

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP-2569-2009 (O&M)

Date of decision: 18.08.2015

Desh Raj

.....Petitioner

versus

Central Administrative Tribunal, Chandigarh & Ors.

.....Respondents

And

CWP-2618-2009 (O&M)

Date of decision: 18.08.2015

Lakhwinder Singh

.....Petitioner

versus

Central Administrative Tribunal, Chandigarh

.....Respondent

**CORAM:- HON'BLE MR. JUSTICE M.JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH**

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Ms. Satpreet Grewal, Advocate for petitioners.

None for respondent No.1.

Mr. R.K. Sharma, Advocate for respondents No.2 & 3.

DARSHAN SINGH J.

CM-10157-2015 in
CWP-2569-2009

and

CM-10161-2015 in
CWP-2618-2009

These applications are for fixing the case for actual date of hearing.

The applications stand dismissed as infructuous, as the main case itself is coming up today for final hearing.

Main Writ Petitions

This judgment of ours shall dispose of both the Civil Writ Petitions mentioned above, which are involving the same question of law and facts and have arisen out of the same order passed by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh.

2. The facts are being taken up from Civil Writ Petition No.2569 of 2009. Respondent No.2 launched its technical services in the year 1975 for assisting and facilitating the scientists engaged in the research in the fields of agriculture, education, extension and other allied disciplines of agriculture. The rules were framed for governing the service conditions of the technical staff, which were got published by respondent No.2, the Indian Council of Agriculture Research, heading “ICAR Handbook of Technical Services”. Earlier, there were three categories in technical service and were having the pay scales as under:-

Category - I	
T-1	Rs. 3200-85-4900
T-2	Rs. 4000-100-6000
T-1-3	Rs. 4500-125-7000

Category - II	
T-II-3	Rs. 4500-125-7000
T-4	Rs. 5500-175-9000
T-5	Rs.6500-200-10500

Category - III	
T-6	Rs. 8000-275-13500
T-7	Rs. 10000-325-15200
T-8	Rs.10000-325-15200
T-9	Rs.12000-375-16500

3. There was five yearly assessment promotion system under the Technical Service Rules from one grade to another. Later on, the basic scales were revised by the Fifth Pay Commission from 01.01.1996. As per the modified rules, the grades of T-1-3 and T-II-3 (4500-125-7000) were merged into single new grade named T-3 and the new grade was kept in Category-II. The table reproduced below, will facilitate the better understanding:-

Prior to modification		After modification	
Category - I		Category - I	
T-1	3200-85-4900	T-1	3200-85-4900
T-2	4000-100-6000	T-2	4000-100-6000
T-1-3	4500-125-7000		
Category - II		Category - II	
T-II-3	4500-125-7000	T-3	4500-125-7000
T-4	5500-175-9000	T-4	5500-175-9000
T-5	6500-200-10500	T-5	6500-200-10500

Category - III			Category - III	
T-6	8000-275-13500		T-6	8000-275-13500
T-7	10000-325-15200		T-7/8	10000-325-15200
T-8	10000-325-15200		T-9	12000-375-16500
T-9	12000-375-16500			

4. After the above-said modification, the petitioners were placed in new grade as T-3 as per provisions of Rule 5.1 of the Technical Services Rules, 1975 as modified on 03.02.2000 (here-in-after called the Modified Rules) (Annexure P-3 in CWP-2618 of 2009) on point to point basis without any further screening irrespective of their qualification. The service rendered in grade T-1-3 was to be counted for assessment promotion to next grade as T-4 as per rule 6.9 of the Modified Rules. It was further pleaded that form the above rule, it is clear that eligibility for assessment promotion to the next grade was five years of service in each grade. The employees were given option to be either governed by the Modified Rules or the pre-Modified Rules. The petitioners opted for being governed under the Modified Rules. So, they along with others were placed in T-3 grade w.e.f. 03.02.2000. Thereafter, respondent No.2 issued a clarification dated 06.02.2003. As per the said clarification, grade T-1-3 and T-II-3, which were merged into the new grade T-3, were again made distinct and respondents took a totally contrary stand by treating the grade T-3 as new grade in place of grade T-II-3 only. While introducing the above impugned clarification, the Modified Rules were given a complete go-by. The petitioners and similarly situated employees challenged the above said clarification dated 06.02.2003 by way of

