

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&**

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

OP (CAT).No. 116 of 2015 (Z)

**AGAINST THE JUDGMENT IN OA 614/2012 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 01-07-2015
PETITIONER(S)/APPLICANT:**

**A.J.BHADRAN
TECHNICAL OFFICER, T-5, CPCRI
REGIONAL STATION, KRISHNAPURAM P.O
KAYAMKULAM - 690 533.**

**BY ADVS.SRI.R.RAJASEKHARAN PILLAI
SMT.SABINA JAYAN**

RESPONDENT(S)/RESPONDENTS:

- 1. THE INDIAN COUNCIL OF AGRICULTURE RESEARCH (ICAR)
REPRESENTED BY THE SECRETARY
KRISHI ANUSANDHAN BHAVAN, PUSA, NEW DELHI 110 012.**
- 2. THE DIRECTOR
CENTRAL PLANTATION CROPS RESEARCH INSTITUTE
CPCRIKASARGODE 671 124.**
- 3. THE ASSESSMENT COMMITTEE FOR TECHNICAL
PERSONNEL CATEGORY III
REPRESENTED BY ITS CHAIRMAN THE 2ND RESPONDENT.**

R1-R3 BY ADV. SRI.P.SANTHOSH KUMAR, SC, ICAR

**THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 15-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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OP (CAT).No. 116 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1 - TRUE COPY OF OA NO.614/2012 FILED BY THE PETITIONER BEFORE THE
CAT ERNAKULAM BENCH.**

**P2 TRUE COPY OF THE REPLY STATEMENT FILED BY THE 2ND
RESPONDENT IN OA. NO.614/2012**

**P3 - TRUE COPY OF THE JUDGMENT DATED 13.12.2008 IN WPC.
NO.36025/2007 OF THIS HON'BLE COURT.**

**P4 - TRUE COPY OF THE ORDER DATED 1.7.2015 IN OA NO.614/2012 OF THE
CAT ERNAKULAM BENCH.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

avk

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

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O.P.(CAT) No. 116 OF 2015

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Dated this the 15th day of July, 2015

JUDGMENT

P.R. Ramachandra Menon,J.

Non-considering the claim for promotion to the grade of T-6 level in the respondent establishment, rejecting the same for the reason that the petitioner did not secure the minimum benchmark of **three 'very good'** for the purpose of selection is under challenge in the original petition.

2. The facts and figures brought on record reveal that the petitioner was working as a 'T5 Technical Officer'

from 1995 onwards and has an unblemished track record. The next promotion in the hierarchy of the post is to the level of 'T6 Technical Officer'. The petitioner is stated as qualified in all respects to have it. However, the claim of the petitioner was rejected as per Annexure A-10 order dated 21.6.2012 passed by the second respondent, which reads as follows:

"Shri A.J.Bhadran, T5 Technical Officer (Artist) is hereby informed that his Ten yearly Assessment for the period 01.01.1995 to 31.12.2004 was considered by the Assessment Committee for Technical Personnel Cat.III (Artist) held at this Institute on 19.06.2012. However, the Committee has not recommended his case for placement/promotion to the next higher grade T-6 (Cat.III) with the observation that "Not found fit either for grant of merit promotion to the next

higher grade or grant of advance increment during the reporting period.

However his case will be considered again at a subsequent stage or stages for which he may submit supplementary reports relating to the subsequent periods upto 31.12.2011 (year wise) for consideration by the Assessment Committee."

3. Being aggrieved by the turn of events, the petitioner approached the Central Administrative Tribunal, Ernakulam, by filing O.A. No. 614 of 2012 with the following prayers:

"I. Call for the records leading to and culminating in Annexure X and quash the same as Arbitrary illegal and opposed the dictum laid down by the Apex Court.

II. Direct the 3rd respondent to confer the applicant T6 grade retrospectively with effect from 1.1.2005.

III. Direct the 1st respondent to consider Annexure A-XII, and pass appropriate orders.

IV. Declare that Annexure-A-IV is non est and ab initio void."

It was contended by the petitioner that the petitioner had the merit rating entries as one '**exemplary**', one '**very good**' and three '**goods**', also contending that as per the relevant note. For evaluation of merit, '**good**' was actually to be the norm, which has been conveniently and wrongly omitted by the concerned authorities while considering the claim of the applicant. The amendment brought about by virtue of the norms prescribed as per **Annexure A-11** of the year 2002 is sought to be relied on, in support of the contentions raised by the petitioner.

