

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

May-19-2003  
W/2813

1/1(A) Date 16/4/03

O.A. No. 97/2000  
T.A. No.

199

DATE OF DECISION \_\_\_\_\_

Prabhat Chand and 5 others.

Petitioner

Mr. Prahlad Singh

Advocate for the Petitioner (s)

Versus

UOI and two others.

Respondent

Mr. V.S. Gurjar.

Advocate for the Respondent (s)

**CORAM :**

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman.

The Hon'ble Mr. A.P. Nagrath, 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 ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

*Chufr*  
(A.P.Nagrath)  
Administrative Member.

*plw*  
( G.L.Gupta )  
Vice Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH: JAIPUR

O.A. No. 97/2000

Date of decision.

17.04.03

1. Prabhat Chand S/o Shri Hajari Lal, aged about 50 years, resident of House No. 90, Harijan Basti, Toda Rai Singh Road, Near Dadabari PO Malpura, Dist. Tonk; Rajasthan.
2. Babu Lal Verma S/o Shri Kanlya Lal, aged about 51 years resident of II/23 CSWRI, Avika Nagar 304 S01, Via Jaipur Tehsil Malpura, District Tonk ( Rajasthan )
3. Fateh Singh S/o Shri Kalu Singh, aged about 54 years resident of Near Sita Ramji Temple, Chaupar DIGGI, Tehsil Malpura, District Tonk ( Rajasthan )
4. Satya Narain Sharma S/o Shri Ghisa Lal, Fujari, aged about 52 years Resident of Bara Thambha, Behind Shri Kalyanji Temple, Bharatji Ki Gali, PO Diggi, Tehsil Malpura, District Tonk ( Rajasthan )
5. Shri Bashir Ahmed S/o Shri Rehman Khan, aged about 50 years, Resident of Nagorion Ki Dhani, Avika Nagar, Via Jaipur, Tehsil Malpura, District Tonk ( Raj. )
6. Padri Frasad Sharma S/o Shri Chhitar Lal Sharma, aged about 52 years, Resident of Behind Kalyanji Temple, PO Diggi, Tehsil Malpura, District Tonk ( Rajasthan )

: Applicants.

rep. Mr. Pralhad Singh : Counsel for the applicant.

-versus-

1. Union of India through the Secretary, to the Govt. of India, Ministry of Agriculture, Krishi Bhavan, New Delhi.
2. The Director General, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
3. Central Sheep & Wool Research Institute, Avika Nagar, ( Via Jaipur ), Tehsil Malpura, Dist. Tonk ( Raj. ) through its Director.

: Respondents.

rep. Mr. V.S. Gurjar : Counsel for the respondents.

CORAM : The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. A.F. Nagrath, Administrative Member.



ORDER

Per Mr.Justice G.L.Gupta:

The following reliefs have been claimed in this O.A.

" i) the impugned order dated 1.3.2000 (Annex. A.1) may kindly be declared to be illegal and the same may be quashed and set aside and the applicants position as Machine Operator T-1 Technical may kindly be restored with all consequential benefits as if the order dated 1.3.2000 had never been issued and the applicants have been continuously holding the post of Technical T-1.

(ii) any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may also kindly be issued in favour of the applicants.

(iii) the cost of this Original Application may also kindly be awarded in favour of the applicants. "

2. It is averred that all the six applicants were initially appointed on the post of Machine Operator in the pay scale of Rs.80-110/-on probation for a period of two years. They were considered for promotion to the next grade of Machine Operator by the Departmental Promotion Committee and as they were found suitable, they were promoted to the grade of Machine Operator in the Auxiliary cadre in the pay scale of Rs.950-1500 and their pay was fixed at Rs.1250/- as on 10.10.94, vide order dated 21.6.97. It is further averred that the auxiliary posts of Machine Operator were reclassified by the Indian Council of Agricultural Research ( ICAR for short) into Technical category and the applicants were therefore placed in the Technical category with effect from 29.6.96 vide order dated 29.11.97. On the recommendations of the 5th Pay Commission, which came into force with effect from 1.1.96 the pay of the applicants was revised vide order dated 22.1.98 and they were placed in the scale of pay of Rs.3200-4900/-The applicants claim that they are holding the post of T.1 from 10.10.94; yet the respondent No. 3, issued an order on 1.3.2000,( Annex. A.1) withdrawing the two orders dated 21.6.97 and 29.11.97, thereby reverting the applicants



