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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01011/2014

Friday, this the 26th day of October, 2018

C O R A M :

**HON'BLE Ms.P.GOPINATH, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

K.Solomon,
Technical Assistant, T-1-3,
Socio Economic Evaluation and Technological Transfer Division,
C.M.F.R.I, Cochin – 18.Applicant

(By Advocate – Mr.Poly Mathai)

V e r s u s

1. Indian Council for Agriculture Research
represented by its Secretary,
Krishi Bhavan, Rajendra Prasad Road,
New Delhi – 110 114.

2. The Director,
C.M.F.R.I, P.B-1603,
Ernakulam North P.O., Cochin – 18.Respondents

(By Advocate Mr.P.Santhosh Kumar)

This Original Application having been heard on 24th October 2018,
the Tribunal on 26th October 2018 delivered the following :

O R D E R

HON'BLE Ms.P.GOPINATH, ADMINISTRATIVE MEMBER

The applicant joined the service of the respondents in the year 1988 in
Category I as T-1 in the group of field/farm technician. He was promoted to
T-2 in 1.1.1994 and T-3 in 2004. The Technical Service Rules (TSR) was
amended in 2000, 2002 and 2006 bringing about changes in the service
conditions. On the introduction of the new TSR all employees were

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directed to submit an option whether to shift over to the new TSR or opt to remain to be governed by old TSR. The applicant submits that he submitted an option for old TSR in the year 2006. On receipt of the applicant's option, the respondents convened an Assessment Committee and the applicant was promoted to T-3, Category II under the old TSR.

2. As per old TSR promotion to Category II is given only to persons having a degree in the relevant field. The applicant acquired a B.A degree in (Economics) in the year 2011. The applicant applied for promotion on the basis of the degree he had obtained. As the respondents did not take any action, he filed O.A.No.524/2014 which was disposed of on 21.7.2014 with a direction to issue a speaking order on the representation submitted, within two months. The applicant received Annexure A-1 order rejecting his request for promotion. The prayer of the applicant in this O.A is for promotion to Category II in the light of the degree acquired by him. The applicant also prays that the respondents should cancel his option exercised by R2(g) and grant all benefits as a consequence of this cancellation.

3. The applicant submitted a representation on 21.12.2013 requesting for the following :

- (i) He is a graduate and is eligible to be promoted to Category to T-5 as per Old Technical Service Rules.
- (ii) He had worked in T-3 post for more than 4 years and similarly placed persons who got degree while in service were given higher promotion.

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(iii) His earlier promotion granted to him in 2004 cannot be cancelled because he had opted for old TSR. At best it could have been cancelled only from the date on which he had opted for old TSR or date from which he was ordered to be demoted by ICAR whichever is favourable to him.

4. The above representation was examined by the respondents and the following facts were brought out :

(i) Shri.K.Solaman, T-I-3, CMFRI who belongs to the functional group 'Field/Farm Technician' joined as T-1 (Field Assistant) on 14.3.1988.

(ii) He was promoted to the post of T-2 w.e.f 1.1.1994.

(iii) On completion of five years' service in the grade of T-2, his performance was assessed and he was granted 2 advance increments w.e.f 1.1.1999 in T-2 grade.

(iv) On introduction of new TSR w.e.f 3.2.2000, he did not exercise option and he was deemed to have opted for new TSR.

(v) He was accordingly placed in the grade of T-3 under Category-II w.e.f 1.1.2004 under the provisions of new TSRs considering his length of service in T-2 grade and the recommendations of the Assessment Committee.

(vi) The Council again called for fresh option in the year 2006 and this time, Shri.Solaman opted for old TSR.

(vii) As per old TSR, the essential qualifications prescribed for appointment to Category-II of Technical Service is under :

(i) Three years Diploma/Bachelor's Degree in relevant field.

(ii) Three years experience in the relevant field for Diploma holders.

(viii) He was reverted to T-1-3 grade w.e.f 1.1.2004 from T-3 grade as he did possess graduation in the relevant field which is the essential qualification. T-I-3 is the terminal grade in Category-I.

(ix) He had filed O.A in CAT Ernakulam Bench against his reversion, but the same had been dismissed by the CAT vide its order dated 15.11.2010.

5. The respondent also argues that the Bachelor of Arts degree which the applicant has acquired subsequently was not in the relevant field as required under the old TSR and hence this qualification would also not come to the aid of the applicant.

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6. The applicant did not exercise an option when the new TSR was introduced on 3.2.2000 and hence as per conditions stipulated in the option letter he was deemed to have opted for the new TSR. He was accordingly placed in grade T-3 Category II with effect from 1.1.2004 under the provision of new TSR on the basis of his length of service in T-2 and the recommendations of the Assessment Committee. In 2006 when the employees were given another opportunity for opting for either old TSR or new TSR, the applicant opted for old TSR which was in operation prior to 3.2.2000. The respondents argue that the applicant having opted voluntarily for the old TSR cannot claim the benefits of the new TSR as he could not ride two boats at the same time.

