

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 18.07.2003

OA No.569/2002

Suālal s/o Shri Surajmal r/o CSWRI Campus Qtr. No.12, Type IIInd via Jaipur, Avikanagar, last employed on the post of Tractor Driver in CSWRI Avikanagar, Tonk.

.. Applicant

Versus

1. Union of India through the Secretary, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
2. Director, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
3. Director, CSWRI Avikanagar, Tonk via Jaipur.

.. Respondents

Mr. Shiv Kumar - counsel for the applicant

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

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R (ORAL)

Per Hon'ble Mr. M.L.Chauhan

The grievance of the applicant in this OA is that the recovery of Rs. 60,000/- is being effected from the applicant pursuant to the order dated 11.12.2002 (Ann.A1) whereby the benefit of Assured Career Progression (hereinafter referred to as ACP) Scheme which was granted to him vide order dated 14.7.2000 w.e.f. 9.8.1999 has been withdrawn without giving show-cause notice to the applicant. The applicant has further alleged that he was initially appointed as Driver. He remained as Driver till his retirement. In case the respondents have decided that

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the benefit of ACP scheme is not to be extended to the category of the applicant, in that eventuality, he was entitled for promotion/financial benefit under OTBP scheme. In relief, he has prayed that the impugned order dated 11.12.02 (Ann.A1) withdrawing the benefit of ACP Scheme and recovery of Rs. 60,000/- from the applicant may be declared as illegal, arbitrary and be quashed.

2. The respondents have filed reply. According to the respondents, the post of Driver to which category the applicant belongs, was re-classified as technical category w.e.f. 29.6.96 i.e. prior to implementation of the ACP scheme. The benefit of ACP scheme is not applicable to the employees who were governed by the technical service rules as the benefit of Flexible Complementary and Time Bound schemes are already available to such staff. Regarding non issuance of show-cause notice, it has been stated that no prejudice has been caused to the applicant on account of non-issuance of show-cause notice and as such action of the respondents is justified and there is no violation of principle of natural justice or any provision of Article 14 and/or 16 of the Constitution of India.

3. I have heard the learned counsel for the parties and gone through the material placed on record.

3.1 It is admitted fact between the parties that no show-cause notice was given to the applicant while passing the impugned order dated 11.12.02 (Ann.A1). The contention of the learned counsel for the respondents that the applicant has failed to place on record even an iota of evidence to substantiate the prejudice caused to him on account of non-issuance of show-cause notice, cannot be

accepted in view of the law laid down by the Hon'ble Apex Court in the case of Management of M/s M.S.Nally Bharat Engineering Co. Ltd. vs. State of Bihar and Ors., 1990 SCC (L&S) 189. The Hon'ble Apex Court while referring to the earlier decision of the Bench in S.L.Kappor vs. Jagmohan [(1980) 4 SCC 379] in para 25 held that particular prejudice as a result of want of opportunity need not be established. Non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. The matter is also covered by the judgment of the Hon'ble Apex Court in the case of Bhagwan Shukla vs. Union of India and ors., 1994 (4) SLR 615. In that case the pay of the appellant therein was reduced with retrospective effect without affording any opportunity of being heard on the ground that it was wrongly fixed. The Apex Court held that the appellant has been visited with civil consequences, thus, the order is violative of the principles of natural justice and the impugned order was set-aside.

3.2 In view of the ratio laid down by the Hon'ble Apex Court in the aforesaid cases, the present application is allowed. The impugned order dated 11.12.02 (Ann. A1) is hereby quashed and set-aside. It will be open for the respondents to proceed against the applicant after following the principles of natural justice, if so advised. No order as to costs.


(M.L.CHAUHAN)

Member (Judicial)