

Central Administrative Tribunal Principal Bench: New Delhi

OA No.2297/2013

This the 12th day of January, 2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mrs. Nita Chowdhury, Member (A)

1. Bishamber Singh
S/o Sh. Tilak Ram
R/o D-1/22, Palam Extn., Part-I,
Sector-7, Dwarka, New Delhi.
2. Vijay Kumar Sharma
S/o Late Sh. L.R. Sharma
R/o H.No.53, 2nd Floor
Prem Nagar, Shakti Nagar
Delhi-7
3. Dr. Vijay Verma
S/o Late Sh. H.K.G.Verma
R/o B-71, Oriental Apartments
Sector-9, Rohini, Delhi-85.

(By Advocate: Shri Chittaranjan Hati)

Versus

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|----|---|-----------------|
| 1. | Union of India Through the Secretary (DARE) Ministry of Agriculture Krishi Bhawan, New Delhi-1 | |
| 2. | Indian Council of Agricultural Research, Through its D.G./Secretary Krishi Bhawan, New Delhi-1 | |
| 3. | The Director Indian Agricultural Research Institute, Pusa, New Delhi-12. | ... Respondents |

(By Advocate: Shri B.Mor)

ORDER (ORAL)

By Hon'ble Mr. Justice Permod Kohli, Chairman:

The applicants herein three in number, joined the services under respondent No.3 as Senior Scientific Assistant/Laboratory Assistant on 04.03.1971 23.12.1970 and 28.10.1972 respectively. Initially they were placed in the pay scale of Rs.150-300 which was later on revised to Rs.380-560 as per recommendations of the 3rd Central Pay Commission (CPC) which was accepted and implemented by the ICAR. All the applicants were thereafter placed in the post Technical Assistant in the pay scale of Rs.425-700 vide order dated 21.10. 1976. It is stated that the nature of work of the applicants is purely scientific in nature right from the inception in service and continued to be so till their retirement.

2. The case of the applicants is that ICAR reconstituted the Service Rules and implemented the ICAR ARS Rules which recommended its employees to complete M.Sc. by the year 1980 so as to avail the benefits of scientific induction. The applicants completed the M.Sc. in the year 1980 within the stipulated period as prescribed by the ICAR. All the applicants were further promoted to grade T-4, T-5 and T-6 on the dates mentioned in para 4.9. Applicants No.1 and 3 were further promoted to T-7/T-8 on 01.01.2005. The claim of the applicants are that since they had qualification of B.Sc. at the time of their recruitments, therefore, they were entitled for financial upgradation to

the pay scale of Rs.425-700 which was denied to them and they were placed in the pay scale of Rs.380-560 contrary to the recommendation of 3rd CPC. Some of the employees of Central Rice Research Institute (CRRI) Cuttack also similarly situated as the applicants filed OA-291 and 292 of 1995 **Sanjukta Das & Ors. Vs. ICAR & Ors.** before the Cuttack Bench of this Tribunal seeking upgradation/revision of their pay scale as per recommendations of 3rd CPC. The Tribunal vide its order dated 29.09.1995 passed in the aforesaid OAs, issued following direction:-

“8. The applications are allowed. It is directed that the applicants, Dr.K.M.Das, Ms.Sanjukta Das and Sh.Amar Bilas Das, be placed in the scale of Rs.425-700 from 1.1.1973. This shall be done within two month of the receipt of a copy of these orders by Respondent No.3, i.e. Director, CRRI. All consequential service/monetary benefits, if any, shall be calculated, sanctioned and disbursed to/conferred on the applicants within two months thereafter.

Thus the O.A. is disposed of.”

3. The applicants claiming to be similarly situated filed OA No.2878/2005 before the Principal Bench of the Tribunal seeking similar relief as was granted to the applicants before the Cuttack Bench in the matter of **Sanjukta Das & Ors. Vs. ICAR & Ors.** (supra). This OA came to be allowed by this Tribunal vide order dated 05.06.2006 with the following direction:

“20. In the result, the OA is allowed. Impugned orders are quashed. Respondents are directed to extend the same benefits to the applicants as have been accorded to the applicants before the Cuttack Bench in Sanjukta Das’s case (supra) with all consequential benefits, including interest @ 9% simple from the date it is due to the date of it is actually paid to the applicants. This shall be done within a period of three months from the date of receipt of a copy of this order. No costs.”

