ph.D degree. Later on the ICAR adopted the University Grants Commission (UGC) pay package and Career Advance Scheme (CAS) for the scientists of ICAR w.e.f. 01.10.1986 pursuant to 4th CPC recommendations. As per this UGC pay package a Scientist who joined with Ph.D degree on or after 01.01.1986 was eligible for 3 advance increments. There was no provision for grant of advance increments for acquiring Ph.D degree as per the UGC pay package effective from 01.01.1986. It is also noted that pursuant to 5th CPC recommendations the pay scales of scientists of ICAR were revised and revised pay scales were made effective from 01.01.1996 as per ICAR notification No.1(15)/98-Pers.IV dated 27.02.1999 (Ann.MA/1) issued in this regard. As per Para 2(i)(d) of the said notification 'a scientist will be eligible for two advance increments as and when he acquires the Ph.D degree in his service career.' A plain reading of this para indicates that the provision regarding the advance increment has been made prospective as per the words "will be eligible." However, it is also noted that various representations were made by different categories of employees and in that regard subsequently a circular dated 14.11.2005 (Ann. A/7) was issued and in this regard counsel for applicant drew the attention to the following para:

"The matter regarding grant of advance increments to the scientists for acquiring Ph.D degree during service career was reviewed in consultation with the Ministry of Finance, Dept. of Expenditure in terms of UGC notification No.F5-3/2001(PS) dated 31.08.01 and it has now been decided to allow the incentive to all those who acquired Ph.D degree during service career in an uniform manner, with actual benefits from the cut off date viz. 27.07.98. Accordingly all the Scientists (including Sr. Scientists, Principal Scientists and RMPs) who acquired Ph.D degree during service even prior to 1.1.96 and who were not given the benefit of any advance increments as per earlier Career Advancement Scheme (CAS) may now be given the benefits of two advance increments. This shall however, be applicable from 27.7.98 and only to those who were in ICAR service as on 27.7.98."

Subsequently another circular was issued dated 12.12.2006 Ann.A/6 with regard to the incentive for possessing the Ph.D degree at the time of entry in service as scientist Grade S-1 prior to 01.01.86, and the following directions were given:-

"The matter has been carefully examined in the Council and it has been concluded that there was no incentive for having Ph.D degree at the time of appointment to the post of Scientist Grade S-1 prior to 1.1.86 as per instructions in vogue. The incentive came only from 1.1.86 in the UGC package with the specific objective of attracting Ph.D. holders to join service as Scientist and to encourage non-Ph.Ds in the service to acquire Ph.D degree. So there does not seem to be any justification for extending them and incentive which did not exist in their case. Likewise, there is no justification for this incentive in case of those who joined the scientific service of ICAR with Ph.D degree on posts for which Ph.D was a minimum essential qualification for appointment."

Further, with reference to both these circulars dated 14.11.2015 (Ann.A/7) and 12.12.2006 (Ann.A/6), another circular dated 14.05.2007 filed as Ann.MA/2 was issued by the respondents clarifying the position as under:-

'References have been received from some of the institutes enquiring as to whether in the light of ICAR circular No.1(15)/98-Pers.IV dated 12.12.2006 the scientists who acquired Ph.D degree during service prior to 1.1.86 were eligible for the incentive of two advance increments w.e.f. 27.7.98 in pursuance to circular dated 14.11.2005.

In this connection, it is stated that the two circulars cited above have dealt with separate issues. The circular No.1(15)/98-Pers.IV dated 14.11.05 referred to the cases of Scientists who had acquired Ph.D degree during service period and is applicable in the administration of the incentive of two increments for acquiring Ph.D degree any time

during service period introduced w.e.f. 27.7.98. The circular dated 12.12.2006 has communicated Council's decision in reference to the representations of such of the Scientists who had joined with Ph.D degree at S-1 level prior to 1.1.86 or on senior posts for which Ph.D was an essential qualification. The contents of the circular dated 12.12.06 have no bearing on those Scientists who had acquired Ph.D degree during service period.'

A harmonious reading of the various circulars and the facts of the case indicate that the incentive for having Ph.D degree or acquiring Ph.D degree started with the introduction of UGC package w.e.f. 01.01.1986 which was only for those who have joined with Ph.D degree on or after 01.01.1986 and were eligible for 3 advance increments. Further vide notification dated 27.02.1999 Ann.MA/1 two advance increments were introduced for those acquiring Ph.D degree in their service career. Next circular Ann.A/7 dated 14.11.2005 allows incentives to all those who acquire Ph.D degree during service career with actual benefits from cut off date i.e. 27.07.1998 and even those who acquired Ph.D degree during service prior to 01.01.1996 were made eligible but it does not make any reference to the fact that those who acquired Ph.D degree even prior to 01.01.1986 i.e. the date from which the UGC package was introduced were also eligible. The next circular Ann.A/6 dated 12.12.2006 clarifies that the incentive came only from 01.01.1986 in the UGC package with the specific objective of attracting Ph.D holders to join service as Scientist and to encourage non-Ph.D in the service to acquire Ph.D in service. A further clarification has been issued vide Ann.MA/2 dated 14.05.2007 as noted on pre-page. However, it does not specifically clarify whether even those who have acquired Ph.D degree prior to 01.01.1986 would be eligible for advance increments because the scheme for advance increments began only after 01.01.1986 i.e. after introduction of the UGC package. Therefore, on a harmonious reading of the relevant circulars it appears that as the applicant acquired the Ph.D degree in 1972 which was well before 01.01.1986 i.e. prior to

the UGC incentive package to Ph.D degree holders, the applicant cannot
said to be eligible for the advance increments as sought for.

12. In view of the above analysis there is no ground to grant any relief
as sought for by the applicant and accordingly the OA is dismissed with
no orders as to costs.



(Ms. Meenakshi Hooja)
Administrative Member

Adm/