

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 213 of 2007

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Natabar Mohanty, S/o Late Dayanidhi Mohanty, aged about 65 years, residing at – Kanheipur, PS - Chauliaganj, PO - CRRI, Dist.- Cuttack.

.....Applicant

VERSIS

1. Director General, Indian Council of Agricultural Research (ICAR), Krishi Bhawan, New Delhi-110001.
2. Secretary, Indian Council of Agricultural Research (ICAR), Krishi Bhawan, New Delhi-110001.
3. Director, Central Rice Research Institute, Bidyadharpur, Cuttack-753006.

.....Respondents

For the applicant : Mr.A.C.Panda, counsel

For the respondents: Mr.S.B.Jena, counsel

Heard & reserved on : 20.11.2019

Order on : 2.12.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The present OA has been filed by the applicant seeking the following reliefs :

- “(a) quash the Memorandum dated 19.4.2006 under Annexure-5.
- (b) direct the Opposite parties to fit the Applicant in T-II-3 grade w.e.f. 01.10.1975 taking into consideration of the amendment which was made in 1979 and the order passed by the Hon'ble High Court of Orissa in W.P.(C) No. 12843 of 2004.
- (c) direct the Opposite parties to revise the pension of the applicant retrospectively;
- (d) direct the respondents to pay the applicant all his service and financial benefits retrospectively which have been denied to the applicant by virtue of non-fitment as per the 1979 Amendment Rules;
- (e) pass any other order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper;
- (f) allow this application with costs.”

2. This OA was dismissed by this Tribunal vide order dated 21.1.2009 and the said order was challenged by the applicant before Hon'ble High Court in W.P. (C) No. 10048/2009, which was allowed vide the judgment dated 25.4.2019 (copy at Enclosure-8 of the written submission filed on behalf of the

applicant). By the judgment dated 25.4.2019 this Tribunal has been directed to reconsider the matter as under:-

“3. Brief facts of the case are that the petitioner was appointed as Field Assistant on 01.10.1965. While continuing as such, the Organization was taken over by ICAR. In order to enable the members of Technical Services to give their best to the Organization, the Indian Council of Agricultural Research (ICAR) introduced new personnel policies for the Technical Services from 1.10.1975. On 1.07.1976, the petitioner was inducted to T-1 of Category-I in the scale of pay Rs.260-430/-. Thereafter, the petitioner was promoted to Senior Field Assistant with effect from 01.07.1976 in the pay scale of Rs.330-560/-. When the Technical Service Rules (TSR) came into force on 06.03.1978, the petitioner was working as Senior Field Assistant wherein the essential qualification for category-II was for “three years Diploma/Bachelor Degree in relevant field or “three years experience in the relevant field for Diploma holders. On 27.1.1979, the essential qualification for different categories underwent change. For category-II in respect of Field/Farm Technician alternative qualification of matriculation with 10 years experience in the relevant field was made applicable in respect of the existing employees as on 01.01.1977. On 28.02.1980, an order was issued by ICAR clarifying that said qualification will be applicable with effect from 01.01.1975. On 01.07.1982, the petitioner having not been fitted in Category-II was promoted to T-I-3 in Category-I in the scale of pay Rs.425-700/-. On 01.01.1995, the petitioner was promoted/brought over to T-II-3 in the scale of pay of Rs.425-700/-. On 24.6.1999, the opposite party no.3 (ICAR) intimated the opposite party No. 4(CRRI) to extend the benefits of the aforesaid provision to the deserving persons. On 01.01.2000, the petitioner was promoted to T-4. On 30.11.2004, the petitioner retired from service on attaining the age of superannuation. Since the petitioner was not fitted in T-II-3 Category with effect from 01.01.1975, he filed O.A. No. 237 of 2002 before the Central Administrative Tribunal, Cuttack Bench, Cuttack, which came to be dismissed on 22.07.2004, referring to the decision of Hon’ble Supreme Court in the case of **Director CRRI-v- K.M. Das and others**, reported in 1994 Suppl.(3) SCC 595. The petitioner challenged the said order dated 22.07.2004 passed in O.A. No.237 of 2002 before this Court in W.P.(C) No.12843 of 2004, which was disposed of on 05.01.2006 directing the opposite parties to consider the case of the petitioner in the light of the decision rendered by the Hon’ble Supreme Court in the case of **ICAR and others –v- Bibhuti Bhusan Nayak** and others in Civil Appeal No.6673 of 1997 as well as the circular issued under Annexure-9. On 19.04.2006, the opposite party no.4 (CRRI) issued memo to the petitioner rejecting his claim without taking into consideration the observations made by this Court in W.P.(C) No.12843 of 2004. Thus, the petitioner again approached the learned Central Administrative Tribunal ventilating his grievances. On 21.01.2009, learned Central Administrative Tribunal, Cuttack Bench, Cuttack passed a common order in O.A. Nos.92 and 213 of 2007 dismissing the O.As. and rejecting the petitioner’s claim purportedly ignoring the direction of this Court and also the order of the Hon’ble Supreme Court in Civil Appeal No.6673 of 1997, holding that the benefits allowed to some other officials on a wrong interpretation of legal position cannot be taken as a precedent for the purpose of getting erroneous benefit to which the applicants are not entitled to at all. On 15.07.2009, challenging the impugned order under Annexure-1, the present writ petition has been filed.

4. Learned counsel for the petitioner has taken upto the Service Rules of the Institution, namely, Handbook of Technical Services, ICAR. Rules 1, 2 and 3 of the said Service Rules read as under:

“Scope and Nature of the Services

1. All posts, the incumbents of which are engaged in performing technical services in support of research and education whether in the laboratory, workshop or field or in areas like library, documentation, publication and agricultural communication, constitute the Technical Services. There will be no common cadre. The posts will be borne on the strength of the respective Institution or the Headquarters of the Council as the case may be.

