CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.161 of 2014
with
OA No.386 of 2014
OA No.822 of 2014

Orders reserved on : 18.03.2019

Orders pronounced on : 27.03.2019

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

OA No.161 of 2014

Shri Vinod Kumar Makkar
s/o Late Shri Ram Narayan
Aged about 59 years,
R/o E-12, Rajan Babu Road,
Adarsh Nagar, Near Azadpur,
New Delhi-110033.

....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)

OA No.386 of 2014

Shri Heera Lal Meena
S/o Shri Laxman Ram Meena
Aged about 56 years
E-40, Pusa Compus,
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)

OA No.822 of 2014

Shri Sad Giri
S/o Late Sh. Prem Giri
Aged about 59 years
R/o 2B/18, Janak Vihar,
Pusa Campus, IARI,
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,
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Indian Agricultural Research Institute,
Pusa Campus, New Delhi-110012.

.....Respondents

(By Advocate : Shri Gagan Mathur)

O R D E R

Ms. Nita Chowdhury, Member (A):

Since common questions of law and facts arise for consideration in all these OAs, with the consent of both the parties, we dispose of the same by this common order.

2. By filing these OAs, the applicants are seeking the following reliefs:-

In **OA No.161 of 2014** –

> "8.1 Set aside the impugned order of reversion dated 18.07.2012 at **Annexure A-1**;
>
> 8.2 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."

In **OA No.386 of 2014**

> "8.1 To set aside the impugned order of reversion dated 20.12.2013 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 the 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."

In **OA No.822 of 2014**

> "8.1 Set aside the impugned order of reversion dated 21.11.2013 at **Annexure A-1**;

8.2 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."

3. When these matters were taken up for consideration, we find that the entire issue in this OAs hinges on the fact that admittedly applicants do not have the requisite qualification as prescribed for Category II for direct recruitment under Rule 6.2.1. (iii) of Old TSR of ICAR.

4. The facts giving rise to these cases are that the applicants joined services with the respondents as Field/Farm Technicians as Refrigeration Assistant, Field Man and Junior Mechanic in category T-1 on different dates between 1981, 1983 and 1984 respectively. All the applicants are aggrieved by the impugned orders of reversion dated 18.7.2012, 20.12.2013 and 21.11.2013 passed respectively in the cases of applicants of these OAs vide which they were reverted from T-II-3 to T-I-3 on different dates in 2000 and 1995.

5. At the outset, learned counsel for the applicants 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

5.1 Counsel for the applicants 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 has extensively gone into the matter and dismissed the said Writ Petitions by upholding the Orders of this Tribunal as in those cases also the petitioners averred that they did not possess the requisite qualification and had also not acquired the same subsequently and they were given relief in that case, 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 he 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 4thMarch, 2014 rejected the Petitioner's challenge to the order dated 15thMay, 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 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.

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."

5.2 Counsel for the applicants submitted that the applicants should be treated sympathetically on the lines of the aforesaid judgment of the Hon'ble Delhi High Court.

6. Counsel for the respondents questioned the very applicability of the judgments, i.e., ***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 in*** OA No.653/2009 and sought to distinguish them by stating that the above judgment was issued on the question that while the applicants of the said cases did not have the requisite qualifications for promotion on a particular date and that they subsequently earned those qualifications and hence, the question that was considered in the light of those facts. He in fact drew out attention to para 21 of the above judgment of the Hon'ble Delhi High Court, which is quoted again below for clarity on the subject:-

> "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."

Counsel for respondents further submitted that it is not the case of the applicants that they had any time even initially or subsequently acquired the requisite qualification for promotion from T-I-3 to T-II-3 and hence, the above judgment is totally distinguishable and cannot be relevant to the facts of this case.

6.1 Counsel for the respondents further accepted that the only case similar to that in this case, which has also been sought to be relied upon by the applicants, is the decision of

the Hon'ble Delhi High Court in Writ Petition (Civil) No.1379/2014. However, the Hon'ble High Court of Delhi in the said case has itself justified that the same is being a judgment in *personam* and ratio of the said judgment is not applicable to the facts of these cases as in that case, by the time recovery order has been affected, the petitioner had already stood retired and in the said facts and circumstances, the Hon'ble Delhi High Court passed the aforesaid judgment, the 24 of the said judgment is reproduced as under:-

> "24. In view of the submissions made by learned counsel for the petitioner, it is made clear that this case shall not be treated as a precedent in any other case. In the event that any other similar petition is pressed before the Tribunal, the same shall be decided on the facts and circumstances therein as well as explanation for the delay, if rendered by the petitioner."

whereas applicants in this case are in service and since the applicants are not eligible for removal of category bar from Category I to Category II as per Old TSR of 1978, as they do not have the essential qualifications prescribed for Category II for direct recruitment under Rule 6.2.1. (iii) of Old TSR of ICAR and, therefore, their erroneous placement in T-II-3 in Category-II w.e.f. 3.2.2000 in the case of applicant in OA No.161/14 & OA No.386/14 and w.e.f. 1.1.1995 in the case of applicant in OA No.822/14, is rectified by the reversion orders passed in the cases of the applicants after issuing show cause notice and after considering the replies received from them.