in the lower pay scale. It is averred that all the applicants possess the necessary qualifications for holding the post of Auxiliary category. Matriculation qualification was not required for promotion to the category of Auxiliary and therefore their promotion to the Auxiliary category was <sup>alleged</sup> not against rules. The order Annex. A.1 dated 1.3.2000 is to be arbitrary and illegal, for the reason that the applicants had been promoted in the pay scale of T.1 on regular basis after their selection by the DPC and after 5 years, there could not be any justification for their reversion. It is stated that the post of Machine Operator is a Technical post and has been encadred as Gr. T.II in Appendix attached the the Technical Rules of ICAR, 1975 and therefore the applicants automatically became the members of the technical category because of holding the posts of Machine Operator. It is also stated that before issuing the impugned order, the principles of natural justice have not been followed.

3. In the detailed reply, the respondents' case is that as per the Technical Service Rules, 1975, it is necessary that persons should hold certificate issued by a recognised institution and they should be matriculates, but the applicants do not possess these essential qualifications and therefore their promotion to the technical category was against the rules. It is further stated that the competent authority has decided not to make any relaxation in rules and therefore the earlier promotion orders have been withdrawn.

4. In the rejoinder, the applicants state that the condition of educational qualification of matriculation for appointment in Technical category was not mentioned in the promotion order and they were promoted on the basis of experience.

5. In the additional affidavit filed by the respondents, it is stated that the applicant No. 1 Prabhat Chand was appointed as Operator



vide order dated 30.9.69 in the pay scale of Rs.80-110/- and the other applicants were appointed in the same pay scale between the years 1968 and institutions 1972. It is stated that the ICAR has its L throughout the country and the Institutions are governed by rules and bye-laws of ICAR, which came into force from 3.4.75. It is also stated that ICAR is a Society registered under the Registration Societies Act, 1860, and that the Society can be sued in the name of Secretary of the Society, which has not been done and therefore the O.A is bad because of non-joinder of necessary party and mis-joinder of respondent No. 1. It is the case for the respondents that the applicants were appointed in the pay scale of Rs.80-110/- which falls under Class IV and that the Recruitment Rules for the supporting staff of the Research Institute were framed and came into force from 1.12.75. It was provided in the Rules that the existing posts in the would be pay scale of Rs.196-232 to Rs.225-305/- L grouped together to form four grades of supporting staff. i.e. Gr. I, Gr.II, Gr. III and Gr.IV and that the posts like Duplicating Machine Operator, Grinding Machine Operator, Press Machine Inker, Operator, Pump Operator etc in the pay scale of Rs.210-290 or Rs.210-270 were categorised as Supporting Staff Gr. III. There is a provision of promotion of the Supporting Staff Gr. III to the scale of Rs.225-305/- Gr.IV and the applicants, being Supporting staff were promoted from Gr. III to Gr.IV with effect from 13.7.78. It is further stated that the auxiliary posts are ex-cadre posts and isolated in nature but as there were no avenue of promotion in Auxiliary category, the posts of designation of Machine Operator, Duplicating Machine Operator etc. were also included therein. The mere designation of the applicants as Machine Operator/Operator, cannot lead to the inference that the applicants were in the Auxiliary category. It is averred that the Recruitment Rules for the post of Machine Operator in Auxiliary category provide the pay scale of Rs.1200-2040/-. It is stated that the applicants were by mistake considered for promotion in the Central Sheep and Wool Research Institute, Avikanagar to Auxiliary category in the pay scale of Rs.950-1500 on the basis of the recruitment rules for the post of Machine Operator of Ginning,



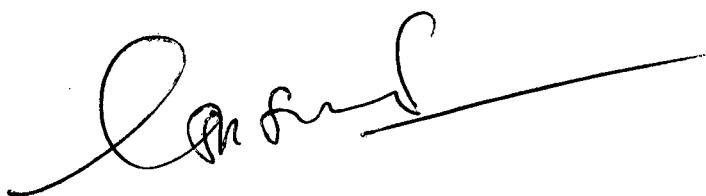
Spinning, Knitting and Weaving at Cotton Technology Research Laboratory Bombay. The Director of the Institute requested the competent authority to provide relaxation so that the applicants could be promoted as Auxiliary without the certificate of training in the pay scale of Rs.950-1500. But the applicants were promoted in anticipation of relaxation of the qualification by the competent authority but the competent authority did not agree for relaxation and therefore there was no illegality when the applicants were reverted to their original post.

