

A DIR., CENT. MARINE FISHERIES RES INST. & ORS.

V.

A. KANAKKAN & ORS.

Civil Appeal No. 5236 of 2008

MAY 5, 2009

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[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

Service Law — Pay — Parity in — Claim of — Original application dismissed by Central Administrative Tribunal as barred by time — In another case similarly situated employees granted such pay scale by Supreme Court — On the basis of the judgment of Supreme Court, the claimants granted pay-scale as claimed by Office Order -- Subsequently Office order withdrawn finding the same having been issued without approval of competent authority — Representation rejected distinguishing their case from the other case and on the ground that the plea was barred having been rejected earlier by Tribunal — Fresh application before Tribunal allowed — Order confirmed by High Court — On appeal, held: Subsequent claim was not barred by res judicata having been raised on fresh cause of action — Withholding of benefit on a technical ground of approval, would be harsh in view of the facts that claimants are only four (two of them since retired), that their claim was found to be justified by the authority concerned; and that they were granted the benefit for more than two years.

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5236 of 2008

From the Judgement and Order dated 07.04.2008 of the Hon'ble High Court of Kerala at Ernakulam in W.P. (C) No. 9674 of 2008(s).

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A Sharan, ASG, L.B. Gaur, Neeraj D. Gaur, for the Appellant.

Mathai M. Paikeday, Shishir Pinaki (for Sanjay Jain), with him for the Respondent.

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The Judgement of the Court was delivered by

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S.B. SINHA, J.

1. Indian Council of Agricultural Research (ICAR) is a society registered under Societies Registration Act, 1860. It is an apex Agricultural Scientific Research Organisation. It has a network of Research Institutes/ National Bureau, National Research Centres and Project Directorates. It has 47 Research Institutes, 5 National Bureau, 26 National Research Centres, 10 Project Directorates, 594 Krishi Vigyan Kendras and 73 All India Co-ordinated Research Projects.

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2. First Appellant herein is the Director, Central Marine Fisheries Research Institute being affiliated to ICAR. Respondents herein, who are four in number, were appointed in the post of 'Computers' under a functional group known as 'Laboratory Technician' (in the scale of pay of Rs.330-560). First respondent was appointed on 1.3.1972, second respondent was appointed on 10.2.1975 and the third respondent was appointed on 23.4.1976.

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3. Indisputably ICAR, despite recommendations of the Third Pay Revision Commission, granted a scale of pay of Rs.425-600/-.

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We may, however, notice that the contention of the appellant in this connection is that the pre-revised scale of pay for the holders of the post of Computer was Rs.160-300/-. The said scale of pay was revised to Rs.330-560. They were appointed as direct recruits as Technical Assistants (T-II-3) in the pay scale of Rs.425-700 on or about 18.5.1987. The said posts were under the functional group "Field/Farm Technician" of Technical Service Rules of ICAR.

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Relying on or on the basis of the decision of the Andhra Pradesh High Court, respondents herein filed an original application before the Central Administrative Tribunal in 1988. The said application was dismissed opining that they were not entitled thereto as the classification of two categories was not unjust. It was furthermore held :

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A "I am of the view that the application in respect of the relief
sought in this case for the period they were when they
were made Technical Assistant is hopelessly belated. The
judgment of the Andhra Pradesh High Court does not give
them any right to make this claim because they have
B ceased to be Computer long back. There cannot be a
retrospective revival of a grievance which was not felt when
the alleged discrimination was in force. That judgment
could have helped them if on the date they filed this
application they were Computers and suffered such
grievance."

C 4. It has not been denied or disputed that the said matter
was not carried forward further. It, however, appears that the
Central Administrative Tribunal, Cuttack Bench, Cuttack on an
application filed by the Central Rice Research Institute in its
judgment dated 6.3.1994 passed in OA No.182 of 1991, relying
D on or on the basis of the decisions of the other benches of the
Central Administrative Tribunal, as also that of the Andhra
Pradesh High Court, held :

E "To sum up, all the basic issues involved in this case have
already been addressed by earlier judicial
pronouncements and there are no new insights to be had
or any fresh inputs to be made, and ipso facto, no new
conclusions to be drawn. What is crystal clear is that
complete jurisdiction exists for accepting the prayer of the
applicants in this case. It is, therefore, directed that the
F applicants, S/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-II-
G T (iv) in the scale of Rs.550-900 with effect from 1.10.1975
or from the date of their respective appointment. This part
of the direction of their placement in relevant pay scales
will be completed within 60 days of the date of receipt of
a copy of the judgment. The arrears on account of the
H different in pay-scale that may become due to these

applicants as a result of the revised placement in the scales as indicated above, will be calculated and disbursed to them within 90 days from the date of receipt of a copy of the judgment.”

