



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

% ***Judgment reserved on: December 19, 2023***

***Judgment pronounced on: January 10, 2024***

+ **W.P.(C) 1096/2014**

**DR. R.L.SHARMA AND ANR**

**..... Petitioners**

Through: **Mr. Ram Bhushan, Advocate**

**versus**

**THE UNION OF INDIA AND ANR**

**..... Respondents**

Through: **Mr. Ripu Daman Bhardwaj, CGSC  
for UOI.**

**Mr. S.S. Lingwal, Advocate for  
ICAR.**

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

**JUDGMENT**

**SHALINDER KAUR, J.**

1. The present writ petition under Article 226 of the Constitution of India, 1950 is instituted on behalf of the petitioners against the order dated 24.05.2011 passed in OA No. 345/2008 by the learned **Central Administrative Tribunal** (hereinafter as 'Tribunal') wherein the learned Tribunal failed to grant the relief to the petitioners to set aside the orders/letters dated 09.02.2007 and 20.02.2007 passed by the respondents vide which the petitioners have not been given simultaneous assessment for antedating their promotion to Scientist S-2 and consequential merit promotion to the next higher grade of Scientist S-3. The learned Tribunal further failed to grant the prayer of the petitioners in consequence to setting



aside of the letters dated 09.02.2007 and 20.02.2007, to implement the order dated 26.06.1995 passed by the respondents in respect of granting simultaneous consequential benefit by way of merit promotion to the petitioners to S-3 grade, as has been done in the case of other similarly placed over 200 Scientists and give all the consequential benefits including pay/pension re-fixation, pensionary benefit, etc.

2. The following are the facts necessary for the disposal of the present petition:

3. The **Indian Council of Agricultural Research** (hereinafter as 'ICAR') formed a service namely **Agricultural Research Service** (hereinafter as 'ARS') for its Scientists with the promulgation of statutory rules with effect from 01.10.1975. In response to the advertisement published on 24.11.1994 by the Director, Indian Veterinary Research Institute, Izzatnagar had invited applications for recruitment to various Scientists posts in Junior Class-1 in the pay scale of Rs. 700-1300, Class 2 in the pay scale of Rs. 650-1200 and Senior Research Assistant in the pay scale of Rs. 550-900, the petitioners were selected as Junior Class-1 Scientists. Besides petitioners, some other persons were also recruited to Class 2 posts and to the posts of Senior Research Assistants. Vide order dated 07.09.1977, the respondents informed that their post will be regularized in ARS by merging the Junior Class-1 and Class-2 posts into one cadre as Scientist S-1 with retrospective effect availing benefit in seniority. In the process anomalies in seniority of the petitioners and erstwhile **Junior Research Officers** (hereinafter as JROs) vis a vis **Assistant Research Officers** (hereinafter as 'AROs') occurred. Resultantly, the then AROs became senior to the erstwhile JROs including the petitioners and



inequalities in the cadre seniority occurred during 1977. Subsequently, consequential promotion to next higher grade of Scientist S-3 was granted in terms of policy decision dated 26.06.1995. Consequently, the ICAR strived to resolve the said inequalities as per ARS Rule 21 of 1975, however, the petitioners were discriminated and were left out resulting in anomaly in their case.

4. It is the case of the petitioners that though time and again they had approached the respondents for grant of analogous benefits of antedating promotion date and their placement in ARS Scientist S-2 cadre and consequential merit promotion to next higher grade i.e., Scientist S-3 as ordered in cases of majority of similarly situated counterparts, the then JROs in the scale of Rs. 700-1300.

5. The ICAR, New Delhi in order to resolve the said disparity in the seniority of the petitioners vis a vis the AROs in the scale of Rs.650-1200, which occurred during April 1977, pursuant to the decision in the case of **Dr. M.L. Lodha and Ors v. Union of India & Ors.** [CWP No. 1192/84 dated 05.03.1987], by a series of orders dated 27.12.1988, 28.12.1988, 07.02.1989 and 16.03.1995, a large number of similarly placed Scientists were granted antedation of their promotion as Scientist S-2 effective from 01.07.1976.

