

(2010) 04 OHC CK 0005

In the Orissa High Court

Case No : Writ Petition (C) No. 12498 of 2008

Agricultural Scientist Recruitment Board and Another

APPELLANT

Vs

Sri Akshya Kumar Mishra

RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21

Citation : (2010) 110 CLT 356 : (2010) 1 OLR 1110 Supp

Hon'ble Judges : L. Mohapatra, J;B.K. Patel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.K. Patel, J.—This Writ Petition is directed against Order Dated 21.4.2008 passed by Central Administrative Tribunal, Cuttack Bench, Cuttack (for short "the Tribunal) in O.A. No. 732 of 2006. Opp. Party was the applicant before the Tribunal.

2. On 2.4.1974 the Opp. Party, who was a Post Graduate in Mathematics, joined the Central Rice Research Institute (CRRI), Cuttack under Indian Council of Agricultural Research (ICAR) as Computer in the pay scale of Rs. 330-560. In accordance with Third Pay Commission Recommendations, the pay scale of Opp. Party was later revised to Rs. 425-600 w.e.f. 1.10.1975. Pursuant to the order of the Tribunal in O.A. No,182 of 1991 instituted by Petitioners and Ors. by Order Dated 25.2.1995 the pay scale of Opp. Party was fixed at Rs. 425-600 w.e.f. the date of his appointment & in the pay scale of Rs. 550-900 w.e.f. 1.10.1975 subject to SLP (SLP) filed by ICAR before the Hon"ble Supreme Court. Opp. Party's case is that having learnt regarding provision for induction of Computers possessing Post Graduate Degree in Mathematics to Scientists Grade "S" as per the Agricultural Research Service Rules (for short the "ARS Rules"), he submitted representations & reminders to ICAR for his induction into Scientists Grade"S". In the representations & reminders dated 18.9.1995, 2.11.1995, 27.2.2003, 2.9.2003,28.12.2004, 18.2.2005 & 24.6.2006 Opp. Party informed the

Petitioners that one Dr. K.M. Das & three others, who were similarly situated as the Opp. Party had been inducted into Scientists Grade "S". The representations & reminders were favourably forwarded by CRR I to ICAR. Opp. Party filed O.A No. 683 of 2006 before the Tribunal seeking a direction for induction into Scientists Grade "S" & by Order Dated 13.10.2006 direction was made by the Tribunal to consider the representation of the Opp. Party by end of October, 2006. Apprehending that the Petitioners may not consider his representations prior to 31.10.2006, the date of superannuation of Opp. Party, he filed the present OA seeking the following reliefs:

- (i) To pass appropriate orders directing the Respondents to induct the applicant into the Scientists Grade "S" w.e.f. 1.10.1975 as per the A.R.S. Rules, 1975;
- (ii) To pass appropriate orders directing the Respondents to make further assessment & extend all the service & consequential benefits, to which the applicant is entitled & to allow him to retire at the age of 62 (sixty two) years as a Scientist; &
- (iii) To pass such further order/orders as are deemed just & proper in the facts & circumstances of the case & allow this O.A. with costs.

3. Petitioners resisted the application on the ground of limitation u/s 21 of the Administrative Tribunal Act, 1985 as well as on merits. On merits it was contended on behalf of the Petitioners that the Opp. Party was not placed in the pay scale of Rs. 425-600-700 as on 1.10.1975 as the decision of the Tribunal in the case of Dr. R.M. Das was set aside by the Hon'ble Apex Court holding that applicant in that O.A. would be entitled to be considered for promotion in the Category-II, T-4 in the pay scale of Rs. 550-900 after fitment in the pay scale of Rs. 425-600 w.e.f. 1.10.1975. As regards the fitment of Dr. R.M. Das and Ors. into Scientists Grade "S" it was averred that benefit was erroneously extended to them resulting in wrong fitment. Grant of erroneous benefit cannot be a ground or reason for extension of similar erroneous benefit to other persons as parity cannot be claimed with errors. As regards the higher pay scale of Rs. 550-900 granted to the Opp. Party w.e.f. 1.10.1975, it was pleaded in the counter that CRR I made apparent mistake regarding placement of the employees in the higher pay scale of Rs. 550-900 instead of fitting these employees on point to point basis, as provided under Rule 5.1 of Technical Service Rules (for short "the TSR") of the ICAR. By the time such mistake came to the notice of the Petitioners, it had become impracticable to withdraw the erroneous benefits granted to the four employees. Decision not to induct the Opp. Party into Scientists Grade "S" was communicated to the Opp. Party by Memorandum dated 18.3.2005 stating that grant of erroneous benefit cannot be ground/reason for extension of similar erroneous benefit to other persons. Prior to that, Memorandum was issued informing that Opp. Party's request for grant of pay scale of Rs. 550-900 w.e.f. 1.10.1975 can not be agreed to by the ICAR & excess amount paid to the Opp. Party was directed to be recovered in four installments from September to December, 2001.