7. The new TSR may have been beneficial to the applicant as there was no degree/diploma qualification for promotion to the higher grade. But the applicant having failed to notice this had voluntarily opted for old TSR. The respondents produced Annexure R-2 (g) option form of the applicant wherein the applicant in 30.11.2006 had opted for the old TSR. As per old TSR the essential qualification prescribed for appointment to Category II is three years Diploma/Bachelor Degree in the relevant field. At the time of appointment as T-1 the applicant possessed a pre-degree in Science Group with Physics, Chemistry and Biology as subject. The Degree he obtained subsequently is B.A (Economics), whereas he was required to possess a B.Sc Degree. Therefore, the respondents argue that he does not have a qualification in the relevant field. Since he did not obtain a Degree in the

science subject, his eligibility for further promotion under the old TSR was non-existent and the applicant having realised this, prays for cancelling the R-2(g) option exercised and be given another chance to re-opt after having availed the exercise of option opportunity twice.

8. At this point it is brought to our notice that the applicant was before the Tribunal in O.A.No.653/2009 which was decided on 15.11.2010. We find that the relief raised by the applicant in this O.A has already been covered by the Tribunal in its earlier order in O.A.No.653/2009 cited above and the relevant portions are reproduced as below :

“5. Heard learned counsel for the parties and perused the records produced before us.

6. The applicant is challenging the office order dated 25.5.2009 changing the designation of the Technical staff including the applicant who have opted for Old TSR as T-I-3 instead of T-3. As per office order dated 29.1.2008 (A-11) the designation of the applicant on exercise of his option for Old Technical Service Rules was shown as T-3 (Technical Assistant). As per the revised option the applicant would be governed by the old Technical Service Rules. Therefore, on submission of the revised option he will be governed by the old TSR and the benefits got under the New TSR will have to be surrendered by him. As per the old TSR, he is eligible for promotion upto T-I-3 in Category-I only and not beyond since he does not possess the minimum qualification of Degree for entry into Category-II.

7. The applicant who was working in category of T-2 Category-I was granted assessment promotion to T-3 in Category-II w.e.f. 1.1.2004 in accordance with the new TSRs in force, by order dated 7.10.2004 (A2). Fresh options within 30 days for opting for either old Technical Service Rules or New Technical Service Rules, were called for by circular dated 19.10.2006 (A-10) much after the assessment promotion was granted to the applicant. It was specified in the endorsement that if they do not submit fresh option within the above period it shall become automatically covered under the New Technical Service Rules. Therefore, it is clear that the applicant had submitted option for Old TSR.

8. The New Technical Service Rules was introduced by letter dated 3.2.2000 and the applicant having not submitted any option he is deemed to have opted for new TSR. To overcome the difficulties arising out of the implementation of the qualifications, etc it was decided to

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allow opportunity of fresh option to the employees for opting for either the Old or New TSRs. The applicant has opted for the Old TSRs on 30.11.2006.

9. The issue that comes up for consideration is whether the applicant is entitled to opt for the old TSR in response to circular dated 19.10.2006 on one hand and retain the assessment promotion granted to him under the new TSR vide AnnexureA-2 dated 7.10.2004.

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12. It is in this context that ICAR introduced new TSR and issued R-2 whereby higher qualification of graduation was made mandatory for those inducted in Category-II and Post Graduation for such entrant in category-II for promotion upto T-6 grade in Category III. Acquisition of higher essential qualification for further promotion and the need to encourage excellence in performance and opportunity for growth for promotees, was elaborated in R-2 for bringing it to the notice of all the staff. ICAR, the 3rd respondent, while notifying the new TSRs on 3.2.2000 at R-1 vide its para 3 called for options from those who want to be governed by the old TSR. The applicant did not give any option. Therefore, the first respondent issued R-4, a list of 197 officials who would be governed by the new TSR w.e.f. 3.2.2000 as they did not opt to continue under the old TSR, which was in force upto 3.2.2000.

13. The main difference between old TSR and new TSR is that as per old TSR a person in T-2 grade who does not possess the required qualification of graduation for entry into category-II is eligible for promotion only upto T-1-3 grade. He will get promotion beyond T-1-3 only if he acquires graduation. However, as per new TSR, a person in T-2 grade with 10 years service can get promotion to T-3 grade in Category-II on the basis of assessment of performance. Therefore, had the applicant opted in 2000 for the old TSR, he could not have been promoted beyond T-1-3. Since he did not opt, he became the beneficiary for promotion to T-3 grade in Category-II by virtue of 10 years of service, without getting the mandatory educational qualifications of graduation under the new TSR. It is noted above that, only on the request of staff union representatives, after deliberations at the highest level, an opportunity for exercising option in 2006 was permitted. Thousands of personnel all over the country would have availed this opportunity. So any further changes if needed, it has to be taken up by the staff union with the competent authority.

