

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.4363 of 2013

This the 28th day of February of 2019

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

Shri Bishan Dev
Aged about 58 years
s/o Late Shri Girdhari Lal
E-19, Pusa Campus,
New Delhi-110012.

....Applicant

(By Advocate : Shri Nilansh Gaur)

VERSUS

1. Indian Council of Agricultural Research
Through its Secretary,
Krishi Bhawan,
Dr. Rajender Prasad Road,
New Delhi-110001.
2. Director General
Indian Council of Agricultural Research
Krishi Bhawan,
Dr. Rajender Prasad Road,
New Delhi-110001.
3. The Director,
Indian Agricultural Research Institute,
Pusa Campus,
New Delhi-110012.

.....Respondents

(By Advocate : Shri Gagan Mathur)

O R D E R (Oral)

Ms. Nita Chowdhury, Member (A):

Heard learned counsel for the parties.

2. By filing this OA, the applicant is seeking the following reliefs:-

“8.1 To set aside the impugned order of reversion dated 22.06.2012 at **Annexure A-1**;

8.2 To direct the respondents to deem the applicant as duly qualified and eligible under the Technical Service Rules. The respondents be further directed to allow the applicant his present position in his respective grade and that he may also be further assessed for promotion to higher grades; and

8.3 Any other relief which this Hon'ble Tribunal may deem fit and appropriate, in the circumstances of the case.”

2. The grievance of the applicant is against the impugned order of reversion issued by the respondents whereby in the guise of rectification of mistake, the applicant has been reverted from T-5 Grade to T-I-3 grade by cancelling the promotion orders placing him in T-II-3, T-4 and T-5 grades respectively.

3. The brief relevant facts of the case are that earlier the applicant (who is in T-5 grade in the ICAR) had filed OA 1611/2012 as he was aggrieved by the show cause notice dated 23.2.2010 issued by the respondents vide which respondents were reverting him to T-1-3 grade w.e.f.1/1/1995 on the ground that he does not possess the essential qualifications prescribed for Category II for direct recruitment under Rule 6.2.1. (iii) of Old TSR of ICAR. Since no decision had been taken by the respondents on his reply to the said show cause notice, this Tribunal vide Order dated 14.5.2012 disposed of the said OA with the following directions:-

“3. We are of the view that the request of the learned counsel for the applicant is reasonable as the respondents have not responded to his reply to the show cause notice in which he had made several submissions.

4. In view of the above, we dispose of this OA at the admission stage itself by directing the respondents to take a decision in the matter as per rules/law after considering the submissions of the applicant in his reply to the show cause notice. The decision taken should be communicated to the applicant through a reasoned and speaking order within a period of four weeks from the date of receipt of a copy of this order. Till such decision is taken, the applicant should not be reverted to T-1-3 grade w.e.f.1/1/1995.

5. It is made clear that we are not expressing any view on the merits of the case.”

3.1 In compliance of the aforesaid directions of this Tribunal, the respondents have passed the order dated 22.6.2012, which is impugned by the applicant in this OA. The contents of the said Order reads as under:-

“ORDER

Whereas Sh. Bishan Dev, TO/T-5 was appointed as T-1/Fieldman in Cat.I w.e.f. 1.5.80 in Field/Farm Technician Functional Group and further promoted T-2 w.e.f. 1.1.86, T-I-3 w.e.f. 1.7.91, T-II-3 w.e.f. 1.1.95, T-4 grade w.e.f. 1.1.2000 & T-5 w.e.f. 1.1.2005.

Whereas when the New Technical Service Rules were notified w.e.f. 3.2.2000 any existing technical employees who may like to be governed only as per the existing technical service rules may specifically exercising an individual option. Sh. Bishan Dev has not given his option as such governed under New Technical Service Rules. Accordingly, his service matters are to be dealt to be dealt as per New TSR which came into force w.e.f. 3.2.2000.

