

(2016) 08 SHI CK 0041
In the High Court Of Himachal Pradesh
Case No : CWP No. 4261 of 2009

Rajinder Kumar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 HimLR 2572

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ. and Mr. Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Mr. Dilip Sharma, Senior Advocate with Mr. Manish Sharma, Advocate, for the Petitioners in CWPs No. 4261, 4262 and 4266 of 2009; Mr. Sanjeev Bhushan, Senior Advocate, with Ms. Abhilasha Kaundal, Advocate, for the Petitioner in CWP No.1053 of 2010; Mr. Ash

Final Decision : Disposed Off

Judgement

Tarlok Singh Chauhan, J. - The moot question in all these petitions is as to whether the petitioners possess Bachelor's degrees or Master's degrees in the relevant field? so as to entitle them for consideration for further promotion. 2. Since common questions of law and fact arise for consideration in these petitions, therefore, they were taken up together for consideration and are being disposed of by a common judgment. 3. All the petitioners are working as Field Farm Technician Grade T-II in category-1. Petitioners had earlier approached the learned Central Administrative Tribunal by filing different original applications (for short? OA's?) seeking directions to the respondents to constitute Assessment Committee and assess their qualifications and thereafter grant the Career Advancement benefit through promotion on the post of Field Farm Technician Grade T-4 with effect from 3.1.2004 with all consequential benefits with further direction to pay arrears of difference of salary of the post of Field Farm Technician Grade T-4 with effect from 3.1.2004 along with @ 12% p.a. 4. These petitions were disposed of by a common order dated 28.5.2008 and respondents were directed to consider the respective OAs as representation and decide the

same keeping in view the decision dated 27.11.2007. The respondents considered the matter and vide order dated 25.7.2008 rejected the claim of the petitioners on the ground that they did not fulfil the requisite qualification in the ? relevant field? and, therefore, their assessment/promotion to Grade T/3 and T/4 could not be acceded to. Not only this, even the earlier order granting promotion to the petitioners to Grade T-II-3 with effect from 27.9.2001 was held to be erroneous and, therefore, ordered to be withdrawn with immediate effect. 5. Aggrieved by the said decision, petitioners once again approached the learned Tribunal seeking quashment of the orders whereby their cases for promotion had been rejected with further directions to the respondents to constitute assessment committee and assess their claims for promotion to category-II-T- 4 with effect from 20.1.2005 with all consequential benefits as well as pay arrears of salary etc with interest @18% p.a from the due date till realisation of the same. 6. As per Handbook of Technical Services, 4th Edition, the technical services have been grouped into different categories:

"Category I

T-1T-2T-1-3

Category II

T-II-3T-4T-5

Category III

T-6 T-7T-8T-9"

In Appendix IV, model qualifications for all functional groups for three categories of technical services of ICAR, the qualifications have been prescribed for promotion from Category II to category III as under:

"Category II: Bachelor?s degree in the relevant field or equivalent qualifications from a recognised university.

Category III: Master?s degree in the relevant field or equivalent qualifications from a recognised university."

7. Learned Tribunal, on the basis of aforesaid provisions concluded that the petitioners were not possessing the Bachelor?s degree in the ?relevant field? as had been clarified by the competent authority, i.e. ICAR, and were, therefore, not entitled for consideration to the post of Category-II-T/3 and any further promotion thereafter. 8. Civil Writ Petitions No.4261, 4262 and 4266 of 2009, arise out of a common order passed by the learned Central Administrative Tribunal (hereinafter referred to as ?Tribunal?) on 10.9.2009 in OAs No.489/HP/2008, 490/HP/ 2008 and 488/HP/2008. Whereas, CWP No.1053 of 2010, emanates from a subsequent decision rendered by the learned Tribunal in OA No.659-HP-2008 decided on 4.11.2009 on the basis of earlier decision rendered by the learned Tribunal in three OAs, on 10.9.2009 (supra). We have heard the learned counsel for the parties and have gone through the material placed on

record. 9. The qualification of the petitioners is as under :

Name

CWP No.