Date of Coming Into Force of the Service Rules

2. The Technical Service Rules came into force with effect from October 1, 1975.

Categories and Grades of the Services

3.1 The Technical Services are grouped into three categories consisting of the following grades:

Category	Grade	Pay Scale
CATEGORY-I	(T-1	i) Rs.260-6-290-EB-6326-8-366-EB-8-390-10-430
	(T-2	ii) Rs.330-10-380-EB-12-500-EB-15-560
	(T-I-3	iii) Rs.425-15-500-EB-15-560-20-700
CATEGORY-II	(T-II-3	i) Rs.425-15-500-EB-15-560-20-700
	(T-4	ii) Rs.550-25-750-EB-30-900
	(T-5	iii) Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200
CATEGORY-III	(T-6	i) Rs.700-40-900-EB-40-1100-50-1300
	(T-7	ii) Rs.1100-50-1600
	(T-8	iii) Rs.1300-50-1700
	(T-9	iv)Rs.1500-60-1800-100-2000

3.2 The pay scales in Categories I & II replace the existing pay scales in the manner indicated in Appendix I. The new pay scales in Category-III are the same as the existing pay scales. 3.3 The new pay scales will be applicable both to the future entrants as well as to the existing incumbents from 1.10.1975. However, the existing incumbents may, if they so desire, retain their existing scales as personal to them.”

5. Learned counsel for the petitioner has also taken us to the Appendix-IV of the said Service Rules, where minimum educational/trade qualification for different groups of the three categories was diluted in 1979, which reads as under:

Field/Farm Technicians

Category-I Essential Qualifications (i)Matriculate with at least one year certificate in relevant field Or Matriculate with 5 years experience in the respective field.	Category-I Essential Qualifications *(i)Three years Diploma /Bachelor’s Degree in relevant field. (ii) 3 years experience in the relevant field for Diploma holders	Category-III Essential Qualifications (i)Three years Diploma/ Bachelor’s Degree in Science/Agri./Animal Science/Relevant field /Forest Rangers Course (for CAZRI & CS & WCR TI) (ii) Five years experience of working in relevant field Minimum experience will Be seven years, ten years And twelve years, ten Years and twelve years for lateral entry to posts Carrying scales of Rs.1100 -1600, Rs.1300-1700 and Rs.1500-200, respectively.
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6. Learned counsel for the petitioner contended that learned Tribunal while adjudicating the matter has not considered the judgment of the Hon’ble Apex Court in the case of **I.C.A.R. and Ors. –v- Bibhuti Bhusan Nayak & Ors.** in Civil Appeal No.6673 of 1997 arising out of SLP (C) No.23741 of 1995, where the Hon’ble Supreme Court while considering the matter has observed as under:

“Special leave granted.
We have heard Learned Counsel for the Parties. The respondents were employed as Computers with the Central Rice Research Institute which is an Institute under the control of Indian Council of Agricultural

Research. The grievance of the Respondents was that while Sr. Computers were placed in the pay scale of Rs.425-600/- with effect from January, 1, 1973 they were placed in lower pay scale of Rs.300-560/-. They were claiming the pay scale of Rs.450-600/- with effect from January 1, 1973/-. They were also seeking the higher pay scale of Rs.550-990/- with effect from October 1, 1975. They filed petition (O.A. No.182 of 1992) seeking the said relief before the Central Administrative Tribunal, Cuttack Bench, (hereinafter referred to as 'the Tribunal'). The said petition has been decided by the Tribunal by the impugned judgment dated 23,1994. The Tribunal, while allowing the said application has held:

What is crystal is that complete jurisdiction exists for accepting the prayer of the applicants, Shri Bibhuti Bhusan Nayak, Madan Mohan Das and Akhaya Kumar Mishra be placed in the pay scale of Rs.425-600 with effect from 1.1.1973 or from the actual date of their respective appointment to the post of Computers. Further they should be placed in category-T(IV) in the scale of Rs.550-900/- with effect from 1.10.75 or from the date of their respective appointment.

The words "Category T-I(IV)" should be read as "Category T-II (IV) in these observations because there is no category T-I (IV) and the pay scale of Rs.550-900/-, was given for category II-T (IV).

Shri Sikh, the learned counsel appearing for the appellants states that the appellants do not question the first direction given by the Tribunal that the respondents be given the pay scale of Rs.425-600 with effect from January 1, 1973 or from the actual date of their appointment on the post of Computers. He assails the second direction that the respondents should be placed in category II-T(IV) in the pay scale of Rs.550-900/- with effect from October 1, 1975 from the date of their respective appointment. The submission is that the categorization of the various scales was done under the Technical Services Rules of the Indian Council of Agriculture Research which came into force with effect from October 1, 1975. The learned counsel has invited our attention to Rule 5.1 of the said Rules which provides for initial adjustment for existing employees and submits that in view of the said rule on October 1, 1975 the respondents could only be fixed in the pay scale of Rs.425-600, either in category I-T (III) or in category II-T depending upon their qualifications and that the next scale of Rs.550-900/- falling in category II- T(IV) could be given to them only by way of promotion after the initial fitment had been made with effect from October 1, 1975.

The learned counsel has placed reliance on the decision of this Court in Director, Central Rice Research Institution, Cuttack & Anr. Vs. Khetra Mohan Das, 1994 Suppl.(3) SCC 595. When it has been down.

"Viewed from any angle it is clear that when these rules came into force person in Grade T-I-3 of category-I (pay scale Rs.425-700) would be entitled to be inducted in grade T-II-3 of category II provided the person possessed the necessary qualifications prescribed for category-II in the case of the respondent can be only as per Rule 7.2 and not by way of induction as claimed by way of induction as claimed by the respondent" (P.600)

In view of the said decision of this Court the direction given by the Tribunal that the respondents be placed in category II-T (IV) in the pay scale of Rs.550-900 with effect from October 1, 1975 cannot be sustained and has to be set aside. The respondents will however, be entitled to be considered for promotion in the said category II-T (IV) in the pay scale of Rs.550-900 after fitment in the pay scale of Rs.425-600 with effect from October 1, 1975 under the Rules of 1975.

The appeal is therefore, allowed and the direction given by the Tribunal that the respondents be placed in category II-T(IV) in the pay scale of Rs.550-900 with effect from October 1, 1975 or from the date of their respective appointment is set aside. No order as to costs."

