Indian Council of Agricultural Research and Another Vs Ram Bilas Mehto and Others
 The Secretary, India Council of Agricultural Research and Another Vs Dharam Singh and Another

Writ Petition (C) 2975 of 2012 and W.P. (C) 3030 of 2012

Court: Delhi High Court

Date of Decision: May 21, 2012

Hon'ble Judges: V.K. Jain, J; Badar Durrez Ahmed, J

Bench: Division Bench

Advocate: B.S. Mor, for the Appellant; V.S.R. Krishna, for the Respondent

Final Decision: Dismissed

Judgement

Bada R Durrez Ahmed, J.

CAV 516/2012 in WP(C) 2975/2012

The learned counsel for the caveators/respondents is present. The caveat stands discharged.

WP(C) 2975/2012 & CM 6422/2012 and WP(C) 3030/2012 & CM 6542/2012

1. These writ petitions are directed against the common order dated 04.11.2011 passed by the Central Administrative Tribunal, Principal Bench,

New Delhi in OA Nos. 4094/2010 & 4096/2010. As a result, we are disposing of the said writ petitions by a common order and / or judgment.

The respondents in both the petitions had initially been appointed as T-1/ Field man in Category - I with the petitioners. Subsequently they were

promoted to the Grades of T-2 and T-1-3, all within Category - I. They were in the Grade of T-1-3 with effect from 01.01.1994. At that point of

time, they were governed by the Technical Service Rules which were existing and which we shall now designate as the Old Technical Service

Rules. In the year 2000, to be precise, on 03.02.2000, New Technical Service Rules were brought into force by the petitioners. At that point of

time, a circular No. 18-1/97.Estt/V dated 03.02.2000 was issued by the Indian Council of Agricultural Research (ICAR). Paragraph 2 of the said

circular carried the details with regard to the changes made in the existing (Old) Technical Service Rules. Paragraph 3 of the said circular dated

03.02.2000 made it clear that the modifications, as set out in the aforesaid paragraph 2, would take effect from the date of issuance of the

notification. More importantly, the said paragraph provided, inter alia, as under:-

Any existing technical employees who may like to be governed only as per the existing technical service rules may do so by specifically exercising

an individual option in writing to the Director of the Institute within a period of 30 days from the date of issue of this notification. Option once

exercised shall be irrevocable and final.

2. Two of the respondents in the said writ petitions, namely, Dharam Singh and Khushi Ram exercised the option for being governed by the New

Technical Service Rules. However, the other respondents did not indicate any option. It is apparent that, by default, they would be governed by

the New Technical Service Rules as is evident from a plain reading of the above extracted portion of paragraph 3 of the circular dated

03.02.2000. Thereafter, in the year 2000 itself, the said respondents were promoted to T-3 in Category - II with effect from 03.02.000, that is,

the date on which the New Technical Service Rules came into operation. Subsequently also, on 03.02.2005, the respondents were promoted to

T-4, which was also in Category - II. Thus, it is clear that the respondents had taken the benefit of the New Technical Service Rules after they

came into operation in the year 2000 and thereby got two promotions from T-1-3 in Category - I to T-3 in Category - II and from T-3 in

Category - II to T-4 in Category - II.

3. Thereafter, in the year 2006, on account of requests for fresh options from all quarters, by virtue of a circular dated 19.10.2006, ICAR decided

to allow an opportunity of exercising a fresh option to the employees with regard to their choice of being governed by the Old Technical Service

Rules or the New Technical Service Rules. A similar circular was also issued by Indian Agricultural Research Institute (IARI) on 14.11.2006 with

reference to the ICAR circular of 19.10.2006. It is an admitted position that IARI is one of the institutes of ICAR.

4. In the said circular of 19.10.2006 issued by ICAR, while it has been pointed out that the New Technical Service Rules are the ones that were

introduced on 03.02.2000, it had not been made clear that those persons, who exercised the option in the year 2006, would be dealt with

retrospectively, with effect from 03.02.2000 under the New Technical Service Rules.

