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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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R.A/C.P No. 27/2006
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SECTION OFFICER (Judl.)

Sabita
16.11.17

(RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. 86/03

Misc. Petition No. /

Contempt Petition No. /

Review Application No. /

Applicant (S) B.K. Mishra

- Vs. -

Respondent (s) U.O.I. Guwahati

Advocate for the applicant (s) B.K. Sharma, S. Sarma

Advocate for the respondent (s) D.K. Sharma, U.K. Naik, Min U. Das

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form but not in time. Condonation Petition is filed / not filed C.F. for Rs. 5/- deposited vide IPO/DO No. <u>86490025</u> Dated <u>22.4.03</u>.</p> <p><i>Copy not yet furnished respondents. W.S. 2/5/03.</i></p> <p><i>Steps taken along with envelopes.</i></p> <p><i>mb</i></p> <p><i>28.8.03</i></p> <p><i>Notice prepared and sent to D/S for filing the respondent No 1 dt 6 by Regd. A/D.</i></p> <p><i>SIN. 978 to 980 dt 14/5/03.</i></p> <p><i>13/5</i></p>	<p>8.5.2003</p>	<p>Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman</p> <p>The Hon'ble Mr. S. Biswas, Member (A).</p> <p>Heard Mr. S. Sarma, learned counsel for the applicant.</p> <p>The application is admitted. Call for the records. List on 16.6.2003 for orders.</p> <p><i>SQ</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>Respondents are yet to file written statement. Mrs. R.H. Chowdhury, learned counsel for the respondent prays for time to file written statement. The learned counsel for the applicant has no objection. Prayer is allowed. List on 20.10.03 for orders.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

16.6.2003

Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. R.K. Upadhyaya, Member (A).

Mrs. R.S. Choudhury, learned counsel has entered appearance on behalf of the respondents and prayed for ~~for~~ time for filing written statement. Prayer is allowed.

List again on 21.7.2003 for written statement.

21.7.2003

Member

Vice-Chairman

mb

21.7.2003

Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. N.D. Dayal, Member (A).

Heard Mrs. R.S. Choudhury, learned counsel for the respondents who has stated that she has received the instructions and she is filing written statement. Mrs. Choudhury, learned counsel also stated that some new development has taken place in the matter and she wants some time.

List again on 19.8.2003 for written statement.

Member

Vice-Chairman

mb

19.8.2003

Present : The Hon'ble Sri K.V. Prahaladan Administrative Member.

List again on 28.8.2003 to enable the respondents to file written statement.

K.V. Prahaladan

Member

mb


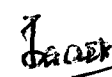
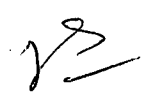
*NO written statement
has been filed*

*NS
18/8/03*

*No written statement
has been filed*

27.8.03

③
O.A:86/2003

Office Note	Date	Tribunal's Order
	20.10.2003	<p>Written statement is yet to be filed Ms.S.Das, learned counsel appearing on behalf of Mrs.R.S.Choudhury, learned counsel for the respondents, prays for time to file written statement.</p> <p>Prayer allowed. List the case on 10.11.2003 for filing of written statement if any. .C</p> <p style="text-align: right;"> Vice-Chairman</p>
<p>19/11/03</p> <p>NO written statement has been filed.</p> <p>19/11/03</p>	bb 20.11.03	<p>NO Bench Order. Ad'ed to 20.11.03.</p> <p style="text-align: right;">870 h</p>
	20.11.2003	<p>Present : The Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman The Hon'ble Shri S.K.Naik Administrative Member.</p> <p>Mr.R.Lal, learned proxy counsel for the applicant.</p> <p>Ms.S.Das, learned proxy counsel for the respondents.</p> <p>Learned proxy counsel for the respondents submits that reply affidavit has been filed, with copy to the opposite side. Learned proxy counsel for the applicant seeks and is allowed three weeks to file rejoinder.</p> <p>Admit subject to legal pleas. List on 16.12.2003.</p> <p style="text-align: right;"> Member</p> <p style="text-align: right;"> Vice-Chairman</p>

bb


Office Note	Date	Tribunal's Order
<p>21. 11. 03</p> <p>W/S Submitted by the Respondents Nos. 2 and 3.</p> <p><i>[Signature]</i></p> <p>5.4.04</p> <p>Rejoinder Submitted by the Applicant.</p> <p><i>[Signature]</i></p> <p>Pl. comply order dated 23/7/04.</p> <p>N.S. 26/7/04</p> <p>Received copy of the order dated 23.7.2004 on behalf of Counsel for the Respondents.</p> <p><i>[Signature]</i> 3.8.04</p> <p>23-8-04</p> <p>Case 5 ready for hearing.</p> <p><i>[Signature]</i></p>	<p>16.12.03</p> <p>pg</p> <p>23.7.2004</p>	<p>List again on 28.1.2004 for order.</p> <p><i>[Signature]</i> Member</p> <p>present : The Hon'ble Sri K.V. Sachidanandan, Member (J) The Hon'ble Sri K.V. Prahladan, Member (A).</p> <p>When the came up for hearing, the learned counsel for the applicant submitted that this is a case regarding promotion of the applicant to the next cadre on the basis of seniority cum merit. The learned counsel for the respondents submitted that the applicant was not promoted due to the performance of the applicant was 'average'. The learned counsel for the applicant submitted that the respondents never communicated the same. In the ends of justice, the respondents are directed to produce the CR for last five years in tabular form.</p> <p>List the matter before the next Division Bench.</p> <p><i>[Signature]</i> Member (A)</p> <p><i>[Signature]</i> Member (J)</p>

24.8.2004 Present: The Hon'ble Shri D.C.Verma,
Vice-Chairman (J).

The Hon'ble Shri K.V.Prahladan
Member (A).

Ms.S.Das, learned ~~xxx~~ learned counsel
appearing on behalf of Mrs.R.S.Choudhury
for the respondents requests for adjour-
nment.

As prayed adjourned to next Division
Bench.


Member (A)


Vice-Chairman

bb

15.9.2004 Present: Hon'ble Justice Shri R.K. Batta
Vice-Chairman

Hon'ble Shri K.V. Prahladan,
Administrative Member.

On the request of the learned
counsel for the parties the matter is
adjourned to 20.9.04 for hearing.


Member



Vice-Chairman

nkm

20.9.2004

After having briefly heard
the learned counsel for the parties, it
is considered necessary that the
respondents shall place before us
various reports of the Assessment
Committee with effect from 1986 onwards
and the orders passed thereon by the
appointing authority in addition to the
CRs in respect of which orders has
already been passed, on the next date of
hearing. List for further hearing on
9.11.04.

*Received
8/11/04
(Resp.)*


Member


Vice-Chairman

nkm

8/11/04
*The case is ready
for hearing.*

9.11.2004

Heard Mr S. Sarma, learned counsel for the applicant seeks to go through the records directed to be produced by this Tribunal. The records be shown to the learned counsel for the applicant. The learned counsel for the applicant seeks time to argue the matter. Stand over to 6.12.04.

Case is ready for hearing.

K. P. Reddy
Member

R. -
Vice-Chairman

nkm

6.12.2004
Shillong

After perusal of the records it is seen that the orders passed by the Competent Authority disagreeing with the assessment of the Assessment Committee are not on records produced before us.

Mr. I. Choudhury, learned counsel for the respondents, submits that the applicant was considered for promotion in the years 1987, 1991, 1993, 1999 and 2003. He further states that though the reports of the Assessment Committee and the C.R.s of the applicant for the said periods are ~~on~~ on record, yet the order of the Competent Authority disagreeing with the assessment of the Assessment Committee are not on record. He seeks ten days time to place the orders of the Competent Authority. Accordingly, the matter is adjourned to 20.12.2004 for hearing.

Steno copies of the order duly authenticated by the private Secretary be given to both sides.

Order dt. 6/12/04
Sent to D/Section
for issuing to
learned advocate
for both the parties.

Cops
16/12/04

Case is ready for hearing.

K. P. Reddy
Member

R. -
Vice-Chairman

nkm

10-1-05

Case ready for hearing.

20.12.2004 List on 11.01.2005 for hearing

[Signature]
Member (A)

mb

11.1.2005 Division Bench is not available.
Adjourned to 19.1.2005 for hearing.

[Signature]
Member

bb

18.1.2005 Ms.U.Das, learned counsel for the applicant and Mr.G.Rahul, learned counsel appearing on behalf of Mr.I.Choudhury, learned counsel for respondents 2 & 3 were present.

Additional written statement filed by respondents 2 & 3. Learned counsel for the applicant states that the applicant be permitted to file ~~xxxxxx~~ ~~xxxxxx~~ rejoinder. permission is granted. Rejoinder to be filed with advance copies to the respondents.

Stand over to 4.2.2005.

[Signature]
Member

[Signature]
Vice-Chairman

bb

16.2.2005 It is reported that there has been a bereavement in the family of Mr R.S. Choudhury, learned counsel for the respondents. Hence adjourned to 11.3.05.

[Signature]
Member (A)

[Signature]
Member (J)

nkm

11.3.2005 Ms.B.Davi, learned counsel appearing on behalf of Mr.S.Sarma, learned counsel for the applicant, seeks for an adjournment, considering that the learned counsel is not keeping well. Mr.G.Rahul, learned counsel for the respondents also wants adjournment.

Accordingly post the matter on 24.3.05

[Signature]
Member

[Signature]
Vice-CHAIRMAN

b/p

19.1.05
An additional statement filed on behalf Respondent Nos. 2 & 3.

[Signature]

Case is ready for

[Signature]

8
O.A. 86 of 03

28.4.05.

Post the matter on 19.5.05.


Vice-Chairman

lm

19.5.2005 At the request of counsel for the respondents the case is adjourned to 7.6.2005.


Member

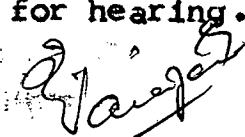

Vice-Chairman

mb

7.6.2005

At the request made by Mr.S.Sarma, learned counsel for the applicant case is adjourned to 16.6.2005 for hearing.



Member

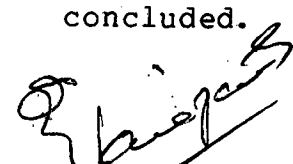

Vice-Chairman

bb

15.6.2005

Heard Mr S. Sarma, learned counsel for the applicant and Mr G. Rahul, learned counsel for the respondents. Hearing concluded. Judgment reserved.


Member


Vice-Chairman

nkm

22.6.2005

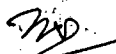
Judgment delivered in open Court, kept in separate sheets. The application is disposed of in terms of the order passed in separate sheets.


Member


Vice-Chairman

mb

The case is ready for hearing as regard W/S and rejoinder.


15.6.05.

Received Copy for respondent Jitendra Rahul Advocate 28/6/05.

R
29.6.05
Boudhaya Dui
Advocate

29.6.05
Copy of the Judgment handed over to the 4 Advocates for the parties.
48

PUC →

Memo No Nil/ Datu nil received from
The Assistant Registrar (I & E) of The
Hon'ble Gauhati High Court. a

The order dated 13/12/2006 passed
in WP(C) No. 6106/06 may kindly be
seen at PUC.

The Indira Council of Agricultural
Research and our have filed
the above mentioned WP(C) before The
Gauhati High Court against the
judgment & order dtd 22.6.05 passed in
OA 86/2003 of this Tribunal. But
the Hon'ble High Court stayed the
operation of the order passed ~~by~~ in
the above mentioned OA on 13.12.2006.
Submitted for favour of kind

perusal.

16/8/07

9/12/07
9.2.07
PO (S)

~~DR~~
Memo
9/12/07

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./XXX No. 86 of 2003

DATE OF DECISION 22.6.2005

Shri B.K. Mishra

.....APPLICANT(S)

Mr S. Sarma, Mr U.K. Nair and

Mr D.K. Sharma

.....ADVOCATE FOR THE
APPLICANT(S).