6. In the counter to the additional reply, the applicants reiterated the stand taken in the OA pointing out the various documents.

7. We have heard the learned counsel for the parties and documents placed on record.

8. It is seen that the applicants were initially appointed in the pay scale of Rs.80-110 as Machine Operators vide order Annexure A-2 and pursuant to the recommendations of the DPC they were promoted to the scale of pay of Rs.950-1500 under non planned Auxiliary category with effect from 10.10.1994 vide order dated 21.06.1997 Annexure A-3. The Senior Administrative Officer of the Institute vide order dated 29.11.1997 (Annexure A-6) placed the applicants in the Technical category w.e.f. 29.06.1996 in the pay scale of Rs.975-1540. After the coming into force of the Fifth Pay Commission recommendations, the applicants pay were refixed vide order Annexure A-7.

9. The question for consideration is whether the respondents have erred in recalling the orders Annexure A-3 and A-6 vide order Annexure A-1 dated 01.03.2000. The contention of Mr. Prahlad Singh was that once the applicants had been given promotion in the Auxiliary category and they were placed in the Technical category, there promotion could not be withdrawn even if, they did not possess the necessary qualifications. His contention was that the applicants had not procured the promotion by playing fraud on

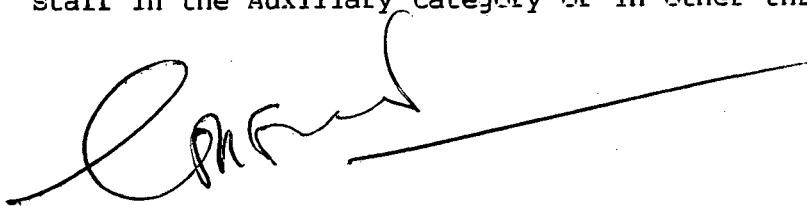


the respondents and the promotions were given to them keeping the eyes open and therefore the applicants should not be allowed to suffer on the ground of lack of qualification.

10. On the other hand, the learned counsel for the respondents contended that the placing of the applicants in the auxiliary category was a mistake and a further mistake was committed by the officers when the applicants were placed in the Technical category w.e.f. 29.06.1996. It was urged that the applicants did not have the requisite certificates of training issued by the recognised institutes and, therefore, they could not be placed in the Technical category. According to Mr. V. S. Gurjar, respondents had a right to correct the mistake and the court should not interfere in this matter.

11. It has to be accepted that the applicants were not at fault when they were given promotion in the Auxiliary category and thereafter they were placed in the Technical category. However, a plain reading of the orders and the relevant rules, indicates that the applicants could not be placed in the Technical category. The applicants were the members of the supporting staff in Grade IV and were working as Machine Operators. It has to be accepted that their promotion to the scale of Rs.950-1500 placing them in Auxiliary category was not according to rules.

Under the Auxiliary category in the ICAR, the posts of supporting staff have been identified as the existing posts in the scales of pay ranging from Rs. 196-232 to Rs.225-308. It is provided that the supporting staff may be graded as Skilled, Semi-skilled and Unskilled. The Bye-laws clearly state that the supporting category is different from Auxiliary category. There are promotional avenues in the supporting category itself and there is no provision for promotion of the supporting staff in the Auxiliary category or in other three categories of Technical,



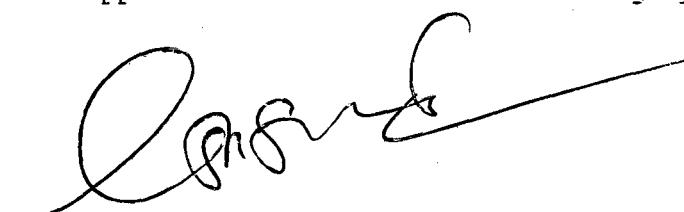
Administrative and Scientific.

