

Bench

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01595-01597/2018

DATED THIS THE 31st DAY OF JULY, 2019

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

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

1. Sri.R.Manjunath, 50 years
S/o Sri Ramachandra
Technical Officer (Welder) (T-5)
2. Sri.Ganesh M, 51 years
S/o Sri M.Ananda Bangera
Senior Technical Assistant (T-4)
3. Sri.P.T.Mahantesh, 46 years
S/o Late Sri.Tipperudrappa Gowda
Technical Officer (Mech. Workshop) (T-5)

Applicants 1 to 3 are working at Post Harvest Technology
ICAR-Indian Institute of Horticulture Research
Hessarghatta Lake Post
Bengaluru: 560 089.

....Applicants

(By Advocate Sri P.A.Kulkarni)

Vs.

1. Secretary
Indian Council of Agricultural Research
Krishi Bhavan
Dr.Rajendra Prasad Road
New Delhi-110 001.
2. Director General
Indian Council of Agricultural Research
Krishi Bhavan
Dr.Rajendra Prasad Road
New Delhi: 110 001.
3. Director
ICAR-Indian Institute of Horticulture Research
Hessarghatta Lake Post
Bengaluru: 560 089.

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4. Chief Administrative Officer
ICAR-Indian Institute of Horticulture Research
Hessarghatta Lake Post
Bengaluru-560 089.

...Respondents

(By Advocates Sri B.A.Chandra Shekar)

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

The case of the applicants is that they are the employees of Indian Council of Agricultural Research(ICAR) and working in Indian Institute of Horticulture Research (IIHR) Bengaluru which is part of ICAR. The 1st applicant who has the qualification of SSLC & National Apprenticeship Certificate(NAC)(Welder) of 2 years, was appointed as T2(Welder) on 9.5.1996. The 2nd applicant who has the qualification of SSLC, 2 years National Trade Certificate(NTC) & 1 year NAC(Mech.), was appointed as T1(Refrigeration) on 6.5.1992. And the 3rd applicant who has the qualification of PUC & NTC(Mech., Motor Vehicle) of 2 years, was appointed as T2(Mechanic) on 25.3.1995. The Directorate General of Employment & Training, Min. of Labour on 26.8.1999(Annexure-A20) has issued clarification on status of NAC stating that Govt. of India has recognized the Apprenticeship Certificate as of a Higher Grade to NTC which are being issued now by the National Council for Vocational Training under the Min. of Skill Development & Entrepreneurship of Govt. of India and not by the Technical Education Wing of the State of Karnataka. Therefore, both NAC & NTC are to be taken as of higher grade for all purposes and to be recognized as equivalent to the Diploma awarded by Polytechnics. Since the applicants belong to the main functional group 'Workshop Staff including Engineering Workshop Staff', their service conditions at the time of their appointment in IIHR were governed by the

'Technical Service Rules 1975'. A proposal for revision of some of the provisions of existing Technical Service Rules 1975 was under detailed consideration of the Council for quite some time to remove the anomalies and to improve and update the qualifications. The matter was considered by the Governing body in its meeting held on 18.11.1999 and based upon the decision of the governing body, the changes as approved by the Competent Authority are incorporated in the Modified Technical Service Rules/ New TSR in terms of ICAR notification dtd.3.2.2000(Annexure-A1& A2) as per which, the Technical Services are grouped into two categories consisting of Category-I & II with scales of pay as updated by the ICAR on the basis of recommendations made by 4th & 5th CPC. In the meanwhile, on 24.2.2006(Annexure-A11) a further notification is issued by ICAR New Delhi making it effective from the date of issue of the said notification under which, General Body of the Council amended the model qualifications prescribing for Category II services(T3, T4 & T5 grade services) for the workshop staff including the Engineering staff like the applicants as Bachelor's Degree/Three years Diploma in the relevant field or its equivalent qualification from a recognized university. Insistence of educational qualification is from the date of issuance of the 2006 orders i.e. w.e.f. 24.2.2006. The entrants of Category-I at T1 grade would continue to be regulated for assessment from T1 to T2 after 5 years of service and from T2 grade, such personnel possessing the qualifications as prescribed for category-II for direct recruitment would be eligible for assessment promotion to T3 grade after 5 years of service while those not possessing such qualifications shall become eligible for assessment promotion to T3 grade only after 10 years of service in T2 grade. The assessment promotions from T3 onwards to T4 and T4 to T5 shall continue to be regulated at 5 years