Whereas category bar from Cat.I(T-I-3) to Cat.II (T-II-3) w.e.f. 1.1.95 vide Office Order No.25-12/95-P-V dated 10.10.95 with reference to Council's letter No.14(3)/94-Estt.IV dated 1.2.1995 was erroneously removed in the case

of Sh. Bishan Dev. Since Sh. Bishan Dev did not possess the essential qualification for Direct Recruitment of Cat.II under Field/Farm Technician Functional Group. He was not eligible for removal of category bar in Cat.II as per Old TSR.

The qualification for Cat.II in the Functional Group FFT is as under:

3 years Diploma/Bachelor's degree/equivalent qualification in the relevant field/3 years experience in the relevant field for Diploma holders.

As per Technical Service Rules BA/MA qualification cannot be treated as relevant qualification for the Field/Farm Technician Functional Group as such Sh. Bishan Dev does not possess the essential qualification for entry to Cat.II by direct recruitment.

Whereas Sh. Bishan Dev possess the following qualifications:

High School/Inter(Science)/BA/ MA(Economics) Studied Agril. Economics as one of the subject.

Whereas as stated by the applicant in the supplementary reply that a higher power committee has been constituted to examine the relevant qualifications. As the IARI was dealing with more than 32 ARS disciplines of which Sociology and Economics was one of the relevant field of Agriculture. In this regard, it is stated that the recommendations of the committee for inclusion of Economics and Sociology has not been concurred by the ASRB or SMD as such proceedings of the Committee is not valid & relevant to the matter.

Sh. Bishan Dev's case of erroneous placement in T-II-3 grade was referred to the Council along with show cause notice issued to him. ICAR has intimated that recommendations of the Committee on the anomaly in the matter of promotion/appointment of technical staff across different categories have been rejected by the Secretary/DG,ICAR after due application of mind and consideration of its pros and cons. The committee has mentioned in its proceedings that BA(Eco.), B.Com, BA(Sociology) etc. are not considered relevant to Agriculture and hence their promotion to Cat.II cannot be accepted and they would have to be reverted after following due procedure.

The category bar from Cat.(T-I-3) to Cat.II (T-II-3) w.e.f. 1.1.95 in case of Sh. Bishan Dev was erroneously removed as he does not possess the essential qualification of Direct Recruitment of Cat.II in Field/Farm Technician Functional Group under Old TSR of ICAR.

As per the directions of the Hon'ble CAT, PB, New Delhi in the OA No.1611/12 dated 14.05.12 and also considering the supplementary reply (OA which is treated as supplementary reply as per the order of the Hon'ble CAT), his case has again examined in the light of the ICAR Old TSR. As such the removal of category bar w.e.f.1.1.95 in the case of Sh. Bishan Dev is found erroneous.

Hence, after due consideration of the reply sent by Sh. Bisan Dev to the show cause notice and the contentions raised by him in the aforesaid OA, the Competent Authority (i.E. Director, IARI) is of the view that since the removal of the category bar in the case of Sh. Bishan Dev is erroneous and the erroneous removal of category bar is to be rectified and accordingly, Sh. Bishan Dev is to be reverted back in T-I-3 grade w.e.f. 1.1.95. It is clarified that he will be considered for grant of advance increment on completion of 5 years of service in T-1-3 grade i.e. 1.7.1996 by prescribed procedure under TSR through a constituted Assessment committee. As he governed by New Technical Service Rules w.e.f. 3.2.2000 therefore he will be assessed for his placement in T-3, T-4 & T-5 grade through Assessment Committee and illegitimate/additional payments, if so made to him are to be recovered."