4. On consideration of the rival contentions, it was held by the Tribunal that as rejection of representations made by Opp. Party was communicated as late as in the year 2005, the Original Application was not barred by limitation. On merits, it was held by the Tribunal, on the basis of the favourable recommendations from CRR I to ICAR to the effect that Opp. Party satisfied the conditions/qualifications for induction into Scientists Grade "S" & the office Order Dated 5.5.2003 by the CRR I placing the Opp. Party in the scale of pay of Rs. 425-600 w.e.f. the date of his appointment & inducting him into the grade-T-II-3 of Category-II w.e.f. 1.10.1975 on point to point basis under Rule 3 of the TSR in force stated to have been passed on the basis of Judgment of Hon'ble Supreme Court dated 26.9.1997, held that the Opp. Party was entitled to be considered for Scientists "S" grade. As the Opp. Party had already retired, Learned Tribunal directed for national fixation of pay & increments till the date of retirement of Opp. Party for the purpose of working out his terminal benefits. On the basis of such higher pay, differential amount was directed to be paid to the Opp. Party. If the Opp. Party was entitled to pension, the same was directed to be based on the basis of national revised pay.

5. It was argued by the Learned Counsel for the Petitioners that admittedly opposite party was not holding the pay scale of Rs. 425-700 w.e.f. 1.10.1975 when TSR came into force though he was having Past Graduate Degree in Mathematics. The ICAR introduced ARS Rules & TSR w.e.f. 1.10.1975 which provided for Five Yearly Assessment Benefit-Cum- Promotion without occurrence of vacancy within the Categories-I, II & III or grant of maximum three advance increments where Category bar is applicable to the ICAR employees of Scientific & Technical Category respectively. As per Third Pay Commission Recommendations the pay scale of Opp. Party was revised to Rs. 380-560 w.e.f. his date of appointment, i.e., 2.4.1974 as Computer under Technical Category. After introduction of ARS Rules & TSR the existing Scientific & Technical Category employees of the ICAR were to be initially inducted or fitted or placed, as the case may be, in the manner indicated under Rule 5.1 read with Rule 3.1 of TSR. Rule 3.1 of the TSR divided the Technical Services into three Categories consisting of different Grades. Category-I comprises of three Grades, i.e., T-1 with the pay scale of Rs. 260-430, T-2 with the pay scale of Rs. 330-560 & T-I-3 with the pay scale of Rs. 425- 700. Category-II also comprises of three Grades, i.e., T-II-3 with the pay scale of Rs. 425-700, T-4 with the pay scale of Rs. 550-900 & T -5 with the pay scale of Rs. 650-1200. As per Rule 5.1 of the TSR the existing permanent & temporary employees were required to be fitted into the grades specified in Rule 3.1 on point to point basis without any further screening irrespective of their qualifications. However, persons holding position in the merged grade of Rs. 425-700 & possessing qualifications prescribed for Category-II were entitled to be fitted in Grade-T-II-3. As per Rule-2 read with Schedule-1 of the ARS Rules, candidates of the ICAR could be considered for induction into the service in case they satisfied the requirements of having prescribed minimum qualification as well as pay scale in Scientific or Technical

