

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

Order reserved at Shimla on: 11.10.2018

ORIGINAL APPLICATION NO. 063/226/2017

Chandigarh, this the 26th day of October, 2018

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...

R.S. Mehta son of late Sh. Dhan Singh Mehta aged 66 years, retired Group-B employee, resident of Village Tikker, P.O. Jarol, Tehsil Kumarsain, District Shimla, H.P.

....APPLICANT

(By Advocate: Shri Parkash Sharma, Advocate)

VERSUS

1. Union of India, ICAR, Krishi Bhawan, New Delhi-110001, through its Director General & Secretary (DARE).
2. Indian Council of Agricultural Research, through its Secretary, ICAR, Krishi Bhawan, New Delhi 110001, through its Secretary.
3. Director, Central Potato Research Institute, Shimla 171001, Himachal Pradesh.

....RESPONDENTS

(By Advocate: Shri Anshul Bansal)

ORDER

AJANTA DAYALAN, MEMBER (A)

The present Original Application has been filed by applicant R.S. Mehta feeling aggrieved by impugned order dated 29.2.2016 (Annexure P-24) rejecting his claim for grant of 2nd financial upgradation under Assured Career Progression Scheme (ACPS) in the pay scale of Rs. 10000-15200 with effect from 16.1.2002 and against letter dated 17.3.2008 (Annexure P-17) to the similar effect

and has sought quashing of the same. Besides, clarification dated 24.8.2005 (Annexure P-19) stating that directly recruited Stenographer Grade-II/PA in the ICAR Institute will be entitled to 2nd financial upgradation in the scale of Rs. 7500-250-12000 has also sought to be quashed being contrary to basic ACP Scheme. Further, the applicant has prayed for direction to grant him financial upgradation under ACP Scheme in the scale of Rs. 10000-15200 w.e.f. 16.1.2002 with all consequential benefits and interest on the delayed payment at market rate.

2. The counsel for the applicant pleaded that the applicant was appointed as Stenographer in Central Potato Research Institute, (CPRI), Shimla w.e.f. 16.1.1977. His appointment order dated 16.1.1978 (Annexure P/1) contained a condition (ii) that 'his Headquarters will be at CPRI, Shimla, but he will be liable to serve in any institute and/or office of (ICAR) located anywhere in India.' The applicant was promoted as Senior Stenographer in the scale of Rs. 1640-2900 w.e.f. 27.12.1995. In June 1997, the cadre of Assistants and Stenographers Grade-II at ICAR Headquarters and Research Institutes were unified and the revised scale of Rs.1640-2900 was extended to them with immediate effect. Recruitment Rules for these posts were also approved in October 1997. The applicant was promoted as Senior P.A. w.e.f. 28.12.1998. The ACP Scheme introduced by Central Government vide DOPT O.M. dated 9.8.1999 was made applicable to ICAR/CPRI employees vide letter dated 30.8.1999 (Annexure P-10/B). Vide DOPT O.M. dated 10.2.2000 a clarification was issued whereby benefits of

upgradation under ACP Scheme was to be allowed in the hierarchy existing after merger of pay scales by ignoring promotion from lower pay scale to higher pay scale before merger of pay scale by ignoring promotion from lower pay scale to higher pay scale before merger of pay scale. In the case of applicant, as the post of Stenographer and Senior Stenographer was merged in 1997, his promotion in 1995 was required to be ignored for the purpose of ACP and as such he could be considered for promotion as Private Secretary in 1998 and became eligible for 2nd financial upgradation in 2002 on completion of 24 years of service. On 27.7.2000, Recruitment Rules for the administrative post in ICAR system were revised including the post of Private Secretary. In terms of 5th Central Pay Commission's recommendation as implemented by Government of India and adopted by ICAR the pay scale for the post of Senior Personal Assistant (Rs. 2000-3200) and Private Secretary (2000-3500) were merged into a common pay scale of Rs 6500-10500 with the common designation of Private Secretary. The ICAR vide letter dated 24.8.2005 (Annexure P-19) issued instructions (after obtaining clarification from DOPT) that directly recruited Stenographer Grade-II/PA in ICAR institutions would be entitled to 2nd financial upgradation in the scale of Rs. 7500-12000. The applicant was accordingly allowed financial upgradation in this scale w.e.f. 16.1.2002 vide order dated 9.11.2005 (Annexure P-19/A).