6.2 Counsel for the respondents further submitted that no such circular has been issued in respect of the applicants, who are seeking the benefit of higher grade, i.e., from Category I to Category II without having the basic minimum qualification for the same. It is their case when no such benefits were ever extended to other similarly placed as the applicants, it is not open to the Tribunal to waive of essential qualification for various posts. In support of this contention, he placed reliance on the following judgments of the Hon'ble Supreme Court :

(I) ***State of AP vs. McDowell & Co***. AIR 1996 SC 1627, the Apex Court held that "a law made by the Parliament or the Legislature can be struck down by Courts on two ground and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part - II of the Constitution or of any other constitutional provision. There is no third ground.

(II) ***P.U.Joshi vs. Accountant General*** (2003)2 SCC 632 held as under:

> "10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions

envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

(III) ***Indian Drugs & Pharmaceuticals Ltd. vs. Workman, Indian Drugs & Pharmaceuticals Ltd.,*** (2007) 1 SCC 408, the Apex Court held as follows:-

"When the State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize quo any matter which under the

> constitution lies within the sphere of the legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers".
>
> The courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment on these posts, regularization, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional case. The relevant case law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in Rama Muthuramalingam vs. Dy. S.P. AIR 2005 Mad 1, and we fully agree with the views expressed therein."

7. After hearing learned counsel for the parties and also perusing the pleadings on record, we observe that the distinction drawn by the learned counsel for the respondents between the judgment in ***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 in*** OA No.653/2009 and the case of the present applicants of these OAs is correct as the applicants of those cases were to be given the benefit of a letter/circular dated 19th August, 2016 issued by the respondents in which twelve subjects-including Economics, have been treated as relevant fields with effect from 24th February, 2006 and it was 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. Further, as the aforesaid judgment of Hon'ble Delhi High Court in Writ Petition (C) No.1379/2014 is not applicable to the facts of these cases, as the same is not a judgment in *rem* but a judgment in *personam* keeping in view the aforesaid observations of the Hon'ble Delhi High Court in para 24 above. As such the same is not distinguishable on facts.

8. However, it is relevant to note that issue of recovery has already been settled by the Hon'ble Supreme Court in the case of ***State of Punjab and others vs. Rafiq Masih and others***, 2015 (4) SCC 334, wherein the Hon'ble Supreme Court while observing that 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 has summarized 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.

Thereafter the Hon'ble Supreme Court again considered the issue of recovery in the case of ***High Court of Punjab and Haryana and others vs. Jagdev Singh*** in Civil Appeal No.3500/2006 decided on 29.7.2016, in which held as follows:-

"9 The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10 In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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." (emphasis supplied).

11 The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12 For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.

13 The judgment of the High Court is accordingly set aside. The Civil Appeal shall stand allowed in the above terms. There shall be no order as to costs."

9. Hence, we make it clear that the prayer of the applicants to direct the respondents to deem the applicants as duly qualified and eligible under the Technical Service Rules, to allow them to continue in their present positions in their respective grade and that they may also be further assessed for promotion to higher grades is not acceptable in view of the fact that none of them have requisite qualification for the category in question as has been pointed out by the

respondents by referring to the aforesaid judgments of the Hon'ble Supreme Court, relevant extracts of the said judgments have already reproduced above.

10. However, on the issue of recovery as observed above, the matter shall be re-assessed by the respondents in the light of the Hon'ble Supreme Court judgments in the cases of ***Rafiq Masih*** and ***Jagdev Singh*** (supra).

11. In view of the above facts and circumstances of these cases and for the foregoing reasons, we quash the impugned orders and the matter is remitted back to the respondents to re-consider the recovery sought to be made from the applicants in the light of the aforesaid observations and pass a reasoned and speaking order within a period of three months from the date of receipt of a certified copy of this Order.

12. In the result, the prayer to direct the respondents to deem the applicants as duly qualified and eligible under the Technical Service Rules is not acceptable as not being based on rules and in the light of the Hon'ble Supreme Court observations in ***P.U. Joshi*** cited above. The applicants have no right to get the higher grade when they do not satisfy the minimum qualifications for the same. However, if in future they acquire the minimum qualifications only then can the respondents consider their cases for higher grade.

13. The only relief that will be considered by the respondents will be only to look into the recovery orders passed by them in case individual applications are made by the applicants of this OA within 30 days from the date of receipt of certified copy of this Order. Accordingly, the present OA is disposed of in above terms. There shall be no order as to costs.

14. Let a copy of this Order be placed in other connected case files.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

/ravi/