

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01495/2018

DATED THIS THE 01st DAY OF AUGUST, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

M.Senthil Kumar
S/o. Mayappamuniyan
Aged about 46 years
Working as Scientist
Indian Council of Agricultural
Research/Indian Institute of
Horticultural Research
Hesaraghatta Lake Post
Bangalore-560 089.

....Applicant

(By Advocate Sri M.Naga Prasanna)

Vs.

1. Indian Council of Agricultural Research
Krishi Bhavan
Dr.Rajendra Prasad Road
New Delhi-110 114 represented
by its Secretary.

2. The Director
Indian Council of Agricultural Research/
Indian Institute of Horticultural
Research, Hesaraghatta Lake Road
Bangalore-560 089.

3. Government of India (Union of India)
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
North Block, New Delhi-110 001,
Represented by its Director (Services).

...Respondents

(By Advocates Sri M.Vasudeva Rao)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that pursuant to direct recruitment he was appointed as Senior Technical Officer(STO) in the Indian Council of Agricultural Research(ICAR) at the Indian Institute of Horticulture Research (IIHR) Bengaluru on 5.10.2006(Annexure-A1). Thereafter, he was promoted as Assistant Chief Technical Officer w.e.f. 5.10.2011(Annexure-A2). The Agricultural Scientists Recruitment Board vide notification dtd.5.11.2013(Annexure-A3) notified competitive Examination to be conducted under various disciplines in which one such post was Agricultural Research Scientist under vegetable sciences in the pay scale of Rs.15600-39100 with Grade Pay of Rs.6000. The applicant applied to the said post through proper channel on 23.12.2013(Annexure-A4). The applicant came out successful in that recruitment and he was issued with an appointment order on 22.10.2014(Annexure-A5) as Scientist in Agricultural Research Service in the discipline of vegetable science. He was relieved of his services by office order dtd.23.3.2015(Annexure-A6) and sent for training at CPRI, Shimla for a foundation programme. Later he was posted in the IIHR, Bangalore. The applicant on joining the ICAR-IIHR as Scientist gave a representation on 15.4.2015 seeking pay protection of the post of Asst.Chief Technical Officer in which cadre he was working prior to his appointment as Scientist under the ICAR. The representation was forwarded by the 2nd respondent with a recommendation on 5.2.2016(Annexure-A9) to the 1st

respondent quoting two similar cases where the employees were extended the pay protection and also sought clarification as to whether the applicant's pay had to be protected on his direct recruitment to the post of Scientist or his pay is fixed at the minimum of Rs.15,600 + GP 6000. But the 1st respondent has rejected the same by his order dtd.26.10.2016(Annexure-A10) on the ground that an OM dtd.10.7.1998(Annexure-A11) clarify that pay protection was available only if the selection was through interview and not through open competitive examination. The 3rd respondent issued an OM dtd.8.4.2016(Annexure-A12) with regard to technical resignation and lien wherein Clause 2.3 deals with pay protection, eligibility of past service and reckoning of the minimum period for grant of annual increment and it is clearly mentioned that in cases of appointment of a Government servant to another post in the Government on acceptance of technical resignation protection of pay is given in terms of FR 22-B. Thereafter the applicant made another representation dtd.31.1.2017(Annexure-A14) requesting for pay protection to be considered by the respondents and the same is forwarded to the 1st respondent on 6.3.2017(Annexure-A15). In the meantime, on successful completion of probation, the applicant was appointed as Scientist in a substantive capacity vide office order dtd.30.10.2017(Annexure-A16). Again by representation dtd.19.9.2017, the applicant requested for pay protection enclosing therewith the Agriculture Science Rules and pay protection given to similar persons(Annexure-A17) which was forwarded to the 1st respondent on 16.11.2017(Annexure-A18) but no reply was given by the 1st respondent. Even though he was appointed pursuant to a direct recruitment process through

competitive examination, it is trite law that when the Govt. servant applies through proper channel for an appointment under the same wing of the Government, pay protection is available to him in terms of various office memorandums issued by Public Sector Undertakings under the Govt. of India. More so similarly situated persons who are appointed through competitive examination earlier to the same post of Scientist have all been allowed pay protection which instance was quoted by the 2nd respondent while recommending the case of the applicant. Hence, the action of the respondents in not protecting his pay for the service rendered as Asst.Chief Technical Officer prior to his appointment to the post of Scientist is clearly illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and therefore, the applicant has filed the present OA with the following relief:

