

Dr. S. M. Ilyas and others

Vs

Indian Council of Agricultural Research and others

Civil Appeal No. 2736 of 1991

(M. H. Kania, N. M. Kasliwal, K. Ramaswamy JJ)

13.11.1992

JUDGEMENT

KASLIWAL, J.:-

1. The appellants who are Scientists working in various Institutes under Indian Council of Agricultural Research (in short 'ICAR') throughout the country have filed this appeal against the order of the Central Administrative Tribunal, New Delhi dated 5-10-1990. Some of the appellants had filed a Writ Petition No. 550 of 1990 before this Court under Article 32 of the Constitution challenging the notification issued by the ICAR dated 9-3-1989 and for other connected reliefs. This Court disposed of the said Writ Petition by order dated 3-5-1990 in the following manner :-

"The main relief which the petitioners ask for in this writ petition is about revision of pay-scale and other connected service benefits. When we suggested to learned counsel that the matter should go before the Central Administrative Tribunal, he has indicated certain difficulties which are like the officers being spread over in different parts of the country and the difficulty in co-ordinating the cases for disposal, in case they are required to go before the Tribunal and the fact that there may be inordinate delay in disposal and in obtaining the relief. We are of the view that the matter can be appropriately considered by the Tribunal for overcoming the difficulties. indicated by Mr. Sanghi, we direct the Central Administrative Tribunal to treat the petition that is going to be filed at the Principal Bench at Delhi as the representative petition and dispose of the same within six months from the date it is filed. This petition is allowed to be withdrawn."

2. In pursuance to the above order dated 3-5-1990 some of the appellants filed an application No. 1510 of 1990 under Section 19 of the Administrative Tribunals Act before the Central Administrative Tribunal, Principal Bench, Delhi. The Tribunal treated the aforesaid application as having been filed in representative capacity of S-2 and S-3 Officers of the ICAR, pursuant to the directions of the Supreme Court in its order dated 3-5-1990.

3. In order to appreciate the controversy, we shall state the facts in brief. The Imperial Council of Agricultural Research, a Society established under the Societies Registration Act in the year 1929 was redesignated as the Indian Council of Agricultural Research after the advent of independence. Till 1965, the ICAR was largely functioning as a co-ordinating agency and apex body for financing research projects. With effect from 1966, administrative control over the Indian Agricultural Research institute (IARI) and other such Institutes was transferred to ICAR simultaneously placing the staff of such Institutes at the disposal of the ICAR. A department of Agricultural Research and Education was set up in the Ministry of Agriculture and the said department came into existence on 15-12-1973. The ICAR is fully financed by the department of Agricultural Research and Education

(DARE), Ministry of Agriculture and Co-operation, Government of India. ICAR follows the rules of Government of India Mutatis Mutandis. The ICAR has been held to be 'State' within the meaning of Article 12 of the Constitution as per the judgment of this Court in the case of P. K. Iyer v. Union of India, reported in (1984) 2 SCR 200 : (AIR 1984 SC 541).

4. The ICAR started an Agricultural Research Service (in short 'ARS') with effect from 1-10-1975 and the relevant grades and pay-scales as on 31-12-1985 are given as under :-

"Grades	Pay-scales
Scientist S	Rs. 550-990
Scientist S-1	Rs. 700-1300
Scientist S-2	Rs. 1100-1600
Scientist S-3	Rs. 1500-2000"

5. The Scientists of the ICAR who were earlier covered by the Third Pay Commission pay scales had been demanding parity in pay-scales with the employees of the Agricultural Universities who were also financed by the ICAR. After persistent demand, the ICAR agreed to revise the pay scales with effect from 1-1-1986 vide notification No. 1-14/87-Per IV dated 9th March, 1989. According to the appellants, the aforesaid notification though benefited some of the Scientists, but was denying the principle of Equal Pay for Equal Work in the case of the appellants and the like and the said notification had further placed persons much junior to many of the appellants in a higher scale of pay resulting in violation of the fundamental rights of the appellants guaranteed under Articles 14 and 16 of the Constitution. In order to appreciate the grievances of the appellants the pay scales as revised by the ICAR vide the impugned notification dated 9-3-1989 are given as under:

(see table below)

