

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
**O.A.NO.862 OF 2014**

New Delhi, this the 8<sup>th</sup> day of December, 2015

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER  
AND  
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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Kay Prasad,  
Aged 53 years,  
s/o late Shri Horam Singh,  
Executive Engineer, T-9,  
National Phytotron Facility,  
Indian Agriculture Research Institute,  
New Delhi 110012

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Applicant

(By Advocate: Mr.K.K.Sharma)

Vs.

1. Director General,  
Indian Council of Agricultural Research,  
Krishni Bhavan,  
New Delhi
2. The Secretary,  
Indian Council of Agricultural Research,  
Krishi Bhawan,  
New Delhi 110001
3. Director,  
Indian Agricultural Research Institute,  
Pusa Institute, New Delhi 110012

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Respondents

(By Advocate: Mr.Rajeev Sharma)

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**ORDER**

**RAJ VIR SHARMA, MEMBER(J):**

The applicant has filed the present O.A. seeking the following reliefs:

- õ(1) Quash and set aside the Order dated 04.10.2013 rejecting applicant's detailed representation dated 7.08.2013

addressed to Secretary, ICAR, seeking recall of impugned orders, by a cryptic and non-speaking order as communicated by Admn. Officer (P-IV), ICAR, on behalf of the Council.

- (2) Quash and set aside (1) office order dated 11.06.2012 to the extent it does away with grant of advance increments, and (2) order dated 22.4.2013 issued by the ICAR and approved the amendment in rule 6.1 of TS Rules and confirming the same as delineated in the Office Order dated 11.06.2012.
- (3) Direct Respondents not to initiate steps to recover the three advance increments already granted to the applicant by authority of law vide Office Order dated 17.12.2008 in lieu of third promotion denied to him which is forbidden/restricted to the applicant being in the highest pay scale as per the revised Technical Service Rules (Rule 6) which is sought to be impugned in the O.A.
- (4) Direct respondents to pay cost for this uncalled for litigation.
- (5) Pass such further or other order(s) in favour of the applicant as this Honøble Court may deem fit and proper in the facts and circumstances of the case.ö

2. The brief facts of the applicant's case are as follows:

2.1 The applicant had initially joined the respondent-organization in the year 1989, as a direct recruit Engineer in T-6 (Group ÷Aøó Pay Scale of Rs.8000-13500/-), and had earned two promotions by the year 2001.

2.2 The note below Rule 6.2 of the Technical Service Rules of the Indian Council of Agricultural Research (hereinafter referred to as öICARö) stipulates that since merit promotions are restricted within the category, persons holding highest grades, viz., grade T-1-3 in Category I, grade T-5 in Category II, and grade T-9 in Category III, are not eligible for further promotion, and there is, however, no bar for grant of advance increments to such personnel in the Technical Service, who are in the highest grade of category, subject to maximum of three advance increments within the grade.

Referring to the provisions contained in the note below Rule 6.2, *ibid*, the respondents, vide its circular dated 16.3.2006 (Annexure A/6), clarified, *inter alia*, that the employees with 5 years of service in grade T-9 are eligible to be considered for grant of advance increments on the basis of five yearly assessments, subject to maximum of three advance increments within the grade.

2.3 As the applicant completed five years of service in T-9 grade in 2006, the Assessment Committee, on assessment of his performances, he was granted three advance increments with effect from 1.1.2007 under the Technical Service Rules, vide office order dated 17.12.2008 (Annexure A/8).

2.4 While the matter stood thus, the ICAR, vide its circular No.4 (13)/2008-Estt.IV, dated 11.6.2012 (Annexure A/1), stated that consequent to the implementation of the CCS (Revised) Pay Rules, 2008, the grant of advance increments to the personnel in the Technical Service was reviewed, in consultation with the Ministry of Finance, and it was decided as follows:

- õ1. The pay of the employees, who have been granted advance increment(s) prior to 1.1.2006, may be fixed in the revised pay structure corresponding to the stage at which their basic pay was as on 1.1.2006.
2. In the case of employees, who have been granted advance increment(s) between 1.1.2006 and 31.8.2008 under the Revised Pay Rules, 2008, such employees will only be granted annual increments on 1<sup>st</sup> of July of every year. No advance increments, corresponding to the advance increments granted under the pre-revised pay scale will be granted to them during the period between 1.1.2006 and 31.8.2008 while making their due-drawn statement. During this period, advance increment will be

given as per the fixed amount approved by the Ministry of Finance.