7. Learned counsel for the petitioner has also pointed out that this Court in W.P.(C) No. 10720 of 2004 had occasioned to consider the case of Bibhuti Bhusan Nayak (supra), wherein this Court considered the facts and circumstances of the said case and observed at paragraph-4 as follows:

“4. From the discussion made in the impugned judgment of the Tribunal, we find that the decision of the Apex Court in the case of Bibhuti Bhusan Nayak (supra) has not been taken into consideration. From the above quoted portion of the judgment it appears that the petitioners pray for consideration of their claim that they are entitled to the scale of pay of Rs.425-700/- with effect from 1.10.1975 is required to be reconsidered. We, therefore, dispose of this writ application directing the opposite parties to consider the case of the petitioners in the light of the decision rendered by the Apex Court in the case of Bibhuti Bhusan Nayak and others as well as the circular issued by the Organization in Annexure-9 and take a decision in that regard within a period of three months from the date of communication of this order. Learned counsel for the petitioners also brought to the notice of the Court another decision of the Central Administrative Tribunal, Cuttack Bench, Cuttack in Original Application Nos.244 and 245 of 1997 in which the scale of pay Rs.425-700/- has been allowed and therefore while considering the case of the petitioners said judgment may also be taken consideration by the authorities. Learned counsel for the petitioners undertakes to produce copies of the judgments before the authorities for their consideration”

8. Learned counsel for the petitioner has also pointed out that learned Tribunal while adjudicating the matter has failed to consider the order of promotion on 24.3.1976 and also the order dated 28.02.1980. Prima facie, learned Tribunal while adjudicating the matter has not considered the case of Bibhuti Bhusan Nayak (supra) in its letter and spirit. Learned Tribunal ought to have considered the amended rules and alternative criterion of eligibility of promotion on due date, i.e. 01.01.1975, when the petitioner completed ten years because the rules were amended in 1979 with retrospective effect.

9. Taking into consideration the facts and circumstances of the case, we are of the considered opinion that learned Tribunal is required to reconsider the instant case on the factual matrix of the petitioner, which is apparently absent. In that view of the matter, the impugned order of learned Tribunal is quashed and the matter is remitted back to learned Tribunal for fresh consideration of the case on its factual matrix and give finding on the basis of amendment rules and the eligibility. Petitioner is directed to appear before learned Tribunal on 16.05.2019 to receive further instruction in the matter. Learned Tribunal shall consider and dispose of the matter within a period of six months from the date of appearance of the petitioner after affording opportunity of hearing to the parties concerned.”

3. In accordance with the direction of Hon'ble High Court as above, the matter was taken up in this Tribunal on 14.10.2019 after receipt of the records from Hon'ble High Court vide letter dated 25.9.2019. Vide order dated 7.11.2019, the final hearing was fixed on 15.11.2019 on request of the applicant's counsel. Learned counsel for the applicant and respondents were heard on 15.11.2019 and on 20.11.2019.

4. Learned counsel for the applicant has filed a written note of submissions stating as under:-

“1. That the Respondent No.1 ICAR issued a circular No. 7(42)/79. Per-III dt. 28.2.1980 addressing to all the institutes under the ICAR wherein it has been specifically mentioned referring the letter dt. 27./1.1979 that the existing employees in the Council as on 1.1.1977 shall be entitled for promotion into next higher grade w.e.f. 1.10.1975 so as to accommodate the existing staffs in position with long years of service.

2. That the applicant humbly submits that the respondents have not implemented the circular in its letter and spirit with regards to existing staff having matriculation qualification with ten years of working experience in the Council as on 1.1.1977 for fitment in pay scale of Rs.425-700 w.e.f. 1.10.1975.

3. That decision made by the Learned Central Administrative Tribunal, Ernakulam Bench, Jodhpur Bench and the Hon'ble Apex Court in the case of Bibhuti Bhushan Nayak holds good as on date.

4. That the Hon'ble High Court of Orissa in WP(C) 10048 of 2009 has been pleased to allow the writ application quashing the impugned order and remitted the matter back to this learned Tribunal for fresh consideration of the case on its factual matrix and give finding on the basis of amendment rules and the eligibility of the petitioner/Applicant.

5. That so far as the case of Bibhuti Bhushan Nayak is concerned the same has attained finality as per the judgment of the Hon'ble Apex Court. The case of Bibhuti Bhushan had two parts: one relating to the fitment into Category-II from Category-I and the second part the claim of Bibhuti Bhushan Nayak was relating to the subsequent higher scale of pay. The claim of the applicant is justified in view of the judgment passed in the case of Bibhuti Bhushan Nayak and Others as in the said case nowhere it has been denied in the first part that the applicant cannot be fitted into the category-II nor the same was challenged before the Apex Court, the respondents only challenged the second part of the judgment passed in the case of Bibhuti Bhushan Nayak wherein the Hon'ble Apex Court rejected the subsequent claim of the applicant i.e. scale of pay of Rs.550-900 which is not the claim of the applicant in the present case. The claim of the applicant is squarely covered in the first part of the judgment which was passed in the case of Bibhuti Bhushan Nayak in C.A.Nio.6673 of 1997.

6. That in the TSR Rule Para 5.1 stipulate that,

'The existing permanent and temporary employees appointed through regularly constituted DPC/Selection Committee will be fitted into the grades specified in para 3.1 on point to point basis without any further screening irrespective of their qualifications. However, persons holding positions in the merged grade of Rs.425-700 and possessing qualifications prescribed for Category II, will be fitted in grade T-II-3(Rs.425-700)'.

That the essential qualification for different categories required under the Rule of ICAR was underwent change on 27.1.1979. For category-II in respect of Field/Farm Technician alternative qualification of matriculation with ten years experience in the relevant field was applicable for existing employees as on 1.1.1977 and considering such qualification of the applicant as on that he shall be considered for fitment/promotion to Category-II.