-VERSUS -

Union of India and others

.....RESPONDENT(S)

Mr K.N. Choudhury, Mrs R.S. Chowdhury

and Mr G. Rahul

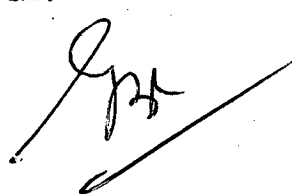
.....ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE-CHAIRMAN

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the judgment is to be circulated to the other benches ?

Judgment delivered by Hon'ble Vice-Chairman



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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.86 of 2003

Date of Order : This the 26th day of June, 2005

The Hon'ble Shri Justice G. Sivarajan, Vice-Chairman.

The Hon'ble Shri K.V. Prahladan, Administrative Member.

Shri Barun Kumar Mishra
S/o Late Surya Narayan Mishra,
Working as Farm Manager (T-6),
ICAR (RC), Sikkim Centre,
Tadong, Gangtok.

.....Applicant

By Advocates Shri S. Sarma, Shri D.K. Sharma and Shri U.K. Nair.

- Versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Agriculture,
Krishi Bhawan, New Delhi.
2. The Indian Council of Agricultural Research,
Represented by the Director General,
Krishi Bhawan, New Delhi.
3. The Director,
ICAR Research Complex for NEH Region,
Barapani, Meghalaya.

..... Respondents

By Advocates Mr K.N. Choudhury, Mrs R.S. Chowdhury and
Mr G. Rahul.

.....

ORDER

SIVARAJAN. J. (V.C.)

The matter relates to the promotion of the applicant from
Farm Manager (Agri), T-6 to Technical Officer, T-7 in the Indian
Council of Agricultural Research, Research Complex for North
Eastern Hill Region, Barapani, Meghalaya. The applicant was initially

[Signature]


appointed as Farm Manager (Agri), T-6 at Indian Council of Agricultural Research Complex (ICAR for short), Research Complex, Tripura Centre, Lembucherra, on 29.9.1981 from where he was transferred in the month of April 1999 to ICAR, Research Complex, Sikkim Centre where he is working under the respondent No.3. The applicant has filed this O.A. seeking for direction to the respondents to promote him from the due date, i.e. the date when similarly situated employees were so promoted with all consequential benefits alongwith arrear salary and to recast his seniority accordingly.

2. According to the applicant as per the rules the requisite qualification for promotion to the next higher grade, i.e. Technical Officer (T-7) is five years of service as Technical Officer (T-6). The applicant had completed five years of service as Technical Officer (T-6) on 29.9.1986. According to the applicant he was entitled to be promoted to the Grade of T-7 thereafter. It is stated that the criteria for promotion was that the authority shall make assessment every five years in respect of the incumbents in the Grade of T-6 and that the applicant's promotion became due in the year 1986. It is further stated that his case was referred to the Assessment Committee meeting and he appeared before the same on 3.5.1988 at Shillong and that on finding him suitable for promotion the DPC duly recommended his name for promotion and forwarded to the Council for consideration. It is further stated that the Council did not approve his case for promotion which fact was intimated to the applicant as per Memo dated 18.2.1991 (Annexure-A). The applicant thereafter, filed appeal dated 4.3.1991 to the Secretary, ICAR, new Delhi followed by reminders (Annexures- B, B/1, C and C/1). The applicant then received a communication dated 20.5.1993 (Annexure-D) directing for

[Signature]

furnishing certain details by filling up the enclosed form, which the applicant complied with immediately thereafter vide Annexure-D/1. Since the appeal was not disposed of the applicant again submitted representation dated 12.11.1999 and 20.1.2000 (Annexures- E and E/1). The Assistant Administrative Officer, ICAR issued a communication dated 21.5.2001 (Annexure-F) wherein it is stated that the competent authority has not approved the case of the applicant for promotion to the next higher grade and therefore, the applicant was asked to furnish supplementary information in the enclosed form for the period from 1.1.1987 to 31.3.1989. The applicant furnished the said supplementary information also by communication dated 27.8.2001 (Annexure-G) and 24.8.2001 (Annexure-G/1). In the meantime, ICAR, New Delhi issued a Circular dated 2.5.1989 adopting revised criteria for the gradation of C.C.R.s of Technical Personnel wherein, it is stated that "..... It has been decided that technical personnel who are recommended for assessment/promotion upto grade T-5 should possess consistently three "good" reports and "Very good" for T-6 and above."

3. The applicant has stated that similarly situated persons who were denied promotions, namely S.M. Goswami, Dr Ramesh Singh, Shri Vishwakam, A.S. Singh, Dr R.K. Tarat, Shri D. Medhi were given the said promotion subsequently. It was also pointed out that one Shri Nepal Shah who was similarly situated like the applicant and whose case was ignored by the respondent No.5 had filed O.A.No.58 of 1994 before this Tribunal and the same was allowed by order dated 16.12.1997. The applicant states that the Circular dated 2.5.1989 providing revised criteria for assessment is only prospective in nature and that it cannot have any application in respect of persons due for



promotion prior to that date. It is also pointed out that the Tribunal in the order dated 16.12.1997 in O.A.No.58/1994 has clearly held so. Though the applicant, it is stated, was entitled to similar treatment, the applicant's case for promotion to T-7 has not been considered by the respondents in the manner it deserved. It is stated that in view of the decision of this Tribunal in O.A.No.58/1994 in the case of Nepal Shah, the applicant being similarly situated the respondents cannot deny the benefits to the applicant.

4. The respondents have filed a written statement. In para 6 of the said written statement it is stated that the assessment promotion to the next higher grade under the Technical Service Rules of ICAR is based as reflected in the ACR grading, five yearly assessment reports as well as the benchmark for assessment promotion. As per Rule 6.4 of the ICAR Technical Service, it is stated, "Merit promotion or grant of advance increment(s) to the successful technical personnel who complete five years of service between 1st July and 31st December of a year shall be given with effect from 1st July of the following year" and accordingly the applicant who joined service in ICAR on 29.9.1981 as Farm Manager (T-6) and completed his five years of service in the grade of T-6 as on 28.9.1986 was due for consideration for assessment benefit on 1.7.1987 and not in the year 1986 as claimed by the applicant. It is also stated that as per the procedure his case was considered by the Assessment Committee duly constituted with the approval of the ASRB which functions as an independent recruiting agency in the ICAR setup; the recommendation of the Assessment Committee were forwarded by the Institute for consideration and approval of the Appointing Authority as prescribed under Rule 9 of the Technical Service Rules; considering



the recommendations of the Assessment Committee, it was observed that during the period under assessment the overall performance of the applicant was rated as an 'average worker' and as such he was not allowed any assessment benefit as on 1.7.1987. The Appointing Authority of the Council, it is stated, did not approve the applicant's case for promotion as the applicant's performance was rated as 'average' and conveyed the same vide letter dated 18.2.1991. It is further stated in para 10 of the written statement that a second Assessment Committee was held in the year 1995 to consider the applicant's case for promotion, but due to non-fulfillment of quorum of members nominated by the ASRB, the effort did not materialize and that the promotion case of the applicant was again considered by the Assessment Committee during August 1999 and the Appointing Authority did not find him suitable for promotion due to his continued poor performance and accordingly the applicant was informed about the same vide letter dated 21.5.2001. The supplementary information called for, it is stated, is only to facilitate reassessment of his promotion case as per the provisions under the Technical Service Rules. Regarding the Circular dated 2.5.1989, it is stated that it has nothing to do with the non-promotion of the applicant for the year 1987-88 and that it was, in fact, due to the fact that the overall performance of the applicant was rated as 'average worker', that he was not allowed any assessment benefit as on 1.7.1987. Regarding the promotions given to six other persons mentioned in para 4.13 of the application, it is stated that they were found to be 'very good' and accordingly they have been allowed assessment benefit of promotion on the due dates on the recommendation of the Assessment Committee duly approved by the Appointing Authority. Regarding



Nepal Shah's case it is stated that the O.A. was filed against the erroneous application of the criteria of the requirement of at least three consistent 'very good' in the ACR adopted vide Council's Circular dated 2.5.1989. Regarding the supplementary information sought from the applicant as per letter dated 21.5.2001 (Annexure-F) for the period from 1.1.1987 to 31.3.1989, it is stated that it was in connection with the assessment for the extended period of eligibility and accordingly necessary action has already been completed by the respondents and the result is also being communicated to the applicant as soon as the approval/decision from the Appointing Authority is received. It is also stated that during the pendency of the O.A., a DPC was also held on 5.8.2003 and the name of the applicant alongwith the list of AAR grading etc. was duly placed before the said DPC and vide letter dated 11.8.2003 (Annexure-A to the written statement) the proceedings of the DPC have been sent to the Council for approval by the Agricultural Scientists Recruitment Board (ASRB) who is the competent authority to grant such approval.

5. An additional written statement has also been filed on behalf of respondent Nos.2 and 3. With reference to the order in O.A. No.58 of 1994, filed by Nepal Shah, it is stated that the said Nepal Shah approached the Tribunal within the limitation period and the said Nepal Shal died immediately after the judgment being passed on 16.12.1997 and therefore, they did not pursue the appeal remedies.

6. We have heard Mr S. Sarma, learned counsel for the applicant and Mr G. Rahul representing Mr K.N. Choudhury, learned counsel for the respondents. The counsel for the respondents has also placed before us the relevant assessment records.



7. Admittedly, the applicant was appointed as Farm Manager (Agri), T-6 on 29.9.1981; he had completed five years of service as Technical Officer, T-6 on 29.9.1986. As it is he has satisfied the eligibility requirement for promotion to the grade of T-7 from that date. Of course, the further requirement for promotion as admitted by the respondents is that an Assessment Committee duly constituted with the approval of the ASRB which functions as an independent recruiting agency in the ICAR setup will consider the ACR gradings for the five year period and "Merit promotion or grant of advance increments are given to the successful Technical Personnel who completes five years of service between 1st July and 31st December of a year with effect from 1st July of the following year." It is also an admitted position that the applicant was due for consideration for assessment benefit on 1.7.1987. It is further admitted that as per the procedure the applicant's case was considered by the Assessment Committee and the recommendations of the Assessment Committee were forwarded by the Institute for consideration and approval of the Appointing Authority as prescribed under Rule 9 of the Technical Service Rules. However, it is stated that the Appointing Authority of the Council did not approve the applicant's case for promotion as the applicant's performance was rated as 'average' and the said fact was intimated to the applicant vide letter dated 18.2.1991. The applicant then filed an appeal against the same and he had been pursuing this matter till the date of filing the O.A. in the year 2003. It would also appear that the respondents under one pretext or the other had been denying the benefit of grade promotion to T-7 to the applicant and finally it has come out that on the basis of supplementary information sought for and obtained from the



applicant for the period from 1.1.1987 to 31.3.1989 necessary action has already been completed by the respondents and the result is also being communicated to the applicant as soon as the approval/decision from the Appointing Authority is received. It is further clarified that during the pendency of the O.A. a DPC was also held on 5.8.2003 and the name of the applicant alongwith the list of AAR grading etc. was duly placed before the said DPC and vide letter dated 11.8.2003 the proceedings of the DPC have been sent to the Council for approval by the ASRB..