post. One of the minimum qualifications prescribed therein was having a Post Graduate Degree in Mathematics. Minimum qualifying pay scale prescribed for induction was Rs. 425-700. Opp. Party satisfied the requirement of educational qualification but did not hold the scale of Rs. 425-700 for which he could not be inducted into Scientists Grade "S". He was holding the pay scale of Rs. 330-560 i.e. merged Grade of Rs. 380-560 after introduction of TSR w.e.f. 1.10.1975. Therefore, he was rightly placed into Grade-T-2 of Category-I in accordance with Rule-3.1 read with Rule 5.1 of TSR by office Order Dated 4.4.1978 as per Opp. Party's option for Technical Services w.e.f. 1.10.1975. Subsequently, Opp. Party was granted Assessment Promotions under the TSR. In OA No. 182 of 1991 it was directed by the Tribunal to place Opp. Party & two others in the pay scale of Rs. 425-60Q w.e.f. 1.1.1973 or from the actual date of their respective appointment, & in Category-II, Grade-T-4 in the pay scale of Rs. 550-900 w.e.f. 1.10.1975 or from the date of their respective appointment. Direction of the Tribunal was implemented by issuance of Memorandum specifically stating therein that the same was made subject to SLP filed by the ICAR. Placing reliance on the earlier decision in Director, General Rice Research Institution, Cuttack and Another Vs. Khetra Mohan Das, , order of Tribunal passed in OA No. 182 of 1991 directing to place the Opp. Party & two others in Category-II, Grade-T-4 in the pay scale of Rs. 550-900 w.e.f. 1.10.1975 was set aside by the Hon'ble Supreme Court in Civil Appeal No. 6673 of 1997 & it was held that they would be entitled to be considered to the said Grade after fitment in the pay scale of Rs. 425-600 w.e.f. 1.10.1975 in accordance with TSR. It was specifically held by the Hon'ble Supreme Court that benefit of initial fitment of the existing employees as on 1.10.1975 was required to be done as per Rule 5.1. of the TSR. As Opp. Party was in the pay scale of Rs. 330-560 he could only be fitted into Category-I, Grade-T-2. He cannot claim to be fitted into Category-II, Grade-T-II-3 merely because he possessed Post Graduate Degree in Mathematics. Only if an employee was entitled to be fitted into Category-I, Grade-T-I-3 & possessed qualification required for Category-II then only he could be fitted in Category-II, Grade-T-II-3. There is no scope for the Opp. Party to claim that he was holding the required pay scale of Rs. 425-700 as on 1.10.1975 or even on 30.9.1980. Learned Tribunal in the impugned order itself has observed that identical matter in OA Nos. 244 & 245 of 1997 & 1416 & 1417 of 2004 were dismissed by it in view of decision of Hon'ble Supreme Court in Director Central Rice Research Institute, Cuttack v. Khetra Mohan Das (supra). Also Learned Tribunal has expressly stated that Petitioners were right in holding that since in some other cases benefit was erroneously granted, the same cannot be perpetuated in the case of the Opp. Party. Nonetheless Learned Tribunal passed the impugned order which is contrary to the directions of the Hon'ble Supreme Court in Director Central Rice Research Institute, Cuttack v. Khetra Mohan Das (supra) as well as in Civil Appeal No. 6673 of 1997. Office Order Dated 5.5.2003 was erroneously & inadvertently issued granting benefit to the 6pp. Party & the same has rightly been withdrawn.

6. Learned Counsel for the Opp. Party supported & defended the impugned order. It was strenuously argued that the CRRI having all along taken the stand that the Opp. Party fulfilled the requirements for induction into Scientists Grade "S" & having already granted the benefit of pay scale required to be eligible for induction, the Learned Tribunal rightly held that the Opp. Party was entitled to be inducted. As direction has been made by the Tribunal for notional calculation of Opp. Party's pay for the purpose of working out terminal benefit only, the Petitioners have not made out any case for interference with the impugned order.

7. At Paragraph 8 of the impugned order it has been categorically observed by the Tribunal that identical matters in OA Nos. 244 of 1997, 245 of 1997, 1416 of 2004 & 1417 of 2004 were dismissed in view of decision of the Hon"ble Supreme Court in Director. Central Rice Research Institute, Cuttack v. Khetra Mohan Das (supra). Also at Paragraph-14 of the impugned order it has been observed by the Tribunal that had the claim of the Opp. Party been based only on the ground that some other employees who were similarly placed with Opp. Party were granted the benefit of induction into Scientists Grade "S", the Petitioners were right in holding that since in other cases by error such benefit was granted the same cannot be perpetuated in the case of Opp. Party.