It is pertinent to mention here that the present applicant has not been fitted as per the said Para 3.1 at the time introduction of TSR even though fulfilling the essential requirements. The applicant although had requisite qualification as on 1.1.1977 but he was not fitted to Category-II only on the ground that his existing scale of pay was not Rs.425-700. This cannot be held a valid ground for rejecting the claim of the applicant for fitment in Category-II as he already had 10 years of experience as per the amended rules and had he been given the pay scale of Rs.425-700 then certainly the applicant could have been fitted in Category-II but as the same was not done in case of the applicant but other similarly situated employees, the applicant was denied his legitimate scale of pay for fitment into Category-II w.e.f. 1.10.1975.

7. That it humbly submitted that similarly situated persons in different institutes under the ICAR have been promoted/fitted in pay scale of Rs.425-700 in T-II-3 in Category-II w.e.f. 1.10.1975."

5. Learned counsel for the respondents was heard. He also submitted a brief written note stating that he had earlier filed the 'written notes of arguments' which may be considered. In nutshell, the respondents' case is that the applicant's pay has been fixed correctly and he is not entitled for higher pay scale as claimed.

6. We have considered the pleadings as well as the submissions by both the sides. The applicant's case is that the respondents have not considered his case as per the circular dated 28.2.1980 read with the circular dated 27.1.1979, by which, the Technical Services Rules (in short TSR) were amended by the Indian Council of Agricultural Research (in short ICAR) w.e.f. 1.10.1975. From the documents available on record, the applicant seems to have raised his claim after his retirement on 30.11.2001 when he challenged the alleged inaction of the ICAR in OA No. 237 of 2002. It is noticed that no document has been enclosed with the OA to show that the applicant had agitated his grievance before the authorities prior to his retirement although it was contended in OA that he had repeatedly represented to the authorities about his claim. A letter dated 24.6.1999 (Annexure-4 of the OA) of the ICAR has been enclosed with the clarification that the Director of the Institute can decide about the promotional post of the employees. There is no document on record to show that the applicant has raised his grievance before the Director (respondent No. 3) after receipt of clarification on 24.6.1999 and before his retirement on 30.11.2001.

7. It is noticed that the averments of the applicant in para 4(v) of the OA are as under :

"That on 25.6.1979 a letter was addressed from the Head Office to all the Directors of all the Research Institutes under the ICAR wherein it was pointed out that the amendment shall be made applicable w.e.f. 1.10.1975. By virtue of that as the applicant being a matriculate with ten years experience as on 1.10.1975 is entitled to be fitted in Category T-II-3 grade whereas he was fitted in T-2 grade which gave much prejudice to the Applicant. (Photocopy of the letter dated 25.6.1979 is annexure with marked as Annexure-3)."

It is clear from above that the applicant was aggrieved with fixation of his pay in T-2 grade in the scale Rs.330-560/- on 1.7.1976 [as stated in para 4(i) of the OA], which the applicant states to be incorrect as averred in para 4(v) of OA, in which, he claims the pay scale applicable for the category of T-II-3 grade with pay scale of Rs.425-700/- also applicable to him with effect from 1.10.1975, as per the amended rules for Technical Services under ICAR. It is noticed that the applicant did not raise his grievance relating to his fitment in the grade T-II-3, to which he claims his entitlement, within a reasonable time after introduction of the amended rules vide ICAR's letter dated 27.1.1979 (Annexure 2 of the OA). As per para 5.1 of the amended rules (paragraph 6 of

the written note of the applicant as extracted in paragraph 4 of this order), an employee enjoying the pay scale of Rs.425-700/- as on 1.10.1975 will be entitled for automatic fixation of pay in pay scale Rs.425-700/- applicable for grade T-II-3. Other employees (including applicant) need to be selected by the DPC/Selection Committee for the post, will be given the fitment in higher pay scale for grade T-II-3. Hence, the applicant's claim to be fitted into the pay scale of Rs.425-700/- applicable to the grade T-II-3 w.e.f. 1.10.1975 effectively means that he is claiming his promotion to the grade T-II-3 retrospectively w.e.f. 1.10.1975. As observed in paragraph 3 of the judgment of Hon'ble High Court the applicant had been promoted to T-II-3 grade on 1.1.1995. He had not raised his claim to antedate his promotion to the above grade of T-II-3 with pay scale of Rs.425-700/- w.e.f. 1.10.1975 within a reasonable time after his promotion to the grade on 1.1.1995, since no document to that effect is furnished in the OA. Although the paragraph 4(vi) and 4(vii) referred to such claims being submitted by the applicant before authorities, no document is enclosed in support of such contention. He approached this Tribunal in 2002 for redressal of his grievance when he filed the OA No. 237/2002 after his retirement from service on 30.11.2001.

8. It is also noticed that the applicant has not mentioned any specific case of his junior in the OA, who was promoted to the grade T-II-3 w.e.f. 1.10.1975 while ignoring the applicant's case, although he has mentioned the following in para 4(xi) of the OA:-

“(xi)..... Even if the Juniors those who were joined much later to the appointment of the Applicant i.e. during 1975 or 1976 are getting the same scale of pay and other benefits and the Applicant though served a longer period of service was receiving lower pay and was unable to get the actual service benefits under statute when he is otherwise eligible for higher fitment and higher scale of pay.”

No specific case of any junior has been mentioned in the OA, who was promoted to T-II-3 grade w.e.f. 1.10.1975 when the applicant was in service, although it was generally mentioned in para 4(xi) as extracted above. The applicant's claim is not the wrong fixation of pay, but wrong fitment to a higher pay scale, which was a promotional post and the applicant was promoted to the post on 1.1.1995. The applicant's counsel had submitted a seniority list of the employees as on 1.1.1977 in which the name of the applicant appears at serial no. 7 as against serial No. 4 for Sri B.B. Nayak (Bibhuti Bhusan Nayak) with whom the applicant claims parity in pay fixation in this OA.

