

FORM NO. 4
(SEE RULE 24)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

1. Original Application No. _____
 2. Mice Petition No. _____ 27 /
 3. Contempt Petition No. _____ 27/06 in O.A 86/03
 4. Review Application No. _____

Applicant(S) B.K. Mishra

Respondant(S) W.O. 2 Joms

Advocate for the Applicant(S) S. Sarma

Mr. B. Debn.
Mr. K.N. Choudhry, Sr Adv.

Advocate for the Respondat(S) Mr. R.S. Choudhry for Respond No. 2

Notes of the Registry	Date	Order of the Tribunal
<p>This Contempt petition is filed by the Counsel for by the petitioner W/R IT of the CAT Procedures for drawl of Contempt proceedings against the contemners for their willful and deliberate violation of the order dated 26.6.05 passed by this Hon'ble Tribunal in O.A 86/03.</p> <p>La'd before the Hon'ble Court for further orders.</p> <p style="text-align: right;">(Signature) for Section Officer</p>	21.9.2006	<p>Present: The Hon'ble Shri K.V. Sachidanandan Vice-Chairman.</p> <p>This Tribunal vide order dated 26.6.2005 passed in O.A.89/2003 had directed the respondents as under:-</p> <p>"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 Singh, 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."</p> <p>Thereafter, against the aforesaid order W.P.(C) No.7874/2005 was filed by the respondents before Gauhati High Court. The said High Court vide order dated 28.7.2006 allowed the W.P.(C) to be withdrawn granting leave to file proper writ petition. Mr.S.Sarma, learned counsel for the applicant submits that according to his information no further</p>

CP. 27/2006 (CA. 89/2003)

Contd
21.9.2006

W.P.(C) has been preferred till date. Therefore, he submits that at present notice should be issued to the respondents.

Issue simple notice to the contemner/respondent Nos.1 & 2. However, the applicant will ^{pay} the process.

Post on 10.11.2006

Vice-Chairman

Notice and order dt. 21/9/06 sent to D/section for issuing to resp. nos. 1 and 2 by regd. A/D post.

23/10/06 - D/No - 1047, 1048
Dt. - 27/10/06

Service report awaited.

bb
10.11.2006 Present: Hon'ble Sri K.V. Sachidanandan Vice-Chairman.

Post on 11.12.2006.

Vice-Chairman

Notice duly served on R-2, 1.

/mb/

11.12.06. This Contempt Petition has been filed against the respondents by the petitioner for non compliance of the order of the Tribunal dated 26.6.05. When the matter came up for hearing the learned counsel for the applicant has submitted that it is given ~~as~~ understood that the Respondents are processing ~~so~~ to implement the Tribunal's order. Therefore, he does not want to press the petition. Accordingly, C.P. is ~~skipped~~ ^{dismissed} as not press. Liberty is given to the applicant to file fresh application before this Tribunal.

Vice-Chairman

14/11/06

21/11/06

8-12-06

NO Affidavit filed

bn

12.12.06

Copy of the order has been sent to the office for issuing the same to the A/D, for the parties.

lm

- 1 -
Central Administrative Tribunal
Gauhati Bench

Filed by :-
The Petitioner
Through Dui
Bardana Dui
Advocate
20.9.06

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GAUHATI BENCH

C.P. NO. 27 /2006

IN O.A. NO. 86/03

BARUN KUMAR MISHRA

... APPLICANT

-VERSUS-

UNION OF INDIA & OTHERS

... RESPONDENTS

IN THE MATTER OF:

An application under Rule 17 of the Administrative Tribunal Act, 1985 for drawl of Contempt proceeding against the contemnners for their willful and deliberate violation of the Judgment and order dated 26.06.05 passed in O.A. No.86/03.

- AND -

IN THE MATTER OF:

An application under Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987 for implementation of the judgment and order dated 26.06.05 passed in O.A. No.86/03

-AND-

IN THE MATTER OF:

Sri Barun Kumar Mishra, son of late Surya Narayan Mishra, presently working as Farm Manager (T-6) ICAR (RC) Sikkim Centre, Tadong, Gangtok.

... PETITIONER

-VERSUS-

1. Dr. Mangala Rai, Director General,
The Indian Council of Agricultural Research,
Krishi Bhawan, New Delhi

2. Dr. K. M. Bujarbaruah, Director
ICAR Research Complex for N.E.H. Region,
Barapani, Meghalaya.

...RESPONDENTS/CONTEMNERS

The humble application on behalf of the petitioner above named –

MOST RESPECTFULLY SHEWETH:

1. That being aggrieved by the action/inaction on the part of the Respondents Authority for non-consideration of the case of the petitioner for promotion to the post of Farm Manager (T-7) in the ICAR, while the persons junior to him have been promoted to the post of T-7 and T-8, he preferred the above noted O.A. No.86/03 before this Hon'ble Tribunal.