3. According to the applicant, the pay scale of Rs. 7500-12000 does not exist in ICAR and no such hierarchy/grade exists in ICAR

and hence this is against the spirit of the ACP Scheme. Nstead he needed to be placed in the higher scale of Rs. 10000-15200.

4. The applicant made representation and the respondents vide letter dated 17.3.2008 (Annexure P-17) informed that DOPT has clarified that the question of granting ACP in the higher scale as suggested does not arise and hence his request of 2nd upgradation was not accepted. The applicant filed O.A. No. 326/HP/2009 which was rejected by this Tribunal vide order dated 13.8.2009 (Annexure P-21). The Civil Writ Petition No. 3967/2009 which was filed before jurisdictional High Court at Shimla was disposed of on 6.10.2015 with permission to withdraw the O.A. with liberty to file representation. The applicant submitted detailed representation on 1.11.2015 (Annexure P-23), which was rejected by the respondent department vide impugned order dated 29.2.2016.

5. The case of the applicant is that as per the ACP Scheme, financial upgradation is to be given in the next higher scale, in accordance with existing hierarchy in the cadre/category of posts, though without creating new posts for the purpose. Further, DOPT O.M. dated 10.2.2000 (Annexure P-10) specifically deals with the situation where cadre/hierarchy limited to two grades only. It is therein provided that if such cadre/hierarchy exists in the Ministry/department, the 2nd financial upgradation may be allowed keeping in view the scale of an analogous grade of a cadre/post in the same Ministry/Department. Further, it is provided that in case of attached/subordinate offices the 2nd financial upgradation under ACP may be given keeping in view the pay scale of an analogous

grad of a cadre/post of the concerned office. It is pleaded that vide letter dated 27.7.2000 (Annexure P-13), two cadres of Senior PA and Private Secretary with separate Recruitment Rules were merged in a single designation, post and grade of Private Secretary in the common scale of Rs. 6500-10000. The Recruitment Rules for the post of Private Secretary have been revised and with this there ceases to be a separate post of Senior Personal Assistant w.e.f. 27.7.2000. It is, therefore, averred that he was directly recruited in 1978 and he has got only one upgradation as Private Secretary and hence is entitled for 2nd financial upgradation.

6. The applicant further pleaded that CPRI is one of the research institute of ICAR systems. As per ICAR Rules (Annexure P-20), the 'Constituent Units of Society' means the ICAR Research Headquarters, its Research Institution, regional and sub stations, research laboratories etc. and Co-ordinated projects managed and administered by the Society. Further, Rule 2(a) provides "the Society means 'the ICAR, a Society registered under the Societies Registration Act, 1860'. It is further stated that the case of cadre/ hierarchy being limited only to two grades does not fall in isolated category and in such cases, the financial upgradation is to be given in the scale of analogous grade of cadre/ post in the same Ministry/Department. Hence he is entitled to financial upgradation in the post of Special Assistant to Chairman, ASRB as this post is filled up from amongst Private Secretaries of ICAR Headquarters. As such Private Secretaries are equivalent to Private Secretary post

held by the applicant, his request is justified and the impugned orders are bad in law.