4. At the outset, learned counsel for the applicant submitted that similar show cause notices had also been challenged by similarly situated employees of the respondents – department by filing OA Nos.1710/2012 & 1964/2012, 743/2012 and OA 2264/2005 and this Tribunal vide Orders dated 14.11.2013, 23.4.2014 and 24.7.2014 respectively allowed the said OAs by relying on earlier Order dated 15.5.2013 passed in OA No.763/2012, the operating part of the said Order reads as under:-

“10. While the applicants’ counsel could not cite any rule or judicial precedent to support his case yet in our opinion reversion of the applicants after such long years of service is shocking and unjustified. It will cause irreparable loss to the careers of the applicants. Applicants are not at fault in this as their educational qualifications were well known to the respondents and there was no misrepresentation on the part of the applicants. Yet they were not only appointed but also allowed to work and earn promotions for so many years. Therefore, in the interest of justice, we quash the reversion notices issued to the applicants. The applicants will be allowed to work in their respective grades. However, we do not propose to give any direction regarding further promotions of the applicants.

11. On the basis of above, we allow this O.A. and quash the show cause notices issued by the respondents. The applicants will be allowed to continue working in the grades in which they were working. There shall be no order as to costs

4.1 Counsel for the applicant further submitted that aforesaid Order of this Tribunal in OA No.763/2012 dated 15.5.2013 was challenged by the respondents before the Hon’ble Delhi High Court by filing Writ Petition (Civil) No.1379/2014 and the High Court vide Order dated 4.3.2014 dismissed the said Writ Petition by upholding the said Order of this Tribunal dated 15.5.2013. He also submitted that Orders on similar lines as in OA No.763/2012 had also been passed by this Tribunal in OAs 1710/2012, 1964/2012, 743/12 and 2264/2015 and the respondents have also challenged the Orders passed in the said OAs by filing Writ Petition (Civil) Nos.4431/2014, 4578/2014, 6682/2014 and 1/2015 before the Hon’ble Delhi High Court and the High Court vide common Order dated 31.7.2017 in this said Writ

Petitions extensively gone in the matter, dismissed the said Writ Petitions by upholding the Orders of this Tribunal, the relevant portions of the said judgment reads as under:-

“17. The Tribunal while allowing the present OAs, quashing the reversion orders in respect of all the Respondents and directing that they be allowed to continue working in the grades in which they were working, before the passing of the reversion orders, had specifically observed that the qualifications of the respondents were always well known to the petitioner but still they had taken no action for almost 25 to 30 years and now after so much delay, they were proposing to revert them to the post which they were holding 10 to 15 years back. The Tribunal was also of the view that it was shocking that the Petitioners (respondents therein) had taken so much time to discover that the Respondent(applicant therein) was always available with them.

18. Aggrieved by the impugned order, the petitioner-Organization has filed the present writ petitions wherein the main contention raised by the petitioner is that the respondents had erroneously been given the benefit of removal of category bar, even though, they were at that time not eligible for removal of category bar in category II as per the old technical service rules of 1975 as they did not possess the essential qualifications for direct recruitment of category 2 as prescribed under the rules.

19. Arguing for the Petitioner, Mr. Gagan Mathur, learned counsel has contended that once it was realized that the respondents had been given the erroneous promotions, it was fully justified in withdrawing the promotions earned by them and mere delay in detecting the erroneous promotions, could not be a ground to permit the respondents to continue to hold the grades against the statutory rules. The learned counsel for the Petitioner, has placed reliance on ***I.C.A.R. & Anr. Vs T.K Suryanarayan & Ors. AIR 1997 SC 3108; U.T. Chandigarh Vs. Gurcharan Singh passed in OA No.9873/2013 & K. Solaman Vs. SAO, Central Marine Fisheries Research Institute, Kochi passed inOA No.653/2009.***

20. Per contra, Mr. Shankar Raju and Mr. Chittaranjan Hari, learned counsel arguing for the respondents, have contended that this Court has

already dealt with the issue in WP (C) No.1379/2014, wherein it had vide its judgment dated 4th March, 2014 rejected the Petitioner's challenge to the order dated 15th May, 2013 of the Tribunal in OA No.763/2012 on similar grounds. Reliance has also been placed on the judgment of the Apex Court in the case of **Shekhar Bose Vs. Union of India** 2007 (1) SCC 222 in support of their plea that if a mistake is to be rectified, the same should be done as expeditiously as possible.