5. Appellant No.2 filed a Special Leave Petition thereagainst before this Court which on grant of leave was registered as Civil Appeal No.6673 of 1997 (arising out of SLP (C) No.23741 of 1995). By a judgment and order dated 26.9.1997, the said appeal was disposed of, stating :

“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 (III) 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.”

6. Appellant No.2 circulated the said judgment of this Court to its affiliated units. Indisputably having regard to the intimation received by the appellant No.2, various office orders were issued in between the period 10.8.2001 and 19.9.2003 whereby respondents were granted the benefit of the said scale of pay of Rs.425-600 w.e.f 1.1.1973 on and from their date of their appointment.

Some observations were made in relation thereto. The question is said to have been re-examined by the appellant No.2 and it was allegedly found that the said office orders have been issued without obtaining the approval of the competent authority. On the aforesaid premise, the aforementioned office orders dated 10.8.2001, 7.6.2003 and 19.9.2003 were withdrawn, stating :

“As per the instructions received from Council, this office order No.27-3/94-Adm. dated 07.06.2003 placing the

A following technical personnel in the grade of T-II-3 in the pay scale of Rs.425-700 w.e.f. 01.10.75 is hereby withheld until further orders :

1. S/Shri A. Kanakkan, T-5
- B 2. S. Haja Najeemudeen, T-5
3. P.L. Ammini, T-5

This issues with the approval of the Director, CMFRI, Cochin.”

C A representation was made by the respondents which, by reason of an order dated 15.6.2006, was rejected, stating :

D “This reference to his representation dated 08.05.2006 Shri S. Haja Najeemudeen, T-5 (Technical Officer) is informed that the Competent Authority in the Council has considered the proposal regarding placement of the erstwhile Comutors of CMFRI in the pay scale of Rs.425-700 w.e.f. 01.01.75 and conveyed its decision vide letter No.3(31)/01-1A Pt.III dated 04.05.2006 as under :-

E ‘That the posts of Computers/Sr. Computers were created in the pay scale of Rs.150-240 whereas some posts were created in the pay scale of Rs.168-300 (2nd Pay Commission scale). The 3rd Pay Commission revised the pay scale of all these posts to Rs.330-560 w.e.f 01.01.1973. Subsequently, the Ministry of Finance approved higher scale of Rs.425-600 for such of the posts which were created in the pay scale of Rs.168-300. The proposal of the Institute does not merit reconsideration in view of the fact and also since the employees have lost their plea for higher pay scale of Rs.425-600/- long back.’

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H 7. Aggrieved by and dissatisfied therewith, respondents filed another original application before the Central Administrative Tribunal, Ernakulam which was marked as 642 of 2006. By reason of an order dated 5.12.2007, the said application was allowed. Upon consideration of the pleadings

of the parties, as also the materials brought on record, it was held : A

“Though elaborate pleadings have been advanced by the respondents with reference to the powers of the Director General, ICAR in the subject matter of the Division, we are of the view that all those contentions are irrelevant and have been raised only to justify the stand now taken and have absolutely no basis. The respondents are now denying any knowledge of grant of higher pay scale in other institutions but they have no explanation to offer about the Annexure A-2 letter dated 15.01.1998 issued by them to all the Director forwarding the Hon’ble Supreme Court’s judgment stating that the benefit of initial fitment of the existing employees is to be given as per Rule 5.1 of the Technical Service Rules and that further benefits would be given only as per TSR and the judgment has been forwarded to the concerned Directors which admittedly imply that it has to be implemented in letter and spirit. Evidently, the matter was left to the Directors as competent authorities to implement the orders in their institute. No authority vests in Government or ICAR to refuse to implement the directions of the Apex Court. This letter only clarified that the benefits has to be granted as per TS Rules. It is really unfortunate that the HQrs of the ICAR are now taking a stand that they have no knowledge of the follow up action taken by the various Institute and even going to the extent of stating that the Hon’ble Supreme Court did not give any such direction.” B
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8. Noticing the decision of this Court, it was opined that the appellants cannot deny grant of benefit to one group of employees having conferred the same to the other group of employees in terms of the order passed by the Andhra Pradesh High Court and the Chandigarh Bench of the Central Administrative Tribunal. It was furthermore observed : G

“In fact the applications in OA No.182 of 1991 before the Cuttack Bench were also in the lower scale of Rs.150-300 at the time of their appointment. Besides it is seen H

A that two distinct scales existed only upto third CPC. The Third CPC had revised the pay scale of both and introduced a unified scale of Rs.330-560 which was the scale of approached by the Minister of the respondents in Annexure A-9 is thus not factually correct.”