9. Regarding the claim of the applicant for the higher pay scale w.e.f. 1.10.1975 on merit, the respondents have rejected the claim vide the impugned order dated 19.4.2006 (Annexure-5), which stated as under:-

“3. With regard to ICAR Order No. 4-22/75-F(A)/Per.III dated 31.12.1976 vide Annexure-9 to OA, it is stated that Shri Mohanty was having only matriculation qualification when he was appointed as Field Assistant. Consequent upon introduction of Technical Service Rules w.e.f. 1.10.1975, Shri Mohanty was inducted to T-I grade of Cat.-I w.e.f. 29.11.1977 i.e. from the date of his option to TSR. Prior to induction to T-I grade, he was holding the recommended replacement scale of Rs.260-430/- (Pre-revised Rs.110-200/- IIIrd CPC) i.e. his date of option to TSR. The technical Personnel in CMFRI, Cochin were directly appointed in the scale of Rs.330-560/- during third Pay Commission only and subsequently at the time of initial adjustment, they were promoted taking into consideration of TSR 3.1, 5.1 & 7.2 against the existing available vacancies with them in the scale of Rs.425-700 in the grade of T-II-3 of Cat.II as per annexure-R/9 to OA. Since Shri Mohanty was inducted in the scale of Rs.260-430/- revised (Pre-revised scale of Rs.110-200/- during Third pay Commission Scale) w.e.f. 1.1.1973, hence he was not entitled to the replacement scale of Rs.425-700/- under TSR 3.1, 5.1 & 7.2 respectively. Therefore, he was rightly placed in the revised pay scale of Rs.260-430/- w.e.f. his date of option as indicated above.

4. It is further to mention here that the case cited in Annexure 9 to the OA of CMFRI relates to grant of promotion as per TSR after the induction of employees in TSR. That case is on different footing.

5. To sum up Shri Mohanty Ex-T-4, CRRRI was working in the pay scale of Rs.260-430/- and possessed Matriculation qualification on the crucial date of commencement of Technical Service i.e. 1.10.1975. He was rightly inducted in the grade of T-I. The facts and circumstances of other cases cited by him, in support of his claim of induction into T-II-3, are different and his claim for similar placement cannot be accepted as per rules.”

10. The respondents in para 5 of the Counter have explained the manner in which the fitment in different pay scales after merger of the scales has been done. It is stated that for the employees with pay scale of Rs. 425-700/- and possessing qualifications prescribed for Category-II are to be fitted in grade T-II-3 as per para 5.1 of the amended Technical Service Rules (in short TSR) effective from 1.10.1975. It is further stated that the applicant's pay scale was fixed at T-I under the TSR 3.1 w.e.f. 1.10.1975 as he does not have the qualification required for direct recruitment for the pay scale of Rs. 425-700/- as per the rules. It was stated that 10 year experience (with Matriculation qualification) was applicable for 20% promotional posts of T-II-3 at pay scale of Rs. 425-700/- and the said qualification is not applicable for 80% quota for direct recruitment as per the TSR- 7.1 and TSR-7.2. It is stated that vide the letter dated 22.8.1984 of the ICAR (Annexure-R/2 series), it was clarified that the qualification for direct recruitment for grade T-II-3 will be same for ICAR employees and outside candidates. It was further clarified that vide latter dated 8.8.1996 (Annexure-R/2 series), it was clarified that the ICAR employees having alternate qualifications will be eligible for Category jump from Category-I to Category-II w.e.f. 1.1.1995. Accordingly, the applicant was promoted to grade T-II-3 on 1.1.1995.

11. The respondents have cited the judgment of Hon'ble Apex Court in the case of **Indian Council of Agricultural Research vs. Mr. Khetra Mohan Das**, AIR 1995 SC 122 (Annexure-R/1), which is the case of Director General Rice

research Institution vs. Khetra Mohan Das, in which it was held by Hon'ble Apex Court as under:-

"4. Therefore the only question that arises for consideration is whether the respondent who was admittedly in the pay scale of Rs. 330-560 was entitled to be fitted in Category I Grade T-1-3 and further by virtue of Rule 5.1 he ought to have been fitted in Category II Grade T-II-3. As noted above Para 5.1 lays down that all the existing permanent and temporary employees appointed would be fitted into their respective grades specified in Para 3.1 on point to point basis. The respondent who was in the pay scale of Rs. 330-560 could only be fitted into Category I Grade T-2 and only the persons holding positions in the merged scale of Rs. 425-700 i.e. Category I Grade T-1-3 and possessing the necessary qualifications prescribed for Category II could be fitted in Category II Grade T-II-3 for which also the scale is the same. Merely because one possessed the qualification, he cannot claim as a matter of right that he should be fitted into Category II Grade T- II-3. The initial induction should be only on the basis of pay scale. If the respondent was entitled to be fitted in Category I Grade T-1-3 (Rs. 425-700) on the relevant date and if he possessed the qualification for Category II then only he could be fitted in Category II Grade T-II-3 by virtue of Para 5.1 and the respondent could not be fitted in Category I Grade T-1-3 because of the difference in the pay scale. As per the Rules he could be fitted in Category I Grade T-II and merely because he possessed the qualification for Category II he cannot claim as a matter of right to be fitted in Category II Grade T-II-3. Para 5.1 does not permit such an induction.

5. Learned Counsel for the respondent, however, strongly relied on Para 7.2 as it existed then which reads as follows:

"Promotion

xx xx xx

7.2 Vacancies in Grade T-II-3 in Category II may also be filled by promotion of persons in Category I possessing qualifications prescribed for Category II."

According to the learned Counsel, a plain reading of this Rule as it stood makes it clear that any person in Category I of any grade possessing qualifications prescribed for Category II would be entitled to be promoted to Category II Grade T-II-3 and that as the respondent who was in Category I Grade T-2 and who possessed qualifications prescribed for Category II, would automatically be entitled to be promoted to Category II Grade T-II-3. We see no force in this submission which overlooks fact that between Grade T-2 of Category I and Grade T-II-3 of Category II, there is Grade T-I-3 of Category I for which the scale of pay is Rs. 425-700. A person fitted in Grade T-2 in Category I can not straightaway make a claim to Grade T-II-3 of Category II skipping over the higher grade T-I-3 of Category I which is in between. If this submission has to be accepted, then a person in Grade T-I of Category I which is the lowest in that grade can on the basis that he possesses the qualifications for Category II also claim that he should also automatically be promoted to Grade T-II-3 of Category II as per above Rule 7.2. That can not be the object underlying the above mentioned Rule 7.2 and such an interpretation of the Rule can not be given. It is pertinent to note at this stage that Rule 7.2 deals with only promotions of persons in Category I possessing the necessary qualifications to the higher Category II and has nothing to do with induction contemplated under Rule 5.1. This is only made obvious by virtue of a later amendment of Rule 7.2 which reads as follows:

"Promotion

xxxxxxx xxxxxxxx xxxxxxxx

7.2 20% vacancies in grade T-II-3 may also be filled by promotion of persons in grade T-I-3 possessing qualifications prescribed for Category II."

