

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**JAIPUR BENCH.**

O.A.No.573/2003

Decided on : March 15, 2005.

CORAM : **HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN.**

Sualal S/o Shri Surajmal, aged about 61 years, R/o CSWRI Campus Qtr. No.12, Type IInd Via Jaipur, Avikanagar, last employed on the post of Tractor Driver in CSWRI Avikanagar, Tonk, Rajasthan.

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Applicant

By : Mr.Shiv Kumar, Advocate.

Versus

1. Union of India through its Secretary, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi-1.
2. Director, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi-1.
3. Director, CSWRI, Awikanagar, Tonk via Jaipur (Rajasthan).
4. Senior Administrative Officer, Central Sheep and Wool Research Institute, Awikanagar, Tonk.

By : Mr.V.S.Gurjar, Advocate.

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Respondents

**O R D E R (ORAL)**

**KULDIP SINGH,VC**

The applicant has filed this O.A. Whereby he is assailing an order passed by the respondents on 21.11.2003 (Annexure A-1) whereby his reply given to the show cause notice for recovery of benefits granted to the applicant erroneously under the ACP Scheme has not been accepted and recovery has been ordered.

The facts in brief as alleged by the applicant are that the applicant was working with the respondents since 16.2.1965 and retired from service w.e.f. 30<sup>th</sup> March, 2002, as Tractor Driver. It is stated that applicant who worked as Driver till his retirement was not granted any promotion and even the benefits under the OTBP Scheme,



which was available to the Technical Staff was not granted to him. However, Assured Career Progression (ACP) Scheme was introduced by the Government of India on the basis of the recommendations of the 5<sup>th</sup> Central Pay Commission and the case of the applicant was considered and he was given benefits w.e.f. 9.8.1999 vide orders dated 14.7.2000. Though the applicant was enjoying the benefit of ACP but he was shocked to receive the letter dated 11.12.2002 (Annexure A-3), by which it was informed that benefit of financial upgradation granted to the technical staff, as per particulars given therein, is withdrawn. Name of the applicant is also mentioned in the list of persons whose benefits were withdrawn, at Sr.No.8. It was mentioned that the technical staff was not entitled to the benefit of ACP Scheme. The applicant submits that no show cause notice was issued to him nor any intimation of withdrawal of the benefit was given to him. So, he filed an O.A.No.569/2002 against the action of the respondents by which they have ordered recovery of Rs.60,000/-from the applicant. The O.A was disposed of vide Annexure A-5 dated 18.7.2003 (Annexure A-5). The order of recovery was quashed and the respondents were permitted to issue a show cause notice to the applicant and after giving him proper opportunity pass appropriate orders by following the principles of natural justice, if so advised. So, it is after this judgment a fresh show cause notice was issued by the respondents, Annexure A-6 dated 16.9.2003, informing the applicant that he had been erroneously granted the benefit of ACP Scheme which was not applicable to the technical staff. The applicant submitted a reply thereto and after considering the reply the impugned order was passed.

The only ground to challenge the impugned order as taken by the applicant in the O.A is that the impugned order is a non-speaking



order and the reasons given by the respondents in their reply to reject the claim of the applicant are that the reply submitted by the applicant is not satisfactory. So, the impugned order deserves to be set aside. Besides that the applicant has taken other pleas that since benefit under ACP Scheme had been granted by the department itself without any mis-representation on the part of the applicant, so recovery should not be effected as the applicant has retired from service.

The respondents who are contesting the Original Application plead that they have a right to recover the erroneous benefit granted to the applicant. Since the applicant was not eligible for grant of benefit under the ACP Scheme as he belongs to the Technical Category Staff, the respondents have rightly resorted to recovery.

I have considered the rival contentions of the parties carefully and gone through the record.

I find that when the applicant had challenged the action of the respondents in the earlier O.A he had taken all the pleas in support of his case and after considering all the pleas, the Tribunal came to the conclusion that since show cause notice was not given to the applicant, there is violation of principles of natural justice and as such the order of recovery was quashed. However, the Tribunal gave liberty to the respondents to proceed against the applicant after following the principles of natural justice. Thereafter, the respondents have issued the proper notice to the applicant to show cause as to why the recovery be not effected from him as the ACP Scheme was not applicable to the technical staff and the benefit was wrongly granted to him and in reply to such notice, the applicant states that ACP was applicable to him and he was entitled to the benefit of the same. Thus, in a way no proper reply was submitted by the applicant to the show cause notice. He was expected to explain his position in detail as to



how he fall within the eligibility clause so as to prove his entitlement to the grant of benefit under the ACP Scheme. Thus, the respondents are justified in taking a stand that the reply given by the applicant is not satisfactory. No further elaborate speaking order was required to be passed by them since applicant himself failed to prove that he was entitled to benefit under the ACP Scheme. On the contrary, it is deemed to be admitted by the applicant that he was erroneously granted the benefit of ACP Scheme and the respondents are justified in making recovery of the amount. It was a factual mistake only which can be rectified by the department. For this, one may refer to the decision of Apex Court in the case of Jagdish Prajapat Vs. The State of Rajasthan & Others, 1998(2) ATJ, Page 286.

I do not find any force in the Original Application. It turns out to be devoid of any merit and is rejected without any order as to costs.

  
(KULDIP SINGH)  
VICE CHAIRMAN

March 15,2005.

HC\*