6. It is further the case of the petitioners that in the said manner over 200 erstwhile JROs were granted dual benefit of (a) antedating their placement as Scientist S-2 w.e.f. 01.07.1976 and (b) consequential merit promotion to next higher grade w.e.f. the date as recommended by the Agricultural Scientist Recruitment Board (ASRB), New Delhi, along with full monetary benefits (back wages) and other entitlements. The beneficiary JRO's also



enjoyed inservice benefits laid down under University Grants Commission, Career Advancement Scheme (CAS) opted by them w.e.f 01.01.1986.

7. The petitioners have expressed their grievance that they were grossly discriminated from the similarly situated JROs numbering over 200 and along with similarly situated persons were compelled to file several cases which were resolved finally by the Central Administrative Tribunal's order dated 29.11.1999.

8. Aggrieved by the said order, the respondents filed a writ petition bearing No. 4544/2000 which was dismissed by this Court vide order dated 18.08.2000.

9. It is further the case of the petitioners, that as no action was taken by the respondents in pursuance of the decision rendered by learned Tribunal dated 29.11.1999, consequently, the petitioners filed a contempt petition CP No. 19/2001 in OA No. 246/1996 and CP No. 24/2001 in OA No. 1948/1995. These contempt petitions were disposed of on 31.07.2001 with directions to the respondents to implement the order dated 29.11.1999 within two months of passing the orders in the contempt petition and called for compliance report. As a result, the respondents circulated a policy decision dated 26.06.1995 regarding grant of consequential benefits of assessments in favour of Scientists whose promotion to S-2 grade was ante dated w.e.f 01.07.1976. The said policy decision marked that the assessment and reassessment of the Scientists wherever applicable would be carried out for the period on date 31.12.1981, 31.12.1982, 31.12.1983, 31.12.1984, 31.12.1985.

10. It is further the case of the petitioners that ultimately, the respondents considered the case of petitioners and issued orders dated 10.01.2002 and



02.07.2002 wherein the competent authority declared the petitioners unfit for promotion. Thereafter, the petitioners along with some other persons questioned the order dated 02.07.2002 by filing OA No. 1784/2004 before the learned Tribunal, Principal Bench, New Delhi, wherein the learned Tribunal vide order dated 02.06.2005 allowed the OA and set aside the order dated 02.07.2002 with a direction to promote petitioners from grade S-1 to grade S-2 in accordance with previous order of learned Tribunal dated 29.11.1999.

11. A writ petition being W.P. No. 870-71/2006 came to be filed by the respondents before this Court challenging the order dated 02.06.2005 and the finality of the order 29.11.1999 was acknowledged, thereby dismissing the writ petition. Thereupon, the respondents issued an order dated 28.03.2006 for antedating promotion of petitioners to ARS Scientist S-2 grade w.e.f 01.07.1996 thereby partially executing the order of the learned Tribunal dated 29.11.1999, as the respondents did not issue any order in respect of consequential merit promotion to the next higher grade (Scientist S-3). Subsequently, the petitioners made representation dated 15.09.2006 seeking information under RTI Act regarding delay in extending consequential benefits and procedures adopted in the past for antedating consequential promotion to similarly placed Scientists.

12. However, the petitioners were repeatedly insisted upon to resubmit the past performance record for the period ending December 1981 and supplementary records thereafter knowing fully well that the ASRB assessment finding on past performance record 1975-83 was submitted in May 2002.



13. The petitioners have submitted that the respondents ought to have considered the petitioners for promotion from S-2 to S-3 grade on the basis of the said records but the respondents again passed the impugned orders and thereby not promoting the petitioners to the Scientist S-3 grade. For that reason, the aggrieved petitioners filed the OA No. 345/2008 before the learned Tribunal for full implementation of the order dated 29.11.1999 earlier passed by the learned Tribunal including their simultaneous promotion to S-2 and S-3 grades and payment of back wages.