14. We notice that the old TSR was in force only till 3.2.2000. In that case, the applicant will be governed by the old TSR and therefore he shall not be entitled to the assessment promotion granted to him vide order dated 7.10.2004 under the new TSR. Therefore, the applicant having exercised the opportunity of revising the option and elected to opt for the Old TSR, he shall be governed by the Old TSR throughout his career, hence, he has to forgo all the benefits received by him under the new TSR.

15. In this view, we do not find any infirmity in the order at Annexure A12 . The O.A lacks merit and accordingly it is dismissed. No costs.”

9. The Tribunal having gone into the matter in depth had arrived at a conclusion that the applicant having exercised the option for old TSR shall be governed by old TSR throughout his career and he has to forgo all the benefits received by him under the new TSR. This order of the Tribunal had been assailed before the jurisdictional High Court and the same was dismissed as withdrawn. Hence the order in O.A.No.653/2009 is final. This application is hit by the principle of res-judicata as prayer and grounds urged in this O.A have already been considered in a former suit and orders passed by this Tribunal in O.A.No.653/2009 on 15.11.2010 have attained finality. The Tribunal while passing orders in above O.A had ordered that “the applicant having exercised the opportunity of revising the option and elected to opt for the old TSR, he shall be governed by the old TSR throughout his career, hence he has to forgo all the benefits received by him under the new TSR.” Therefore the applicant's prayer for allowing him to re-exercise the option is not admissible in view of the final orders of the Tribunal in O.A.No.653/2009.

10. The O.A is dismissed accordingly. No costs.

(Dated this the 26th day of October 2018)

**ASHISH KALIA
JUDICIAL MEMBER**

**P.GOPINATH
ADMINISTRATIVE MEMBER**

List of Annexures in O.A.No.180/01011/2014

1. **Annexure A1** - A true copy of the Office Memorandum dated 16.9.2014 of the 1st respondent.
2. **Annexure A2** – A true copy of the appointing order of the applicant dated 28.3.1988.
3. **Annexure A3** – A true copy of the order dated 2.8.1994 promoted the applicant as Junior Technical Assistant in T-2 Grade.
4. **Annexure A4** - A true copy of the order dated 7.10.2004 promoting the applicant to T-3 post from 1.1.2004.
5. **Annexure A5** - A true copy of the order dated 25.5.2009.
6. **Annexure A6** - A true copy of the degree certificate acquired by the Kerala University to the applicant.
7. **Annexure A7** – A true copy of the letter from the applicant forwarding the degree certificate to the 2nd respondent.
8. **Annexure A8** – A true copy of the representation dated 21.12.2013.
9. **Annexure A9** - A true copies of the order dated 19.8.2014.
10. **Annexure A10** - A true copy of the order of this Hon'ble Tribunal in O.A.No.180/524/2014 dated 21.7.2014.
11. **Annexure A11** - A true copy of the letter from the ICAR to the directors dated 1.2.1995.
12. **Annexure A12** - A true copy of the proforma dated 18.11.2014.
13. **Annexure A13** - A true copy of the order dated 18.6.2016 granting the merit promotion to the Grade of T-1-3.
14. **Annexure A14** - A true copy of the letter dated 12.1.2006.
15. **Annexure A15** - A true copy of the degree certificate issued by the Annamalai University in May, 2015.
16. **Annexure A16** - A true copy of the order of the ICAR dated 2.8.1994.
17. **Annexure A17** - A true copy of the order issued by the CMFRI dated 18.6.2016.
18. **Annexure A18** - A true copy of the CMFRI dated 2.3.2017.
19. **Annexure R2(a)** - A true copy of the Letter No.18(1)/97-Estt.1 dated 3.2.2000 of the 1st respondent.

20. Annexure R2(b) - A true copy of the Letter No.19(10-2004-E-IV dated 19.10.2006 of the 1st respondent.

21. Annexure R2(c) - A true copy of the order dated 15.11.2010 in O.A.No.653 of 2009 of this Hon'ble CAT.

22. Annexure R2(d) - A true copy of the judgment dated 7.1.2013 in OP(CAT) No.966 of 2011 of the Hon'ble High Court of Kerala.

23. Annexure R2(e) - A true copy of the Office Order F.No.15-4/2001-Estt. dated 18.5.2011 of the 2nd respondent.

24. Annexure R2(f) - True copy of the Office Order F.No.15-1/2012-Estt. dated 6.7.2013 of the 2nd respondent.

25. Annexure R2(g) - True copy of the Option Form dated 30.11.2006 submitted by the applicant.