Qualifications

Rajinder Kumar

4261 of 2009

B.Com and MA(Sociology)

Kedar Singh

4266 of 2009

BA with Economics and MA History

Rakesh Kumar

4262 of 2009

BA with Economics and MA (History)

Naresh Chand Sharma

1053 of 2010

BA with Economics as a subject

10. It is argued by the learned Senior counsel for the petitioners that this court need not to go into the correctness of the impugned judgments in view of the letter dated 19th May, 2008 in which the ICAR has categorically clarified to the Director, NDRI, Karnal that "Economics" is the subject coming under "Social Science" relevant to Agriculture. Relevant portion of the letter reads thus:

"To

The Director,

NDRI,

Karnal

Sub: Clarification regarding merit promotion of T-3 in Category II on the basis of qualification BA economics.

Sir,

I am directed to refer to your letter No. 2- 84/07/Assessemnt/E.II (T)-1495 dated 13th may, 2008 on the subject cited above and to say that as per the Council's instructions issued vide No.19(10)/2004- Estt.IV dated 24.2.2006 the minimum qualification for entry into Category II of the Technical Services in the Functional Group of "Field /Farm Technician" is "Bachelor's degree in Agriculture

or any other branch of science/social science relevant to agriculture or equivalent qualification from a recognised university. Economics is the subject coming under 'Social Science' relevant to Agriculture. As Sh. Jagdish Singh is having BA with economics, his case can be considered as eligible for promotion to Category II as per the instructions stated above. Therefore, the recommendations of the Assessment Committee promoting Sh. Jagdish Singh, who is having BA with Economics, to the Category II w.e.f. 14.1.2007 is in order. As far as the other case of Sh. Samar Singh is concerned, it is requested that the institute may examine his case and decide as per the instructions/circular issued on 24.2.2006."

11. In addition to the aforesaid, petitioners have also placed on record an extract from the Notification No. F.No.TS-19(3)/16- Estt.IV, wherein item No. 12 reads thus:

"Item No.12

"2. The committee has recommended the following 12 subjects under the term 'Social Science relevant to Agriculture':

- (i) Economics
- (ii) Statistics which includes all specialisation of the subjects
- (iii) Agriculture Economics
- (iv) Agricultural Extension
- (v) Mathematics
- (vi) Operational Research
- (vii) Sociology and Social work
- (viii) Home Science
- (ix) Computer Science
- (x) Mass Communication
- (xi) Geography

Management Subjects

(1) Bachelor of Business Administration (BBA)

(3) Comments of the Institutes were sought on the inclusion of the above mentioned subjects under the term 'Social Science relevant to Agriculture'.

(4) Based on the recommendation of the Committee and the inputs received from the institutes, only the 12 (twelve) subjects mentioned above may be included as Subjects under the term 'Social Science relevant to Agriculture'. This may be made effective prospectively so that the existing employees under

the Functional Groups (i) to (iii) mentioned at para 1 above are not adversely affected. As per the Technical Service Rules (TSR) of the Council, the relevancy of the above mentioned subjects to the mandate of the institute may be decided by the Director of the Institute. GB, ICAR may kindly approved the proposal at para (4) above."

12. Mr. Ashok Sharma, while vehemently opposing the prayer made by the petitioners, has strenuously argued that these documents cannot be looked into at this stage as this court is exercising the powers of judicial review and is, therefore, only required to go into the correctness or otherwise of the impugned orders. He further contends that without affording an opportunity to the respondents to go through these documents, same cannot be taken into consideration much less a verdict thereupon be pronounced. 13. We are in complete agreement with the submissions made by the learned ASGI to the extent that the matter does require a re-look and reconsideration by the respondents because prima facie the qualifications possessed by the petitioners i.e. BA with Economics and MA in Sociology fall within the 12th subjects enumerated in the notification F.No.TS-19(3)/16-Estt.IV (supra). However, this is a matter, which entirely rests with the respondents as normally academic issues must be left to be decided by the expert bodies. 14. Having said so, these petitions are disposed of with a direction to the respondents to reconsider the cases of petitioners in light of letter F.No.19-9/2003-E-IV and notification F.No.TS-19(3)/16-Estt.IV and take decision within a period of three months from today. Needless to say in case the decision goes against the petitioners, they shall be free to approach the competent court/forum for adjudication of their grievance. .