7. The respondents have resisted the claim of applicant in their written statement. It is stated that the post of Stenographer Grade-II was a feeder cadre for the post of Senior Stenographer. Consequent upon the extension of pay scale of Rs. 1640-2900 to the post of Stenographer Grade-II w.e.f. 16.6.1997, this post was treated as dying cadre and the promotion from Stenographer Grade-II to Senior Stenographer was to be ignored. So the 1st financial upgradation to directly appointed Stenographer Grade II/Senior Stenographer was to be given in the next pay scale of Rs. 6500-10500 in the hierarchy and 2nd financial upgradation is to be granted in the scale of Rs. 7500-12000 as per the advice of DOPT. The applicant was first promoted as Senior Stenographer Grade-I in the scale of Rs. 1640-2900 w.e.f. 27.12.1995 and then promoted as Senior Personal Assistant in the scale of Rs. 6500-10500 w.e.f. 28.12.1998 which post was re-designated as Private Secretary. As the two cadres were merged accordingly his 2nd promotion to the post of Senior Personal Assistant was ignored and he was due for 2nd financial upgradation under ACP Scheme. At the Institute level, hierarchy for Stenographer is only upto Private Secretary. As such, financial upgradation was given in the pay scale of Rs. 7500-12000 in view of DOPT clarification. It is also stated that no post exists in the Institute above the post of Private Secretary and hence advice of DOPT was sought. DOPT observed that Stenographer cadre of ICAR Headquarter is based on the Central Secretariat Subordinated

Services Care. On the other hand, field units are structured as in the case of non-secretariat organization. Since both the cadres are independent, therefore, the quantum of ACP has to be viewed separately for ICAR Headquarters and field units. Respondents have further averred that DOPT vide its note dated 22.2.2004 has clarified that the next higher scale of Rs. 7500-12000 as per the standard structure for Stenographer in non-secretariat organization will apply in the case of stenographers at Institute.

8. The respondents have further averred that as per condition no. 11 of the ACP Scheme, 'any interpretation/clarification of doubt as to the scope and meaning of the provision of ACP Scheme shall be given by the DOPT'. Accordingly, the decision on the issue has been taken by DOPT and the request of the applicant for 2nd financial upgradation under ACP Scheme in the pay scale of Rs. 10000-15200 is not justified.

9. The respondents have further pleaded that the hierarchy of posts of Stenographers at the Institute is only up to Private Secretary in the pay scale of Rs. 6500-10500 being attached/subordinate office. It is only at ICAR Headquarters (being Ministry/Department) that one post exists above the Private Secretary i.e. Special Personal Assistant to Chairman, Agricultural Scientist Recruitment Board in the scale of Rs. 10000-15200. This post is equivalent to the post of Principal Private Secretary in CSSS cadre. Therefore, only Private Secretaries at Headquarters are eligible for promotion to this post and not Institutional based Private Secretaries.

10. The respondents have argued that Ministry of Finance has accorded approval for placing Private Secretaries in ICAR Headquarters in Pay Band-2, Rs. 9300-34800 with grade pay of Rs. 4800 w.e.f. 1.1.2006 and after completion of 4 years of service in the grade pay of Rs. 5400. However, in case of Private Secretaries at ICAR Institutes, the Ministry of Finance has allowed placing them in Pay Band-2, Rs. 9300-34800 with grade pay of Rs. 4600. Therefore, distinction between ICAR Headquarters and the institute has further been emphasized by the Ministry of Finance.

11. We have heard the learned counsels for opposing parties, carefully gone through the pleadings and given our thoughtful consideration to the matter.