4. The respondents challenged the aforesaid judgment before the Hon'ble Delhi High Court in Writ Petition (C) No.16025/2006 which came to be dismissed by the Hon'ble High Court vide its judgment dated 25.02.2008 with the following observations :

" In view of this, we find no distinguishing feature which should disentitle the Senior Scientific Assistant/Lab Assistant based in Delhi from the above scale. We may also note that the requirement of securing 55% marks in aggregate at the graduation level was an alternative to the work content of the scientific task and these two are not cumulative.

In view of the foregoing discussion, we find no merit in the writ petition as preferred and the same is dismissed."

5. Since the judgment passed by the Tribunal had not been implemented, the applicants filed C.P.No.745/2012 before this Tribunal. The said CP was however, withdrawn with liberty to file fresh OA vide order dated 16.10.2012. The respondents inducted the applicants in the grade S-0 with effect from the date they acquired M.Sc. degree as the requisite qualification. The respondents thereafter considered the claim of the applicants for consequential benefits and passed impugned order dated 11.06.2012. Hence the present OA has been filed by the applicants seeking following relief(s):

" 8.1. Applicant No.1 Grade S-1 on 09.06.80, S-2 on 09.06.85, S-3 on 09.06.90 and S-4 on 09.06.95.

Applicant No.2 Grade S-1 on 06.05.90, S-2 on 06.05.85, S-3 on 06.05.90 and S-4 on 06.05.95.

Applicant No.3 Grade S-1 on 30.06.80, S-2 on 30.06.85, S-3 30.06.90 and S-4 on 30.06.90 and S-4 on 30.06.95."

6. We have heard learned counsel for the parties at length. Mr. Chittaranjan Hati, learned counsel for the applicants has submitted that the judgment dated 05.06.2006 and that of the Hon'ble High Court of Delhi dated 25.02.2008 confirming the CAT judgment has not been implemented as per directions contained therein and the applicants have been treated differently than the applicants in OA-291 and 292 of 1995 passed by the Cuttack Bench of the Tribunal vide order dated 05.06.2006 whereas the applicants were/are entitled to the same relief. It is accordingly stated that the applicants before the Cuttack Bench were inducted at level S-1 whereas the applicants in the present OA have been inducted at level S.

7. In the counter affidavit filed by the respondents, it is stated that the impugned order dated 11.06.2012 is fully justified. The applicants were not recommended for promotion by the duly constituted Committee of experts. It is stated that the cases of the applicants were considered at par with similarly situated applicants in the judgment of Cuttack Bench of this Tribunal. However, as far as the question of promotion is concerned, it is subject to consideration of their suitability for promotion by the assessment committee. Learned counsel for the respondents, Mr. Mor, submitted that the cases of the applicants have been considered by the Committee of experts and found not eligible/fit for promotion and thus could not be promoted. In so far as the question of discrepancy in induction of the applicants in the grade S-1 is concerned, Mr. More, learned counsel for the respondent has taken us to the relevant rules, i.e. ICAR service ARS Rules. Rule-3 prescribes the Mode of Induction contained in Chapter 4

of the said Rules providing "Constitution and Maintenance of the Service" and reads as under:-

"3. Mode of Induction.

The induction has been done in equivalent grades with effect from 1-10-1975, the date of initial constitution of the service, i.e. the grade of induction of a person has been determined having regard to the grade of post held by him prior to his induction. An exception has, however, been made in the case of scientists who were holding posts in the pay scales of Rs.425-700 and Rs.650-1200. In their cases, the induction has been done in grade S (Rs.550-900) and S-1 (Rs.700-1300) respectively.

Persons who were not absorbed at the time of initial constitution of the Service will be considered again for appointment to the service at a subsequent stage or stages.

Any person who does not desire to be absorbed in the Service can continue to hold the position already held by him provided that he informs the Council accordingly within a period of six months from the date of his selection for induction into the Service."

8. On examining the rules, we find that such scientists who were holding the post in the pay scale of Rs.425-700 were to be inducted in the grade S Rs.550-900 and those who were in the grade 650-1200 could be inducted in the grade S-1 in the pay scale of Rs.700-1300 respectively. Mr. Mor, learned counsel for the respondents has also shown us the original record as per directions regarding consideration of the applicants for further promotion after their placement in the grades S. We have perused the records. The applicants were considered for their promotion from grade S to the next higher post in the grade S-1 during the year 1980, 1981, 1982 and 1983 by the Committee of experts. Applicant No.1 Shri Bishamber Singh has

secured 37 and 40 marks out of 100, Applicant No.2, Shri Vijay Kumar Sharma has secured 38 and 37 marks whereas Applicant No.3 has secured 35 and 36 marks. The assessment chart also contains the criteria/norms for promotion on the reverse of the document wherein following criteria has been prescribed for promotion from Scientist Grade S-1 to Scientist Grade S-2 and S-3:-