When under the order Annexure A-3 dated 21.06.1997, the applicants were promoted as Auxiliary category w.e.f 10.10.1994 an obvious error was committed. For the Machine Operators in the Auxiliary category, it is necessary that a candidate is matriculate or possesses equivalent qualification. The applicants were not matriculates and, therefore, they could not be placed in the category of auxiliary posts.

12. The mistake was committed not only when the applicants were placed in the Auxiliary category, again rules were violated when the applicants were placed in the Technical category vide order dated 27.02.1996 (Annexure A-5).

13. It is not disputed that for Technical category, one has to undergo the necessary training from the recognised institutes and obtain a certificate in that regard. Admittedly, the applicants had not undergone any training and were not possessing any certificate of the recognised institute. Therefore, the respondents had committed an obvious error when the applicants were placed in the Technical category.

14. It is noticed that the Director of the Institute had addressed a letter on 01.08.1997 (Annexure R.A.A/16) to the Director General seeking relaxation in the matter of qualification for the applicants. He had stated that the applicants had put in 20/25 years of service as supporting staff in Grade IV and they may be considered for Auxiliary category in the scale of pay of Rs.950-1500 and thereafter they may be placed in the Technical Category in terms of the Council's letter dated 01.08.1995, whereby the Machine Operators had been classified as Technical from Auxiliary category. Without waiting for the reply of the Director General, the Administrative Officer chose to issue order Annexure A-6 dated 29.11.1997 placing the applicants in the Technical category. As a matter of fact, the order



Annexure A-3 could not be issued by the Administrative Officer when the applicants did not possess the necessary qualifications.

When the promotions of the applicants were made in the Auxiliary and Technical category without necessary qualifications, the competent authority was perfectly justified in recalling the orders of promotion.

15. It seem that because of the letter dated 27.02.1996 wherein it was informed to the Institute at Avika Nagar, that the Council had reclassified the Auxiliary posts-Machine Operators into Technical category, the applicants were placed in the Technical category. It may be stated that the rules with regard to Jute Technological Research Laboratory, Calcutta, were different. On the basis of this letter the Institute at Avika Nagar could not be justified in reclassifying the applicants as Auxiliary category and further placing them in the Technical category.

16. The mistake seems to have been occurred because of the nomenclature of the posts. The post of Machine Operator existed in the supporting category. The post of same nomenclature also existed in the Auxiliary category and Technical category. The applicants were in Class IV. They could be given promotion in the next available category to Class IV only. It is seen that w.e.f.13.7.78 they had already been promoted from Grade III Rs.110-220 (Rs.800-1150) to Grade IV Rs.225-308 (Rs. 825-1200) which was the highest scale for supporting staff, vide order RAA/9 dt. 26.03.1980. There could not be any occasion of promoting the applicants to Auxiliary category from 1994 or Technical category from 1996.

17. It is , however, seen that the impugned order was issued without issuing show cause notice to the applicants. It seems that keeping this fact in view the interim stay was granted by this Tribunal on 06.03.2000 and the applicants are availing the benefit of the said interim order.



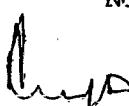
18. Keeping in view the peculiar facts of the case it may not be proper to quash the impugned order only on the ground of not following the principles of natural justice.

19. It has however, to be accepted that the applicant were not at fault when they were placed in the Auxiliary category in the scale of pay of Rs.950-1500 and also in the Technical category vide order dated 29.11.1997. There was neither any mis-representation on the part of the applicant nor did they played fraud on the respondents. See: Bihar State Electricity Board vs. Vijay Bahadur [2000 SCC (L&S) 394], Shyam Babu Verma vs. Union of India & Ors. [ (1994) 27 ATC-121 (SC) ] & Sahib Ram vs. State of Haryana [(1994) 28 ATC 747 SC].

20. The respondents, therefore cannot be justified to make recovery on account of the salary paid to the applicants under the orders Annexure A-3 and Annexure A-6. In other respects, the order Annexure A-1 cannot be said to be illegal.

21. Consequently, this OA is allowed in part. The respondents shall not make any recovery from the applicants under the orders Annexure A-3 and Annexure A-6. On merits there is force in this OA. It is dismissed.

21. No order as to costs.

  
(A. P. NAGRATH)

MEMBER (A)

  
(G. L. GUPTA)

VICE CHAIRMAN