Original Application No.383/HR of 2003 before the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh. During the pendency of above Original Application, an office order dated 19.04.2004 was issued, vide which, it was further clarified that the employees who do not possess qualification as prescribed under notification dated 03.02.2000 for Category-II for direct recruitment, would become eligible after 10 years of combined service in T-2 and T-1-3 grades for placement in grade T-3. It is further pleaded that in the above-said order, the respondent committed another illegality by not counted the service rendered in grade T-1-3 (pre-revised). The Original Application moved by the petitioners was dismissed vide impugned order dated 09.08.2007. The review application moved by the petitioner was also decided on 11.10.2007. It is pleaded that the impugned order dated 09.08.2007, passed by the learned Tribunal, is liable to be set aside on various grounds mentioned in the petition. A Writ in the nature of Mandamus has been prayed for directing the respondents to withdraw the clarification dated 06.02.2003 and restore the position of petitioners as T-3 from 03.02.2000 and for counting the service rendered in grade T-1-3 for the purpose of next promotion to T-4 grade.

5. Respondents No.2 & 3 contested the writ petition on the grounds inter alia that petitioners did not fulfil all requisite qualification and experience condition for change of category to T-3 of Category-II. Due to mistake, they were granted the benefit vide order dated 17.05.2001 and after receiving the clarification, the said mistake has been

rectified.

6. The petitioners also filed the rejoinder controverting the pleas raised in the written statement and reaffirming that of the petition.

7. We have heard Ms. Satpreet Grewal, Advocate, learned counsel for the petitioners, Mr. R.K. Sharma, Advocate, learned counsel for respondents No.2 & 3 and have carefully examined the record of the case.

8. Learned counsel for the petitioners contended that originally there were three categories of the technical staff having separate grades. She contended that vide Modified Rules dated 03.02.2000 and in view of the recommendations of the Fifth Central Pay Commission, as the grades T-1-3 and T-II-3 were overlapping, those were merged into one grade i.e. T-3. She further contended that in consequence of the said merger of the grades vide office order dated 17.05.2001 (Annexure P-4 in CWP-2618 of 2009), the petitioners were placed in grade T-3 in Category-II w.e.f. 03.02.2000, as the petitioners have given the option for new grade. She contended that subsequently the respondents issued the clarification dated 06.02.2003 (Annexure P-9 in CWP-2618 of 2009) mentioning therein some qualification and experience for being placed in T-3. She contended that this clarification is illegal as grade T-1-3 and T-II-3, which were merged into new grade T-3 vide Modified Rules, have been again revived. She contended that it was also provided that the service rendered in T-1-3 shall not be counted for the purpose of promotion from grade T-3 to T-4. She further

contended that in consequence of said clarification, the pre-revised scales were again revived qua the petitioners in an illegal manner. She further contended that the petitioners approached the learned Tribunal to challenged this action of the respondents but the learned Tribunal has dismissed the Original Application filed by the petitioners simply on the ground that as the original rules were not challenged, the clarification can also not be challenged. She contended that in a similar case with respect to the same service rules, the Division Bench of Hon'ble High Court of Delhi in case titled as ***Indian Council of Agriculture Research and Anr. Vs. Ram Bilas Mehto and Ors. W.P. (C) No.2975 of 2012 decided on 21.05.2012*** had held the order of withdrawal of grade of T-3 and Category-II to be unfair, unjust and unreasonable and not tenable in law. Thus, she contended that the impugned order passed by the learned Tribunal and the action of the respondents in withdrawing the grade T-3 of Category-II to the petitioners w.e.f. 3.2.2000 is illegal.

9. On the other hand, learned counsel for the respondents No.2 & 3 contended that the petitioners were placed in T-3 grade of Category-II due to mistake. The said mistake has been rectified on receiving clarification dated 06.02.2003. He contended that even in the original Modified Rules, the essential qualification and experience was prescribed for placement in T-3 grade of Category-II. Thus, he pleaded that there is no illegality in the action of the respondents. He further contended that before learned Tribunal, the main Modified Rules which prescribed the essential qualification and experience, were never

challenged. The clarification dated 06.02.2003 was only a clarification which does not amount any amendment of the original Modified Rules.