8. As the matter stands, it would appear that the only reason for denying the grade promotion to the applicant from T-6 to T-7 is that the overall performance of the applicant was rated as an 'average worker'. We have perused the ACRs and the assessment records placed by the counsel for the respondents before us. A perusal of the ACRs of the applicant would show that the format for general assessment contain only the columns, 'outstanding', 'very good', 'average' and 'below average'. In other words there is no column for 'good' in between 'very good' and 'average'. We also find that the ACRs of the applicant for the period from 29.9.1981 to 31.12.1981 showed that the applicant was assigned 'very good' for the first three items and 'average' for the remaining items. Regarding the period from 1.1.1982 to 31.12.1982 it is seen that except in one item which is 'very good' all other items are shown as 'average'. For the period from 1.1.1983 to 31.12.1983 there are 'very good' in three items and others are 'average'. For the period from 1.1.1984 to 31.12.1984 the applicant has been assigned 'very good' in all the items. For the period from 1.1.1985 to 31.12.1985 there is 'very good' for three items and in all others 'average'. For the period from 1.1.1986 to

9/ps

31.12.1986 all the items are noted as 'very good'. For the period from 1.1.1987 to 31.12.1987, 'very good' is there in four items and in the other items 'average'. For the first time in the ACR for the year 1987 there is an entry 'an average worker'. It is worthwhile to note here that the noting and the assessment do not tally. Even in cases where 'very good' has been assigned in the general assessment in all columns (see the ACR for the period 1.1.1986 to 31.12.1986), when it came to the remarks he has been shown as an 'average worker'.

9. We have also seen from the assessment records that the applicant's case for the grade promotion was recommended by the Assessment Committee. The applicant's grade promotion from T-6 to T-7 was considered by the Assessment Committee of five expert persons and had unanimously recommended the case of the applicant also for promotion. It is seen from the communication dated 11.4.200 issued by the ICAR, New Delhi that the competent authority has not approved the recommendation of the Assessment Committee as the applicant "does not fulfill the eligibility criteria." It is seen that the Assessment Committee consisting of three eminent persons met on 5.8.2003 and after careful examination of the relevant papers observed thus:

"The Committee after careful examination of all the relevant papers found that the Five Yearly Assessment of Shri B.K. Mishra, Farm Manager, T-6 was recommended by the previous Five Yearly Assessment Committee meeting held on 6th July, 1999, but the same was not approved by the competent authority on the grounds of not having three 'very good' AARs in the relevant period. The benchmark of three very good AARs came into existence w.e.f. 2.5.1989 vide Council's letter No.7(18)/85-Per.II dt. 2.5.1989. Prior to that the benchmark for promotion below the grade of Rs. 3700-5000/- was only 'good' as per DOPT norms. The Committee has examined his case for grant of advance increment for the period from 29.8.86 effective from 1.7.87 and for promotion to

Opb

the next higher grade w.e.f. 1.7.88. Accordingly Shri B.K. Mishra, T-6 has been recommended for advance increments and promotion as follows:

2(two) advance increments - w.e.f. 1.7.87

Promotion to the grade of
T-7(Rs. 3000-4500/-) - w.e.f. 1.7.88."

10. The above observations clinches the issue. Though this Tribunal called for the records of the CSIR, the Appointing Authority, the respondents have filed an affidavit on 19.1.2005 wherein it is stated that "very recently the Regional Head Office at Barapani, Meghalaya received a letter from the Head Office at New Delhi that the said files and documents as called for are not traceable and as is the normal practice of destroying/weeding out old records, in all probability such records have been destroyed/weeded out." When the assessment authority, namely the Five Yearly Assessment Committee consisting of experts in the field clearly says that the applicant's case for grade promotion was not approved by the competent authority on the ground of not having three 'very good' AARs in the relevant period, it must be taken that the only ground on which the applicant was denied grade promotion was that he did not have three 'very good' AARs during the relevant period. The Committee itself has pointed out that the benchmark of three 'very good' AARs came into existence with effect from 2.5.1989 vide Council's letter No.7(18)/85-PER.II dated 2.5.1989 and that prior to that the benchmark for promotion below the grade of Rs.3000-5000/- was only 'good' as per DOPT norms. The Committee with reference to the said norms has clearly recommended that advance increments and promotions have to be given to the applicant with effect from 1.7.1987 and 1.7.1988 respectively. Here it is relevant to note that as per the DOPT norms the benchmark for promotion below the grade of 3700-5000/- was only

[Signature]

'good'. As already noted in the ACRs there was no column for 'good' and therefore, all those persons who did not secure 'very good' even if they are 'good' can only fall under 'average'. In fact, we find some correspondence available in the file that this aspect was also pointed out by the Assessment Committee.

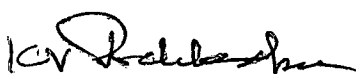
11. Here it is relevant to note that one Nepal Shah had filed O.A.No.58/1994 before this Tribunal alleging that the respondents had denied the grade promotion to him by applying the Circular dated 2.5.1989 on the ground that the applicant therein did not get three 'very good' during the relevant period. The Tribunal by its order dated 16.12.1997 (Annexure-I) had clearly held that the Circular dated 2.5.1989 was not applicable in the case of the applicant therein for the reason that the Assessment Committee met for recommending the eligible hands for grade promotion to T-7 prior to that date. The respondents were directed to give promotion to the said Nepal Shah. Here, the proceedings of the Assessment Committee held on 5.8.2003 clearly speaks of this position and recommended the case of the applicant. It is this proceeding which is stated to be pending approval by the competent authority, namely CSIR, New Delhi.

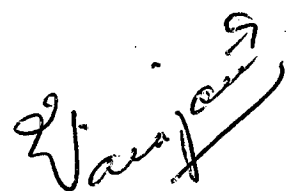
12. It is relevant at this point of time to once again note that the respondents were taking the stand that the applicant was denied the grade promotion only because the overall assessment of the applicant was 'an average worker' and not on the basis of the Circular dated 2.5.1989. Now it has come out that the promotion was denied to the applicant only on the basis of the Circular which provides for three 'very good' during the relevant period. Now, the recommendation of the Assessment Committee dated 5.8.2003 is stated to be pending approval by the CSIR, New Delhi. The legal

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position being as stated in the proceeding of the Assessment Committee supported by the decision of this Tribunal in O.A.No.58/1994 the respondents cannot avoid the inevitable consequence of giving promotion to the applicant from T-6 to T-7 with effect from 1.7.1987. We accordingly direct the respondents to promote the applicant from the post of Technical Officer (T-6) to Technical Officer (T-7) with effect from 1.7.1987. However, taking into account the attitude of the applicant being passive in the matter of pursuing the remedies as has been done by Nepal Shah, we are of the view that the promotion of the applicant as directed can be only notional with effect from 1.7.1987 without back wages.

The O.A. is disposed of as above. No order as to costs.


(K.V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(G. SIVARAJAN)
VICE CHAIRMAN

nkmm

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Central
Administrative Tribunal Act.1985)

. O.A.No. 86 of 2003

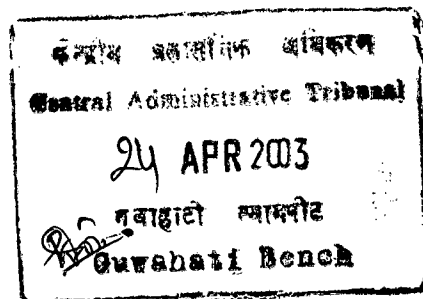
Barun Kumar Mishra

-VS-

Union of India & Ors.

GIST OF THE CASE

29.9.81	The applicant got his initial appointment as Firm Manager (Agri) T-6.
April 1999	He was transferred to Sikkim Centre.
<u>29.9.86</u>	With effect from 29.9.86, the applicant is entitled to T-7. -
28.2.91	Letter of the Joint Director Tripura, Center regarding non-considerations of the case of the applicant.
4.3.91	Appeal preferred by the applicant.
5.3.91	Forwarding letter
14.1.92 and 19.1.93	Representations
20.5.93	Letter by the Joint Director regarding 5 yearly Assessment
9.9.93	Forwarding letter
12.11.99	Representation filed by the applicant
20.1.2000	Representation filed by the applicant
21.5.2001	Letter written by the respondents seeking additional informations
24.8.2001	Representation submitted by the applicant enclosing additional informations.
27.8.2001	Forwarding letter
2.5.89	DM guiding the field of promotion as Technical Officers.
16.12.97	Judgment and order passed in OA 58/94.



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case :

86
O.A. No.....of 2003

BETWEEN

Shri Barun Kumar Mishra Applicant.

AND

Union of India & ors..... Respondents.

I N D E X

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Filed by :

Usha Das
Advocate

Regn.No.:

File : c:\WS\barunkum

Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Central
Administrative Tribunal Act.1985)

D.A.No. 86 of 2003

BETWEEN

Sri Barun Kumar Mishra
Son of Late Surya Narayan Mishra
Att present working as Farm Manager(T-6)
ICAR(RC), Sikkim Centre,
Tadong, Gangtok.

..... Applicant.

- AND -

1. The Union of India.
Represented by Secretary to the
Govt. of India.
ministry of *Agriculture*
Krishi Bhawan New Delhi
2. The Indian Council of Agricultural Research,
Represented by the Director General,
Krishi Bhawan, New Delhi.
3. The Director,
ICAR Research Complex for NEH Region
Barapani, Meghalaya.

..... Respondents.

PARTICULARS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION
IS MADE:

This application is directed against the
arbitrary and discriminatory action of the respondents for
non-consideration of promotion of the applicant inspite of
recomendation of Assesment Committee and inspite of his
several representations/ appeals, though the similarly
situated persons, even the persons junior to him also had
already been promoted to the grade of T-8.

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Filed by
The applicant through
Alsha Das.
Advocate
25/11/03

2. LIMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act, 1985.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1. That the applicants are citizens of India and as such they are entitled to all the rights, privileges and protection as guaranteed by the Constitution of India and laws framed thereunder.

4.2. That the applicant was initially appointed as Farm Manager (Agri) T-6 on 29.9.81 at ICAR Research Complex, Tripura Centre, Lembuchera, and thereafter he has been transferred to ICAR Research Complex, Sikkim Centre in the month of April 1999, wherein he is still working. The respondent No.3 is the controlling authority of applicant.

4.3. That as per the extant rules guiding the field the requisit qualification to get the promotion to the next higher grade i.e. Technical Officer, (T-7) is 5 (five) years of service as Technical Officer (T-6). The applicant as has completed his 5 years of his service as Technical Officer.

(T-6) on 29.9.86, hence from that very date, the applicant was entitled to be promoted to the grade of T-7. At that point of time the criteria for promotion was that the authority shall make assesment every 5 (five) years in

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respect of the incumbents applicant in the grade of T-6.

4.4. That as the applicant's promotion became due in the year 1986, his case was referred to the assessment committee meeting and he appeared before the same on 3.5.88 at Shillong (i.e. in the O/o the Respondent No.3) along with others. As being found suitable for promotion, the DPC duly recommended his name for promotion and forwarded to the Council for consideration.

4.5. That the applicant begs to state that inspite of the recommendation of the DPC, the council did not approved his case for promotion. The Joint Director of Tripura Centre, vide letter under memo No.F.4(149)/878998 dated 18.2.91 had informed the applicant about the same. p12

A copy of the letter dated 28.2.91 is annexed herewith and marked as Annexure-A.

4.6. That the applicant beg to state that while his case has not been considered for promotion, he submitted an appeal dated 4.3.91 before the Secretary, ICAR, New Delhi through proper channel to re-consider his case for promotion vide letter no.f.4(62)81/173/702 dated 5.3.91.

A copy of the appeal dated 4.3.91 along with the forwarding letter dated 5.3.91 are annexed herewith and marked as Annexure-B and B/1 respectively.

4.7. That the applicant begs to state that when the respondents has not done anything towards disposal of his appeal, he made several representations/ reminders following his appeal dated 4.3.91 requesting the authority concern to consider his case for promotion to the next higher grade.

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Copies of representation dated 14.1.92 and 19.1.93 are annexed herewith and marked as Annexure-C and C/1.

4.8. That the applicant beg to state that he received a letter bearing memo no.F.4(106)191/478 dated 20.5.93 from the joint Director, ICAR(RC), Tirpura Centre, whereby he was asked to fill up the forms of five yearly Assesment form. The applicant submitted the same once again vide letter dated on 7.9.93.

A copy of the letter dated 20.5.93 and the forwarding letter dated 7.9.93 are annexed herewith and marked as Annexure-D and D/1.