8. However, the Tribunal appears to have relied upon the letter dated 8.12.2003 of the CRRI, which is Annexure - A/8 to the Original Application, wherein, while forwarding the bio-data of the Opp. Party to ICAR, it was stated by the CRRI that the Opp. Party satisfied the conditions of (1) minimum qualification of P.G. in Mathematics & (2) holding T-II-3 post in the scale of Rs. 425-700 w.e.f. 1.10.1975. Petitioners squarely admitted that said letter at Annexure-A/8 as well as office Order Dated 5.5.2003 at Annexure-A/14 were issued on a wrong reading of the directions of the Hon"ble Supreme Court in the decision referred to above. Office Order Dated 5.5.2003 at Annexure-A/14 reads:

The Director, CRRI, Cuttack-6 has been pleased to place Shri A.K. Mishra, (Computer) in the scale of pay of Rs. 425-600 with effect from his date of joining into Council service i.e. 02.04.74 as per verdict of the Hon"ble Supreme Court dated 26.09.97 & subsequent Council letter No. 3-6/89-Law dated 20.10.97 therein in the scale of pay of Rs. 425-700 (Pre-revised) & to induct him into the grade T-II-3 of Category-II w.e.f. 01.10.75 on point to point basis under provision 3 of the T.S.R. in force. All previous Office Orders in this matter stand superceded in view of Hon"ble Supreme Court verdict under reference until further orders.

9. Obviously, above said office order is not in conformity with Rules 5.1 & 3.1 of the TSR & the decision of the Hon"ble Supreme Court in Director, Central Rice Research Institute, Cuttack v. Khetra Mohan Das (supra) & in Civil Appeal No. 6673 of 1997 (supra).

10. In Director. Central Rice Research Institute. Cuttack v. Khetra Mohan Das (supra), the only question which arose for consideration before the Hon"ble

Supreme Court was stated to be whether the Respondent who was admitted in the pay scale of Rs. 330-560 was entitled to be fitted in Category-I, Grade-T-II-3 & further by virtue of Rule 5.1 he ought to have been fitted in Category-II Grade-T-II-3. It was observed by the Hon'ble Supreme Court that Rule 5.1 lays down that all the existing permanent & temporary employees appointed would be fitted into their respective grades (sic) in Rule 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 & only the persons holding positions in the merged scale of Rs. 425-700 i.e. Category-I Grade-T-1-3 & 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-I-3 (Rs. 425-700) on the relevant date & if he possessed the qualification for Category-II then only he could be fitted in Category-II Grade-T-I-3 by virtue of Rule 5.1 & the Respondent could not be fitted in Category-I Grade-T-I-3 because of the difference in the pay scale. As per the Rules he could be fitted in Category-I Grade-T-II & merely because he possessed the qualification for Category-II he cannot claim as a matter of right to be fitted in for Category-II Grade-T-II-3. Rule 5.1 does not permit such an induction."

It was further held:

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 & 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 5.4.1978 that those persons who are in Grade- T -2 of Category-I & who possess qualifications for Category-II & earn merit promotion as a result of performance assessment for five years service would be promoted to next higher Grade-T -1-3 & 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.

11. The decision dated 26.9.1997 of the Hon'ble Supreme Court in Civil Appeal No. 6673 of 1997 preferred by the Opp. Party and Ors. against order of the Tribunal in O.A. No. 182 of 1991, is based squarely on Director, Central Rice Research Institute, Cuttack v. Kheta Mohan Das (supra). Having quoted the earlier observation underlined above, it was held:

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 1.10.1975 cannot be sustained & 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 1.10.1975 under the Rules of 1975.

The appeal is, therefore, allowed & 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 1.10.1975 or from the date of their respective appointment, is set aside. No order as to costs.

12. In the present case admittedly the Opp. Party was in the Third Pay Commission pay scale of Rs. 380-560 w.e.f. the date of his appointment as Computer i.e. 2.4.1974. Therefore his fitment could only have been made to Category-I, T-2 Grade. Even in the revised pay scale of Rs. 425-600, the Opp. Party is not entitled to fitment into Category-I, T -3 Grade, the reason being Opp. Party was not holding the required position in the merged grade in the pay scale of Rs. 425-700 so as to be entitled to be fitted into Category-II, T-II-3 Grade. Consequently, there is no basis for the claim of Opp. Party for induction into Scientists Grade "S" in the pay scale of Rs. 425-700 with effect from 1.10.1975. Error, inadvertently committed by Petitioners, having, thus, been rightly rectified, the Learned Tribunal was not justified in directing induction of the Opp. Party to Category-II, T-II-3 Grade with effect from 1.10.1975 even for the purpose of notional fixation of pay to work out his terminal benefits.

In view of the above, the Writ Petition is allowed. The impugned order is quashed.

L. Mohapatra, J.

13. I agree.