5. The respondents were under the impression that on their exercising the fresh option which was offered to them in the year 2006, the same would

be effective prospectively from 2006 and would not affect their earlier promotions which had taken place during 2000 to 2006 under the New

Technical Service Rules. It was also contended on behalf of the respondents that the circular of 2006 did not give any indication that the effective

date of applying the new option would be from 03.02.2000, retrospectively.

6. In any event, the respondents exercised their option for being governed under the Old Technical Service Rules. The position continued till 2010.

The respondents continued to work in the higher posts of T-4 in Category - II. However, after four years, that is, in 2010, the promotions granted

to them in 2000 and 2005 were sought to be withdrawn. Individual orders of withdrawal were issued to the respondents. Being aggrieved by the

same, they filed the said Original Applications before the Tribunal. By virtue of the impugned order dated 04.11.2011, the Tribunal allowed the

Original Applications and set aside the orders of withdrawal, meaning thereby that the respondents would continue in their position at T-4 in

Category - II but they would be governed by the Old Technical Service Rules with effect from 2006 onwards.

7. We are in agreement with the view taken by the Tribunal. It is abundantly clear that during the period 2000 to 2006, all the respondents,

whether by a specific option or by default, were governed by the New Technical Service Rules. It is under those rules, which were operational

during that period, that the respondents got their two promotions to T-3 and T-4 Grades. However, for whatever reason, the petitioners issued

circulars in 2006 requiring the respondents and other employees to exercise their option as to whether they would like to be governed by the Old

Technical Service Rules or by the New Technical Service Rules. This time round, all the respondents opted for the Old Technical Service Rules.

They were under the impression that the option would take effect prospectively, that is, from 2006 onwards. This impression of theirs was further

fortified by the fact that the petitioners allowed them to continue in their position at T-4 in Category - II for four years. It is only in 2010 that the

petitioners issued the withdrawal orders whereby the promotions granted to the respondents under the New Technical Service Rules, were

withdrawn. It is, of course, necessary to point out that the withdrawal orders were issued after show cause notices had been issued to the

respondents and their replies had been received.

8. Be that as it may, the fact remains that by virtue of the withdrawal orders, the respondents would be reverted back to the Grade of T-1-3 in

Category - I, which they had acquired in 1994. It would mean that the clock would be set back to just prior to 03.02.2000, when, under the New

Technical Service Rules, they were promoted to the Grade of T-3 in Category - II. Apart from being unfair, unjust and unreasonable, the position

adopted by the petitioners is also untenable in law. This is so because the petitioners did not indicate to the respondents in 2006 that if they were to

exercise the option for the Old Technical Service Rules, then their previous promotions under the New Technical Service Rules would be washed

away and they would be reverted to their original positions in the Grade of T-1-3 in Category - I. It is, therefore, clear that since there was no

indication that the option of 2006 was to operate retrospectively, the said option exercised by the respondent in 2006 would, in law, only take

prospective effect, that is, from 2006 onwards.

9. The learned counsel for the petitioner had also submitted that the respondents, having once exercised the option, ought to be governed by the

same. He submitted that the options were given to all the employees and, therefore, they were bound by the same although, as a result, some

would be gainers and some would be losers. We are, however, not concerned with the question of who would gain or who would lose, but with

the question as to what would be the date from which the circular of 2006 is to take effect. There is no indication in the circular that the option

exercised in 2006 would operate retrospectively. The understanding of the respondents was that the options exercised by them in 2006 would

operate prospectively. And, there is nothing unreasonable in such an understanding. As indicated above, the conduct of the petitioners indicates

that their understanding also was that the options were to operate prospectively. There is no merit in the argument raised by the learned counsel for

the petitioner. In view of the foregoing, we accept the view taken by the Tribunal. There is no merit in the writ petitions. The same are dismissed.

There shall be no order as to costs.