"S.No	Grade	Existing pay-scale	New designation	Revised pay-scale
1.	Scientist S-2 (with total service in the ARS as on 31-12-1985 up to 8 years)	Rs. 1100-50-1600	Scientist (Senior scale)	Rs. 3000-100-3500-125-5000
2.	Scientist S-2 (with total service in the ARS as on 31-12-1985 exceeding 8 years)	Rs. 1100-50-1600	Scientist (Selection Grade)	Rs. 3700-125-4950-150-5700
3.	Scientist S-3 (with total service in the ARS as on 31-12-1985 up to 16 years)	Rs. 1500-60-1800-100-2000	Scientist (Selection Grade)	Rs. 3700-125-4950-150-5700
4.	Scientist S-3 (with total service in the ARS as on 31-12-1985 exceeding 16 years)"	Rs. 1500-50-1800-100-2000	Principal Scientist	Rs. 4500-150-5700-200-7300

6. Certain clarifications were issued to the above notification vide letter No. 1- 14/ 87-Per. IV (Vol. III) dated 31-3-1989, order No. 1-7/89-Per. IV (Vol. III) dated 14-6-1989, order No. 1-7/89-IV dated 6-11-1989 (Vol. II) and order No. 1-7/89-Per. IV dated 6-7-1990.

7. The case of the appellants is that according to the impugned notification dated 9-3-1989 together with subsequent clarifications, Scientists S-3 in pre-revised scale of Rs. 1500-2000 having completed total service in the ARS as on 31-12-1985 exceeding 16 years had been placed in the scale of Rs. 4500-7300, whereas Scientists S-3 who were in the same pre-revised scale of Rs. 1500-2000 but had put in total service, in the ARS as on 31-12-1985 up to 16 years have been placed in the scale of Rs. 3700-5700.

8. Similarly, Scientists S-2 who were in the pre-revised scale of Rs. 1100-1600 and had completed total service of more than 8 years in the ARS as on 31-12-1985 have been put in the scale of Rs. 3700-5700, but those having completed total service up to 8 years as on 31-12-1985 had been put in the scale of Rs. 3000-5000. According to the appellants by the impugned notification dated 9-3-1989, in the guise of revision of pay-scales, altogether new grades/ designations have also been created as under :-

(See Table below)

"S. No Grade Existing designation New designation

1. Scientist S-2 (with total service in the ARS as on 31-12-1985 up to 8 years) Scientist S-2 Scientist (Senior Scale)
2. Scientist S-2 (with total service in the ARS as on 31-12-1985 exceeding 8 years) Scientist S-2 Scientist (Selection Grade)
3. Scientist S-3 (with total service in the ARS as on 31-12-1985 up to 16 years) Scientist S-3 Scientist (Selection Grade)
4. Scientist S-3 (with total service in the ARS as on 31-12-1985 exceeding 16 years) Scientist S-3 Principal Scientist"

9. It has been further submitted by the appellants that in the ICAR there were two streams for career advancement of the Scientists. The slower stream is the five yearly assessment and the faster one is the direct selection through advertisement to various posts at All India level. In the direct selection, the existing Scientists can also compete with the other Scientists from non-ICAR Institutions. The requirements for assessment and direct selection are different as illustrated below by the appellants :-

"Suppose a Scientist with Ph.D. qualification joins as S-1, it will take for him at least 11 years to become S-3 through assessment, whereas if he had only 7 years' experience and good merit, he could be directly selected as S-3. So, it takes 4 years less for a Scientist to become directly recruited S-3 as compared to his counterparts who got S-3 through assessment scheme. This fact has been completely ignored by the ICAR while revising the pay scale in which the requirement of total length of service was kept same for Scientists of both the streams. This is the reason why many of the Scientists who were selected directly as S-2/S-3, taking lesser time to attain higher grades, have been denied their due. in the impugned revision of pay scales."

10. It has been further submitted on behalf of the appellants that the criterion of eight years of qualifying service for getting the scale of Rs. 3700-5700 and 16 years of qualifying service for getting the scale of Rs. 4500-7300 completely ignores the period of service put in the grade of S-2

or S-3 respectively. This clearly shows the utter disregard for merit and competence of the Scientists working on these posts of S-2 or S-3. The impugned notification is not only unreasonable and discriminatory, but has resulted in grave injustice to the Scientists directly selected as Scientists S-2 and S-3 by taking into consideration the total length of service in the ARS as the only criterion thereby giving a complete go-bye to merit and competence. It has been further submitted that before the issuance of the impugned notification Scientists S-2 who had put in up to 8 years' service and those who had put in exceeding 8 years service had the same designation namely, Scientist S-2 and were performing the same nature of work and duties. After the impugned notification, they have been reclassified in two categories, namely Scientist (Senior-Scale) and Scientist (Selection Grade), and have been put in different pay-scales, though their nature of work and duties still continue to remain the same.