3. Only one advance increment at the following rates may be granted to those technical personnel who have been recommended/approved for grant of advance increment w.e.f. 1.1.2006.

Grade	Pay Band	Grade Pay	Amount of one advance increment (3% of the minimum pay in the pay band)
T-1	5200-20,200/PB-1	2000/-	156
T-2	5200-20,200/PB-1	2400/-	156
T-3	5200-20,200/PB-1	2800/-	156
T-4	9300-34,800/PB-2	4200/-	279
T-5	9300-34,800/PB-2	4600/-	279
T-6	15600-38,100/PB-3	5400/-	468
T-7-8	15600-38,100/PB-3	6600/-	468
T-9	15600-38,100/PB-3	7600/-	468

(Some examples have been worked out in the Annexure to clarify the issue).

4. The advance increment as given would be treated as a separate element distinct from basic pay. No increment/allowance will be earned on the element of advance increment.
5. In cases where more than one advance increments have already been paid from 1.1.2006 the same may be restricted to only one to be paid at the rates indicated at Sl.No.3 pre-page and necessary recoveries be made for the excess payment, if any.ö

2.5 The ICAR, vide its circular dated 22.4.2013 (Annexure A/2), stated that the Governing Body of ICAR, in its 226<sup>th</sup> meeting held on 14<sup>th</sup> February, 2013, approved the amendment in Rule 6.1 and paragraph 10 of Appendix III for Categories I, II and III under Rule 6.13 of the Technical Service Rules to the extent that only one advance increment would be granted in the same grade on the basis of assessment of performance of the employees in the Technical Service after expiry of the number of the

prescribed years of service, and that the advance increment w.e.f. 1.1.2006 would be granted as per the rate(s) mentioned in the letter No.4(13)/2008-Esst.IV dated 11.6.2012, *ibid*.

2.6 The applicant's representation dated 7.8.2013 seeking recall of the circulars dated 11.6.2012 and 22.4.2013, *ibid*, having been rejected by the ICAR, vide its order dated 4.10.2013, he has filed the present O.A., seeking the reliefs, as aforesaid.

3. It is contended by the applicant that three advance increments were granted to him with effect from 1.1.2007 under the rules, and, therefore, the respondents could not have withdrawn the same by amending Rule 6.1 and paragraph 10 of Appendix III for Categories I, II and III under Rule 6.13 of the Technical Service Rules with retrospective effect.

3.1 It is also contended by the applicant that the change in the service conditions to his disadvantage is violative of the basic principles of natural justice, and doctrine of equity.

3.2 It is also contended by the applicant that there is no restriction on the number of promotions on merit in the case of employees in the Administrative Service of ICAR, whereas the number of promotions to the personnel in the Technical Service of ICAR has been restricted to two. Such restriction on the number of promotions in the case of the personnel in the Technical Service of ICAR, being discriminatory, is violative of Articles 14 and 16 of the Constitution of India.

3.3 Referring to the DoP&T's O.M. No.1/1/2010-Estt.(Pay-I), dated 6.12.2012, it is also contended by the applicant that consequent upon implementation of the CCS (RP) Rules, 2008, in the case of Stenographers in Subordinate Offices, who had been granted advance increments prior to 1.1.2006 on qualifying speed test in Shorthand, the advance increments were taken into account for fixation of their revised pay, and the advance increments would no longer continue as a separate element. In respect of persons, who become eligible for grant of advance increments consequent upon implementation of CCS (RP) Rules, 2008, the advance increment is calculated by granting increment @ 3% of the Basic Pay on the date of passing of the test. Two advance increments are calculated by granting two increments @ 3% of the Basic Pay on the date of passing the test. The amount of this increment is treated as a separate element in addition to the Basic Pay (Pay in the Pay Band + Grade Pay) till such advance increments are taken into account. Once the advance increments are taken into account for the purpose of pay fixation on promotion or being placed in a higher scale on grant of ACP/MACP or fixation of pay due to revision of pay scale, etc., the advance increments will no longer continue as a separate element, as it will be merged with the basic pay. It is, therefore, submitted by the applicant that there being a clear departure from the DoP&T's O.M. dated 6.12.2012, *ibid*, by the respondents in the case of the personnel in the Technical Service of ICAR, the impugned circulars dated 11.6.2012 and 22.4.2013, *ibid*, are unsustainable.