B As discussed above, all the grounds taken by the respondents are found to have no merit being factually incorrect and legally unsustainable.”

9. A writ petition was filed thereagainst which by reason of the impugned judgment has been dismissed, stating :

C “The claim of similarly placed persons was upheld by the Andhra Pradesh High Court in W.P. No.5741/1979. W.A. No.1474/1986 filed against that judgment was also dismissed by the said court. The respondents therein filed SLP No.23741/1995 before the Apex Court and the Civil Appeal No.6673 of 1997 arising out of that SLP was heard and dismissed (*sic*) by the Apex Court. Relying on the above decisions, the CAT allowed the OA.”

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E 10. Mr. Amarendra Sharan, learned Additional Solicitor General for India, appearing on behalf of the appellants, would contend :

F 1) The Order dated 17.8.1989 passed by the Central Administrative Tribunal would operate as a bar to filing of the second original application; the former having been dismissed and attained finality.

G 2) Respondents having been appointed in the scale of pay of Rs.130-300 and not in the scale of pay of Rs.160-300, they were not entitled to the revised scale of pay of Rs.425-600.

H 3) Office orders purported to have been issued by the first respondent in terms of the judgment dated 26.9.1997 passed by this Court in Civil Appeal No.6673 of 1997 could not have been issued without approval of the competent authority.

- 4) In any event, respondents having joined the posts of Laboratory Technician on 18.5.1977, they could not have obtained the benefit of the revised scale of pay as a 'Computer'. A

11. Mr. Paikeday, learned senior counsel appearing on behalf of the respondents, on the other hand, urged : B

- i) Respondents, being holders of post-graduate degree in Mathematics, were entitled to the scale of pay of Rs.160-300 and, thus, they should have been placed in the scale of pay of Rs.425-600 from the very beginning. C
- ii) Although the original application filed by the respondents was dismissed by the Central Administrative Tribunal by its order dated 17.8.1989, a fresh cause of action having arisen in the light of the judgment of this Court passed in Civil Appeal No.6673 of 1997, the principle of res judicata cannot be said to have any application at all. D

12. Principle of res judicata concededly would apply to proceedings initiated before the Central Administrative Tribunal. If the said principles were applicable, the bar to maintain a fresh application on the self-same cause of action would attract provisions of Section 12 of the Code of Civil Procedure or the general principles of res judicata. E

13. It is, however, not denied or disputed that relief to the persons similarly situated had been granted by the Cuttack Bench of the Central Administrative Tribunal. The decision of the said Tribunal was upheld by this Court. It is only pursuant to or in furtherance of the directions issued by this Court, appellant No.2 issued a circular letter which is to the following effect : F

"S/Shri S. Haja Najeemudeen, T-4, V.P. Annam, T-6, C.J. Prasad, T-5, and P.L. Ammini, T-5 have represented the Deputy Director General (Fisheries), ICAR for of CMFRI, Cochin as has already been done by the Director, IVRI in respect of the Computers employed at IVRI. G H

A The whole representation was discussed with you in the meeting with Dy. DG (Fisheries) during your visit to Delhi in connection with Director's Conference. It was explained that the ICAR circulated the judgment of the Hon'ble Supreme Court in Civil Appeal No.6673 in the case of
B ICAR Vs. Shri Bibhuti Bhushan Nayak and others to all the Directors of the Institutes for guidance in such cases at their respective institutes. It was on the basis of this judgment that the Director, IVRI allowed the pay scale of Rs.425-600 to IVRI Sr. Computers in the scale of Rs.330-560 w.e.f. 01.01.73 and they were placed in the grade of
C T-II-3 w.e.f. 01.10.75 as per rule 5.1 of Technical Service Rules.