2. That this Hon'ble Tribunal after hearing the all contesting parties to the aforesaid proceeding and on perusal of relevant records was pleased to dispose of the said original application vide judgment and order dated 26.06.05, directing the respondents to promote the applicant from the post of T-6 to T-7 with effect from 01.07.1987 notionally without any back wages.

A copy of the aforesaid judgment and order-dated 26.06.05 passed in O.A. No. 86/03 is annexed herewith and marked as Annexure-1.

3. That the petitioner begs to state that the aforesaid judgment and order dated 26.06.05 passed by this Tribunal was sent to him by his counsel on 06.07.05 through registered post, which he received after a few days thereafter.

A copy of the receipt of the registered post dated 06.07.05 is annexed herewith and marked as Annexure-2.

4. That the petitioner begs to state that immediately on receipt of the aforesaid judgment and order dated 26.06.05 from his counsel, he submitted the same before the Respondents No.1 and 2; but none of the respondents has done anything towards compliance of the aforesaid judgment and order dated 26.06.05 passed in O.A. No. 86/03. Thus, knowing the intention of the Respondents Authority, the petitioner filed a Caveat before the Hon'ble High Court.
5. That the petitioner begs to state that as apprehended the contemnors preferred a writ petition being WP (C) No. 7874/05 challenging the legality and validity of the judgment and order dated 26.06.05 before the Hon'ble High Court. The said writ petition preferred by the contemnors/respondents has been listed before the Hon'ble High Court for admission hearing on 19.12.05 and the Hon'ble court was pleased to pass an order calling for the records of the case before admission of the said writ petition with the observation that attempt shall be made to dispose of the matter on the next date i.e. in the admission stage itself.
6. That the petitioner begs to state that the said writ petition preferred by the Respondents/contemnors has again been listed for Admission Hearing before the Hon'ble High Court on 28.07.06. On that day, the learned counsel for the Respondents Authority, who were the petitioner of the said writ petition has withdrawn the said writ petition with liberty to file a proper writ petition; but after withdrawal of the aforesaid W.P.(C) No. 7874/05, no fresh writ petition has been preferred till date and there is no stay order restraining the Respondents Authorities to implement the aforesaid judgment and order dated 26.06.05 passed by this Hon'ble Tribunal. Thus, the petitioner having no other alternative constraint to move before this Hon'ble Tribunal by way of this present application praying for a direction for implementation of the aforesaid judgment and order dated 26.06.05.

A copy of the order-dated 28.07.06 of the Hon'ble High Court passed in W.P.(C) No. 7874/05 is annexed herewith and marked as Annexure-3.

7. That the petitioner begs to submit that even after a lapse of more than one year the Respondents Authority has not shown any scant towards implementation of the aforesaid judgment and order dated 26.06.05 passed in O.A. No. 86/03. The aforesaid action/inaction of the Respondents/contemners is willful and deliberate and they are intentionally delaying the matter.
8. That the petitioner begs to submit that the respondents/contemners have committed Contempt of Court and for that they are liable to be punished severely for such deliberate inaction and appropriate direction may also be issued to them to extend the benefit of the aforesaid judgment and order to the petitioner forthwith.
9. That this petition has been filed bonafide and to secure the ends of justice.

In the premises aforesaid, it is most respectfully prayed that Your Lordship would graciously be pleased to draw appropriate contempt proceeding against the contemners for their willful and deliberate violation of the judgment and order dated 26.06.05 passed in O.A. No.86/03 and to punish them severely and to pass an appropriate direction to implement the aforesaid judgment forthwith and/or pass any such order/orders as your Lordship may deem fit and proper.

And for this act of kindness, the humble petitioner as in duty bound, shall ever pray.

DRAFT CHARGE

Whereas Dr. Mangala Rai, the Director General, ICAR, New Delhi and Dr. K.M. Bujarbaruah, the Director, ICAR Research Complex for NEH Region, Barapani, Meghalaya have willfully and deliberately violated the judgment and order dated 26.06.05 passed in O.A. No. 86/03 passed by this Hon'ble Tribunal and as such they are liable to be punished under the provisions contend in Contempt of Courts Act for such act of willful and deliberate violation.