From the amended Rule it can be seen that vacancies in Grade T-II-3 of Category II can be filled by promotion only of those persons in Category I Grade T-I-3 possessing qualifications prescribed for Category II. So far as the initial adjustment of existing employees is concerned, it is only Rule 5.1 dealing with induction which is relevant and as per that Rule, as discussed above, only persons holding positions in the merged scale of Rs. 425-700 which is the scale for Category I Category T-I-3 can be fitted in Category II Grade T-II-3 for which also the scale is Rs. 425-700 provided such persons holding positions in the merged scale of Rs. 425-700 possess the qualifications prescribed for Category II.

6. Learned counsel for the respondent, however, submitted that it is unamended Rule 7.2 as extracted above which is applicable to the case of the respondent. As mentioned above even as per the unamended rule the respondent cannot claim induction into Grade T-II-3 of Category II straightaway from Grade T-2 of Category I merely on the basis of qualifications. He can only claim promotion to Category II Grade T-II-3 provided he was holding a position in the next lower grade namely Grade T- 1-3 of Category I. A promotion is different from fitment by way of rationalisation and initial adjustment. Promotion, as is generally understood, means; the appointment of a person of any category or grade of a service or a class of service to a higher category or grade of such service or class. [In C.C. Padmanabhan and Ors. v. Director of Public Instructions and Ors. : \[1981\]1SCR128](#) this Court observed that "Promotion" as understood in ordinary parlance and also as a term frequently used in cases involving service laws means that a person already holding a position would have a promotion if he is appointed to another post which satisfies either of the two conditions namely that the new post is in a higher category of the same service or that the new post carries higher grade in the same service of class. Viewed from any angle it is clear that when these Rules came into force only a person in Grade T-I-3 of Category I (Pay scale - Rs. 425-700) would be entitled to be inducted in Grade T-II-3 of Category II provided he possessed the necessary qualifications prescribed for Category II. The promotion to Category II in the case of the respondent can be only as per Rule 7.2 and not by way of induction as claimed by the respondent. As a matter of fact I.C.A.R. while replying to the further representations made by the respondent, made it clear by its letter dated 5th April, 1978 that those persons who are in Grade t-2 of Category I and who possess qualifications for Category II and earn merit promotion as a result of performance assessment for five years service would be promoted to next higher grade T-1-3 and on the basis of further assessment of performance in that grade would be considered for promotion to Grade T-II-3 of Category II provided they possess the qualifications prescribed for Category II.

7. The Tribunal, however, observed that in the meantime the respondent has been promoted to Grade T-I-3 of Category I carrying the same scale as Grade T-II-3 of Category II, therefore he should be deemed to have been inducted into Grade T-II-3 Category II. This reasoning is erroneous. The crucial date is 1.10.1975 on which date the Rules came into force and for fitment into the necessary categories Rule 5.1 has to be applied and the existing employees should be fitted only in the grades specified in Para 3.1 on point basis on the basis of their existing scales of pay on that date. The subsequent promotion of the respondent from Grade T-II of Category I to Grade T-I-3, the higher grade in the same Category can not make any difference so far as the initial fitment on 1.10.1975 is concerned as contemplated under Rule 5.1. The Tribunal also made a reference to Rule 8.1 which applies only to direct recruits and it has no relevance so far as the case of the respondent is concerned.

8. For all the above reasons, the finding of the Tribunal that the respondent should be held to have been appointed in Grade T-II-3 of Category II in the pay scale of Rs. 425-700 with effect from 1.10.75 is set aside. Accordingly the appeal is allowed but there shall be no order as to costs."

12. Regarding the case of Sri Bibhuti Bhusan Nayak (B.B. Nayak) relied upon by the applicant, the para 15 of the Counter stated that Sri B.B.Nayak filed OA No. 182/91, which was allowed with direction that he be allowed the scale of

Rs. 425-600 w.e.f. 1.1.1973 and scale of Rs. 550-900/- w.e.f. 1.10.1975. ICAR appealed by filing SLP before Hon'ble Apex Court in Civil Appeal No. 6673 of 1997 in the case of Indian Council for Agricultural Research & Anr. -vs- Bibhuti Bhushan Nayak, in which it was held as under:-

"The respondents were employed as Computers with the Central Rice Research Institute which is an Institute under the control of the Indian Council of Agricultural Research. The grievance of the respondents was that while Senior Computers were placed in the pay scale of Rs.425-600/- with effect from January 1, 1973 they were placed in a lower pay scale of Rs.300-560/-. They were claiming the pay scale of Rs.450-600/- with effect from January 1, 1973. They were also seeking the higher pay scale of Rs.550-900 with effect from October 1, 1975. They filed a petition [OA No. 182 of 1991] seeking the said relief before the Central Administrative Tribunal, Cuttack Bench [hereinafter referred to as the Tribunal]. The said petition has been decided by the Tribunal by the impugned judgment dated June 23, 1994. The Tribunal, while allowing the said application, has held :

'What is crystal clear is that complete jurisdiction exists for accepting the prayer of the applicants, S/Shri Bibhuti Bhushan Nayak, Madan Mohan Das and Akhaya Kumar Mishra be placed in the pay scale of Rs.425-600/- with effect from 1.1.1973 or from the actual date of their respective appointment to the post of Computers Further they should be placed in category I-T(IV) in the scale of Rs.550-900/- with effect from 1.10.1975 or from the date of their respective appointment.'