4.9. That the applicant begs to state that inspite of repeated representation/reminder and submission of Five Yearly Assesment his case has not been considered for promotion to the next higher grade i.e. T-7. Then the applicant prefered another serries of representations with a request to give his due promotion.

Copies of representations dated 12.11.99 and 20.1.2000 are annexed herewith and marked as Annexure-E and E/1.

4.10. That the petitioner begs to state that the authority asked him to furnish some supplimentary information in the enclosed proforma for the period of 1.1.87 to 31.3.89 once again to process his case further vide letter bearing memo no.RC(R)8/99 dated 21.5.2001.

A copy of the letter dated 21.5.2001. is annexed herewith ass Annexure-F.

4.11. That the applicant, upon receipt of the said letter dated 21.5.2001 submitted the supplementary information as desired by the authority concerned along with an application on 24.8.2001 which was duly forwarded by the Asstt. Administrative Officer, Sikkim Centre vide letter dated 27.8.2001.

A copy of the forwarding letter dated 27.8.2001 and a copy of the letter dated 24.8.2001 is annexed herewith and marked as Annexure-G and G/1.

4.12. That the applicant begs to state that inspite of the fact and circumstances, narrated above, the case of the applicant has not been considered for promotion, which is due to him since the year 1986. The applicant came to know that certain new guideline, i.e. circular dated 2.5.89 have been formulated adopting some criteria regarding promotion of technical personal working in ICAR. The promotion of the applicant has become due since 1986 and the new rules/circular came into picture with effect from 2.5.89 and the said circular have its prospective effect only, which is not applicable at all in the case of the present applicant.

A copy of the circular dated 2.5.89 is annexed herewith and marked as Annexure-H.

2.13. That the applicant begs to state that, the case of some similarly situated persons, who were denied their promotion, namely S.M.Goswami, Dr. Ramesh Singh, Sri Vishwakam, A.S.Singh, Dr. R.K. Tarat, Sri D Medhi has given the said promotion subsequently. Further, one Sri Nepal Shah who is also similarly situated like the present applicant

BMishra

and whose case was also ignored, had occasion to come before this Hon'ble Tribunal, by way of filling original Application No. 58/94, and this Hon'ble Tribunal was pleased to allow the said application vide judgement and order dated 16.12.97. In the instant case the principles laid down by this Hon'ble Court in the case of Nepal Shah is squarely applicable.

A copy of the order dated 16.12.97 ✓
is annexed herewith and marked as
Annexure-I.

4.14. That the applicant begs to state that his case was never considered for promotion, inspite of his repeated representations/ reminders. Situated thus he send a Legal notice through his advocate and aspected that his case would be considered, but the respondents have not responded to the said legal notice. Hence this application seeking an appropriate direction from this Hon'ble Tribunal.

A copy of the Legal notice is
annexed herewith and marked as
Annexure-J.

4.15. That the applicant was constantly pursuing the matter before the authority concerned for consideration of his case highlighting the earlier cases but for the reasons best known to the authority the benefit was however denied to him. The applicant in several occasion visited the office of the respondent No.3, who is the concerned authority but apart from assurance nothing came out in positive. The respondent No.3 issued a letter dated 21.5.2001 to the affplicant asking him to furnish detailed ✓ informations performing to his claim. the applicant was hopeful that the assurance made by the respondents would be

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materialised soon. But several months have passed even than there has been no respondents from the Respondents.

4.16. That the applicant begs to state that the matter relating to the present OA has already been adjudicated inform by the Hon'ble Tribunal and by now it has attained its finality. The respondents under no circumstances could deny the benefit of the said judgment which has attained its finality. It is pertinent to mention here that when a law has been laid down by a competent court of law it is the duty of the respondents authority to follow the same in its true spirit and extend the benefit of the said judgment to all the similarly situated employees, without requiring him to approach the door of court again and again. In such an eventuality appropriate direction need be issued to the respondents to effect his promotion to the higher grade with retrospective effect with all consequential service benefits and arrear salary & seniority etc.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the action of the Respondents for not considering his case for promotion is per-se illegal, arbitrary and discriminatory, and the same is in direct confrontation with the order dated 16.12.97 passed by this Hon'ble Tribunal in OA No.58/94 in a similar case.

5.2. For that the action on the part of the respondents in not treating the applicant at par the other similarly situated persons in whose favour the aforesaid promotion has been given effect, hence the action/inaction of the

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respondents is discriminatory and appropriate direction need be issued directing the respondents to promote the applicant from the due date.

5.3. For that it is the settled law that when some principles have been laid down in a judgement extending certain benefits, the said benefits are required to be given to the similarly situated without requiring them to approach the Court again and again.

5.4. For that the authority should have promoted the applicant to the grade of T-7, immediately after the recommendation of the D.P.C. and if the case of the applicant was considered and rejected as per the new circular dated 2.5.89 which have its prospective effect only is liable to be set aside and quashed.

5.5. For that the discrimination meted out to the applicant in not extending the benefits of the order of the Hon'ble Tribunal and not treating him along with the similarly situated persons is also violative of Article 14 and 16 of the Constitution of India.

5.6. For that in any view of the matter the action/inaction of the respondents are not sustainable in the eye of law and liable to be set aside and quashed.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds at the time of hearing of the case.

5.6. For that in any view of the matter the imputed action of the respondents are not sustainable in the eye of law and liable to be set aside and quashed.

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The applicant craves leave of the Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER

COURT:

The applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

8.1. To direct the Respondents to promote the applicant from the due dated i.e. the date when similarly situated employees have been so promoted with all consequential benefits, along with arrear salary and to recast his seniority accordingly.

8.2. To direct the respondents to extend the benefits of the order passed by this Hon'ble Tribunal.

8.3. Cost of the application.

8.4. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Under the facts and circumstances of the case the applicant does not pray for any interim order at this stage.

10.

11. PARTICULARS OF THE I.P.O.:

1. I.P.O. No. : 86 490025
2. Date : 22/4/03
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

VERIFICATION

I, Barun Kumar Mishra, aged about 51 years, Son of Late Surya Narayan Mishra, at resident of Gr.No.IV/3, ICAR Research Complex, Sikkim Centre, Gangtok, I hereby solemnly affirm and verify that the statements made in paragraphs 1 to 3, 4.1, 4.4, 4.15, 4.16 & 5 to 12..... are true to my knowledge and those made in paragraphs 4.2, 4.3, 4.5 to 4.14 are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 20th day of April of 2003.

Signature.

Barun Kumar Mishra

JOINT COUNCIL OF AGRICULTURAL RESEARCH
ICAR RES ARCH COMPLEX FOR J.E.H. REGION
UNROI ROAD, BARAPANI, MEGHALAYA

No. RC(BR)11/88/57

Dated Barapani, the 17th May, '90

To

The Joint Director,
ICAR Research Complex for JEH Region,
Tripura Centre,
P.O. Lembucherra, West Tripura.

Sub: Result of Five-yearly Assessment for T-6 staff
of your centre.

Sir,
With reference to the above, I am to say that
the proposal for assessment in respect of Shri Barun
Kr. Mishra, T-6(F.M.) was duly forwarded to the Council
H.Q. New Delhi for consideration alongwith recommen-
dation of the Committee constituted for the purpose.
But the Council did not agree neither for promotion
nor advance increment. Shri B.K. Mishra, T-6(F.M.),
may please be informed accordingly.

Yours faithfully,

Sd/- (S. SAHA)
Administrative Officer

Memo. No. F.4(149)/87/378/978 Dated, the 18/2/91

Copy for information to Sh. B.K. Mishra, Farm Manager
(T-6), ICAR, Tripura Centre, Lembucherra.

2 . Personal File of Sh. Mishra.

Joint Director
Tripura Centre

Attested
Advocate.

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
ICAR Research Complex for N.E.H. Region
Tripura Centre, P.O. Lembucherra 799210
West Tripura

No.F.4(62)81/173/ 702

Dated the 5th March 1991.
7

To

The Director
ICAR Research Complex for N.E.H. Region,
Barapani Farm, Umroi Road,
MEGHALAYA

Sub: Forwarding of appeal submitted by Shri B.K. Mishra
Farm Manager (T-6) regarding re-consideration of
his Five-Yearly Assessment.

Ref: Complex Hqr. letter no.RC(BR)11/88/57 dt.17-5-90.

Sir,

While forwarding herewith the representation submitted by Shri Barun Kumar Mishra, Farm Manager T-6, ICAR Research Complex for N.E.H. Region, Tripura Centre which is self explanatory, I wish to say that the appeal made by Shri Mishra to reconsider his Five Yearly assessment needs sympathetic consideration and the undersigned do not hesitate to recommend his earnest appeal favourably.

It is requested that his representation may kindly be forwarded to the Council for favour of sympathetic consideration.

Yours faithfully,

Sr
(S. LASKAR)
JOINT DIRECTOR

✓ Copy to Shri Barun Kumar Mishra, Farm Manager (T-6) w.r.t. his representation of dated 4th March 1991.

Attested

Wan

Advocate.

14 -
The Secretary
ICAR Krishi Bhawan
New Delhi - 1

(Through Director, ICAR Research Complex for NEH Shillong)

Sub: An earnest appeal to re-consider Five-Yearly
Assessment.

Ref: J.D.'s endorsement no.F.4(149)/87/348
dt. 18th Feb. '91 (copy enclosed)

Sir,

With due respect and humble submission I would like to draw your kind attention that I have been serving as a Farm Manager (T-6) for the last 9 and half years in ICAR Research Complex, Tripura Centre. After the completion of 6 and half years I appeared at the assessment interview conducted at Shillong on 3rd May 1988. Recently (18-2-91) I have come to know vide letter referred above that my proposal for promotion was duly recommended by the committee and forwarded to the Council for consideration but was not approved. It is pertinent to mention that some other persons appearing at the said interview was duly promoted to the next higher grade.

It may be mentioned that after serving in the remotest corner of our country for a long span of time may I not keep any hope to get myself promoted to the next higher grade and thus remove the cloud of mental agony and misery. To the best of my knowledge I have been duly performing the duties as assigned to me upto the entire satisfaction of my superiors and maintaining very cordial relationship with all the staff in the Centre.

Under the circumstances stated above I would therefore fervently make an appeal to re-consider my long awaited promotion in order to restore mental peace and tranquility and augment my working efficiency.

Thanking you.

Yours faithfully,

(B.K. Mishra)

(B.K. MISHRA)

Dated the 4/6 March 1991.

Attested
Under
Advocate.

The Director,
ICAR Research Complex for NEH Region,
Barapani, Meghalaya.

(Through proper channel)

Subject : Request regarding Five yearly Assessment.

Reference : My representation dated 04.03.91, forwarded vide letter No. F.4(62)/81/173/702 dtd 7th March'91.

Sir,

With due respect and humble submission I would like to draw your kind attention towards the fact that I made an appeal to the Council to reconsider my five yearly Assessment through proper channel, which had been forwarded to you by joint Director vide reference cited above, but I am sorry to inform you that I have not yet received any reply neither from Council nor from your end.

In this connection I am to inform you that I have completed more than 10 years of service as T-6 and inspite of serving a long span of time in this region, I have not been given any promotion.

Therefore I request you to kindly give due consideration in this regard to restore my mental peace.

Thanking you.

Dated : 14.01.92.

Yours faithfully,

(B.K. Mishra)
Farm Manager T-6 (Agri),
ICAR Research Complex,
Tripura Centre,
Lembucherra 799210.

Copy to
Shri B.K. Mishra
Farm Manager
ICAR (R.C.) Tripura Centre
Lembucherra
for information

sc/

Attested
WDA
Advocate.

- 16 -

No.F.

To

The Director,
ICAR Research Complex for NEH Region,
Jmroi Road, Barapani,
Meghalaya.

(Through proper channel)

Sub. : Request regarding five yearly assessment.