14. It is further the case of the petitioners that the learned Tribunal instead of appreciating the facts that by virtue of order dated 29.11.1999, the petitioners ought to have been promoted to both the grades simultaneously, i.e., S-1 to S-2 and then S-2 to S-3, on incorrect assumption and held that it would not be possible for the respondents to promote the petitioners to S-3 grade without going through the required procedure and granted an opportunity to the petitioners to fill up the assessment forms and hand over to the respondents. Thereafter, the respondents will deal with the cases of the petitioners for their promotion to S-3 grade as expeditiously as possible preferably within a period of three months. It further directed that if the petitioners are found fit for promotion to S-3 grade, they would be so promoted from a date persons named above were promoted to S-3 grade. They may not be entitled in that case to pay and allowances of the promoted post but their pension would be fixed as if they had retired on the post of S-3 grade. It is in the facts and circumstances as detailed hereinabove, the petitioners have filed the present writ petition.



### **Submissions of the Petitioners**

15. Mr. Ram Bhushan, learned counsel appearing on behalf of the petitioners submitted that the respondents have grossly discriminated the petitioners vis a vis a majority of similarly situated counterparts in matter of promotion and in giving service benefits and in cadre seniority. The petitioners could not enjoy while in service, the legitimately entitled benefits, status or privileges of ARS Scientists S-3 cadre since July 1982 on account of discriminatory policy adopted by the respondents.

16. It was submitted that the respondents ought to have considered the petitioners for promotion from S-2 grade to S-3 grades on the basis of past performance records from 1975 to 1983 as submitted in May 2002, a few weeks before re-assessment on 04.06.2002. These records were time and again assessed for petitioner no. 1 and were positively recommended by the ASRB. However, the respondents blatantly flouted the order passed on 29.11.1999 by the learned Tribunal and declined promotion to the petitioners from S-2 to S-3 grade also. The contention of the learned counsel was that while the respondents were to consider the petitioners for promotion to Scientist S-3 grade on the basis of the same records of five years for which they had been considered for grant of grade S-2 and therefore, the inaction on the part of the respondents to do so would be a deliberate violation of the order of the learned Tribunal dated 29.11.1999.

17. It was submitted that the respondents have been misleading before all the legal forums that reassessment with respect to the petitioners was required for their promotion to S-3 grade which was a pre condition and fresh records for the period from 01.07.1976 to 31.12.1985 were to be submitted. The completing of residency period of 5 years was not



applicable in case of petitioners on the date of reassessment in the year 2002. Apparently, the respondents have overridden their own policy decision dated 26.06.1995 and as such passed the orders vide two communications dated 09.02.2007 and 20.02.2007 while stating about various orders of the respondents.

18. The learned counsel contended that respondents were considering the petitioners for promotion to S-2 grade and further promotion on the basis of ACRs for the periods ending 1975 to 1979, and as such their action for requiring ACRs for further periods for considering their promotion to grade S-3 would be unwarranted. While relying the operative paragraph in the order dated 29.11.1999, it was submitted that promotion of the petitioners to S-2 and S-3 grades ought to have been considered simultaneously on the basis of already furnished documents.

19. It was submitted that the learned Tribunal also misdirected itself and passed the impugned order on 24.05.2011 by not granting the prayers of the petitioners.