The words 'category T-I(IV)' should be read as 'Category T-II(IV)' in these observations because there is no category T-I(IV) and the pay scale of Rs.550-900/- was given for category II-T(IV).

Shri Sikh, the learned counsel appearing for the appellants, states that the appellants do not question the first direction given by the Tribunal that the respondents be given the pay scale of Rs.425-600/- with effect from January 1, 1973 or from the actual date of their appointment on the post of Computers. He assails the second direction that the respondents should be placed in category II-T(IV) in the pay scale of Rs.550-900/- with effect from October 1, 1975 from the date of their respective appointment. The submission is that the categorisation of the various services was done under the Technical Services Rules of the Indian Council of Agricultural Research which came into force with effect from October 1, 1975. The learned counsel has invited our attention to Rule 5.1 of the said Rules which provides for initial adjustment for earlier employees and submits that in view of the said rule on October 1, 1975 the respondents could only be fixed in the pay scale of Rs.425-600, either in category I-T(III) or in category II-T depending upon their qualifications and that the next scale of Rs.550-900/- falling in category II-T(IV) could be given to them only by way of promotion after the initial fitment had been made with effect from October 1, 1975.

The learned counsel has placed reliance on the decision of this Court in Director, Central Rice Research Institution, Cuttack & Anr. -vs- Khetra Mohan Das, 1994 (Suppl.(3) SCC 595, wherein it has been laid down:

'Viewed from any angle it is clear that when these rules came into force only a person in Grade T-I-3 of category I [pay scale – Rs.425-700/-] would be entitled to be inducted in Grade T-II-3 of category II provided he possessed the necessary qualifications prescribed for category II. The promotion to category II in the case of the respondent can be only as per Rule 7.2 and not by way of induction as claimed by the respondent.'[P.600]

In view of the said decision of this Court the direction given by the Tribunal that the respondents be placed in category II-T(IV) in the pay scale of Rs.550-900/- with effect from October 1, 1975 cannot be sustained and has to

be set aside. The respondents will, however, entitled to be considered for promotion in the said category II-T(IV) in the pay scale of Rs.550-900/- after fitment in the pay scale of Rs.425-600/- with effect from October 1, 1975 under the Rules of 1975.

The appeal is, therefore, allowed and the direction given by the Tribunal that the respondents be placed in category II-T(IV) in the pay scale of Rs.550-900/- with effect from October 1, 1975 or from the date of their respective appointment, is set aside. No order as to costs.”

13. From above, it is noticed that the case of Sri B.B. Nayak is different factually, since his claim was for the pay scale of Rs. 425-600/- w.e.f. 1.10.1973 (it should be Rs.425-700/-) at par with Senior Computers as he was placed at lower pay scale. In that case, the ICAR accepted the fitment of pay of Sri Nayak in pay scale of Rs. 425-700/- as Computer w.e.f. 1.10.1973 as per the order of the Tribunal as the ICAR's counsel did not object to that part of the Tribunal's order before Hon'ble Apex Court as observed in the judgment extracted above. The other direction for fitment in pay scale of Rs. 550-900/- was challenged and the said direction of the Tribunal was set aside by Hon'ble Apex Court. Learned counsel for the applicant in the present OA before us had submitted that the applicant wants the same benefit of Rs. 425-700/- w.e.f. 1.10.1975 which was allowed to Sri B.B.Nayak. But the present applicant's pay scale as on 1.10.1975 was not Rs.425-700/- like the case of Sri B.B.Nayak.

14. It is stated by the respondents in para 14 of the counter that the claim of the applicant for induction to the Grade T-II-3 is different from other cases cited by him for which his claim for fitment w.e.f. 1.10.1975 cannot be accepted. It is seen from the order of the Hon'ble Apex Court in CA No. 6673/1997 in the case of B.B.Nayak that his claim for fitment to the pay scale of Rs.425-600/- w.e.f. 1.1.1973 was not disputed by the ICAR as Sri Nayak was in Computer and there were other senior Computers. He was in the scale of Rs.425-700/-. In other words B.B.Nayak was in the pay scale of Rs.425-700/- when the rules for Technical Services were amended w.e.f. 1.10.1975 by applicant of TSR-5.1 since Sri Nayak was in Rs.425-700/- already as on 1.10.1975 he was upgraded to the grade of T-II-3 with the pay scale of Rs.425-700/- as per the stipulations in TSR-5.1. But the applicant's case is different since he was not drawing pay scale of Rs.425-700/- as on 1.10.1975. Hence the applicant will not be entitled for automatic migration to the grade T-II-3 as per TSR-5.1. His case has to be considered for promotion as stipulated in para 5.1 to the grade of T-II-3, which is possible within 20% limit as per the amended TSR-7.2 which is discussed in the judgment of Khetra Mohan Das (Annexure R/1). As stated by the respondents in para 5 of the counter no post on promotion quota within 20% of cadre strength was available for consideration of the applicant's case as on 1.10.1975. It was further stated that his case for absorption against the direct recruitment quota was not found

acceptable since he did not possess the required qualification for direct recruitment since the relaxed qualification of Matriculation with 10 years experience was applicable for promotion quota. Hence, it is clear that the case of Sri Bibhuti Bhushan Nayak is factually different from the applicant's case.

15. The contentions in para 5 and 14 of the Counter have not been contradicted by the applicant in the Rejoinder, filed by the applicant. In the Rejoinder, the applicant has mentioned the case of Sri B.B.Nayak, who has been given the pay scale of Rs.425-700/- w.e.f. 1.10.1975 by virtue of the order dated 5.5.2003 of the respondents. He claims parity with the case of Sri B.B.Nayak. Although the applicant has mentioned about another employee Sri A.K.Mishra in the Rejoinder, no details with documentary evidence have been furnished by the applicant to substantiate his claim. Further the direction of Hon'ble High Court vide order dated 13.1.2006 in WP© No. 12843/2004 was to consider the case of the applicant in the light of the judgment in the case of Sri B.B.Nayak. No specific averment is there to contradict the contentions of the respondents in paragraph 5 of the counter affidavit. As discussed earlier in this order, the case of Sri B.B.Nayak is not similar to the case of the applicant. Hence the judgment of Hon'ble Apex Court in Civil Appeal No. 6673/1997 in the case of B.B.Nayak (supra) will not be of any assistance to the applicant.