Ref. : My representation dated 04.03.91 and 14.01.92
forwarded vide letter No.F.4(62)/81/173/702
dated 7th March'91 and F.4(62)81/1428 dated
14th Jan.'92.

Sir,

With due respect and humble submission I would like to draw your kind personal attention towards the fact that I made an appeal to the Council, vide my representation dated 4th March'91 to reconsider my five yearly Assessment through proper channel and again I requested you vide my letter dated 14th Jan'92 which had been forwarded to you by the Joint Director vide reference cited above, but it is a matter of great pain to inform you that I have not yet received any reply in this regard.

Further I am to inform you that I have completed more than 11 years of service as T-6 in this difficult region and I have not been given any weightage for that inspite of performing my duty sincerely.

Therefore, I request you to kindly look into the matter sympathetically and help me in restoring my mental peace by giving me my due promotion.

Thanking you,

Yours faithfully,

Dated : 19.01.93.

Forwarded vide letter
No F.4 (62) 81/2321
dt 22-1-93

(B.K. Mishra),
Farm Manager (Agri.) T-6,
ICAR Research Complex,
Tripura Centre, Lembucherra.

Attested

Advocate.

sc/

Annexure — D

17-

ICAR, Tripura Centre,
Lumbachura 799210

No. F. 4(106) 171/478

Dated, the 20th May, 1993

To

The Farm Manager (Agri),
ICAR, Tripura Centre,
Lumbachura,

Sub: Five Yearly Assessment Report,

Sir, Please find enclosed herewith 6 (Six) copies of Five Yearly Assessment form and submit it to this office after duly filled in and signed by you at your earliest convenience.

Encls: As above

6 (Six) copies

Yours faithfully

[Signature]

20/5/93

Attested
WOM

[Signature]

To, The Joint Director,
ICAR (R) Tripura Centre,
Lembucherra.

Sub: Submission of Five yearly
Assessment Report.

Sir,
With reference to the letter
No. F.4 (106)/91/478 dated 20th
May '93 I am submitting here
with 6 (six) copies of five
yearly Assessment Report.

This is for favour of
your information and
necessary action please.

Yours faithfully

B. S. Ma
7/9/93

103. K. Mishra
Farm Manager

Attested

h. Das
Advocate

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
ICAR Research Complex for N.E.H. Region
Tripura Centre, P.O. Lembucherra 799210
West Tripura.

No.

Dated : 12.04.99.

To

The Director,
ICAR Research Complex for NEH Region,
Umiam, Barapani, Meghalaya.

(Through proper channel)

Sub : Request regarding my promotion.

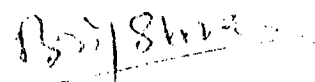
Sir,

With due respect and humble submission I would like to draw your kind personal attention towards the fact that I have been working here as Farm Manager (Agri.) T-6 since September, 1981. I have completed nearly 18 years of service as T-6 in this difficult region and I have not yet been considered suitable even for a single promotion, inspite of performing my duty sincerely, where as all others, even my juniors are likely to get second promotion. Earlier also I have represented my case.

Therefore, I request you to kindly look into the matter personally and help me in restoring my mental peace by awarding me promotion with due date.

Thanking you,

Yours faithfully,



(B.K. Mishra)
Farm Manager (Agri) T-6,
ICAR, Tripura Centre.

Attested

Advocate.

Dated 20/01/2001

The Director
ICAR Res. Complex for NEH Region,
Umiam, Meghalaya

(Through proper channel)

Sub : Request regarding five yearly assessment

Ref : My earlier representation dated 4.3.91,
14.1.92, 19.1.93 and 12.4.99

Sir,

With due respect I would like to draw your kind attention towards the fact that I joined as Farm Manager (Agri.) T-6 on 29th Sept. 1981 at ICAR Research Complex, Tripura Centre, Lembucherra. Subsequently, I have been transferred to ICAR Research Complex, Sikkim Centre, Tadong in April '99. I have completed more than 18 years of service and inspite of serving for such a long span of time in this difficult region and performing my duty sincerely I have not been given any promotion. At first I submitted my five-yearly assessment form on 18th March '87, but was denied promotion inspite of the fact that it was duly recommended by the committee, the reason not known to me. After that I made several appeals for reconsideration but it went unheard. At last I was asked to submit the Five-yearly Assessment form again and I submitted it on 7th Sept. '93. Even after passing of nearly six years time of resubmission, I have not yet been promoted, whereas all others, even my juniors have got two promotion.

In this connection, I want to draw your kind attention towards the fact that Late Mr. Nepal Shah (Farm Manager), who was also denied promotion along with me, moved to CAT and the Hon'ble Tribunal was pleased to allow the prayer of Mr. Shah by ordering his promotion from due date. Dr. S.N. Goswami (Technical officer), whose promotion was also not approved by the Council, was promoted on the basis of the letter written in his favour, by the Administrative officer of our Institute. Shree Dibakar Medhia (Farm Manager), was also promoted like that.

I, therefore, request you to kindly give due consideration on my request and help me in restoring my mental peace by promoting me from due date.

Thanking you,

Yours faithfully,

(B.K. Mishra)
Farm Manager (Agri.) T-6
ICAR (Re) Sikkim Centre, Tadong.

Forwarded vide Enrolment no. SKM/FF/928 on 20/1/2001

Attested
Advocate.

21 -

Annexure - F₄₆

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
ICAR RESEARCH COMPLEX FOR N. E. H. REGION
UNROI ROAD, UNILAM

NO.RC(R)8/99

DI. The May 21, 2001

To

The Joint Director,
ICAR Research Complex for NEH Region,
Sikkim Centre
Gangtok.

Five Yearly Assessment of Dr. B.K.Mishra, T-6 - furnishing of
supplementary information reg.

Sh. A.K.

Pl. Landans 116
enclosed five 1/3
assessment. for 30%
Sub:
to Sh B.K. Mishra

20/5/2001

Sir,

20/5/2001

With reference to the subject cited above, I am directed to inform you that the competent authority has not approved the case of Shri B.K.Mishra, Farm Manager (T-6) for his promotion to the next higher grade through the Five Yearly Assessment from the due date. Therefore, it is requested that necessary supplementary information in the enclosed proforma for the period 1.1.87 to 31.3.89 may kindly be obtained from Shri Mishra at an early date to enable us to process his case further.

I.C.A.R. SIKKIM CENTRE

Diary NO. 139

Date 28-05-2001

Yours faithfully,

G. Sinha

Asstt. Admin. Officer (Admin.)

Encl : As above.

Attested

Advocate.

(CONFIDENTIAL)

Indian Council of Agricultural Research
ICAR Research Complex for N.E.H. Region
Sikkim Centre, Tadong - 737102, Gangtok

No. SKM/Conf-6 (Vol. II) / 168

Dated Gangtok, the 27-08-2001.

To

The Asstt. Administrative Officer (Admn),
ICAR Research Complex for N.E.H. Region,
Umroi Road, Uniam - 793 103,
Meghalaya.

Sub. : Five Yearly Assessment of Shri B.K. Mishra,
Farm Manager T-6, furnishing of supplementary
information - regarding.

Ref. : Your letter No. RO(2)2/99 dated 21-05-2001.

Sir,

With reference to the subject cited above, I
am directed to forward herewith a supplementary information
for the period from 01-01-87 to 31-03-89 of Five yearly
Assessment duly submitted by Shri B.K. Mishra, Farm Manager,
T-6 alongwith an application dated 24-08-2001 addressed to
the Director, ICAR Research Complex for N.E.H. Region, Umroi
Road, Uniam - 793 103, Meghalaya, which is self-explanatory,
for favour of further needful.

Yours faithfully,

Encl. : As stated above.

(Davis Joseph)

Asstt. Administrative Officer

NIO

Copy forwarded for information to :

1. Shri B.K. Mishra, Farm Manager (T-6), ICAR Research
Complex for N.E.H. Region, Sikkim Centre, Tadong,
Gangtok - 737 102 with reference to his application
dated 24-08-2001.

Davis Joseph
27/8/2001

Asstt. Administrative Officer

Atteste

h. Das
Advocate.

The Director,
ICAR Research Complex for NEH Region,
Umiam, Meghalaya.

Through : Proper channel.

Subject : Five Yearly Assessment - regarding:

Sir,

As desired by the office vide letter No. RC(R)8/99 dated 21st May 2001, I am submitting herewith supplementary information for the period 01.01'87 to 31.03.'89. In this connection I am to inform you that I have submitted my First Five Yearly Assessment form on 18th March '87, but was denied promotion.

I submitted it again on 7th Sept. '93 as asked by the office and at that time I submitted supplementary information upto March '93 along with Five Yearly Assessment Form. However, I am submitting it again inspite of the fact that I have submitted it earlier.

Therefore, I request you to kindly look into the matter sympathetically and help me in restoring my mental peace by giving me promotion from due date, as I have completed nearly 20 years of service in this difficult region, without any promotion.

Thanking you,

Yours faithfully,

B.K. Mishra
24/8/01
(B.K. Mishra)
Farm Manager
ICAR (Rc) Sikkim Centre,
Tadong, Gangtok.

Enclosed : As stated above.

Attest
WCU
Advocate.

(COPY)

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
KRISHI BHAVAN, NEW DELHI

NO. 7(18)/85-PER, II

Dated the 2nd May, 1989

To

The Directors/Project Directors of all
Research Institutes of the Council.

Subject: Five-Yearly assessment of Technical personnel—
Adoption of some criteria for the gradation of
C.S.Rs of Technical Personnel for the past five
years under assessment for purpose of eligibility
for promotion to the next higher grades.

Sir,

The matter regarding adoption of some criteria
regarding gradation of the C.S.Rs of Technical Personnel who are
recommended for merit promotion on the basis of their five-
yearly assessment by the assessment Committee, has been examined
in the Council. It has been decided that the technical personnel
who are recommended for assessment/promotion upto grade T-5
should possess consistently three "good" reports and "very
good" for T-6 and above.

This may please be brought to the notice of all
concerned and receipt of this letter may please be acknowl-
edged.

Yours faithfully,

Sd/- Kishor Lal
Deputy Secretary (I)

Copy Forwarded for information to :-

1. All section including ASRB.
2. All sections/US(A)
3. Secretary, CSO, ICAR.

- x -

Memo NO. RC(BR) 1/89/74

Dated Shillong, the 14th June, 1989.

Copy forwarded for favour of information & action to:-

1. All Joint Directors of Centres including In-Charge,
KVK's/ TTC.

2. All Heads of Division, ICAR, Shillong

3. Technical Officer.

4. Assessment File of "R" Cell.

(G. SINHA)

Sd/- (AIMN)

Attested

Wan
Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

- 25 -

Annexure - I

Original Application No.58 of 1994

Date of decision: This the 16th day of December 1997

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Nepal Shah,
Technical-6 (Farm Manager),
Indian Council of Agricultural Research Complex,
Barapani, Meghalaya.Applicant

By Advocate Mr B.K. Sharma.

-versus-

1. The Union of India, represented by
The Secretary to the Government of India,
Ministry of Agriculture, New Delhi.
2. The Indian Council of Agricultural Research,
represented by the Director General,
Krishi Bhawan, New Delhi.
3. The Director,
ICAR Research Complex for NEH Region,
Barapani, Meghalaya.Respondents

By Advocate Mr A.K. Choudhury, Addl. C.G.S.C.

.....

ORDER

BARUAH.J. (V.C.)

The applicant has filed this application challenging the Annexure 1 order dated 21.9.1989 issued under the signature of the Under Secretary to the Government of India. In para 2 of the said order it has been mentioned that the competent authority did not approve the recommendation of the Selection Committee for promotion of the applicant as the applicant did not fulfil the

Attested

Advocate.

pre-requisite conditions laid down in Annexure 2 circular dated 2.5.1989. We quote para 2 of Annexure 1 order.