4. The petitioner/applicant had a further contention to the effect that, insofar as the petitioner was rated granting 'good' in respect of three years of assessment, if the rating as 'good' was not a grade to be considered or reckonable for the purpose of promotion (allegedly by virtue

of the stipulation that it has to be very good for three years), it could not have been acted upon by the Departmental Promotion Committee (DPC) for the reason that such a rating was never communicated to the petitioner and was liable to be termed as an adverse remark to the said extent. Reliance is sought to be placed on the verdict passed by the Apex Court in **Dev Dutt v. Union of India [2008 (8)SCC 725]**. The grievance is that the version put forth by the petitioner was not properly appreciated by the Tribunal and more weight wrongly given to the submissions made from the part of the respondents as to the alleged amendment of the Rules effected in the year 2010(as per Annexure R2(d)). The O.A. was disposed of directing the first respondent to consider the grievance projected by Annexure A-1 and to have it finalised in accordance with law within two months. This made the petitioner to challenge

the verdict by filing the present original petition.

5. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents in detail. Learned Standing Counsel appearing for the respondents points out that the verdict passed by the Tribunal does not require any interference at the hands of this Court, insofar as the relief sought for by the petitioner particularly 'prayer No.3', has been considered and granted by the Tribunal. The version of the petitioner/applicant that the latest Rule was Annexure A-1I O.M. is not correct and that the said Rule was amended. It was accordingly that, Annexure-R2(d) was brought into force in the year 2010. By virtue of the change in the scenario, it is very well necessary to have obtained at least three '**very goods**' for promotion to the post in question i.e. level T-6. Admittedly, the petitioner did not satisfy the said

requirement and hence the rejection of the claim was well within the four walls of law and it is not assailable under any circumstances, submits the learned counsel.

6. Learned counsel for the petitioner, on the other hand, submits that the Department is always bound by the instructions given as specified under the Rules, a copy of which has been produced as Ext.R1(a). The scope of the said Rule and the effect of non-communication of the adverse remarks with reference to the rating of the grade as '**good**' instead of '**very good**' has been considered by another Division Bench of this Court under exactly similar circumstance, leading to Ext.P3 judgment dated 13.11.2008 in W.P.(C) No. 36025 of 2007. The issue involved in the said case was also similar, involving the claim for promotion to level T-6 and rejection was with reference to the absence of non-possession of the grade '**very good**' for

three years, apart from non-communication of the merit rating. After considering the facts and circumstances, this Court held that the case projected by the petitioner as to the effect of non-communication of the proclaimed rating was liable to be accepted in the light of the Ruling rendered by the Apex Court in **2008(8)SCC 725 (supra)**. A positive finding was also rendered with reference to the other relevant aspects as well, particularly dealing with the second issue raised therein. It was accordingly, that the impugned proceedings were set aside and the case of the petitioner for promotion was remitted to the DPC, with a direction to the DPC to constitute a review meeting and consider the claim of the petitioner for promotion in the light of the observations made, in accordance with law. In so far as there is no case of the respondents that the adverse ratings which have been relied on by the DPC in the instant case

were communicated to the petitioner at any point of time, the petitioner is also entitled to have similar relief for being reconsidered

7. This Court finds that a fresh look is necessary in the light of the judgment passed by the Apex Court in **2008 (8)SCC 725(supra)** and the verdict passed by this Court vide Ext.P3 judgment. In the above circumstances, the proceedings under challenge, i.e. Annexure A-10 order passed by the second respondent is set aside and the matter is directed to be reconsidered by the second respondent in the light of the rulings rendered above. Considering the submissions made by the learned counsel for the petitioner that he is due to retire from the service in October 2015, the steps as above shall be finalised at the earliest, at any rate within 'two months' from the date of receipt of a copy of this judgment.

8. The Original petition stands disposed of. It is made clear that this Court has not dealt with the relative merits of the petitioner and it is open for the second respondent to consider all the relevant aspects and eligibility of the petitioner to have the promotion to level T-6.

The petitioner shall produce a copy of this judgment before the second respondent for compliance.

Sd/-

**P.R. RAMACHANDRA MENON
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

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True copy

P.S. (Hr.Gr.)To Judge