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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 20.11.2023***

+ W.P.(C) 6846/2020 & CM APPL. Nos. 23664/2020, 22276/2023,
22277/2023

COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH

..... Petitioner

Through: Mr. Arun Sanwal, Adv.

versus

DR OP AGARWAL & ANR.

..... Respondents

Through: Mr. Kavindra Gill, SPC (Senior Panel
Counsel) for R-2/UOI.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T (oral)

1. The present writ petition under Article 226/227 of the Constitution of India has been filed by the petitioner seeking the following relief:

“Quash/set aside the impugned order/judgment dated 29.08.2019 and 20.01.2020 passed by the Ld. Central Administrative Tribunal, Principal Bench, New Delhi.”

2. On 25.08.2023 Mr. Gauri Puri, learned counsel for the respondent no.1 has appeared and submitted that the respondent no.1 has already expired and his LRs do not want to contest the present writ petition.

3. The respondent no. 2 is a proforma party.

4. The brief facts of the present case are that the petitioner Council of Scientific & Industrial Research (C.S.I.R) is an autonomous body and has a dynamic network of 38 national laboratories, 39 outreach centres.



5. The respondent herein was working as a Scientist in petitioner C.S.I.R and on 21.12.2001 was granted assessment promotion in Group IV(6) in the grade of Rs.18,400-22,400 w.e.f. 01.01.1999. In 2001, the petitioner herein advertised the post of Head, Research Planning and Business Development (RPBD) Division with the last date of submitting the application as 10.10.2001. This advertisement no.5/2001 categorically enunciated the Pay Scale as Rs.18400-500-22400. It is pertinent to mention here that the Advertisement was issued under the MANAS rules and therefore the recruitment procedure and pay scales as per those rules were to be abided by the petitioner herein.

6. Meanwhile on 07.12.2001, the CSIR Scientists Recruitment Rules were notified w.e.f. 01.4.2002 for recruitment. As per the rules the scale of pay for Scientist Group IV(6) was Rs.18400-500-22400 and Scientist Group IV(7) was Rs.22400-525-24500. It is pertinent to mention here that rules clearly stipulated that the procedure for promotion and appointment to Scientist Group IV(7) was to be decided subsequently.

7. Further, the advertisement for the post of Head, RPBD was re-advertised as Advertisement No. 1/2002 with the last date of filing applications as 22.03.2002. The respondent no. 1 herein applied for the post and on 31.05.2002, the screening committee recommended the respondent and the pay was required to fixed as per normal rules. On 18.06.2002, the petitioner issued an Office Order no.191 being OM No. 6-3(102)2002-E-III by which the respondent no.1 herein was appointed as Head, RPBD in the pay scale of Rs.18,400-22,400. On 24.03.2004 an O.M. was issued by the petitioner being O. M. no. 17/68/97-PPS for upgradation of 10% post of Scientists 'G' and 'H' in the pay scale of Rs.18,400-22,400 to the scale of



Rs.22,400-24,500 (Additional Secretary Level).

8. Further, the respondent no.1 made a representation on 22.02.2004 requesting for upgradation in the pay scale of Rs.22,400-24,500. However, vide letter dated 19.05.2004 the applicant was informed that only directors will be considered for this pay scale. The respondent on 01.03.2005 initiated a note and pointed out as per the CSIR Scientists and Recruitment and Assessment Promotion Rules, 2001, the desired qualification for Scientist Group IV(7) was the same as required for Head, RPBD and thus he should be placed in Scientist Group IV(7) which has a pay scale of Rs.22,400-24,500/-.

9. Further, vide OM No. 6-8(1483)/86-E-III the respondent no.1 was informed that the vacancy for the post of Head, RPBD was advertised as per the old rules i.e. MANAS Group-IV(7). However, it is pertinent to mention here that after the implementation of the 5th CPC, pay scales of Group IV(6) and Group IV(7) were merged in the new pay scale of Rs.18,400-22400 as a result of which both Scientist Group IV(6) and Scientist Group IV(7) were placed in the revised pay scale of Rs.18,400-22,400.

10. Further, the respondent no.1 vide various letters represented that since he was already a Scientist Group IV(6), his appointment as Head, RPBD was to a position of higher responsibility and thus the advertisement was issued for Scientist Group IV(7) and therefore, he should be granted the pay scale that was later granted to directors i.e. 22400-24500.

11. Further, on 01.01.2009 the petitioner herein informed the respondent no.1 that case of the petitioner has been considered by the Competent Authority and that in view of the provisions Under FR 22 (III), the benefit of fixation of Pay under FR-22 (1) (A) (i) i.e. position of higher responsibility



cannot be extended to the respondent no.1.

12. Further, the respondent no.1 kept sending representations of the same issue and, therefore, the petitioner vide its letter dated 14.03.2016 reiterated its earlier decision given on 01.01.2009. Aggrieved by the aforesaid orders the respondent no.1 filed an O.A. for placing him in Scientist Group IV(7) and also filed its reply to the Original Application filed by the respondent under Section 19 of the Administrative Tribunal, 1985 before the Central Administrative Tribunal, Principal Bench, New Delhi.

13. Thereafter, vide the impugned order dated 29.08.2019, the CAT has allowed the Original Application ('OA') No. 1897/2016 filed by the respondent no.1 herein and directed that the respondent no.1 (since deceased) shall be extended the benefit of pay scale of Rs.18400-500-22500.

14. The grievance of the petitioner is that the learned CAT has failed to appreciate the aforesaid Original Application filed by the respondent no.1 on the ground that the impugned order was passed in the year 2009 whereas the OA was filed in the year 2016. The order of the learned CAT is against the clear mandate of Section 21 of Central Administrative Tribunals Act, 1985 and, thus, the OA was filed after eight years without moving an application for condonation of delay, the learned CAT allowed the OA in complete disregard of the Act and Law settled by the Supreme Court.

15. It is pertinent to mention here that after the implementation of the Fifth Central Pay Commission, pay scales of Group IV(6) and Group IV(7) were merged in the new pay scale of Rs.18400-22400 as a result of which both Scientist Group IV(6) and Scientist Group IV(7) including directors were placed in the revised pay scale of Rs.18,400-22,400. However, the learned CAT has failed to appreciate all the documents on record and placed



undue reliance on a single document dated 11.05.2005 in complete disregard of the Advertisements as well as the Appointment letter of the respondent no.1.

16. In addition, the respondent no. 1 pursuant to Advertisements No.5/2001 accepted with open eyes that the pay scale shall be Rs.18,400-22,400 and, thus, could not later abrogate the accepted terms and conditions.

17. However, the learned Tribunal in our considered view, while allowing the O.A. failed to consider the appointment of the respondent no.1 as Head, RPBD was not a promotion but the scale had been merged and, therefore, the benefit of FR.22-(1) (A)(i) has wrongly been granted to the respondent no.1.

18. In view of above, we hereby set aside the impugned order dated 29.08.2019 and modified the order dated 20.01.2020 passed in M.A./3211/2019 in O.A. 1897/2016 by the learned Tribunal.

19. The petition is, accordingly, allowed and disposed of.

20. The pending applications also stand disposed of.

SURESH KUMAR KAIT, J

SHALINDER KAUR, J

NOVEMBER 20, 2023/ssc