"I am further to say that the competent authority has not approved the recommendation of the Selection Committee to the grant of merit promotion from grade T-6 to the next higher grade T-7 in respect of the following officers as they do not fulfil the pre-requisite conditions with regard to their gradation of CCR as laid down and circulated vide ICAR letter No.7(18)/85-PER. III dated 2.5.1989.

- 1.....
2. Sh. Nepal Shah
- 3....."

2. , By Annexure 2 circular dated 2.5.1989, the Deputy Secretary(L), Indian Council of Agricultural Research, New Delhi, gave the criterion for promotion. As per the said criterion, in order to get promotion up to the grade T-5 an employee should possess consistently three 'good' reports and 'very good' for T-6 and above. This criteria was introduced by the Deputy Secretary(L)'s letter under No.7(18)/85-PER.II dated 2.5.1989.

3. The facts for the purpose of disposal of this application are:

The applicant, at the material time, was working as T-6 in the Indian Council of Agricultural Research (ICAR for short). His next promotion was to the grade of T-7. At that point of time the criteria for promotion was that the authority shall make assessment for five years of the applicant in grade T-6. The applicant's promotion became due in 1986. However, it was deferred and the DPC sat on 3.5.1988 and at that time the applicant was.....



Attested
W.Dan
Advocate.

was found suitable and had the necessary qualification for promotion to T-7 grade. Accordingly, the DPC made the recommendation. However, in spite of the recommendation of the DPC, the authority did not promote him. Being aggrieved, the applicant submitted Annexure-4 representation dated 8.8.1990. However, the applicant came to know about the Annexure-2 circular only in the later part of 1992. Thereafter, the applicant submitted Annexure 5 representation dated 23.4.1993. However, his representation was not considered. Hence the present application.

4. We have heard Mr B.K. Sharma, learned counsel for the applicant and Mr A.K. Choudhury, learned Addl. C.G.S.C. The main contention of Mr Sharma is that the applicant was selected by the DPC in the year 1988. At that time he was found to be qualified for promotion and accordingly his name was recommended for promotion. Therefore, the authority should have promoted him to T-7 grade immediately after the recommendation. However, the authority remained silent and later on, after Annexure 2 circular was circulated, Annexure 1 letter dated 21.9.1989 was written to the 3rd respondent- The Director, ICAR, informing him that on the basis of Annexure 2 circular dated 2.5.1989 the requirements for promotion was changed. Mr Sharma submits that the Annexure 2 circular was issued long after the selection and recommendation were made by the Selection Committee. Therefore, on the basis of the.....

Attested
[Signature]
Advocate.

the subsequent letter the applicant's promotion could not be denied. Mr A.K. Choudhury, on the other hand supports the impugned order. He submits that in view of the criterion subsequently adopted the applicant could not be promoted and there was nothing wrong in it.

5. On the basis of the submissions of the learned counsel for the parties, it is now to be seen whether the applicant's promotion could be denied by adopting certain criterion as per Annexure 2 circular issued subsequent to the applicant's selection. It is an established principle of law that any provision of Acts, Rules or Government Instructions are normally prospective. However, such can be made retrospective by making express provisions. In the present case, the Annexure 2 circular does not show that the authority while issuing the instructions intended to give retrospective effect. Mr Sharma draws our attention to Annexure D letter dated 8.9.1994 to the rejoinder by which the respondents had indicated that the Annexure 2 circular dated 2.5.1989 was not applicable to the persons selected earlier to the issuance of the same. We quote the relevant portion of the said Annexure D letter.



Attested
W.D.M.
Advocate

".....Dr S.N. Goswami, Technical Officer(T-6) was not considered for assessment promotion from T-6 to T-7 with the contention "that the criteria of having at least three Very Good reports consistently as laid down in the Council's circular No.7(18)/85-Per.II dated 2nd May'89(copy enclosed) has not been fulfilled by Dr S.N. Goswami. In this connection, I would like to say that Dr Goswami had joined the post of T-6 on 18/11/82(F.N.). Thereby it appears that his assessment period should be considered from 1.1.83 to 1.1.88 for the purpose of five yearly assessment. If it is so, the contention of three Very goods for assessment from the Grade of T-6 to T-7 as laid down in the Council's circular dated 2nd May'89 referred to above is not applicable....."

This letter was written by the Administrative Officer to the Secretary, ICAR, in connection with the promotion of one Dr S.N. Goswami from T-6 to T-7, who was also similarly not promoted for non-fulfilment of the criterion adopted by Annexure-2 circular. However, Dr Goswami was later on promoted by Annexure-E order dated 18.10.1995 to the rejoinder, issued by the Under Secretary(E-IV), ICAR, New Delhi.

6. Considering all the above we find that the present case is similar to that case and accordingly we are of the view that the criteria adopted by Annexure-2 circular dated 2.5.1989 was not applicable in the case of the applicant. He ought to have been promoted immediately after the selection was made, which was unfortunately not done. No reasons were shown for not promoting him immediately. We, therefore, direct the respondents to give promotion to the applicant from

the.....

Attested

hasan
secretary



the due date.

7. The application is accordingly disposed of.
However, in the facts and circumstances of the case
we make no order as to costs.

Sd/VICECHIEFMAN
Sd/MEMBER (A)

TRUE COPY
of the

COURT OFFICES
Central Administration Building
Gowanus, New York City
New York City, New York

Attested
H. J. O'Connell
Advocate

Sharmendra K. Sarmah

ADVOCATE

Jaitania (Lalmati) Guwahati - 781 033

Date

To,

1. The Director General,
Indian Council of Agricultural Resource (ICAR),
Krishi Bhawan, New Delhi-110001.
2. The Director,
ICAR, Reaserch Complex for NEH Region, Umroi Road,
Umiam, Meghalaya.

Sub : Legal Notice.

Sir,

Upon authority and as per instruction of my client Shri Barun Kumar Mishra, son of Late S.N. Mishra, at present working as Farm Manager (T-6), Indian Council of Agricultural Research (ICAR), Sikkim Centre, Tadong, Gangtok, Sikkim, under the Director of NEH Region, I give you this notice as follows :-

1. That my client was initially appointed as Farm Manager (Agri) T-6 on 29.9.81 at ICAR Research Complex, Tripura centre, Lembucherra. And thereafter he has been transferred to ICAR Research Complex, Sikkim Centre in the month of April 1999, wherein he is still working. He had already completed about 20 years of service in the same post and inspite of serving for such a long period of time and performing his duty sincerely he had not been given any promotion inspite of recommendation of Assessment Committee and inspite of his several appeals, though the similarly

Attested

KSR

situated persons like my client even the persons junior to him also had already been promoted as T-8. As per the extant rules guiding the field the required qualification to get promotion to the next higher grade i.e. technical officer, (T-7) is 5 years of service as technical officer (T-6). My client has completed his 5 years service as technical officer on 29.9.86 and from that very date he became due for promotion to the technical officer, (T-7).

2. That usually when an officer became due for such promotion the officer concerned use to get the said promotion within 6 months of completion of such period. However, in the case of my client several years have elapse but till every date same has not been effective. From a reliable sources somehow he came to know that his case was recommended for the said promotion but the said recommendation was never converted to any effective order of promotion. It is pertinent to mention here that my client was never communicated with any adverse remark in his ACR. To that effect certain new guideline have been formulated for giving such promotion to the post of T-7 and the same was communicated by a circular dated 2.5.89.

3. That my client became due for such promotion with effect from 29.9.86 and the new rules/guidelines have come into picture with effect from 2.5.89 and hence the said guidelines have its prospective effect only. It is the apprehension of my client that his case was examined considering the new guidelines (2.5.89) and for that reason only he was deprived of the same. Needless to say here that the case of my client was duly recommended by the assessment

Attested
10/8/89
Advocate

- 3 -

committee but due to the reasons best known to him the said recommendation was never converted to any effective orders of promotion.

4. That under the similar facts and situation some of my client's colleagues namely Shri S. M. Goswami, Dr. Ramesh Singh, Sh. Vishwakam, A.S. Singh, Dr. R.K. Tarat, Shri. D. Medhi has given the aforesaid promotion but for no fault of my client, his case was not considered. One Shri Nepal Shah who is also similarly situated like that my client and whose case was also ignored, had occasion to come before the Hon'ble Central Administrative Tribunal, Guwahati Bench, was pleased to allow the prayer of Shri Shah. In the instant case the principles laid down the Hon'ble Tribunal in the case of Shri Nepal Shah is squarely applicable to my client also.

5. That from the above, it is apparent that the case of my client to be considered along with the other similarly situated employees to whom the aforesaid promotion as already been made effective from due date.

That in view of the above facts and circumstances, I give you this notice upon authority and instruction of my client, making a demand that my client be given the promotion to the post of technical officer (T-7) from due date with all consequential benefits including arrears salary etc. and thereafter further promotion as T-8 within two month from the date of receipt of this notice, failing which my instruction will be to initiate appropriate legal proceeding against you. In such an eventuality, you will be

Attested

[Signature]

At: 11.10.10

solely responsible for the consequence proceeding thereof.

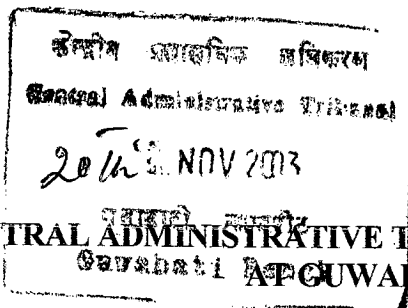
I hope and trust that there would be no such occasion for any type of litigation, unnecessarily bringing you into the same and there would be a happy end to the entire episode and the demand made in this notice would be fulfilled within the time limit fixed in this notice.

Thanking you.

Sincerely yours

D.K. Sarmah

checked
H. S.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH
Guwahati AT GUWAHATI

IN THE MATTER OF :

O.A. No. 86/2003

Sri B.K. Mishra

... APPLICANT

-VERSUS-

Union of India & Ors.

... RESPONDENTS

-AND-

IN THE MATTER OF :

Written statement filed on behalf of
Respondent Nos. 2 and 3.

I, Dr. Yash Pal Sarma, son of (Late) Dhani Ram Sarma, aged about 53 years presently working as Joint Director, I.C.A.R. Research Complex, NEH Region, Barapani currently holding the charge of Director, I.C.A.R. Research Complex do hereby solemnly affirm and state as follows:

1. That I have been impleaded as Respondent No.3 in the aforesaid Original Application No. 86/2003 and a copy of the said application has been duly served upon me. I have gone through the same and understood the contents thereof. I have been duly authorised to swear this affidavit on behalf of the Respondent No.2.
2. That all the averments and submissions made in the Original Application are denied by the answering Respondent, save and except those which have been specifically admitted herein and that which appears from the records of the Case.

3. That with regard to the statements made in paragraph 1 of the Application, the answering Respondent reserves the right to contend the same in the subsequent paragraphs herein below.
4. That with regard to the statements made in paragraphs 2 and 3 of the Application, the answering respondent has no comments to offer.
5. That with regard to the statements made in paragraph 4.1 and 4.2 of the Original Application, the deponent has no comments to offer.
6. That while denying the statements made in paragraph 4.3 of the Original Application, the Respondents beg to state that the assessment promotion to the next higher grade under the Technical Service Rules of ICAR is based as reflected in the ACR grading, five yearly assessment reports as well as the benchmark for assessment promotion. Hence, it is incorrect to presume that the applicant, who has completed his five years of service as Farm Manager (T-6) on 29.09.1986 is due for promotion from that very date, since the said promotion is not automatic on completion of every five years as stated by the applicant.
7. That with regard to the statements made in paragraph 4.4 of the O.A., the Respondents beg to state that the applicant was asked to appear before the Assessment Committee on 03.05.1988 at Shillong. It is also pertinent to be mentioned here that as per Rule 6.4 of the ICAR Technical Service, "Merit promotion or grant of advance increment(s) to the successful technical personnel who complete five years of service between 1st July and 31st December of a year shall be given with effect from 1st July of the following year" and accordingly the applicant who joined service in ICAR on 29.09.1981 as Farm Manager (T-6) and completed his five years of service in the grade of T-6 as on 28.09.1986 (during the assessment period ending as on 31.12.1986) was due for consideration for assessment benefit as on 01.07.1987 and not in the year 1986 as claimed by the applicant. As per procedure, his case was considered by the Assessment Committee duly constituted with the approval of the ASRB which functions as an independent recruiting agency in the ICAR setup. The recommendations of the Assessment Committee were forwarded by the Institute for consideration and approval of the Appointing Authority as prescribed under Rule 9 of the Technical Service Rules. Considering the recommendation of the Assessment Committee it was

-37-
✓

observed that during the period under Assessment the overall performance of the applicant was rated as an "average worker" and as such, he was not allowed any assessment benefits as on 01.07.1987.