21. Counsels for the Respondents have also drawn our attention to letter/circular dated 19th August, 2016 issued by the Petitioner in which twelve subjects-including Economics, have been treated as relevant fields with effect from 24th February, 2006 and it is contended that once a clarification has been issued in respect of the subjects which are now treated as relevant field, the benefit thereof ought to be extended to all the existing employees.

22. We have perused the impugned orders and given our thoughtful consideration to the rival contentions raised by the parties. We find that even before us, there is no explanation given by the petitioners for the delay in passing reversion orders when, admittedly, after removal of category bar in each of their cases, all the respondents had earned at least two to three further promotions. It is also an admitted fact that none of the Respondents is guilty of any misrepresentation and their qualifications were always known to the Petitioner. It is also an admitted fact that as per the new Rules notified on 3rd February, 2000, even those T-2 grade personnel who do not possess the qualifications as prescribed for direct recruitment to Category II, would also be eligible for assessment of promotion to T-3 grade after 10 years of service in T-2 grade.

23. The Petitioner has also failed to give any justification as to why the benefit of clarification issued on 19th August, 2016 is being denied to the Respondents and, therefore, it is apparent that the action of the Petitioner is wholly arbitrary and illegal.

24. We have also perused the aforesaid judgment dated 4th March, 2014 passed by a Coordinate Bench in WP (C) No.1379/2014, wherein this Court has already dealt with the same issue and has, in fact, while dismissing the writ petition, held that delay and laches would preclude any action to be taken against the

employees after so much delay. The Court also observed that since it was an admitted fact that after the removal of the category bar about 20 years ago, the respondents had been promoted on the basis of assessment made by duly constituted committees which also examined their service record, it was highly unjust and unreasonable to revert them at this stage. We find ourselves in respectful agreement with the same. We are also of the considered view that the judgment of the Apex Court relied upon by the counsel for the Petitioner is not applicable to the facts of the present case.

25. In view of the above, we find no error in the decision of the Tribunal in quashing the reversion orders which were admittedly passed after 15 to 20 years.

26. The writ petitions being devoid of merit, are dismissed with no order as to costs.”

5. On the other hand, Counsel for the respondents by referring to the counter reply submitted that the present case is not exactly the similar case as the applicant's case is not eligible for removal of category bar in Category II as per Old TSR of 1978 as he does have not the essential qualifications prescribed for Category II for direct recruitment under Rule 6.2.1. (iii) of Old TSR of ICAR and therefore, he was erroneously placed in T-II-3 in Category-II w.e.f. 1.1.1995.

6. We observe that the similar issue of placement in T-II-3 in 1995 was adjudicated by this Tribunal by observing as quoted above and the said conclusion of this Tribunal has been upheld by the Hon'ble Delhi High Court in Writ Petition No.1379/2014 decided on 4.3.2014 as also in Writ Petitions No.4431/2014, 4578/2014, 6682/2014 and 1/2015 decided by common Order dated 31.7.2017, the relevant portion of

the said Order of the Hon'ble Delhi High Court is reproduced as under:-

“21. Counsels for the Respondents have also drawn our attention to letter/circular dated 19thAugust, 2016 issued by the Petitioner in which twelve subjects-including Economics, have been treated as relevant fields with effect from 24th February, 2006 and it is contended that once a clarification has been issued in respect of the subjects which are now treated as relevant field, the benefit thereof ought to be extended to all the existing employees.

22. We have perused the impugned orders and given our thoughtful consideration to the rival contentions raised by the parties. We find that even before us, there is no explanation given by the petitioners for the delay in passing reversion orders when, admittedly, after removal of category bar in each of their cases, all the respondents had earned at least two to three further promotions. It is also an admitted fact that none of the Respondents is guilty of any misrepresentation and their qualifications were always known to the Petitioner. It is also an admitted fact that as per the new Rules notified on 3rdFebruary, 2000, even those T-2 grade personnel who do not possess the qualifications as prescribed for direct recruitment to Category II, would also be eligible for assessment of promotion to T-3 grade after 10 years of service in T-2 grade.