“Scientist Grade S-1(Rs.700-1300)

Total Marks :100

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|---|-------------------|
| i) Promotion | 61 marks & above |
| ii) Three advance increments | 51-60 marks |
| iii)Two advance increments | 41-50 marks |
| iv)One advance increment | 31-40 marks |
| v) Neither promotion nor advance increments | 30 marks or below |

Scientist Grade S-2(Rs.1100-1600)

Total Marks :100

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|---|------------------|
| i) Promotion | 71 marks & above |
| ii) Three advance increments | 61-70 marks |
| iii)Two advance increments | 55-60 marks |
| iv)One advance increment | 50-54 marks |
| v) Neither promotion nor advance increments | 49 marks & below |

Scientist Grade S-3(Rs.1500-2000)

Total Marks :100

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|---|--------------------|
| i) Promotion | 75 marks & above |
| ii) Three advance increments | 70-74 marks |
| iii)Two advance increments | 65-69 marks |
| iv)One advance increment | 60-64 marks |
| v) Neither promotion nor advance increments | 59 marks & below.” |

9. From the above criteria we find that for promotion to Scientist S-1 minimum 61 marks are required out of 100 and for promotion to Scientist S-2, 71 marks are required, whereas for further promotion to S-3 minimum 75 marks are required out of 100. None of applicants secured prescribed minimum marks. Shri Hati, learned counsel for the applicant submits that the applicants were in fact governed by old rules and there was no requirement of securing minimum marks and he relied upon the para 2 of the booklet which is published in October, 1977 reads as under:-

"2. This grade is meant to provide initial induction opportunities to qualified employees of the Council in the pay scales of Rs.425-700, Rs.550-750 and Rs.550-900. Those who do not possess the minimum educational qualifications for entry into the Service will be assisted to improve their qualifications through appropriate study leave and fellowship facilities. A suitable proportion of positions in the grade 'S' of the Service will be kept vacant for them for a period of five years. There will be no further recruitment to this grade upto 30.09.1980"

10. On the basis of above, it is stated that there is no requirement of securing minimum marks for promotion to SI grade. From the booklet placed before us by Shri Mor, learned counsel for the respondents, we find that there are some changes made in the rules. However, for initial induction the norms for induction remain the same. In so far as submission of learned counsel for applicant that there is no requirement to secure minimum marks is concerned, same cannot be accepted. Even though no criteria may have been laid down in the rules for promotion, that does not mean that the experts committee cannot formulate any criteria for promotion/induction to the next higher grade. The committee is well within its authority to lay down the criteria/norms which should be fair before process of selection take

place. It is settled legal position that employer/selection body can lay laid down the criteria for assessment induction. The assessment form itself contained the criteria at its back which show that this criteria was laid down prior to consideration of the applicant. Acquiring minimum marks is absolutely justified and cannot be said to be illegal or against the interest of the employee. From the record we also find that all the applicants before Cuttack Bench of this Tribunal were also not inducted at S-1 level. We find that out of the three applicants before Cuttack Bench, Dr. K.M. Das (in OA No.292/1995) and S. Das (in OA No.291/1995) who were in the pay scale of Rs.650-1200 were inducted as Scientist Grade S-1 whereas other applicant Sh. A.B. Dash (in OA No.291/1995) who was in the pay scale of Rs.425-700 were inducted in the Grade S-0. Since the applicants were also in the pay scale of Rs.425-700 and Rs.550-900 they were inducted in Grade S in terms of norms laid down in Rule 2 quoted herein above. The applicants were considered for further promotion to S-1, S-2 and S-3 but not found eligible by the Committee for not securing the minimum prescribed works. Though they have earned two increments in accordance with the criteria prescribed for promotion from Scientist Grade S to S-1.

11. Learned counsel for the applicant submits that the applicants have not been granted financial upgradation including interest as ordered by this Tribunal's judgment dated 05.06.2006. Suffice it to say that if any consequential benefits particularly the financial upgradation in terms of the judgment has not been granted to the applicants, the respondents will examine and if any part of the

judgment dated 05.06.2006 remains unimplemented, benefit flowing from the said judgment shall be released within a period of three months from the date of receipt of copy of this order.

12. In view of the above, we find no merit in this OA, same is dismissed. No order as to costs.

(Nita Chowdhury)
Member(A)

(Justice Permod Kohli)
Chairman

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