4. In their counter reply, the respondents have, *inter alia*, stated that the ICAR is a society registered under the Societies Registration Act. The Governing Body, constituted in terms of its Memorandum of Association, manages its affairs. The Governing Body is competent to frame Rules and also to amend them. The power to make Rules and amend them also includes the power to give retrospective effect to the Rules so framed. In the present case, the Governing Body took a conscious decision to amend Rule 6.1 and paragraph 6.13 of Appendix III for Categories I, II and III under Rule 6.13 of the Technical Service Rules retrospectively. It is settled law that even the accrued rights, or vested rights, can be taken away, if it is so expressly provided by the legislature, or the Rule making authority, as the case may be. In the present case, it has been expressly provided that the amendment would be effective from 2006, i.e., retrospectively. The concept of vested rights, or accrued rights, would arise only, if it is expressly provided that the amendment would not be retrospective. The Technical Service Rules, as originally framed, provided for three advance increments to compensate an employee for lack of promotional avenues. However, it was found that advance increments granted were way beyond the benefits that would accrue to the same employee consequent upon promotion. It is in that perspective that the matter was reviewed, and the Rule was amended. Thus, it cannot be said that the amendment providing for one advance increment is arbitrary or unreasonable. As per Rule 21 of the Bye-laws of the Society, the posts in the Council are categorized as: (a) Scientific, (b)

Technical, (c) Administrative, and (d) Supporting. The parity sought to be drawn between the employees who belong to Administrative Service, and those who belong to Technical Service, is misconceived. The two services belong to separate streams, and there can be no comparison between the two classes. The merit promotions are granted to the employees in the Technical Service of the ICAR from one grade to the next higher grade on the basis of assessment of performance, irrespective of the occurrence of vacancies in the higher grade(s), as per the provisions of the Technical Service Rules, whereas the promotions to the personnel in the Administrative Service are granted on the occurrence of vacancies in the higher grade(s) in their cadre as per the rules governing their promotions. Hence, the personnel in the Administrative Service of the ICAR are placed on a footing different from that of the personnel in the Technical Service of the ICAR. In view of the above, the respondents have submitted that the applicant is not entitled to any of the reliefs prayed for in the O.A.

5. In his rejoinder reply, the applicant, besides reiterating more or less the same averments as in the O.A., has controverted the stand taken by the respondents. Referring to the judgment dated 18.12.2014 passed by the Honøble Supreme Court in Civil Appeal No.11527 of 2014 (**State of Punjab & others, etc. Vs. Rafiq Masih (White Washer), etc.**), the applicant has submitted that the recovery of the purported excess amount from him is impermissible in law. Along with his rejoinder reply, the applicant has also filed a copy of the said judgment of the Honøble Supreme Court.

6. We have perused the records, and have heard Shri K.K.Sharma, the learned counsel appearing for the applicant, and Shri Rajeev Sharma, the learned counsel appearing for the respondents.

7. It is the admitted position between the parties that the Governing Body of the ICAR is competent to frame Rules and also to amend the same. As rightly contended by the respondents, the power of the Governing Body of the ICAR to make Rules and amend them also includes its power to give retrospective effect to the Rules so framed. In the circular dated 22.4.2013, *ibid*, it has been clearly stated that the Governing Body of the ICAR, in its 226<sup>th</sup> meeting held on 14.2.2013, approved the amendment in Rule 6.1 and paragraph 10 of Appendix III for Categories I, II and III under Rule 6.13 of the Technical Service Rules to the extent that only one advance increment would be granted in the same grade on the basis of assessment of performance of the employees in the Technical Service after expiry of the number of the prescribed years of service, and that the rate of advance increment w.e.f. 1.1.2006 would be as mentioned in the circular dated 11.6.2012, *ibid*. The Central Civil Services (Revised Pay) Rules, 2008 (hereinafter referred to as 'CCS (RP) Rules, 2008'), which were promulgated by the Government of India on 29.9.2008, came into force with effect from 1.1.2006. The systems of Pay Band with Grade Pay, and increment calculated at 3% of the pay in the Pay Band plus Grade Pay, were introduced by the CCS (RP) Rules, 2008, and, as a consequence thereof, the concepts of pay scale, and fixed increment in the pay scale, which existed