10. We have duly considered the aforesaid contentions.

11. Certain facts are not disputed. It is not disputed that prior to the Modified Rules, there were three categories of the technical staff in the respondent department having different grades and categories, which are reproduced below:-

Category - I	
T-1	Rs. 3200-85-4900
T-2	Rs. 4000-100-6000
T-1-3	Rs. 4500-125-7000

Category - II	
T-II-3	Rs. 4500-125-7000
T-4	Rs. 5500-175-9000
T-5	Rs.6500-200-10500

Category - III	
T-6	Rs. 8000-275-13500
T-7	Rs. 10000-325-15200
T-8	Rs.10000-325-15200
T-9	Rs.12000-375-16500

12. Modified Rules, which were issued on 03.02.2000 with prospective effect. It is also not disputed that petitioners opted to be governed with the Modified Rules. No doubt in Para 3.2 of the Modified Rules, it was mentioned that grades T-1-3 and T-II-3, being overlapping each other, were merged into one grade i.e. T-3. It is also not disputed that due to the merger of grades T-1-3 and T-II-3 into new grade of T-3,

the office order dated 17.05.2001 (Annexure P-4 CWP-2618 of 2009) was issued placing the petitioners in grade T-3 in Category-II w.e.f. 03.02.2000.

13. Later on, the clarification dated 06.02.2003 (Annexure P-9 CWP-2618 of 2009) was issued with the approval of the competent authority of the respondent Council. The relevant portion of the said clarification reads as under:-

Sr. No.	Points for clarification	Clarifications of the Council
2.	A person was promoted in T-1-3 grade on 1.7.84 and on completion of 5 years in the grade he was granted 3 advance increments the person has now completed another 5 years from the date of grant of 3 advance increments. It may kindly be clarified as to from which date he should be placed in T-3 Grade of Category-II in the light of Modified SR dated 3.2.2000.	As per the instructions contained in the ICAR letter No.14-3/94 Estt.IV dated 1.2.95, the existing employees at the level T-1-3 who possess qualifications prescribed for entry to Category II by direct recruitment will be placed in grade T-II-3 of Category II w.e.f. 1.1.95 the Employees who do not possess such qualification will in the event of improving their qualification and acquiring degree/ diploma/ any other qualification prescribed for entry in Category II by direct recruitment will be placed in grade T-II-3 from 1 st January of the year following the year in which degree/diploma/certificate is awarded. Further, the ICAR notification No.18(1)/97-Estt. IV dated 3.2.2000 provides that from T-2 grade such personnel possessing the qualification as prescribed therein for Category II for direct recruitment, would be

		eligible for assessment promotion to T-33 grade after five years of service, while those not possessing such qualifications shall become eligible for assessment promotion to T-3 grade only after 10 years of service in T-2 grade. As such, the technical personnel in grade T-2 and while T-1-3 who do not possess qualification prescribed for direct recruitment to grade T-3 in Category II, will be placed in T-3 grade only on completion of 10 years of combined service in grade T-2 and T-1-3 as on 3.2.2000 or thereafter.
3.	It may be clarified as to whether the service rendered in T-1-3 grade would be counted for computing 10/5 years services for further assessment to T-4 grade or the service rendered in T-II-3 (renamed as T-3 grade) of Category II would only be counted.	As per instructions contained in council letter No.14-3/94-Estt.IV dated 10.1.96, the service rendered in T-1-3 for the purpose of counting of five years of service for the grant of merit promotion/advance increment from T-II-3 to T-4 shall not be counted for the purpose of computation of prescribed years of service. It is thus clarified that the service rendered by the technical personnel in grade T-II-3 (now T-3 w.e.f. 3.2.2000) will be counted for computation of five years of prescribed service for merit promotion to T-4 grade or advance increment.

14. As per the above clarification, an employee from T-2 grade possessing clarification as prescribed for Category-II for direct

recruitment would be eligible for assessment promotion to T-3 grade after 5 years of service while those not possessing such qualification will become eligible for assessment promotion to T-3 grade only after 10 years of service in T-2 grade. It was further clarified that the technical personnel in grade T-2 and T-1-3, who do not possess the qualification prescribed for direct recruitment to grade T-3 in Category-II, will be placed in T-3 grade only on completion of 10 years of combined service in grade T-2 and T-1-3 as on 03.02.2000 or thereafter.