interval as at present. Applicant No.1 was placed in T3 grade w.e.f. 9.5.2001(Annexure-A3), in T4 grade w.e.f. 9.5.2007(Annexure-A4) and in T5 grade w.e.f.9.5.2012(Annexure-A5). Applicant No.2 was placed in T2 grade w.e.f. 6.5.1997, in T3 grade w.e.f. 6.5.2002(Annexure-A6) and in T4 w.e.f. 6.5.2007(Annexure-A7). Similarly applicant No.3 was placed in T3 grade w.e.f. 25.3.2000(Annexure-A8), in T4 grade w.e.f. 25.3.2005(Annexure-A9) and in T5 grade w.e.f. 25.3.2010(Annexure-A10). The applicants submit that they have been given earlier assessment promotions from T2 to T3 after completion of 5 years service even though they have not possessed prescribed educational qualification of graduation. The ICAR in its 30th meeting of the Central Staff Council held on 18.9.2012(Annexure-A12) at New Delhi had made it clear that such staff with the qualification of matriculation plus higher certificate have already been granted promotion to the Grade of T3 in the category-II of the Technical Services and these employees with the said qualification can move up to the grade of T-5 in Category-II. Since the applicants had the benefit of old TSR until that period and with their existing qualification, they were rightly placed in the assessment promotions from T2 to T3 grade. However, the controlling authority at Bengaluru was of the opinion that the career advancement given to the applicants is not in conformity with Amendment rules 2000 for want of prescribed educational qualification of the applicants and accordingly R4 had issued a memo dtd.8.3.2017(Annexure-A13) to the applicants to show cause as to why their placements on the basis of their existing qualification should not be reversed for want of prescribed educational qualification. The applicants have submitted their representations to the show-cause notice(Annexure-A22). Applicants' case is that in terms of ICAR resolution vide Annexure-A12, the

technical employees with the qualification of Matriculation + higher certificate are entitled to be placed in the assessment promotion up to T5 grade at the interval of 5 years each.

2. Applicants submit that a case similar has come up before CAT Principal Bench in OA.No.743/2012 and the Tribunal vide order dtd.23.4.2014(Annexure-A14) had quashed the show-cause notice by protecting the placement in T5 grade to the applicant therein. Then R4 vide communication dtd.25.4.2017(Annexure-A16) have approached the Council in regard to the applicants' promotions carried up to T5 grade. Then ICAR Headquarters on 5.6.2018(Annexure-A18) directed the 3rd respondent to take suitable action in the matter of placement of the applicants up to T5 grade with their existing qualification as per the amended TSR vide notification dtd.3.2.2000 read with notification dtd.24.2.2006. Thereafter R4 issued office order dtd.27.8.2018(Annexure-A19) revising the dates of placements of the applicants up to T5 grade to their disadvantage. No undertaking is obtained from the applicants for refund of the amount received by them on account of their career advancement placements from time to time and the DoPT vide OM dtd.2.3.2016(Annexure-A24) directed the Ministries/Departments of Govt. of India for following the orders of the Hon'ble Apex Court in *State of Punjab & others vs. Rafiq Masih(White Washer)* decided on 18.12.2014. Therefore, applicants cannot be held responsible in any manner for the assessment promotions granted to them upto T5 grade prior to issuance of the impugned order and their placement from T2 to T3 has taken place after issuance of the modified rules of 2000. Therefore, they are not liable for repayment of any amount paid as per the grade entitlement of the applicants prior to issuance of the impugned order dtd.27.8.2018. Hence, it is not open for

the administration to cause any recovery of excess payment made to the applicants. Therefore, the applicants filed the present OA seeking the following relief:

a. Quash the order F.no.4-32/2018/E.III/Tech/6620, dtd.27.8.2018, Annexure-A19 passed by CAO ICAR-IIHR Bengaluru R4 herein so far as it pertains to applicants 1-3.

b. Direct further the respondents to retain the original placement dates of the applicants up to T5 grade with all consequential benefits.

c. Pass any other order or direction that this Hon'ble Tribunal may deem it fit and necessary in the facts and circumstances of the present case including issue of directions to the respondents for not causing any recovery from the applicants in the event of this Hon'ble Tribunal's upholding the action taken by R4 under the order F.No.4-32/2018/E.III/Tech/6620, dated 27.8.2018, Annexure-A19.

3. The respondents, on the other hand, have submitted in their reply statement that the service conditions of the applicants at the time of their appointment in ICAR-IIHR were governed by the Technical Service Rules 1975 i.e. Old TSR which came to be modified on 3.2.2000 in terms of ICAR notification dtd.3.2.2000. Further the applicants vide option forms at Annexures R1, R2 & R3 have opted for Modified Technical Service Rules (New TSR) as notified vide Council's letter dtd.3.2.2000 and presently are governed by New/Modified TSR. To overcome the difficulties arising out of the implementation of the qualifications for different functional groups of Technical employees as given in Appendix IV of the New TSR issued vide letter dtd.3.2.2000, it was decided by the Governing Body of the Council to amend the model qualifications to the extent indicated in the Annexure issued vide letter dtd.24.2.2006. Further, the amended qualifications prescribed for different functional groups of Technical employees are applicable only for the purpose of merit promotion of Council's employees in position as on 3.2.2000. Accordingly, for Workshop Staff including Engineering Workshop Staff for