As decided in the meeting, I am enclosing herewith a copy of the ICAR letter No.3.6/89-Estt. IV dated 15.01.89 along with a copy of the judgment of the Hon'ble Supreme Court for considering the representation of all the 4
D technical officers listed in para 1 above, as the Appointing Authority in accordance with the Technical Service Rules. A copy of the Office Order dated 16.04.1999 issued by IVRI is also enclosed for consideration.

E This has the approval of Dy. Director General (Fy) ICAR."

Pursuant to the aforementioned directions only, officer orders dated 18.10.2001, 7.6.2003 and 19.9.2003 were issued

14. It is one thing to say that an independent claim made
F by the respondents were denied on the ground of delay and latches on their part, but it is another thing to say that a benefit granted to them would be withdrawn on the ground that the office order had been issued without any jurisdiction. When a fresh cause of action arises, the principles of res judicata, it is trite,
G would have no application.

15. The short question which arose for consideration before
H the Tribunal was as to whether the appellants were justified in withdrawing the aforementioned order dated 7.6.2003, despite the order dated 17.8.1989 passed by the Central Administrative Tribunal.

16. We may at the outset place on record that whereas, on the one hand, appellants contended that each of its affiliated units are autonomous bodies, they, on the other, put forward a contention that the second appellant control the financial affairs of the unit. No statutory rules or any other arrangement governing such relationship between the ICAR and its various units has been brought to our notice.

17. Furthermore, respondents are only four in number. According to them, they had been discriminated against. Although their contention in regard to the discrimination had not categorically been adverted to by the Tribunal, the said factor must have been kept in mind while allowing the original application. We may also place on record the stand taken by the appellants herein in Original Application before the Chandigarh Bench of the Central Administrative Tribunal being OA No.175 of 2004, wherein the effect of the order passed by the Cuttack Bench of the Central Administrative Tribunal as also this Court, was accepted, stating:

"It is submitted that the Council Headquarters had also revised the pay scale of its Computer to Rs.425-700 with effect from the date of his appointment vide order No.1-31/96-Estt.IV dated 1.11.2000. A copy of the order dated 1.11.2000 is annexed and marked hereto as Annexure R-7. Because of these reasons, the similarly placed personnel working under the control of the 2nd Respondent had made a series of representations for extending the same benefit to them. After protracted correspondence the matter was carefully considered by the Respondents and it was finally decided to extend the benefit based on the Honourable Supreme Court judgment to these similarly situated Computers by revising the pay scale from Rs.330-560/- to Rs.425-700/- and place them in T-II-3 grade w.e.f. 1.10.1975 or from the date of appointment, whichever is later. These personnel had earlier filed OA No.340/88 before the Hon'ble Central Administrative Tribunal, Ernakulam Bench praying for extending the said benefit.

It is submitted that the OA was, however, disallowed by

A the Hon'ble Tribunal on the ground that the OA was barred
by limitation. The concerned personnel had again made
several representations to the respondents for granting
the benefit. It is submitted that the respondents have
realized that there is merit in the claims of these personnel
B and thus it was finally decided to extend the benefit of pay
revision and placement in T-II-3 grade (Rs.425-700/-) w.e.f.
1.10.1975, i.e., the date from which the TSR came into
effect in accordance with the judgment of the Hon'ble
Supreme Court. It is further made clear that on the other
C hand, the Applicant was neither appointed initially as
Computor nor possessed the Degree in Mathematics/
Statistics, discharged the duties and functions of
Computors any time during his service period and hence
he is not entitled for any benefit whatsoever as extended
to the Computors based on the Hon'ble Supreme Court
D judgment forwarded by 2nd Respondent vide Circular dated
15.1.1998 (Annexure – R6)."

18. We need not, however, go into the depth on the
aforementioned question. Respondents are four in number. Two
of them have already retired. Their claim was found to be
E justified even by the first appellant. They had been granted the
benefit of the said office order dated 7.6.2003 for a period of
more than two years. It will, therefore, be harsh if the withholding
of the said benefit is upheld only on a technical plea that requisite
approval therefor had not been taken from the second appellant.
F Even the principles of natural justice had not been complied
with in issuing the officer order dated 27.4.2005.

19. For the reasons aforementioned, we are of the opinion
that it is not a fit case where we should exercise our discretionary
jurisdiction under Article 136 of the Constitution of India. The
G appeal, therefore, is dismissed. We, however, make it clear that
we have passed this order keeping in view the facts and
circumstances of this case and the same may not be treated to
be a precedent.