23. The Petitioner has also failed to give any justification as to why the benefit of clarification issued on 19thAugust, 2016 is being denied to the Respondents and, therefore, it is apparent that the action of the Petitioner is wholly arbitrary and illegal.”

7. In view of the aforesaid observations of the Hon'ble Delhi High Court, the action of the respondents reverting the applicant in T-I-3 grade w.e.f. 1.1.1995 in the garb of erroneous placement of the applicant in T-II-3 by the impugned order, is not sustainable in the eyes of law.

8. So far as contention of the learned counsel for the respondents that applicant has opted for New Technical Service Rules, which came into force w.e.f. 3.2.2000 and the said rules has no retrospective effect in 1995 is concerned, the applicant was promoted to T-4 w.e.f. 1.1.2000, i.e, prior to amendment of the said rules and the respondents were very much aware of the fact that the applicant was still not having the requisite qualification for promotion to T-4 but they still promoted the applicant and it was not the case of the respondents that the applicant had at any point of time misrepresented about his qualification and as such in the garb of amendment in the RRs, which were amended after he was promoted to T-4 Grade on 1.1.2000, w.e.f. 3.2.2000 and as such the said promotion cannot be cancelled by virtue of an order which was passed in 2012 in view of the aforesaid observations of the Hon'ble Delhi High Court in the said cases.

9. So far as the promotion of the applicant to T-5 Grade is concerned, which was granted to him by the respondents w.e.f.1.1.2005, i.e., after the amendment of the aforesaid Recruitment Rules, again we observe that applicant has not mis-represented to the respondents with regard to his qualification and they themselves promoted him to T-5 grade w.e.f. 1.1.2005 and the respondents have admitted that vide amendment dated 24.2.2006, the qualification of MA

(Economics) with Agricultural Economics, as a subject, was equated with M.Sc. (Agriculture), which is the essential qualification for promotion as per amended RRs of 3.2.2000, which according to the respondents' counsel averment, the applicant has acquired only on 29.7.2005, i.e., much after amendment of the RRs and as such the applicant is not entitled for said promotion w.e.f. 1.1.2005. Since the qualification of the applicant, which was equated with the qualification as provided in the RRs of 2000 vide amendment dated 24.2.2006 and similar issued had also been adjudicated by this Tribunal recently in OA No.1797/2012 and this Tribunal vide Order dated 31.07.2018 passed the following orders, which reads as under:-

“The applicant was initially appointed as Technical Officer in the ICAR on 29.09.1987. Over the period, he earned promotions up to the level of T-V in Category-II in the year 1998. The next promotion in the grade is to level T-VI which is in Category-III. There exists a category bar, as regards the movement from Category-II to Category-III.

2. On 03.02.2000, the new Technical Service Rules came into force. The employees were given option whether to be governed by the old rules or new ones. Since the applicant did not exercise option, he is deemed to have opted for the new rules.

3. According to the new rules, an incumbent from Level T-V can move to T-VI if he holds qualifications that are prescribed for direct recruitment to T-6. This, according to recruitment rules is M.Sc.(Agriculture) or an equivalent P.G. degree. However, the then appointing authority treated the applicant as having crossed the bar on account of his holding a P.G. degree i.e., MA

(Economics). He was accordingly promoted on 01.07.2003 to level T-VI.

4. On 24.02.2006, the question as to whether MA(Economics) with Agricultural Economics, as a subject, can be equated with M.Sc.(Agriculture) was examined, and the rules were amended by treating them as equal.