- a. Quash order being NO.F.35(146)/2014 Per.I dtd.26th October 2016 (under Annexure-A10 to the application) passed by the 1st respondent by issue of a writ in the nature of certiorari and direct the respondents by issue of a writ in the nature of mandamus to consider the representations of the petitioner dtd.31.1.2017 and 19.9.2017 and grant protection of pay as sought for therein and also grant payment of arrears of salary from the date on which he was appointed viz., 22.11.2014 with interest at the rate of 9% per annum.*
 - b. Issue such other appropriate writ, order or direction as this Hon'ble Tribunal deems fit to grant in the interest of justice and equity including the award of costs of this Original Application.*
2. The applicant submits that through RTI he asked information with regard to the procedures and guidelines when direct recruitment takes place through a competitive examination of an employee who is already in permanent employment of the Central Government for which the information is furnished on 5.12.2017(Annexure-A19) enclosing the guidelines which are of the year 2005

concerning Hindustan Aeronautics Limited wherein pay protection is given to a person who joined a different post in the same organisation albeit by open competitive examination. Then the applicant again applied under the RTI seeking information about the protection given to one Mr.Benukantha Dash on his joining Agricultural Research Services, which is replied on 13.3.2018(Annexure-A20) with an office order dtd.10.2.2016(Annexure-A21) protecting his pay in the post of Sr.Technical Officer. The applicant again made an application under RTI with regard to pay scale and protection of pay given to one Sri B.S.Satpathi. Then the respondents vide office note furnished information on 26.4.2018 enclosing office order dtd.26.12.2012 with regard to pay scale given to Sri B.S.Satpathi(Annexure-A21). The applicant is aggrieved by the rejection of his representation on an erroneous consideration and non-consideration of his case for pay protection.

3. The respondents, on the other hand, have submitted in their reply statement that the applicant was issued appointment order on 22.10.2014 on the basis of the results of Agricultural Research Service(ARS) Examination 2013 conducted by Agricultural Scientist Recruitment Board(ASRB) to the post of Scientist in the discipline of Vegetable Science in the pay scale of Rs.15600-39100 + GP Rs.6000/- He was relieved of his services at 2nd respondent i.e., ICAR-IIHR, Bengaluru where he was working as Asst.Chief Technical Officer in the pay scale of Rs.15600-39100 +GP 6600 and sent for training to NAARM, Hyderabad for the foundation programme. On completion of the FOCARS training, the applicant was posted to ICAR-IIHR, Bengaluru where he completed one month's training and

reported for duty at CHES, Hirehalli under ICAR-IIHR, Bengaluru. Thereafter, he was permitted to undergo three months Professional Attachment training at TNAU and was relieved of his duties and on completion of the same, he reported at CHES, Hirehalli. The representation dtd.15.4.2015 seeking pay protection on his appointment as Scientist under the ICAR was forwarded by 2nd respondent to the 1st respondent who vide letter dtd.26.10.2016(Annexure-R1) informed 2nd respondent that the applicant's case was examined and it was observed that as per DoPT OM dd.10.7.1998(Annexure-R2), the pay protection is available only if the selection is through interview and not through an open competitive examination. Further benefit would be available to an officer only, if the officer has completed the period of probation successfully for being regularized in the post in the parent organisation. The applicant had cleared open competitive exam of ARS in the year 2013 conducted by ASRB and hence the benefit of pay protection for the service rendered as Asst.Chief Technical Officer prior to his appointment to the post of Scientist was not extended to him. Hence, the action of the respondents is justifiable and is not violative of Article 14 and 16 of the Constitution of India.

4. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The applicant in this case was appointed to the post of T-6 (Technical Officer) on 5.10.2006 at the Indian Institute of Horticultural Research, Bangalore and was working as Assistant Chief Technical Officer from 2011 till the end of 2014 and was drawing the pay of Rs.22130 + GP Rs.6600/- as on 30.12.2014. He appeared for the competitive exam

conducted by the Agricultural Scientists Recruitment Board under the same umbrella organisation namely Indian Council of Agricultural Research(ICAR) in the year 2013 and on being successful, he was appointed to the post of Scientist under ARS w.e.f. 1.1.2015 but his salary was fixed at the level of basic salary as applicable to the new entrants. He made several representations to protect the pay which he was drawing as Assistant Chief Technical Officer at IIHR since he had applied through proper channel and both the positions were within the overall ambit of respondent organisation namely the Indian Council of Agricultural Research(ICAR). The respondents would take the plea that his case is covered under Annexure-A11 where pay protection is available only if the selection is through interview and not through an open competitive examination. A very reading of the OM at Annexure-A11 would show that it relates to the candidates working in Central PSUs/State PSUs/Universities/Semi-Government Institutions/Autonomous Bodies etc. with a view to drawing talent, which is available in those organisations. The OM also states that the benefit would be available only if the officer has completed the period of probation successfully for being regularised/confirmed in the post in the parent organisation. This OM ostensibly has been issued to provide an opportunity for taking talented persons from public sector undertakings and similar autonomous bodies where it is likely that the pay scales could have been fixed in relation to the market rates and where the pay scales and allowances normally may not correspond directly to the pay scales and allowances being adopted in the Government. In many cases, the pay in such organisations can also be substantially higher having no relation