11. It has been similarly pointed out that prior to the issuance of the impugned notification Scientists S-3 who had put in up to 16 years of service and those having put in more than 16 years had the same designation of Scientist S-3 and their nature of work and duties were also the same. Now, by virtue of the impugned notification Scientists S-3 have been reclassified into two categories, namely, Scientist (Selection Grade) and Principal Scientist and have been given different scales of pay, though their nature of work and, duties still continue to remain the same. It has thus. been submitted that as a result of the impugned notification juniors and less meritorious Scientists and who were also drawing lesser basic pay as on 31-12-1985 than the appellants have been placed in higher pay-scales causing great resentment amongst a large number of Scientists including the appellants.

12. The appellants have further illustrated the injustice and arbitrariness in the application of the impugned notification in the following manner :-

"ILLUSTRATION - 1

DATE OF APPOINTMENT

Class II (Gazetted)	Scientist S-1	Scientist S-2	Scientist S-3	Scientist as on 31-12-1985	Scientist as on 1-1-1986	Scale as per the impugned Notification
Scientist - A	30-4-65		9-10-74	1-7-76	1-1-85	Rs. 1500-4500-2000 7300
Dr. G. C. Sharma						
Scientist - B		1-7-76	24-3-79	6-12-79		Rs. 1500-3700-2000 5700
Dr. Sheo Raj						

It would thus be seen that although Scientist-B got the S-3 grade much before Scientist-A and both were in the same scale as on 31-12-1985, by the impugned notification Scientist-A has been given the higher scale of Rs. 4500-7300 with effect from 1-1-1986 whereas Scientist-B has been put in the lower scale of Rs. 3700-5700.

ILLUSTRATION - II

DATE OF APPOINTMENT

Scientist I	Scientist	Scale	Scale
S-1	S-2	as on 31-12-85	as per impugned Notification w.e.f. 1-1-86
Scientist - A	1-9-76	1-7-1985	Rs.
Ms. Pratibha Shukla			1100-1600 3700-5700
Scientist - B	22-7-78		Rs.
Shri B. S. Modi	(joined directly as S-2)		1100-1600 3000-5000

The above illustration would show that while Scientist-B got the S-2 grade much earlier than Scientist-A and both were in the same scale as on 31-12-1985, by the impugned notification Scientist-A has been placed in the higher scale of Rs. 3700-5700 w.e.f. 1-1-1986 and Scientist-B has been given the lower scale of Rs. 3000-5000."

13. On the other hand, it has been contended on behalf of the respondents that on persistent demand of the appellants and other Scientists for giving them better pay-scales than those recommended by the Fourth Pay Commission, the Government introduced University Grants Commission (in short 'UGC') pay package for them. The designations of Scientists on various grounds have been suitably amended so as to conform to their respective level of responsibility. In the UGC revised scales, there is no single/ uniform revised scale for serving S-2 and S-3 Scientists. However, there is provision for specific placement of Scientists S-2 and S-3 in the UGC scales by virtue of their length of service as on 31-12-1985. Thus, as per the scheme concurred in by the Ministry of Finance, Scientist S-2 having less than 8 years of service as on 31-12-1985 have been placed in the revised scale of Rs. 3000-5000, whereas those having more than 8 years of prescribed service as on 31-12-1985 have been placed in the scale of Rs. 3700-5700. Similarly, in case of S-3 Scientists, the period of service as on 31-12-1985 have been taken as 16 years and as such those having more than 16 years of service as on 31-12-1985 have been put in the scale of Rs. 4500-7300 and those up to 16 years have been placed in the scale of Rs. 3700-5700. Thus, prescribing the aforesaid pay-scales on the pattern of UGC as per the demand of the Scientists themselves, the above fixation of pay-scales is perfectly valid and proper. It has been further submitted that injustice done to some of the incumbents in introducing a new scheme cannot be a reason for setting aside the whole scheme. It has been further submitted that they have formulated model recruitment rules on the pattern of UGC. Some difficulties have been experienced while prescribing the experience of 3, 5, 6 years as Principal Scientists for recruitment to the higher posts. Efforts are being made to devise means by which the affected Scientists may be able to take their chance for appointment to higher management positions.