8. That with regard to the statements made in paragraph 4.5 of the Original Application, the Respondents beg to state that as has already been stated in 4.3 above, during the period under assessment the performance of the applicant was rated as 'average' and as such, the Appointing Authority at the Council did not approve his case for promotion and accordingly the same was conveyed to him vide letter dated 18.02.1991 (Annexure -A to the Original Application).
9. That with regard to the statements made in paragraph 4.6 of the Original Application, the Respondents has no comments to offer.
10. That with regard to the statements made in paragraph 4.7, 4.8, 4.9 and 4.10 of the Original Application, the Respondents state that it is not correct that nothing was done towards redressal of the grievances of the applicant. In fact, a second Assessment Committee was also held in the 1995 to consider his case for promotion. However, due to non-fulfillment of quorum of members nominated by the ASRB, the efforts did not materialize. Similarly, the promotion case of the applicant was again considered by the Assessment Committee during August, 1999 and the Appointing Authority did not find him suitable for promotion due to his continued poor performance and accordingly the applicant was informed about the same vide letter dated 21.05.2001 (Annexure - F to the Original Application). It is further pertinent to mention herein that submission of supplementary information which was asked for vide the same letter dated 21.05.2001, is only to facilitate re-assessment of his promotion case as per the provisions under the Technical Service rules.
11. That with regard to the statements made in paragraph 4.11 of the Original Application, the answering respondents have no comments to offer.
12. That with regard to the statements made in paragraph 4.12 of the Original Application, the Respondents beg to state that as has already been mentioned in paragraph 3 hereinabove, the answering Respondents states that the present Original Application has been filed on the presumption that the new rules

enforced vide circular dated 02.05.1989 was applied in the case of the applicant. The answering Respondents categorically states that there is no merit in this presumption and infact the circular dated 02.05.1989 has nothing to do with the non-promotion of the applicant for the year 1987-88. It was infact due to the fact that the overall performance of the applicant was rated as "average worker" that he was not allowed any assessment benefits as on 01.07.1987.

13. That with regard to the statements made in paragraph 4.13 of the Original Application, the answering Respondent begs to state that the names of similarly cited cases as cited by the applicant have no bearing/relevance in the instant case since the performance of all the individuals mentioned in the application (i.e., 1. Dr. S.N. Goswami, 2. Dr. Ramesh Singh, 3. Sri Vishwakam, 4. Sri A.S. Singh, 5. Sri R.K. Tarat and 6. Sri D. Medhi) was found to be "very good" and accordingly they have been allowed the assessment benefit of promotion on the due dates on the recommendation of the Assessment Committee duly approved by the Appointing Authority. Further the case of Sri Nepal Shah is also not similarly situated as the only grievance of the applicant in the Original Application was against the erroneous application of the criteria of the requirement of atleast three consistently "very good" grading in the AAR adopted vide Council's Circular dated 02.05.1989. Hence the contentions put forth in paragraph 4.13 have no merit/applicability to the instant case.
14. That with regard to the statements made in paragraph 4.14 of the Original Application, the answering Respondent has no comments to offer.
15. That with regard to the statements made in paragraph 4.15 of the Original Application, the Respondents beg to state that as already mentioned in para 6 hereinabove, despite the possible efforts made by the respondents to redress the grievances of the applicant, the same could not be materialized only due to his continued poor performance. Further the supplementary information as asked for vide letter dated 21.05.2001 at Annexure - F from the applicant for the period 01.01.1987 to 31.03.1989 was in connection with his assessment for the extended period of eligibility and accordingly necessary action has already been completed by the Respondents and the result is also being communicated to the applicant as soon as the approval/decision from the Appointing Authority is received.

16. That the answering respondents denies the statements made in paragraph 4.16 of the application and further states that the contents of the present application have no similarity with the contentions/issues raised in O.A. No. 58/94 by the applicant therein and as such, no direction as has been prayed for, can be issued.
17. That the answering Respondents further beg to mention herein that notwithstanding the contention made hereinabove the Respondents state that during the pendency of the Original Application, a DPC was also held on 5th August, 2003 and the name of the applicant alongwith the list of the AAR grading etc. was duly placed before the said DPC. Accordingly, vide letter dated 11.08.2003 the proceedings of the DPC have been sent to the Council for approval by the Agriculture Scientists Recruitment Board (ASRB), who is the competent authority to grant such approval.

A copy of the letter dated 11.08.2003 is annexed herewith and marked as ANNEXURE - A.

18. That, hence in view of submissions made averments made hereinabove, it is humbly stated that no discrimination is being meted out to the applicant and infact the respondents have put in all efforts for a fair opportunity of promotion to the applicant. However, the respondents are bound by the decision of the final authority i.e., the ASRB. As such, this application is devoid of any merit and is accordingly liable to be dismissed.

Verification

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V E R I F I C A T I O N

I, Dr. Yash Pal Sharma, son of (Late) Dhani Ram Sharma aged about 53 years, presently working as Joint Director I.C.A.R. Research Complex for N.E. Region do hereby verify that the statements made in paragraphs 1, 12, 16, 17(pb), 18.

of the written statement are true to my knowledge and those made in paragraphs 17(pb).

being matters of record of the case are true to my information derived therefrom which I believe to be true and those made in paragraph is based on legal advice. I have not suppressed any material fact.

Date : 19/11/03

Place : Barapani


SIGNATURE

संयुक्त निदेशक (मुख्यालय) / Joint Director (Head Quarters)
भा. कृ. अनु. प.-उ. पूर्वी पर्वतीय अनुसंधान परिसर.
ICAR Research Complex For N.E.H. Region.
उमियम, मेघालय
Umiam, Meghalaya

INDIAN COUNCIL OF AGRICULTURAL RESEARCH
ICAR RESEARCH COMPLEX FOR N.E.H. REGION
UMROI ROAD, UMIAM-793 103

NO.RC(R) 8/99/14

Dt. 11th August, 2003.

To

The Under Secretary(Tech.),
I.C.A.R.
Krishi Bhavan,
New Delhi-110 001.

Sub: Five Yearly Assessment of Technical Personnel, Category-III, Group-I-Field/
Farm Technicians

Sir,

The Five Yearly Assessment Committee Meetings of the Institute for Assessment of Technical Staff(Category-III, Group-I-Field/ Farm Technicians) was held on the 5th August, 2003. As per provision in the Technical Service rules the constitution of the Assessment Committees were approved by the ASRB.

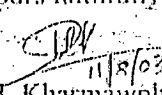
The recommendations of the Committees as per the proceedings in original along with checklist etc. are enclosed herewith for favour of approval of the Council please :-

1. Proceedings of the Assessment Committee in original in respect of Shri B.K. Mishra, Farm Manager, T-6.
2. Self contained notes placed before the DPC.
3. Copy of the ASRB's letter conveying approval for constitution of Assessment Committee for the above group.
4. Gist of AAR Grading with the remarks from the Assessment Committee where necessary.
5. Vigilance and Integrity certificates of the technical person concerned.
6. AAR dossiers in original in respect of Shri B.K. Mishra, T-6, for the relevant period of Assessment.
7. Five Yearly Assessment Proforma in respect of Shri B.K. Mishra, T-6 duly recommended by the Director.
8. Checklists in respect of the technical person concerned.

It is requested that approval of the Council on the recommendation of the DPC may kindly be communicated to the Institute at an early date for further needful at our end.

This has the approval of the Director.

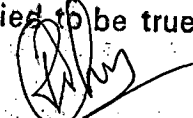
Yours faithfully,

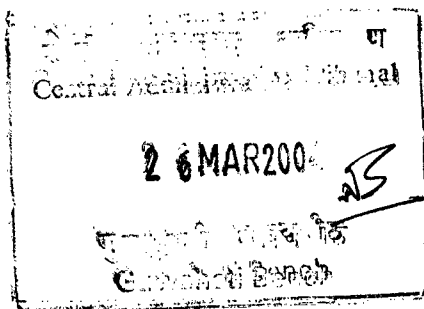

(M.J. Kharmawphlang)
Administrative Officer.

Encl: As above.

✓ Copy forwarded for information to the In-charge, Legal Cell, ICAR Research Complex, Umiam.

Certified to be true Copy


Ekheer Sirauthia Chowdhury
ADVOCATE



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 86/2003

Sri B. K. Mishra

-VS-

Union of India & Ors.

REJOINDER TO THE WRITTEN STATEMENT FILED BY THE RESPONDENT
NO.2 AND 3:

1. That the applicant has gone through the Written Statement submitted by the Respondent No.2 and 3. Save and except the statements which are not specifically admitted herein below, rest of the statements are treated to be total denial, and the statements which are not borne on records are also denied and the Respondents are put to the strictest proof thereof.

2. That with regard to the statements made in para 1, 2, 3, 4 & 5 of the Written Statement the applicant does not admit anything contrary to and/or inconsistent with the records of the case.

3. That with regard to the statement made in paragraph 6 of the written statement the applicant, while denying the statements made therein, and begs to state that the criteria for merit promotion from one grade to the next higher grade or grant of advance increment(s) in the same grade, on the basis of assessment of performance. The persons concerned will be illegible for consideration for such promotion or for the grant of advance increments(s) after the expiry of five years service in the grade. The

(41)
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Filed by
the applicant through
Alha Das
Advocate
26/3/04

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authority shall make assessment in every five years in respect of the person concern. The applicant never contended that the said promotion is automatic on completion of five years but as he completed the five years on 29.9.86 he is eligible for consideration of promotion to the next higher grade.

4. That with regard to the statement made in para 7 of the written statement the applicant while denying the contention made therein begs to state that the Rule 6.4 is not applicable in the present case as this provision has brought vide notification No.14(4)/94 Estt.IV dated 1.2.95 with effect from 1.1.95. The Applicant further denied that the Assessment Committee did not observe his overall performance as "average worker" which is contrary to the record therefore the said paragraph has been verified in the written statement as due to the knowledge. If it is presumed that his overall performance during that period was rated as an "average worker", he can not be deprived from getting promotion on that ground as his case is prior to circular dated 2.5.89. In any case if the promotion of the applicant is held up due to his poor performance for such a long period of time it was the duty of the authority concern to communicate the same to the applicant giving him opportunity to reform himself.

5. That with regard to the statement made in paragraph 8 of the written statement, the applicant begs to reiterate and reaffirm the statement made above as well as in the OA.

6. That with regard to the statement made in paragraph 10 of the Written Statement, while denying the contention made therein begs to state that the respondent admitted that the Assessment Committee was held after a laps of 12 years to consider the case of the petitioner because the Assessment Committee held in the year 1995 has not been materialised.

7. That with regard to the statement made in paragraph 12 of the Written Statement, the applicant begs to state that the respondents have acted illegally by not promoting the petitioner under the ammended (old) rules and the presumption of the applicant, now has been confirmed after filing this Written Statement in which it is stated that the applicant has not been promoted due to poor performance. It was in fact clear that each and every times, the DPC had found him suitable for promotion but it was only the council who did not approved his case for promotion. As such the very purpose of constitution of the said DPC was defeated.