5. The applicant was issued a show cause notice on 15.10.2007 requiring him to explain as to why his promotion from T-5 to T-6 Level, ordered on 01.07.2003, be not treated as invalid. The applicant submitted his explanation on 30.10.2007. However, another show cause notice, in the same terms, was issued. On consideration of the explanation, submitted by the applicant, the competent authority passed order on 25.04.2012 reverting the applicant to T-V Level and directed recovery of differential amount of salary. That order is under challenge in the OA.

6. The applicant contends that it was only on being satisfied that the qualification held by him in the year 2007 was sufficient for promoting him to T-6 grade, that he was promoted, and there was no justification or basis for the respondents to re-open the issue long thereafter. It is also pleaded that the post graduation degree held by him was treated as equal to M.Sc. (Agriculture). Reliance is also placed upon the OA No.1797/2012 judgment of Hon'ble Delhi High Court in WP(C) No.4431/2014 decided on 31.07.2017.

7. The respondents filed a detailed counter affidavit opposing the OA. It is pleaded that the qualification prescribed for appointment to Level T-VI was M.Sc. (Agriculture) in the year 2003, and it was only in 2006 that a decision was taken to equate MA(Eco.) with M.Sc. (Agriculture) as equivalent to that. According to respondents, the applicant was not qualified to be promoted to the level of T-VI in the year 2006.

8. The whole controversy moves around the question as to whether the applicant held the qualification for promotion to T-6 Level as on 01.07.2003. It is not in dispute that under the new Technical Service Rules, the qualification for that post was a degree in M.Sc. (Agriculture) or equivalent which was also to be described as M.Sc. There was

absolutely no scope for anyone to understand or equivalent to M.Sc. (Agriculture). This exactly was the question that was dealt with by issuing show cause notice. The applicant is not able to satisfy us that as on the date of his promotion to Level T-VI, he held a qualification for direct recruitment into that post.

9. In the judgment delivered by the Hon'ble Delhi High Court, specific direction was issued to treat the degree in MA (Eco.) with Agricultural Economics as a subject as equivalent to M.Sc. Because the promotions were already extended to certain employees, they were protected on the ground that such posts were held for a long time.

10. Strictly speaking, in the instant case, the applicant cannot be said to have been reverted. The only effect of the impugned order would be that his promotion to Grade T-6 would be treated with effect from the date of amendment i.e. 24.02.2006, instead of 01.07.2003. The applicant cannot have any genuine grievance about it. However, as regards the proposal to recover the differential pay, he needs protection from the Tribunal.

11. It was not even alleged that the applicant had mis-represented about his qualification. It is the respondents themselves who have promoted him on 01.07.2003 and have also extracted work from him in that post. Therefore, we do not find any basis for the respondents to recover the amount from the applicant.

12. In the result, the OA is partly allowed directing that the applicant shall be deemed to have been promoted to Grade T-VI w.e.f. 24.02.2006. However, the impugned order, in so far as it proposed to recover the differential amount, shall stand set aside. There shall be no order as to costs."

In view of the above facts and circumstances of the case, and for the reasons stated hereinabove, we partly allow this OA by quashing the impugned order dated 22.6.2012 and the matter is remitted back to the respondents to reconsider the entire

issue afresh in the light of the aforesaid observations, especially having regard to the observations of the Hon'ble Delhi High Court (supra) as well as of this Tribunal passed in OA No.1797/2012. The respondents are directed pass a reasoned and speaking order with regard to the date from which the applicant is found to satisfy the qualifications for the present post occupied by him and to give him the benefits of the same in accordance with their rules and law, especially as the applicant himself has stated in this OA that he did not have the essential qualifications for direct recruitment to his present post and acquired the said qualifications at a later date, ie., on 29.7.2005 (as per the averment of the respondents) after joining the respondent's organization, hence in the speaking order, the date of acquiring requisite qualification and the fact that the applicant has opted to be governed under the revised rules shall be clearly considered while passing the said orders within a period of three month from the date of receipt of a certified copy of this Order. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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