Affidavit.....

AFFIDAVIT

I, Shri Barun Kumar Mishra, aged about 55 years, son of late Surya Narayan Mishra, at present resident of Quarter No.IV/3, ICAR Research Complex, Sikkim Centre, Gangtok do hereby affirm and declare as follows:

1. I am the petitioner of the instant petition as such an acquainted with the facts and circumstances of the case.
2. That the Statements made in this affidavit and the accompanying application in paragraph 1 and true to my knowledge; those made in paragraphs 2-7 being matter of records are true to my information derived therefrom. Annexures are true copies of the originals and grounds urged are as per the legal advise.

And I sign this affidavit on this the 20th day of September 2006.

Barun Kumar Mishra

DEPONENT

Solemnly affirmed state by the deponent who is identified by Miss Kabita Goswami, Advocate on this day of 20th September 2006 before me.

Identified by me

Kabita Goswami

Advocate

Bandana Devi
Advocate

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.86 of 2003

Date of Order : This the 26 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.)

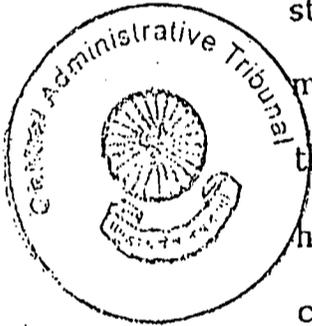
The matter relates to the promotion of the applicant from Farm Manager (Agri), T-6 to Technical Officer, T-7 in the Indian Council of Agricultural Research, Research Complex for North Eastern Hill Region, Barapani, Meghalaya. The applicant was initially

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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.

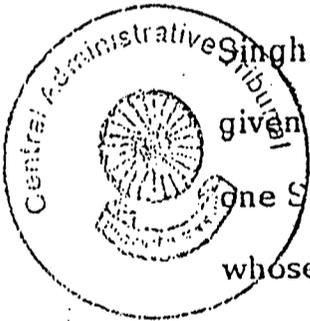
2. According to the applicant as per the rules the requisite qualification for promotion to the next higher grade, i.e. Technical Officer (T-7) is five years of service as Technical Officer (T-6). The applicant had completed five years of service as Technical Officer (T-6) on 29.9.1986. According to 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



[Handwritten 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."

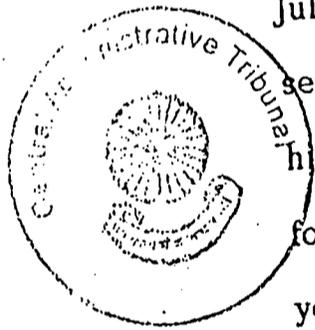
3. The applicant has stated that similarly situated persons who were denied promotions, namely S.M. Goswami, Dr Ramesh Singh, Shri Vishwakam, A.S. Singh, Dr R.K. Tarat, Shri D. Medhi were given the said promotion subsequently. It was also pointed out that one Shri Nepal Shah who was similarly situated 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



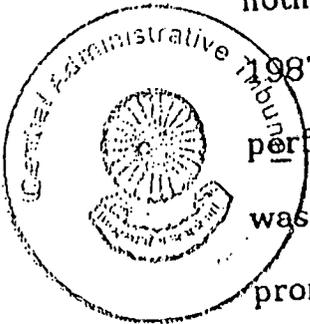
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promotion prior to that date. It is also pointed out that the Tribunal in the order dated 16.12.1997 in O.A.No.58/1994 has clearly held so. Though the applicant, it is stated, was entitled to similar treatment, the applicant's case for promotion to 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



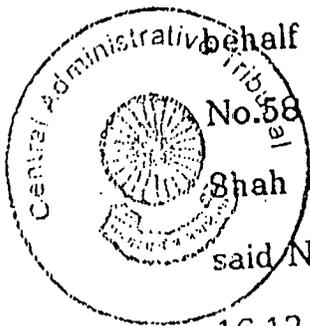
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Nepal Shah's case it is stated that the O.A. was filed against the erroneous application of the criteria of the requirement of at least three consistent 'very good' in the ACR adopted vide Council's Circular dated 2.5.1989. Regarding the supplementary 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.