prior to 1.1.2006, stood obliterated with effect from 1.1.2006. In view of this, consequent upon implementation of the CCS (RP) Rules, 2008, the ICAR, vide its circular dated 11.6.2012, *ibid*, in consultation with the Ministry of Finance, reviewed the grant of advance increment(s) to the employees in the Technical Service, and decided that the pay of the employees of the Technical Service, who had been granted advance increment(s) prior to 1.1.2006, would be fixed in the revised pay structure at the stage, at which their basic pay was as on 1.1.2006. In the case of employees who had been granted advance increment(s) between 1.1.2006 and 31.8.2008, under the CCS (RP) Rules, 2008, such employees would only be granted annual increment on 1<sup>st</sup> of July of every year, and no advance increment(s), corresponding to the advance increment(s) granted under the pre-revised pay scale, would be granted to them during the period between 1.1.2006 and 31.8.2008 while making their due-drawn statement. During this period, the advance increment would be given as per the fixed amount approved by the Ministry of Finance. Thus, all those employees in the Technical Service of ICAR, who have been recommended for grant of advance increments, would be granted only one advance increment with effect from 1.1.2006. It was also decided that in cases where more than one advance increments had already been paid from 1.1.2006, the same would be restricted to only one advance increment at the prescribed rate, and necessary recovery of the excess payment, if any, would be made. Accordingly, the Governing Body of the ICAR also approved the

amendment in Rule 6.1 and paragraph 10 of Appendix III for Categories I, II and III under Rule 6.13 of the Technical Service Rules with effect from 1.1.2006 to the extent that only one advance increment would be granted in the same grade at the prescribed rate on the basis of assessment of performance of the employees in the Technical Service after the expiry of the number of the prescribed years of service. The said amendment, as approved by the Governing Body, was duly notified by the ICAR, vide its circular dated 22.4.2013, *ibid*. In the above view of the matter, we do not find any arbitrariness, or irrationality, or unreasonableness, in the circulars dated 11.6.2012 and 22.4.2013, *ibid*.

8. When the CCS (RP) Rules, 2008, which were promulgated by the Government of India on 29.8.2008, came into force with effect from 1.1.2006, and when the applicant became entitled to the pay and allowances, increments, etc., as per the CCS (RP) Rules, 2008, with effect from 1.1.2006, and further when in the wake of implementation of the CCS (RP) Rules, 2008, the ICAR, or for that matter the Governing Body of ICAR, amended the relevant Rules with effect from 1.1.2006, and under the amended Rules the applicant was entitled to only one advance increment at the prescribed rate with effect from 1.1.2007, we do not find any substance in the contention of the applicant that the circulars dated 11.6.2012 and 22.4.2013, *ibid*, are violative of the basic principles of natural justice, and doctrine of equity.

9. The applicant has not refuted the assertions made by the respondents in their counter reply that as per Rule 21 of the Bye-laws of the Society, the posts in the ICAR are categorized into four distinct and different services, viz., (i) Scientific, (ii) Technical, (c ) Administrative, and (d) Supporting, and that merit promotions are granted to the personnel in the Technical Service from one grade to the next higher grade within the category, irrespective of the occurrence of vacancies in the higher grade, on the basis of assessment of their performance as per the provisions of the Technical Service Rules, whereas promotions are granted to the personnel in the Administrative Service on the occurrence of vacancies in the higher grade of their cadre under the Rules governing their promotions. Since under the provisions of the Bye-laws of the Society, the personnel in the Technical Service, and the personnel in the Administrative Service belong to two different and distinct cadres, and the rules governing their promotions are also different, the applicant and other personnel belonging to the Technical Service of the ICAR cannot be said to have a valid grievance with regard to restriction on the number of promotions available to them on the ground that the personnel in the Administrative Service are granted promotions without any restriction on the number thereof. The applicant and other personnel in the Technical Service, not being similarly placed as personnel in the Administrative Service, cannot claim the same promotional prospects as available to the personnel in the Administrative Service, nor can they challenge the withdrawal of more than one advance increments, or the grant

of one advance increment at the prescribed rate with effect from 1.1.2006, or the recovery of the excess amount, on the ground of restriction on the number of promotions to the personnel in the Technical Service. Therefore, we do not find any substance in the contentions of the applicant that the restriction on the number of promotions in the case of the personnel in the Technical Service is violative of Articles 14 and 16 of the Constitution of India, and that due to the restriction on the number of promotions in the case of the personnel in the Technical Service, the withdrawal of advance increments, the grant of one advance increment at the prescribed rate with effect from 1.1.2006, and the order of recovery of the excess amount, are bad and illegal.