16. The order dated 13.1.2006 of the Hon'ble High Court in WP(C) No. 12843/2004 (enclosure 6 of the written note of submissions of the applicant) had directed the respondents to consider the case of the applicant in the light of the judgment in the case of Sri B.B.Nayak (supra). Accordingly, the respondents have passed the impugned order dated 19.4.2006 (Annexure-5) rejecting the claim of the applicant. From the above discussions, we find no infirmity in the impugned order passed by the respondents rejecting the claim of the applicant.

17. We take note of the written submission by the learned counsel for the respondents which was filed in July 2008 which mentions the different category of pay scales as per the TSR Rule in paragraph 7. It is seen that pay scale of Rs.425-700/- is applicable for the grade T-I-3 as well as T-II-3. Only the employees who were enjoying the pay scale of Rs.425-700/- in the grade T-I-3 were eligible to be automatically upgraded/fitted to the grade T-II-3 as per TSR-5.1 which is also cited by the applicant. It is mentioned in para 11 of the written submission explaining the reasons for not allowing the claim of the applicant as under :

“Accordingly, Sri N.Mohanty, Ext-4 was earlier inducted into Category-I, Grade-T-1 in the pay scale of Rs.260-430/- and granted Five yearly Assessment promotion to Category-I Grade-T-2 w.e.f. 1.7.1976 by taking into his period of

Five years service i.e. from 1.10.1970 to 30.9.1975 which was due with effect from 1st July of the following year (for the cases related to July to December would be given) as he possessed Matriculation with 10 years working experience in the relevant field but he was not holding the merged scale of Rs.425-700/- on the date of sanction of the TSR i.e. on 1.10.1975.”

18. It is noticed from Annexure R/2 series that the ICAR has issued the circular dated 8.8.1996 stating as under :

“Sub : Removal of Category Bar between Cat.I and Cat.II-clarification regarding applicability of relaxed alternative qualifications.

Attention is invited to circular of even no. dated 1st Feb., 1995 wherein the Category Bar between Category-I and Category-II was removed for those possessing qualification for entry to Category-II. A question has been raised whether ICAR employees who were on the strength of the Council as on 1.1.77 i.e. the initial date of formation of Technical Services and possessing qualification in terms of ICAR letter no. 7(10)/78-Per.III dated 27.1.79 are also eligible for the purpose of Category jump from Category-I to Category-II in terms of Council circular of even no. date 1.2.95. The matter has been considered by the competent authority and it has been decided that Council employees in service as on 1.1.77 and possessing alternative qualifications in terms of ICAR letter no. 7(10)/78-Per.III dated 27.1.79 and 14(8)/94-E.IV dated 6.4.94 will also be eligible for Category jump from Category-I to Category-II w.e.f. 1.1.95 in terms of Council's circular of even no. dated 1.2.95.”

This letter allows the employees in Category-I to be fitted in Category-II w.e.f. 1.1.1995 and accordingly, the applicant was extended the benefit of fitment in the equivalent pay scale of Rs.425-700/- relating to grade T-II-3 w.e.f. 1.1.1995. The OA has not challenged the circular dated 8.8.1996 (Annexure R/2 series of the Counter). The prayer of the applicant to be fitted to the pay scale of Rs.425-700/- applicable to grade T-II-3 as per the TSR w.e.f. 1.10.1975 will violate the provisions in the circular dated 8.8.1996 and hence, it will not be tenable.

19. With regard to the judgment of Hon'ble High Court dated 25.4.2019 passed in WP(C) No. 10048/2009 (enclosure 8 of the written submission of the applicant), this Tribunal was directed to consider the case of the applicant as per his factual matrix on the basis of the amended rules and eligibility for promotion. As discussed earlier, TSR-5.1 of the amended rule, which has also been cited by the applicant in the written note of submissions, that has been extracted in paragraph 4 of this order which states as under :

‘The existing permanent and temporary employees appointed through regularly constituted DPC/Selection Committee will be fitted into the grades specified in para 3.1 on point to point basis without any further screening irrespective of their qualifications. However, persons holding positions in the merged grade of Rs.425-700 and possessing qualifications prescribed for Category II, will be fitted in grade T-II-3(Rs.425-700)’.

It is seen from above that an employee will be eligible for the fitment in the Grade T-II-3 in the pay scale of Rs.425-700/- if he is already in the merged pay scale of Rs.425-700/- in grade T-I-3. For employees not in pay scale of Rs.425-

700/- in T-I-3 grade as on 1.10.1975, the fitment has to be done after selection by the DPC/Selection Committee with effect from 1.10.1975 to the grade of T-I-3 to enable his fitment in the scale of Rs.425-700/- in grade of T-II-3. There is nothing on record to show that the applicant has been promoted to the grade with pay scale of Rs.425-700/- by the DPC/Selection Committee as on 1.10.1975. As mentioned in the judgment dated 25.4.2019 of the Hon'ble High Court, the applicant was promoted to the grade T-I-3 in Category I in the pay scale of Rs.425-700/- on 1.7.1982. Hence, as on 1.10.1975, he was not drawing this pay in T-I-3 grade, for which he would not be entitled for automatic fitment for the grade T-II-3 with pay scale of Rs.425-700/- as per TSR-5.1 of the amended rule for Technical Services Rules under ICAR. No rule or instruction has been cited by the applicant to show that on promotion to the grade of T-I-3 with pay scale of RS.425-700/- w.e.f. 1.7.1982, he was entitled to be automatically upgraded to higher grade of T-II-3 in the pay scale of Rs.425-700/-.

20. In view of the above discussions, we are of the view that in the OA, the claim of the applicant when examined in accordance with the rules applicable and the factual circumstances of the case as furnished in the pleadings of the parties on record, has no merit. The OA is accordingly dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)