Category II the amended qualifications are Bachelor's Degree/Three years Diploma in the relevant field or equivalent qualifications from a recognized university. It is not true that the controlling authority has opined that the career advancement given to the applicants is not in conformity with Amended rules of 2000 for want of prescribed educational qualification. It was due to receipt of a letter from the Council dtd.17.7.2014(Annexure-R4). Referring to a similar case of OA.No.743/2012 filed before the CAT, Principal Bench is incorrect as the applicant in that case was promoted to T4 on 1.1.2000 and further as T5 w.e.f. 1.1.2005 which means that he was in Old TSR only as the Modified TSR came into force on 3.2.2000, whereas the applicants in the present case have opted for New/Modified TSR. The show cause notice issued in OA.743/2012 was as to why the applicant therein should not be reverted to Gr.T I 3 w.e.f. 1.1.1995 by cancelling the orders of his placement in T II 3, T4 7 T5 grades, whereas in the instant case, the office has issued a memorandum only on 8.3.2017 and it is produced to all the applicants (Annexure-R6, R7 & R8) informing them that they shall not be continued with the erroneous promotions in future and also to confirm as to whether they were possessing the relevant qualifications viz., Bachelors Degree/Three years Diploma in the relevant Trade or its equivalent qualifications from a recognized university. But all the applicants in their respective replies have neither produced nor stated that they have possessed the required qualifications as per new TSR(Annexures-R9, R10 & R11). The promotions granted to all the applicants to T3 grade was only after 3.2.2000 and as such the instant case cannot be compared as similar to the OA.743/2012.

4. The respondents submit that after issuance of the memorandum dtd.8.3.2017 and after receipt of replies from the applicants, and also in pursuance of the

Council's letter dtd.5.6.2018, the Competent Authority after thorough scrutiny of the cases, decided to revise the effective date of promotions granted to the applicants from T2(Cat-I) to T3(Cat-II) and for further promotions granted thereon vide its order dtd.27.8.2018. The contention of the applicants that both NAC & NTC are to be taken as of higher grade for all purposes is not correct as both cannot be taken as equivalent qualification from a recognized university as per Technical rules since, the prescribed qualification for promotion to Category-II is 3 years Diploma in the relevant field or equivalent qualification from a recognized university under Modified Technical Service Rules for which the applicant have opted. The applicants were promoted to T3 i.e. Cat II during the period between 3.2.2000 to 23.2.2006 when they neither possessed a Bachelor's Degree nor the three years Diploma in the relevant field nor equivalent qualification from a recognized university. Since the applicants did not possess the qualifications as prescribed under the notification of 3.2.2000 and also in order to rectify the error, the effective dates of promotion granted to the applicants were revised. The question of higher certificate is not applicable to the applicants as it pertains to those who opted for Old TSR. Hence, the revision of the effective dates of promotions granted to the applicants is justifiable and correct.

5. The respondents further submit that in the JSC meeting held on 26/27.4.2006, the staff side requested for allowing of fresh option to the employees in Technical Category for opting either the Old TSR or New TSR. The issue was examined in detail and it was decided to allow opportunity of fresh option to the employees for opting for either the old TSRs or New TSRs once again. Then the applicants have once again exercised their option for New/Modified TSR during 2006(Annexures-R13, R14 & R15). Therefore, it is justifiable that the action taken

by the administration is correct in revising the effective dates of promotion in case of the applicants.

6. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The issue in this case is in a very small compass. The modified Technical Service Rules(TSR) in the respondent organisation have come into effect from 3.2.2000 as per which the technical services are grouped into two categories i.e. Category-I & II. Earlier there were three categories. As per the new rules, for promotion to Category-II, the technical persons in the lower category have to have a Bachelors degree or 3 years Diploma in the relevant field or equivalent qualification from a recognised university. The latter part was incorporated vide notification dtd.24.2.2006. The applicants have been promoted to the higher grades T3, T4 & T5 etc. in various years from 2001. While bringing in the new technical service rules, the respondents have clearly stated that in case of persons who do not have their minimum educational qualifications, the promotions to the higher grades will take effect after the service of 10 years instead of the normal 5 years. Therefore, it is clear that the applicants are in no way denied any promotion based on their not having the minimum qualifications since they had all been appointed and also promoted based on the old technical service rules. Denying them the promotional opportunities with the introduction of new higher educational qualifications could be considered as arbitrary and not justified, but however, this is not the case here and the respondents have merely set to the promotion dates 5 years later which is perfectly correct as per the amended rules. As rightly pointed out by the respondents, the applicants vide the option forms at Annexures-R1, 2 & 3 have opted for the modified technical service rules. A memorandum was issued on