14. We have considered the arguments advanced by learned Counsel for both the parties and have thoroughly perused the record. It is no doubt correct that while introducing a new scheme of pay-scales and fixing new grades of posts, some of the incumbents may have to put to less advantageous position than others, but at the same time the granting of new pay-scales cannot be allowed to act arbitrarily and cannot create a situation in which the juniors may become senior or vice-versa.

Admittedly, the Scientists working in the ICAR had made a grievance for the revision of their pay-scales and the Government being satisfied with their grievances had appointed various expert Committees such as, M. V. Rao Committee, N.G.P. Rao Committee, Menon Committee and G.V.R. Rao Committee for improvement of service conditions of the Scientists working in the ICAR. Government had notified a set of pay-scales for the Universities in 1988 known as 'UGC Scales'. M. V. Rao Committee which was set up by the Government to go into the pay-scales of ARS Scientists had recommended the application of the UGC Scales to the ARS Scientists. So far as the recommendations of the aforementioned expert Committees are concerned, learned Counsel for the appellants pointed out that none of the recommendations made by such Committees laid down any criteria of 8 years or 16 years of service for giving higher pay-scales in the case of incumbents holding the same S-2 or S-3 grade in the ICAR. The respondents in their counter-affidavit have admitted that S-1, S-2 and S-3 are equivalent to that of Lecturer, Reader and Professor respectively. Dr. M. V. Rao Committee after considering the facts that the ICAR has the role of UGC in agricultural education recommended that the ICAR being an apex organisation in the country for agricultural education, research and extension should have the pay-scales at least at par with the State Agricultural Universities. Dr. M. V. Rao Committee's recommendations were accepted by the Central Government and a policy decision was taken on 13-10-1988 to the effect that UGC package may be extended to ICAR Scientists engaged in teaching, research and extension. It may be further noted that prior to the impugned notification dated 9-3-1989, there were four grades of Scientists namely, Scientist-S, S-1, S-2 and S-3 apart from other higher grades with which we are not presently concerned. So far as the lowest grade of Scientist is concerned which has been named as Experimental Scientist in the impugned notification is a dying cadre. Now, so far as Scientist S-1 is concerned, he has been given the revised pay-scale of Rs. 2200-4000 and there is no controversy about it. The controversy is about Scientists S-2 and S-3. All Scientists S-2 were in the same pay-scale of Rs. 1100- 1600 prior to the introduction of the revised pay-scales by the impugned notification dated 9-3-1989. By the impugned notification, post of Scientist S-2 has been bifurcated in two grades as Scientist (Senior Scale) in the pay-scale of Rs. 3000-5000 and Scientist (Selection Grade) in the pay-scale of Rs. 3700-5700. Similarly, in the case of Scientist S-3 which had a common pay-scale of Rs. 1500-2000 has now been bifurcated as Scientist (Selection Grade) in the pay-scale of Rs. 3700-5700 and Principal Scientist in the pay-scale of Rs. 4500-7300. The basis for giving higher pay-scales has been taken as period of total service in ARS as 8 years in the case of Scientist S-1 and 16 years in the case of Scientist S-3. It would have been correct in case the recruitment to such posts of S-2 and S-3 had been made purely on the basis of seniority and length of service in ARS. But the admitted position is that such posts of Scientists S-2 and S-3 were also filled by direct recruitment from public as well as by merit-cum-seniority from amongst the members of the Agricultural Research Service. Thus, the anomalous situation created is amply illustrated by the examples of Dr. G. C. Sharma and Dr. Sheo Raj in the case of S-3 and the case of Ms. Pratibha Shukla and Shri B. S. Modi in the case of Scientist S-2. Dr. Sheo Raj came to be appointed as a Scientist S-3 on 6-12-1979 while Dr. G. C. Sharma came to be appointed as Scientist S-3 as late as on 1-1-1985. Admittedly, on 31-12-1985, both were in the scales of Rs. 1500/ 2000. Now, on the basis of the impugned notification Dr. G. C. Sharma gets the pay-scale of Rs. 4500-7300 as Principal Scientist while Dr. Sheo Raj is fixed in the pay-scale of Rs. 3700-5700 as Scientist (Selection Grade). Similar is the case of Shri B. S. Modi and Ms. Pratibha Shukla in S-2.