10. As regards the DoP&T's O.M. dated 6.12.2012, *ibid*, relying on which the applicant also questions the validity and legality of the circulars dated 11.6.2012 and 22.4.2013, *ibid*, we have found that the said DoP&T's O.M. dated 6.12.2012 relates to the Stenographers in Subordinate Offices of the Central Government, while the ICAR is a Society registered under the Societies Registration Act, and the Governing Body of the Society is the authority which is competent to frame and amend the Rules relating to grant of advance increments to the personnel in the Technical Service of ICAR. When the Rules governing the promotions and grant of advance increments to the personnel in the Technical Service of the ICAR, and the Rules governing the promotions and the decisions regarding the grant of advance increments to the Stenographers in Subordinate Offices of the

Central Government are distinctly different, the applicant or, for that matter, other personnel in the Technical Service of the ICAR, cannot claim as a matter of right to be granted advance increments as admissible to the Stenographers of Subordinate Offices of the Central Government. Therefore, the DoP&T's O.M. dated 6.12.2012, *ibid*, is of no help to the case of the applicant.

11. As regards the question of recovery of excess amount from the applicant and other similarly placed personnel in the Technical Service of the ICAR, in terms of the circulars dated 11.6.2012 and 22.4.2013, *ibid*, the applicant has placed reliance on the decision of the Honøble Supreme Court in **State of Punjab & others, etc. Vs. Rafiq Masih (White Washer), etc.** (*supra*) in support of his contention that advance increments having been granted to him with effect from 1.1.2007 under the Rules, the respondents ought not to have ordered the recovery in question after the lapse of more than five years.

11.1 In **State of Punjab & others, etc. Vs. Rafiq Masih (White Washer), etc.** (*supra*), the respondent-employees were given monetary benefits, which were in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authorities in determining the emoluments payable to them. The mistake could have occurred on account of a variety of reasons; including the grant of status, which the concerned employee was not entitled to; or payment of salary in higher scale than in consonance with the right of the concerned

employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward revision of pay scales; or for having been granted allowances, for which the concerned employee was not authorized. The respondent-employees were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake, employees were in receipt of monetary benefits, beyond their due. The respondent-employees were not guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the respondent-employees was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Thus, the question, which arose for adjudication, was, whether the respondent-employees, against whom orders of recovery (of the excess amount) were made, should be exempted in law, from the reimbursement of the same to the employer. After referring to its various earlier decisions on the point, the Honøble Supreme Court held thus:

ō12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

11.2 Admittedly, the applicant was granted three advance increments with effect from 1.1.2007 under the provisions of the Technical Service Rules, vide office order dated 17.12.2008 (Annexure A/5). The excess amount paid to the applicant and other similarly placed personnel in the Technical Service of ICAR was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. The excess amount became recoverable from them only in terms of the circulars dated 11.6.2012 and 22.4.2013, *ibid*, by which Rule 6(1) and paragraph 10 of Appendix III for Categories I, II and III under Rule 6.13 of the Technical Service Rules were amended with effect from 1.1.2006. Therefore, as per the ruling given by the Honøble Supreme Court in paragraph 12 (iii) of the judgment in **State of Punjab & others, etc. Vs. Rafiq Masih (White Washer), etc.** (supra), the recovery of the excess amount from the applicant and other similarly placed personnel in the Technical Service of ICAR, as ordered by the respondents in June 2012 and April 2013, is impermissible in law.

12. In the light of our above discussions, while upholding all other provisions of the circulars dated 11.6.2012 and 22.4.2013 (Annexure A/1 and Annexure A/2), we quash the decision of the respondents to recover the excess amount from the applicant and other similarly placed personnel in the Technical Service of the ICAR, as contained in the said circulars. Consequently, the respondents are directed not to recover the said excess amount from the applicant and other similarly placed personnel in the Technical Service of the ICAR.

13. In the result, the O.A. is partly allowed to the extent indicated above. No costs.

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

**(SHEKHAR AGARWAL)**  
**ADMINISTRATIVE MEMBER**

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