8. That with regard to the statement made in paragraph 13 of the Written Statement, the applicant while reiterating and reaffirming the statement made in the OA and begs to state that his case is squarely covered with the cases referred in the OA, more particularly with the case of Nepal Shah.

9. That with regard to the statement made in paragraph 15 of the written statement the Applicant while denying the contention made therein begs to state that he

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has been superseded by his juniors right from the year 1987 illegally without any reason. Further the statements made by the respondent are false and baseless, so far poor performance is concern, the certificates issued by the join Director under whom the applicant was working are the best evidence of it. Somehow the applicant collect a copy of the Assessment report in which he has been graded as "Outstanding" worker and recommended his case for promotion to the next higher grade from due date i.e. from January 1987. 2

The certificates dated 7.6.84, 3.1.85, 15.1.87, 15.2.88 along with a photocopy of Assessment report are annexed herewith and marked as Annexure-1 series. ✓

10. That with regard to the statements made in paragraph 16 of the Written Statement the applicant reiterate the statement made in paragraph 7 herein above as well as in the OA and prays for a similar direction issued in O.A. No.58/94.

11. That with regard to the statement made in paragraph 17 of the Written statement, the applicant offers no comment.

12. The applicant prays before this Hon'ble Tribunal for an appropriate direction towards the respondents for production of records including the five yearly assessment reports of the applicant.

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13. The applicant states that in view of the contentions and averments made above it is a fit case wherein this Hon'ble Tribunal may be pleased to interfere in the matter directing the Respondents to promote the applicant from the due date by allowing the OA.

-6-

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VERIFICATION

I Shri Barun Kumar Mishra, aged about 51 years, son of Late S.N. Mishra, at present working as Farm Manager (T-6), Indian Council of Agricultural Research (ICAR), Sikkim Centre, Tadong, Gangtok, Sikkim, under the Director of NEH Region, do hereby solemnly affirm and verify that I am the applicant in this instant application and conversant with the facts and circumstances of the case. I am competent to verify this case and the statements made in paragraphs 1, 2, 5, 11 & 13 are true to my knowledge ; those made in paragraphs 3, 4, 5, 6, 7, 8, 9, 10 & 12 are true to my information derived from records and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 25th day of March, 2007.

Barun Kumar Mishra
Deponent



- 7 -

Annexure - 1 series

From: Dr S. LASKAR,

Joint Director.

Gram: Agricomplex

Phone:

Telox:

(47)

भारतीय कृषि अनुसंधान परिषद उत्तर पूर्वीय क्षेत्रीय कृषि अनुसंधान क्षेत्र, मिज़ोरम
ICAR RESEARCH COMPLEX FOR N.E.H. REGION, SHILLONG
Tripura Centre, Lembucherra-799210, West Tripura.

Dated, Lembucherra;
the 7/X June, 1984.

TO WHOM IT MAY CONCERN

This is to certify that Sri B.K. Mishra is working as Farm Manager(T-6) at this Centre since 29th September, 1981. Besides his normal duties of farm management of research work and crop cultivation, he is also assisting in research work of Agronomical trials. He is conducting experiments in cultivators' field (Model Agronomy) since 1983. He is also conducting the survey work of Agroforestry.

He is sincere, hard working fellow and bears a good moral character.

I wish him every success in life.

J. L. — m
(Dr S. LASKAR).

Joint Director,
ICAR Research Complex
Tripura Centre.

Attested
H. S. An
Advocate



- 8 -

Gram : AGRICOMPLEX

Phone :

Telex :

48

भारतीय कृषि अनुसन्धान परिषद उत्तर पूर्वीय पर्वतीय कृषि अनुसन्धान क्षेत्र, शिल्लोंग
ICAR RESEARCH COMPLEX FOR N. E. H. REGION, SHILLONG
Tripura Centre, P.O. Lembucherra-799210
West Tripura.

TO WHOM IT MAY CONCERN

This is to certify that Sri. B. K. Mishra, is working as Farm Manager at this Centre since 29th Sept. 1981. Besides his normal duties of Farm Management of Research work and crop cultivation, he is also assisting in research work of Agronomical trials. He is conducting experiments in cultivators field (Model Agronomy) since 1983. He is actively taking part in all the training programmes.

He is sincere, hard working fellow and bears a good moral character.

I wish him every success in life.

3/1/83
(Dr. S. Laskar)
Joint Director,
Tripura Centre.

*Attested
W.D. on
Advocate*

Dr. S. Laskar,
Joint Director

Gram : AGRICOMPLEX

Phone: 4205

Telex : 15

(49)

भारतीय कृषि अनुसन्धान परिषद उत्तर पूर्वीय पर्वतीय कृषि अनुसन्धान क्षेत्र, शिलंग
ICAR RESEARCH COMPLEX FOR N. E. H. REGION, SHILONG
Tripura Centre, P.O. Lembucherra-799210, Tripura West

Dated : 15.1.1987

TO WHOM IT MAY CONCERN

This is to certify that Sri B. K. Mishra is working as Farm Manager at this centre since 29th Sept., 1981. Besides his normal duties of day to day Farm Management of research nature and crop cultivation, he has conducted experiments on cultivators' field (Model Agronomy) to our full satisfaction since 1983. He is also assisting in research work of Agronomical trials. He has also actively associated himself in the "Lab to Land" programmes and "Farmers day" of this centre. He imparts training on Rice Production Technology every year to the State nominees of Tripura and Mizoram.

He is sincere, hard working fellow of amicable nature and takes up whatever work given to him with zeal and enthusiasm and works to the best of his capacity.

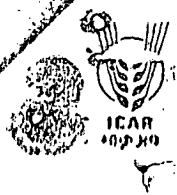
To the best of my knowledge and belief, he bears a good moral character.

I wish him every success in life.

S. Laskar
(S. Laskar)
Joint Director,

ICAR Research Complex,
Tripura Centre.

Attested
K. S. Das
Advocate



From: Dr. S. Laskar,
Joint Director

Gram : AGRICOMPLEX

Phone :

Telex :

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भारतीय कृषि अनुसन्धान परिषद् उत्तर पूर्वीय पर्वतीय कृषि अनुसन्धान क्षेत्र, शिल्लोंग
ICAR RESEARCH COMPLEX FOR N. E. H. REGION, SHILLONG
Tripura Centre, P.O. Lembucherra 799 210
Tripura West.

Dated, the 15th Feb, 1988

TO WHOM IT MAY CONCERN

This is to certify that Shri D.K. Mishra is working as Farm Manager (Agri.) at this Centre since 29th Sept., 1981. Besides his normal duties of day to day Farm Management of research nature and crop cultivation, he has conducted experiments on cultivators' field (Model Agronomy) to our full satisfaction since 1983. He is also assisting and conducting research work of Agronomical trials. He has also actively associated himself in the "Lab to Land Programmes" and "Farmers Day" of this centre. He imparts training on Rice Production Technology every year to the State Nominees of Tripura and Mizoram.

He is sincere, hard working fellow of amicable nature and takes up whatever work given to him with zeal and enthusiasm and works to the best of his capacity.

To the best of my knowledge and belief, he bears a good moral character.

I wish him every success in life.

S. LASKAR
(S. LASKAR)
JOINT DIRECTOR

Attested
by
Advocate

(51)

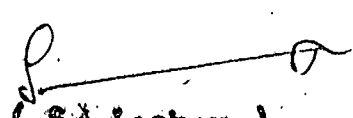
- 11 -

**Recommendation on Five Yearly Assessment of Shri B.K. Mishra,
Farm Manager(L-6).**

1.] The information furnished by Shri B.K. Mishra, Farm Manager, L-6 about his work contribution is correct to the best of my knowledge.

2.] Mr. B.K. Mishra has been working as L-6(Farm Manager) almost since the inception of the Institute. In this assessment report he has illustrated his work in details and my views are in conformity with the projections as outlined by him. I feel immense pleasure to make a critical appraisal of his devoted work. The devotion with which he has been working during the period leads to make the farm developed in its present shape. In spite of various constraints he has left no stone unturned to develop the farm land suitable for undertaking various research trials and commercial production. He has displayed his capability for effective labour management.

Besides farm management and development, he has also contributed significantly in the arena of agronomic research. He has rendered valuable support for successful completion of research programmes undertaken by Scientists of this Centre. I do not have any hesitation to grade him as "Outstanding" worker and strongly recommend him for his promotion to the next higher grade with due date i.e. from January, 1987.


(S. Laskar)
Joint Director
ICAR, Tripura Centre

Attested
by
Advocate

19 JAN 2005

গুৱাহাটী কেন্দ্ৰ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::: GUWAHATI BENCH
AT GUWAHATI

78

Filed by
The Resp
through
MR. R.S
CHODHURY
AD NO CHA
18/01/05

IN THE MATTER OF :

O.A. No. 86/2003

Sri B.K. Mishra

APPLICANT

-VERSUS-

Union of India & Ors.

RESPONDENTS

-AND-

IN THE MATTER OF :

An additional written statement filed on behalf of Respondent Nos. 2 and 3 to bring on record certain additional facts pertaining to the instant case,

I, Dr.Yaspal Sarma, son of (Late) Dhani Ram Sarma, aged about 53 years presently working as Joint Director, I.C.A.R. Research Complex, NEH Region, Barapani currently holding the charge of Director, I.C.A.R. Research Complex do hereby solemnly affirm and state as follows:

1. That I have been impleaded as Respondent No.3 in the aforesaid Original Application No. 86/2003 and a copy of the said application has been duly served upon me. I have gone through the same and understood the contents thereof. I have been duly authorised to swear this affidavit on behalf of the Respondent No.2.
2. That during the proceedings of the instant case the answering respondents were directed to produce copies of the ACRs of the applicant for the relevant period. Subsequently vide order dated 06.12.2004 passed by this Hon'ble Tribunal, the answering respondents were directed to produce the orders passed by the competent authority disagreeing with

Assessment Committee. Accordingly, the same was immediately communicated to the Head Office at New Delhi.

3. That very recently the Regional Head Office at Barapani, Meghalaya received a letter from the Head Office at New Delhi that the said files and documents as called for are not traceable and as is the normal practice of destroying/weeding out old records, in all probability such records have been destroyed/weeded out. ✓
4. That the answering respondents respectfully beg to state that the claim of the applicant particularly in respect of his assessment prior to 1989 is hit by delay, laches and acquiescence in addition to being hit by Section 21 of the Administrative Tribunals Act, 1985 and as such the present Original Application is not maintainable and hence liable to be dismissed on this count alone.
5. That so far as the applicant's claim for promotion subsequent to 1989, the requirement of 3 consecutive "Very Good" remark in the ACR is not met by the applicant and as such he could not be promoted to the next higher rank.
6. That the answering respondent respectfully begs to state that claim of the applicant for a similar relief as in the case of Nepal Shah Vs. Union of India & Ors. in O.A. No. 58 of 1994, the answering respondent humbly submits that the said analogy cannot be drawn in the instant case on two counts. Firstly, the said Shri Nepal Shah had approached the Hon'ble Tribunal within the limitation prescribed in the Act of 1985 and without any delay. Secondly, immediately after the Judgment being passed on 16.12.1997, Sri Nepal Shah expired and as consequence, the answering respondent could not exhaust their appellate remedies. In this view of the matter the answering respondents humbly beg to submit that the analogy of the said case cannot be drawn in the instant case and hence the applicant in the instant case is not entitled to a similar relief.

VERIFICATION

I, Dr. Yash Pal Sharma, son of (Late) Dhani Ram Sarma, aged about 53 years, presently working as Joint Director, I.C.A.R. Research Complex for N.E. Region do hereby verify that the statements made in paragraphs 1 to 6 of the additional written statement are true to my knowledge and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

Yash Pal Sharma

DEPONENT