whatsoever to the scales of pay and other conditions of service available to Govt. Servants. However, the case of the applicant is entirely different in the sense that he has joined a similar institution under the respondent organisation and to improve his career prospects has applied for and qualified through an open competitive examination which included interview. Therefore, the respondents' holding on to the OM of 1998 disqualifying him because of the open examination cannot be accepted as the correct approach since that OM is concerned mainly with the public sector undertakings and other such autonomous bodies and not the kind of institutions in which the applicant was working before his appointment in the year 2015. The applicant has also cited Annexure-A12 wherein the same Min. of PPG & P, DoP&T has issued an Office Memorandum dtd.8.4.2016 specifically dealing with pay protection etc., wherein para 2.3 reads as follows:

2.3 Pay Protection, eligibility of past service for reckoning of the minimum period for grant of Annual Increment

In cases of appointment of a Government servant to another post in Government on acceptance of technical resignation, the protection of pay is given in terms of the Ministry of Finance OM No.3379-E.III(B)/65 dated the 17th June, 1965 read with provisions of FR 22-B. Past service rendered by such a Government servant is taken into account for reckoning of the minimum period for grant of annual increment in the new post/service/cadre in Government under the provisions of FR 26 read with Rule 10 of CCS(RP) Rules, 2008. Pay of the substantive post held by the Government servant is protected. After Sixth Pay Commission, only the pay in the pay band is protected and the employee gets the grade pay of the post to which he is appointed after his resignation.

5. The pay protection requested by the applicant is clearly covered by this provision. In addition, the applicant has shown details of several specific cases at Annexures-A20, 21 & 22 wherein exactly similarly placed persons have been given the pay protection requested by the applicant under the same umbrella of

the respondent organisation namely Indian Council of Agricultural Research. We, therefore, find no merit in the point relied on by the respondents who in fact have chosen not to provide any answer to the specific cases cited by the applicant vide Annexures-A20, 21 & 22.

6. The OA is therefore, allowed and the respondents are directed to re-fix the pay and allowances of the applicant w.e.f. 1.1.2015 with due protection of the pay he was drawing till 30.12.2014 within a period of two(2) months from the date of issue of this order. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/01495/2018

Annexure-A1: Appointment order of the applicant dtd.5.10.2006 as Sr.Technical Officer

Annexure-A2: Promotion order of the applicant dtd.4.2.2013 as Assistant Chief Technical Officer w.e.f.5.10.2011

Annexure-A3: Notification dtd.5.11.2013 issued by the Agricultural Scientist Recruitment Board

Annexure-A4: Forwarding letter dtd.23.12.2013 of R2 with recommendation

Annexure-A5: Order of appointment of the applicant dtd.22.10.2014 as Scientist in

Agricultural Research Service in Vegetable Science

- Annexure-A6: Relieving order dtd.23.3.2015
- Annexure-A7: Last pay drawn certificate of the applicant
- Annexure-A8: 1st respondent's letter dtd.23.9.1987
- Annexure-A9: Communication dtd.5.2.2016 of the 2nd respondent
- Annexure-A10: Order dtd.26.10.2016 rejecting the representation of the applicant
- Annexure-A11: Official Memorandum dtd.10.7.1998 issued by Government
- Annexure-A12: Office Memorandum dtd.8.4.2016 issued by Government
- Annexure-A13: Note dtd.10.11.2016 issued by the 2nd respondent
- Annexure-A14: Representation of the applicant dtd.31.1.2017
- Annexure-A15: Forwarding letter dtd.6.3.2017 of the R2 with recommendation
- Annexure-A16: Office order dtd.30.10.2017 issued by the 1st respondent
- Annexure-A17: Representation of the applicant dtd.19.9.2017 along with annexed documents
- Annexure-A18: Forwarding letter dtd.16.11.2017 of R2 with recommendation
- Annexure-A19: Communication of the Central Public Information Office dtd.5.12.2017 along with guidelines
- Annexure-A20: Reply dtd.13.3.2018 of the 1st respondent
- Annexure-A21: Office order dtd.10.2.2016 issued by the Soil Survey and Land Use
- Annexure-A22: Office note dtd.26.4.2018 enclosing office order dtd.26.12.2012

Annexures with reply statement:

- Annexure-R1: 1st respondent's letter dtd.26.10.2016
- Annexure-R2: DoPT OM dtd.10.7.1998