12. We observe that the sole issue in the case is the pay scale in which the applicant should be placed after 2nd financial upgradation under ACP Scheme. The applicant is claiming pay scale of Rs. 10000-15200 on the plea that such scale exists in the ICAR system for Special Personal Assistant to the Chairman, Agricultural Scientist Recruitment Board. He has also placed reliance on ACP Scheme wherein in cases where only 2 hierarchically cadres exist in a Ministry/Department, 2nd financial upgradation is to be allowed keeping in view the pay scale of analogous grade of cadres/post in the same Ministry/Department. In case of attached/subordinate offices 2nd financial upgradation under ACP is to be given keeping in view pay scale of analogous grade of cadre in the concerned office. On the other hand, the respondent have argued that the pay scale of Rs. 10000-15200

sought by the applicant does not exist in the ICAR system. Only one post exists above the post of Private Secretary i.e. Special Personal Assistant to Chairman Agricultural Scientists Marketing Board in this pay scale. This is in the ICAR Headquarters and not in any of its institute. Further, only Private Secretaries of ICAR Headquarters are eligible for promotion to this post. Institution based Private Secretaries are not eligible for this post. Besides, they have argued that the posts of Private Secretaries at ICAR Headquarters are based at CSSS Cadre. On the other hand, field units are structured as in the case of non-secretariat organization. Both these are independent cadres and, therefore, quantum of ACP Scheme needs to be viewed separately for ICAR Headquarters and the field units. Further, it is averred that Private Secretaries at ICAR Headquarters are placed in Pay Band-2 with grade pay of Rs. 4800 w.e.f. 1.1.2006 and after completion of 4 years service in grade pay of Rs. 5400. On the other hand, the Private Secretaries at ICAR institutions are allowed Pay Band-2 in grade pay of Rs. 4600. Hence there is a clear distinction between Private Secretaries at ICAR Headquarters and institutions and the two are not at par.

13. We further observe that even as per the ACP Scheme relied upon by the applicant himself, there are clear two separate stipulations on the same issue. The DOPT O.M. dated 10.2.2000 relied upon by the applicant in his submission in support of his claim reads as follows:

“ (i) If such cadre/hierarchy exists in the Ministry/Department concerned, the second upgradation may be allowed in keeping with the pay scale of an

analogous grade of a cadre/post in the same Ministry/Department.

(ii) In the case of attached/subordinate offices, the second upgradation under ACPS may be given in keeping with the pay scale of an analogous grade of cadre/post of the concerned office.”

We observe that even here, though the issue and conclusion are the same, two separate provisions have been made for 2nd financial upgradation – one for the Ministry/Department concerned and 2nd for the attached/ subordinate offices. This is clearly to distinguish the meaning of analogous grade of cadre or post in the Ministry/Department and cadre/post in attached/subordinate offices. The intention is clear that these two should be treated as separate and not merged, for identifying analogous grade of cadre or post. Hence, in case of attached/subordinate offices, 2nd financial upgradation is not to be given for analogous grade of cadre/ posts existing in the Ministry department unless such posts exist in the concerned office itself. Otherwise, there was no logic in making two provisions distinct and separate.

14. Moreover, we observe that the Private Secretaries in the Ministry are drawn from CSSS cadre whereas Private Secretaries of the institutions are not drawn from this cadre and constitutes a separate cadre. As the method of recruitment and recruitment rules of the CSSS cadre are separate from non-secretariat service personnel, the two are separate entities and cannot be made equivalent.

15. The contention that Private Secretaries at Headquarters are not equivalent to Private Secretaries in field office is

further established by the fact that Private Secretaries at ICAR Headquarters are given grade pay higher than that allowed to Private Secretaries at ICAR Institutions. While former are allowed grade pay of Rs. 4800 w.e.f. 1.1.2006 and grade pay Rs 5400 after completion of 4 years of service, Private Secretaries at ICAR Institutions are allowed only grade pay of Rs. 4600. Hence, obviously they are not at par and cannot claim equal benefit in financial upgradation.

16. We observe that ACP Scheme categorically state that any interpretation or clarification 'as to the scope and meaning of the provision of ACP Scheme' shall be given by DOPT which is to deal with such type of cases. In this case, the clarification is given by the DOPT. This fact is not disputed. We also find that the clarification given by DOPT has sound logic in view of the facts.

17. Hence, we do not find any reason or logic for interfering in the impugned orders. As such, the O.A. is dismissed.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 26.10.2018

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