15. Shri Arun Jaitley learned Senior Counsel appearing for the ICAR tried hard but in vain to justify such disparity which is totally arbitrary and unreasonable. It does not stand to reason that Dr. Sheo Raj having been appointed as Scientist S-3 on merit as back as on 6-12-1979 is fixed in the new pay-scale of Rs. 3700-5700 while Dr. G. C. Sharma who became Scientist S-3 as late as on 1-1-1985

is fixed in the pay-scale of Rs. 4500-7300. Similarly, in the case of the incumbents on the post of Scientist S-2 Shri B. S. Modi having been appointed by direct recruitment on 22-7-1978 has been fixed in the new pay-scale of Rs. 3000-5000 as Scientist (Senior Scale) while Ms. Pratibha Shukla who came to be appointed as Scientist S-2 on 1-7-1985 has been fixed in the revised pay-scale of Rs. 3700-5700 as Scientist (Selection Grade). In our view, the appellants are justified in their submission that they were also entitled to the higher pay-scale on the post of Scientist S-2 as well as S-3 specially when they were recruited on these posts much earlier to those who have now become entitled to higher pay-scales under the impugned notification. They are also right in their submission that it also mars their future chances of promotion on the higher posts.

16. The following observations made by the Tribunal itself shows the justification of the demand made by the appellants :-

"The respondents have admitted in their counter-affidavit that certain anomalies have been created by the new scheme and that they are trying to rectify the same. They have issued orders allowing directly recruited S-2 and S-3 Scientists certain weightage for a period of service rendered by them for placement in the higher scale as on 1-1-1986. They have also stated that they are devising means by which the affected Scientists may be able to take their chance for appointment to higher management positions. In the instant case, by applying the principle of length of service in the ARS irrespective of the grades in which the officers were hitherto working a large number of erstwhile seniors will be rendered juniors and they will now be entitled to only lower pay scales than their erstwhile juniors. This would also adversely affect their eligibility for promotion from 1-1-1986. In case they were eligible to be considered for promotion to the next higher grade under the old dispensation, it will be unjust and inequitable to render them ineligible for such promotion against the existing vacancies proposed to be filled up. It is, however, for the respondents to devise suitable steps, including grant of one time relaxation and/or appropriate weightage to the applicants and those similarly situated, so as to make them eligible to appear before the Selection Board for the various posts already advertised."

It may be noted that the Tribunal itself had found force and justification in the grievances made by the appellants and had granted 6 months' time to the respondents to take appropriate action.

17. We had also granted opportunities to the respondents to come with a scheme granting appropriate relief to the appellants in the facts and circumstances of the case, but till the matter was finally heard by us, the respondents were unable to come out with any concrete proposal or scheme redressing the grievances of the appellants. The appellants are Scientists who are rendering great service to the nation and we find no justification as to why the appellants or any other Scientists in ICAR placed in similar position like the appellants should be deprived the benefit of the revised pay-scales on the higher post of S-2 or S-3, in case they were appointed by direct recruitment or by selection on merit-cum-seniority on the post of Scientist S-2 or S-3 prior to those who have now become entitled to higher pay-scale under the impugned notification dated 9-3-1989.

18. We, therefore, allow this appeal and direct the respondents to issue appropriate orders so that any of the appellants or the like working as Scientist S-2 or S-3 on or before 31-12-1985 earlier to anyone of the Scientists getting benefit of the revised pay-scales under the impugned notification

dated 9-3-1989 also get a similar benefit of revised pay-scale of Rs. 4500-7300 in the case of S-3 and pay-scale of Rs. 3700-5700 in the case of S-2. Such revised pay-scales shall be given from 1-1-1986 as given to S-2 and S-3 Scientists under the impugned notification. The respondents are directed to take suitable action in this regard and to pay the entire amount within six months from the date of this order. In the facts and circumstances of the case, we pass no order as to costs.

Appeal allowed.

</html