8.3.2017 vide Annexures-R6, 7 & 8 informing the applicants that they shall not be continued with the erroneous promotions in future and also to confirm as to whether they were possessing the relevant qualifications namely Bachelors Degree/3 year Diploma in the relevant Trade or its equivalent qualification from a recognised university. Further, the respondents considering the representations from many persons similar to the applicants, had given one more opportunity for the applicants to confirm whether they would like to be considered under the old technical service rules under which they would have been eligible to be promoted to the higher grades as already done in their cases without the minimum qualifications. However, vide Annexures-R13, 14 & 15, the applicants have once again clearly expressed their option for the new/modified TSR. Therefore, there is no case to consider the plea of the applicants to quash Annexure-A19. However, all the promotions granted to T3, T4 and T5 with respect to the applicants were done under the new technical service rules as could be seen in the various office orders giving such promotions vide Annexure-A 8 & 9 etc. The respondents had given these promotions being fully aware of the minimum educational qualifications required and therefore, at this point of time to effect recovery of whatever sums they additionally paid to the applicants will be clearly unjustified in view of the Hon'ble Apex Court judgment in *State of Punjab vs. Rafiq Masih(White Washer) in CA.No.11527/2014 [(2015) 4 SCC 334]* and the fact that the applicants had no role whatsoever in gaining the promotions by any false claim or otherwise. Therefore, there shall be no recovery of any additional sums which have already been paid to the applicants due to the erroneous promotions which they were given earlier.

7. The OA is disposed of as above. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/01595-01597/2018

- Annexure-A1: ICAR Notification dtd.3.2.2000
- Annexure-A2: Technical Service Rules 1975 as modified on 3.2.2000
- Annexure-A3: Office order dtd.27.4.2002
- Annexure-A4: Office order dtd.23.12.2008
- Annexure-A5: Pay fixation memo dtd.9.4.2013 in respect of applicant No.1
- Annexure-A6: Office order dtd.11.6.2003
- Annexure-A7: Office order dtd.23.12.2008
- Annexure-A8: Office order dtd.27.4.2002
- Annexure-A9: Office order dtd.26.9.2005
- Annexure-A10: Office order dtd.8.11.2010
- Annexure-A11: Notification dtd.24.2.2006 relating to amendment in Technical Service Rules along with typed copy
- Annexure-A12: Proceedings of the 30th meeting of the Central Joint Staff Council (CJSC) held on 18.9.2012 at New Delhi
- Annexure-A13: Memo dtd.8.3.2017 issued by R4 applicant No.1
- Annexure-A14: CAT Principal Bench New Delhi order dtd.23.4.2014 in OA.743/2012
- Annexure-A15: ICAR letter dtd.17.7.2014
- Annexure-A16: R4 communication dtd.25.4.2017 to ICAR
- Annexure-A17: Proceedings of the 36th meeting of the CJSC held on 23.12.2016 at New Delhi
- Annexure-A18: ICAR New Delhi communication dtd.5.6.2018 addressed to R3
- Annexure-A19: Impugned order dtd.27.8.2018
- Annexure-A20: Clarification dtd.26.8.1999 issued by Directorate General of Employment and Trg. Govt. of India along with typed copy
- Annexure-A21: Govt. of Karnataka order dtd.2.5.1961 along with typed copy
- Annexure-A22: Copy of the reply given by the applicant No.1 on 15.3.2017 in response to R4 memo dtd.8.3.2017
- Annexure-A23: Apex Court's ruling in State of Punjab versus Rafiq Masih (relevant portion)
- Annexure-A24: DOPT OM dtd.2.3.2016

Annexures with reply statement:

- Annexure-R1: Option Form of 1st applicant
- Annexure-R2: Option Form of 2nd applicant
- Annexure-R3: Option Form of 3rd applicant
- Annexure-R4: Letter dtd.17.7.2014
- Annexure-R5: Office letter dtd.25.8.2014
- Annexure-R6: Memorandum dtd.8.3.2017 issued to 1st applicant
- Annexure-R7: Memorandum dtd.8.3.2017 issued to 2nd applicant
- Annexure-R8: Memorandum dtd.8.3.2017 issued to 3rd applicant

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Annexure-R9: Reply dtd.15.3.2017 of the 1st applicant
Annexure-R10: Reply dtd.15.3.2017 of the 2nd applicant
Annexure-R11: Reply dtd.16.3.2017 of the 3rd applicant
Annexure-R12: Letter dtd.19.10.2006
Annexure-R13: Option form of 1st applicant
Annexure-R14: Option form of 2nd applicant
Annexure-R15: Option form of 3rd applicant