20. The learned counsel for the petitioners to substantiate his arguments relied upon the following judgments:

- (i) **State of Kerala &Ors. v. E.KBhaskaranPillai;** (2007) 6 SCC 524
- (ii) **Ramesh Kumar V. UOI &Ors;** (2015) 14 SCC 335
- (iii) **Punjab State Electricity Board &Ors. V. Kuldip Singh;** (2005) 13 SCC 362
- (iv) **Rajinder Pal Singh Lamba V. Suraj Bhan&Ors;** (2008) 14 SCC 679



(v) **Harigovind Yadav v. RewaSidhiGramin Bank &Ors;** (2006)  
6 SCC 145

**Submissions of the Respondents**

21. Refuting the submissions placed on behalf of the petitioners, Mr. Ajay Digpaul, learned CGSC appearing for Union of India and Mr. S.S. Lingwal, learned counsel appearing for ICAR submitted that the learned Tribunal vide impugned order has duly considered the grievance of the petitioners and there is no illegality in the order. In view of the orders of learned Tribunal in OA No. 1948/1995, the petitioners were reassessed and orders were issued by the respondents for their placement as Scientists from S-1 to S-2 grade w.e.f 01.07.1976. However, the procedure required that the petitioners should submit fresh assessment proforma etc. for their subsequent assessment to the higher grade of S-3 which was due after 5 years in the respective lower grade i.e., w.e.f 01.07.1981. Also, in case, the petitioners were not found fit for being placed in the next higher grade of S-3, they could also be recommended for some advance increments. For such assessments, ASRP essentially required their assessment proforma without which the Board shall be incapable of assessing, recommending for further placement or for advance increments. It was submitted that respondents are prepared to consider the case of the petitioners for next higher grade i.e., S-3, but for which they are to be re-assessed and submission of assessment form by the petitioners in the prescribed proforma is essential.

22. Learned counsel submitted that ironically petitioner no. 1 has assumed that he should be considered for promotion to S-3 grade based on his earlier assessment proformas/documents submitted for being promoted at S-2



grade. The ASRB has categorically clarified its stand that the said interpretation is not administratively tenable and is against the Rules.

23. It was further submitted that the petitioner no. 1 had also raised the said issue in Contempt Case No. 239/2006 before the learned Tribunal which while dismissing the contempt petition filed by the petitioners also observed that promotion to grade S-2 to S-3 cannot be on the basis of the same records. Just as the records for a stipulated period are necessary for consideration for promotion from S-1 to S-2 grade, similarly records relating to the relevant period are to be considered for promotion from S-2 to S-3. It was observed that promotion to grades S-2 and S-3 cannot be on basis of the same records.

24. It was further submitted that the petitioners overlooked the aforesaid observations made by the learned Tribunal in contempt petition and again approached vide OA 345/2008 agitating the same issues which have been held settled by the learned Tribunal. For consequential benefits of promotion to the grade of S-3/grant of advance increments, the petitioners were required to be considered by the ASRB on furnishing necessary 5 yearly assessment proforma and supplementing information as per procedure laid down vide letter No. 5-1/95-(AU) dated 26.06.1995 which has already been provided to them. However, the petitioners have not submitted the desired proforma thereby delaying the complete compliance of the order of learned Tribunal dated 29.11.1999. Thus, the present writ petition is not maintainable.

### **Analysis and Conclusion**

25. We have carefully considered the contentions advanced at length on behalf of the parties and perused the impugned order and the material on



record. Primarily the issue which survives to be considered by us is - *whether the respondents were required to simultaneously consider the promotion of the petitioners to S-3 grade along with their promotion to S-2 grade on the basis of same set of record of their past performance submitted for 1975 to 1983.*

26. The facts of the present case are unusual, though the issue lies in a narrow compass but has been unnecessarily complicated. The petitioners are seeking total compliance of order dated 29.11.1999 and 31.07.2001 of the learned Tribunal passed in OA No. 246/1996 and OA No. 1948/1995 respectively. Their interpretation of the order is that if the petitioners are promoted to grade S-2 and on that basis promoted to still higher grade i.e. S-3, they will be entitled to all consequential benefits except monetary benefits in respect of back wages. Their grievance is that respondents are not implementing the orders of learned Tribunal in true spirit. Controverting their stand, respondents plea is that procedure requires that petitioners should submit the required documents for subsequent assessment of the petitioners for promotion to a higher grade of S3 and after analysis of the documents, if they are found fit for promotion, they would be promoted to S3 grade.