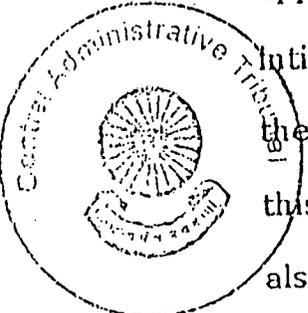
5. An additional written statement has also been filed on behalf of respondent Nos.2 and 3. With reference to the order in O.A. No.58 of 1994, filed by Nepal Shah, it is stated that the said Nepal Shah approached the Tribunal within the limitation period and the said Nepal Shah died immediately after 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.

[Signature]



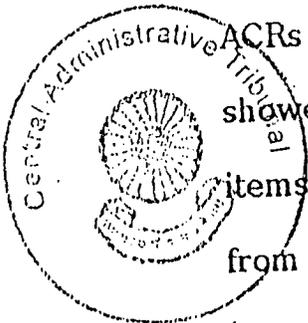
7. Admittedly, the applicant was appointed as Farm Manager (Agri), T-6 on 29.9.1981; he had completed five years of service as Technical Officer, T-6 on 29.9.1986. As it is he has satisfied the eligibility requirement for promotion to the grade of T-7 from that date. Of course, the further requirement 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 1.7.1997. 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



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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

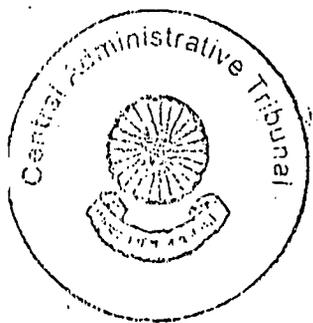


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31.12.1986 all the items are noted as 'very good'. For the period from 1.1.1987 to 31.12.1987, 'very good' is there in four items and in the other items 'average'. For the first time in the ACR for the year 1987 there is an entry 'an average worker'. 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 11.4.2000 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



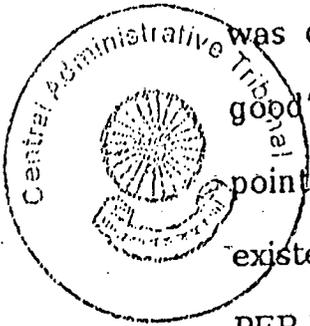
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the next higher grade w.e.f. 1.7.88. Accordingly Shri B.K. Mishra, T-6 has been recommended for advance increments and promotion as follows:

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

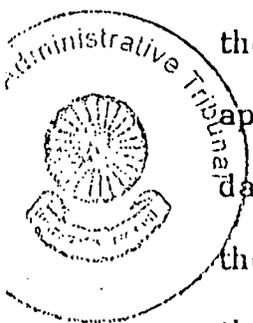


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'good'. As already noted in the ACRs there was no column for 'good' and therefore, all those persons who did not secure 'very good' even if they are 'good' can only fall under 'average'. In fact, we find some correspondence available in the file that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

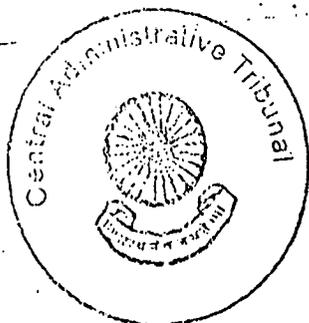


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position being as stated in the proceeding of the Assessment Committee supported by the decision of this Tribunal in O.A.No.58/1994 the respondents cannot avoid the inevitable consequence of giving promotion to the applicant from T-6 to T-7 with effect 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.

SD/VICE CHAIRMAN
SD/MEMBER (A)



TRUE COPY
सिद्धि

Section Officer (I)
C.A.T. GUWAHATI BRANCH
Guwahati 781005

Handwritten signature and date: 27/6

G.U. H.P.O. <781014>
InI-SP EEB40652055IN
PA : P
To: MR B K MISHRA, TADONG
GANGTOK, PIN: 737102
From: D K SARMAH, GHY-33
Wt: 36grams Pre: 0.00
Amt: 50.00, 06/07/2005, 13:39:55
HAVE A WONDERFUL DAY



Attested
Di
Advocate.

ANNEXURE-3

W.P.(C) No.7874/2005

ICAR and another

-versus-

Sri B. K. Mishra

28/7/2006Reddy, C.J.

The learned counsel for the petitioner seeks leave of this court to withdraw this writ petition with liberty to file proper writ petition by duly deleting certain portion of the pleadings, which according to the petitioner have been incorporated in the writ petition inadvertently.

Leave is accordingly granted. Writ petition, if any, to be filed may have to be examined on its own merits.

Sd/ B.PK

Judge

28/7/06
Sd/
Chief Justice

Attested

Di
Advocate