15. This fact is not disputed that the minimum qualification for direct recruitment of Category-II was bachelors degree in the relevant field or equivalent qualification from a recognized university. It is also not disputed that the petitioners do not possess the aforesaid minimum essential qualification for direct recruitment to Category-II. So, in order to seek placement in T-3, they were required to complete 10 years of service in grade T-2 and T-1-3 as on 03.02.2000.

16. The clarification dated 06.02.2003 is only a clarification of the existing rules. It is not the modification or amendment of the Modified Rules issued on 03.02.2000 because in the original Modified Rules, the same essential qualification and experience was prescribed for placement in T-3 grade. The reference can be made to Para 6.3 of the original Modified Rules with advantage:-

“6.3 As per the revised grade structure, the entrants of Category I at T-1 grade would continue to be regulated for assessment from T-1 to T-2 after five years of service, as at present. However, the T-2 grade personnel, possessing the

qualification, as prescribed herein further under the Notification of 3 February 2000 for Category II for direct recruitment, would be eligible for assessment promotion to T-3 grade after five years of service, while those not possessing such qualification shall become eligible for assessment promotion to T-3 grade only after 10 years of service in T-2 grade. The assessment promotions from T-3 to T-4 and T-4 to T-5 shall be continue to be regulated at five years interval, as at present.”

17. In the aforesaid rule, it has been categorically provided that T-2 grade personnels, possessing qualification as prescribed herein further under the notification of 03.02.2000 for Category-II for direct recruitment, would be eligible for assessment promotion to T-3 grade after five years of service, while not possessing such qualification shall become eligible for assessment promotion to T-3 grade only after 10 years of service in T-2. So, this essential qualification and the experience of length of service for placement in T-3 was already provided in the original Modified Rules. But these original Modified Rules were never challenged by the petitioners before the learned Tribunal. Only the clarification dated 06.02.2003 was challenged before the learned Tribunal. In the absence of challenge to the original Modified Rules, the challenge to the clarification alone, which was not at all any modification or amendment to the original rules, was not tenable in law and the same has been rightly held so by the learned Tribunal.

18. There is absolutely no dispute with the proposition of law that the administrative mistake can be corrected by the authorities in order to set the record straight and to undo the wrong. So, there is no

illegality in the action of the respondents in passing order dated 22.03.2003, describing the date of induction of the petitioners in T-3 grade.

19. The Modified Rules are to be read as a whole. No conclusion can be drawn by referring only to a single para in the rules. No doubt in para 3.2 of the Modified Rules it has been mentioned that due to overlapping of the grades, grade T-1-3 and T-II-3 have been merged into one grade i.e. T-3. But at the same time, in these very modified rules, vide Para 6.3, the essential qualification and experience for placement in grade T-3 has been described. Both these paras of the modified rules have to be read harmoniously. Thus, term merger mentioned in Para 3.2 of the Modified Rules is of no help to the petitioners, when in the modified rules itself i.e. the original scheme the essential qualification and experience for entitlement for placement in grade T-3 has been prescribed and the same has also been followed by clarification dated 06.02.2003. From the reading of the entire Modified Rules and subsequent clarification, there is no escape from the conclusion that till the petitioners acquires the prescribed qualification and experience for placement in T-3 grade they will continue to retain the original grades as personal to them.

20. Case ***Indian Council of Agriculture Research and Anr. Vs. Ram Bilas Mehto and Ors.*** (supra) relied upon by learned counsel for the petitioners, is entirely on different footing. That was a case where as a result of subsequent option exercised in view of the instructions/circular

dated 19.10.2006, the employees have to suffer the reversion but there is no reference of instructions/circular dated 19.10.2006 in the present case.

21. Thus, the petitioners were not entitled to be placed in grade T-3 in Category-II w.e.f. 03.02.2000. Consequently, the clarification dated 06.02.2003 issued by the respondent and the impugned order 09.08.2007, passed by the learned Tribunal, do not suffer from any illegality.

22. Resultantly, the present writ petitions have no merits and are hereby dismissed.

**(M. JEYAPPAUL)
JUDGE**

18.08.2015
sunil yadav

**(DARSHAN SINGH)
JUDGE**