27. The learned Tribunal after dealing with the entire background of the case and adverting to the orders passed on various OAs filed by the petitioners and others as well as the orders by this Court with respect to the writ petitions concluded as follows:-

*“there has to be a periodic assessment of the services rendered by a Scientists seeking promotion from one grade to higher grade. It cannot be automatic and on the basis of the same record which may be relevant for one grade”.*



28. It also observed:-

“there is no material whatsoever brought on record which may show that the applicants by virtue of orders of the Tribunal dated 29.11.1999 have to be given promotions both to S-2 and S-3 grades on the same date and that too based on same record”.

29. It further observed:

*“from the records, we find that it is not that the respondents are the stumbling block in the way of the applicants for promotion to S-3 grade. In fact, they want to consider their promotion to S-3 grade in strict compliance of the orders passed by the Tribunal, but there is a procedure to be gone into. It would not be possible for the respondents to promote the applicants to S-3 grades without going through the required procedure. We are of the firm view that instead of rushing to this Tribunal, the applicants would have done better to comply with the directions by filling up the assessment proforma, which would actually given to them and return the same to the respondents after filling it so that their case for promotion to S-3 grade could be considered.”*

30. On a due consideration of the above, it is apparent that the petitioners were granted promotion from S-1 to S-2 grade in accordance with the directions of the Tribunal dated 29.11.1999 in OA 246/1996, pursuant to the order dated 02.06.2005 passed by learned Tribunal in OA No. 1784/2004. To appreciate the contention of the petitioners that the respondents had partially executed the orders of learned Tribunal dated 29.11.1999 by not granting them simultaneous promotion from S-2 to S-3 grade, it is necessary to reproduce the operative portion of the order in OA 246/1996 which is as under:-

“In view of the above mentioned position, we are inclined to dispose of this OA with a direction to the respondent to consider the case of the applicant for promotion “from S-1 to S-2 grade from earliest date from which any of the aforementioned officers had been so promoted”. If the applicant is promoted as S-2 and on that basis promoted to still higher grade, he will be entitled to all consequential benefits except monetary benefits in respect of back wages”.



31. For the period ending 31.12.1974 for ante dating Scientist Grade 2 promotion w.e.f 01.07.1976 there is no dispute that the order of learned Tribunal dated 29.11.1999 stand complied with. The dispute pertains to the promotion to the next higher grade i.e., S-3 from the due date and for granting consequential benefits.

32. The ARS was constituted w.e.f 01.10.1975. After promulgation of the Rules of 1975, the following grades and payscales were introduced:

| “GRADE            | PAY SCALE      |
|-------------------|----------------|
| Scientist 1 (S-1) | Rs. 700-1300   |
| Scientist 2 (S-2) | Rs. 1100-1300  |
| Scientist 3 (S-3) | Rs. 1500-2000” |

33. In view of the Rules of 1975, the Scientists could be appointed to the aforementioned grades of promotion on the basis of merit as determined in the Rules. It is important to note Rule 19 of Rules 1975, which is replicated as follows:-

“19. Merit Promotion and Advance Increments - There shall be a system of merit promotion from one grade to the next higher grade and advance increment within the same grade in the manner specified below:

(1) The number of posts sanctioned shall relate to the total number in the group of grades as a whole, and not to each individual grade. Promotion from one grade to the next higher grade shall be done periodically on assessment of performance by a procedure to be prescribed by A.S.R.B. The promotion of deserving scientists to the next higher scale will be Irrespective of the occurrence of vacancies in the higher scale.

(2) A scientist will be eligible for screening for promotion of advance increment after the expiry of a period of five years service in the grade.

(3) The first screening of scientists for promotion of advance increment shall be made within one year of the introduction of Agricultural Research



Service and thereafter, once a year as early as practicable after 1st January in respect of all who have become eligible for consideration for promotion on or before the last day of the previous year ending on 31st December.

(4) Promotion or grant of advance increment to the successful scientist shall be given with effect from 1st July of the year in which the assessment is made.”

34. It is manifest from the noting of the above Rule that the promotion of an individual can be made by assessing the individual merit on the basis of service record of the individual.

35. According to the respondents, there is a provision of five yearly assessment of Scientists and the promotion to the next higher grade is irrespective of occurrence of vacancies. The petitioners have not specifically denied the said procedure of merit promotion to be adhered from one grade to another but are emphasizing that as per the order of the learned Tribunal dated 29.11.1999 they were to be simultaneously assessed/re-assessed on the basis of same records for their promotion from S-1 to S-2 grade and then from S-2 to S-3 grade. They have submitted that the criteria and method of five yearly assessment is not applicable in their case, in view of aforesaid the order of the learned Tribunal.

36. Though the petitioners are contending that they were to be simultaneously reassessed on 04.06.2002 under the Court's order dated 06.03.2002 by uprightly following ICAR Policy decision dated 26.06.1995; (a) for period ending 31.12.1975 for antedating Scientist (S-2) promotion w.e.f. 01.07.1976 and (b) for the period 1975-1983 for granting consequential merit promotion to next higher grade (S-3) from due date, however there is no material on record to suggest that both these assessments were actually to be simultaneous. The OM dated 26.06.1995



clearly provides that some of the beneficiaries of the antedation of promotion to the erstwhile Grade S-2 may not have been assessed in Grade S2. For consequential benefit for promotion to grade-3/grant of advance increments, the petitioners were thus, required to be considered again by the ASRB on furnishing necessary five yearly assessment proforma and supplementing information as per procedure laid down by letter dated 26.06.1995 which had already been provided to them. The petitioners have, however, not submitted the desired proforma thereby delaying the total compliance of the order of the learned Tribunal dated 29.11.1999.

37. The ARS Rules specifically provided for provision of five yearly assessment of the Scientists and the promotion to the next higher grade which is irrespective of occurrence of vacancies and on the basis of the rigorous periodic assessment by an external panel of eminent Scientists headed by Chairman/Member, ASRB. A Scientist can be allowed to have a scale of pay higher than that of his grade while continuing in service on the basis of the procedure for assessment prescribed by the Controlling Authority in consultation with ASRB and as per criteria and methods of five yearly assessment of Scientists of the ARS as laid down in the ARS Rules duly filled in prescribed proforma are to be submitted by the concerned Scientist as and when occasion arises for his assessment or reassessment.

38. However, the interpretation of the petitioners of OM dated 26.06.1995 does not seem to be correct. It would not be possible for the respondents to promote the petitioners to S-3 grade which is a higher grade without going through the required procedure. The petitioners are only to fill up fresh assessment proforma and supplementary information proforma and return the same to the respondents which shall in no manner prejudice the



petitioners, so that their cases for promotion to S-3 grade could be considered. If the petitioners are found fit for promotion to S-3 grade, they would be so promoted to S-3 grade. Consequently, the petitioners will be entitled to benefit of the said promotion in fixation of their pension.

39. However, as the cases of the petitioners have been inordinately delayed, the respondents will consider the cases of the petitioners for their promotion to S3 grade within a period of 2 months from the date the relevant documents are furnished by the petitioners.

40. Keeping in view the peculiar facts appearing in the present petition, the judgments relied upon by the petitioners are not of any assistance to their cases.

41. For the reasons noted above, the view taken by the learned Tribunal appears to be justified and there is no ground to interfere in it. Consequently, the writ petition is dismissed.

**SHALINDER KAUR, J.**

**SURESH KUMAR KAIT, J.**

**JANUARY 10, 2024**  
**SU**