

PETITIONER:
INDIAN COUNCIL OF AGRICULTURAL RESEARCH

Vs.

RESPONDENT:
A.N.LAHIRI

DATE OF JUDGMENT: 11/04/1997

BENCH:
S.B. MAJUMDAR, M. JAGANNADHA RAO.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.B.Majmudar, J.

Indian Council of Agricultural Research ('ICAR' for short) though its Director General has moved this appeal on special leave against the judgment and order rendered by Central Administrative Tribunal, Jodhpur Bench, Jodhpur in Original Application filed by the respondent herein. In order to appreciate the grievance of the appellant a few introductory facts are required to be noted at the outset.

The respondent was initially selected by the Union Public Service Commission on the post of plant phvsionlogist in the year 1960 and accordingly joined the Agricultural Department of Government of India on 1st October 1960 at Central Arid Zone Research Institute.Jodhpur, Rajasthan. On 6th March 1967 the respondent opted for the service of ICAR and he was absorbed in its service and was given substantive appointment with effect from 1st December 1966. On 9th April 1975 the respondent was selected for the post of Head of Division of Soil Water Relationship which was subsequently reorganized and re-designated as Division of Arable copying System. Respondent was given a time scale of Rs.1800-2000/-.

In the year 1975 ICAR restructured its services and constituted a service known as Agricultural Research Service ('ARS' FOR SHORT) This service was constituted with effect from 1st October 1975 and the rules regulating the constitution of the service were also framed by the appellant. It is the case of the ICAR that pursuant to the formation of ARS the scientists working under it were required to furnish bio-data for induction in ARS and that the respondent didn't furnish his bio-data till 30th September 1980, the last date for submitting the bio-data, in response to guidelines of ICAR as a result of which he was not considered for induction onto ARS. That on 8th December 1976 respondent submitted a representation to the Director General, ICAR to grant him next higher grade namely, Rs.1800-2250/-. According to the ICAR the induction into the ARS was a one time operation and was to be done strictly in accordance with the prescribed procedure laid down for this purpose. Under the Rules the prescribed time limit was 30th September 1980. In the ARS induction of

scientists was to be effected in the appropriate time scales available in ARS. That for the scientists holding posts in the scales for Rs.1500-1800/- Rs.1500-2000/- Rs.1500-2000/- and Rs.1800-2000/- only one grade of S-3 of Rs.1500 -2000/- was available for induction. According to the appellant the respondent was not willing to be absorbed in S-3 grade but wanted induction in S-4 grade in the scale of Rs. 1800-2250/-. Result was that respondent remained outside the purview of ARS. In the meantime an order came to be passed by President of ICAR on 16th July 1985 continuing the respondent on a permanent basis in ICAR excluding his post from ARS. The said order was not challenged by the respondent at any time thereafter. It appears that subsequently when UGC pay scales were introduced for ARS scientists holding different grades from S to S-3, the respondent who was all throughout continuing as Head of the Department had second thought and submitted his option on 20th August 1988 who was all through out for induction in ARS. The ICAR by an order dated 9th March 1989 adopted UGC pay Scales the ARS, scientists with effect from 1.1.86 as per the decision of the Government of India. As the respondent was outside the ARS he did not get this benefit of UGC pay scales. The respondent's contention was that he should be deemed to be absorbed in ARS even on the then existing S-3 pay scale which got revised upwards as per UGC pay scales to Rs. 4500-7300/-. As this was not made available by the ICAR to him he moved the Tribunal by an application. The said application, as noted earlier, came to be granted by the Tribunal by the impugned order which is challenged by the appellant in this appeal.

Learned counsel appearing for the appellant vehemently submitted that respondent according to his calculations and in his own wisdom thought it fit to remain outside ARS when it was introduced in 1975 as he would have been inducted only as scientist in the maximum scale of S-3 which was Rs.1500-2000/- in those days. Respondent was already in the pay scale of Rs.1800-2000/- in ICAR itself and was also enjoying the Position of Head of the Department. However if he would have joined ARS as per the Scheme applicable to ARS he would have been required to give up headship by rotation as prescribed by rules which he was not willing to do. He also insisted that he should be inducted in ARS in the time scale available to S-4 scientists which was not permissible as per the scheme. Accordingly he remained outside ARS and that is the reason why he did not challenge the order dated 16th July 1985. Consequently when pay scales of S-3 scientists in ARS were enhanced by adopting UGC pay scales with effect from 1.1.86 respondent obviously could not get the benefit thereof being outside ARS. That he could not get best of both the words, namely, to get permanent headship by remaining outside ARS and still claim the pay scale available to scientists in ARS. Therefore, his claim for getting UGC pay scales of Rs.4500-7300/- was obviously untenable. That when he remained outside the ARS he ultimately got escalation of pay scales when made available to Central Government employees as per the IVth Central Pay Commission Report, namely, Rs.4100-5300/- and when he retired from service in 1996 he was rightly allowed to retire in the said time scale. It was next contended that the Tribunal was in error in taking the view that on the principle of Equal pay for Equal Work the respondent was entitled to get the time scale of Rs. 4500-7300/- available to ARS scientists as the respondent was not in that category.

Learned counsel for the respondent on the other hand

submitted that when the ICAR service was restructured in 1975 all the ICAR employees automatically got absorbed. That there was no provision for an ICAR employee to opt out for absorption. Absorption was automatic and that the respondent was never informed at any time thereafter that his absorption was granted so as to enable the respondent to exercise his option of not being absorbed, within six months of the decision of the Board to absorb him. That even otherwise under the scheme the respondent could opt for being absorbed even later on in ARS and that is how respondent had opted for ARS in 1988. That even though he might have asked for a higher pay scale of S-4 scientists as per ARS scheme he would be deemed to be absorbed at least in pay scale of S-3 scientists and once that happened the UGC pay scales made applicable to escalated pay scale of S-3 scientists would automatically become available to the respondent. He, next submitted that the order of 1985 was clearly unauthorised and incompetent. In any case on the principle of Equal pay for Equal Work the respondent was rightly held entitled to the pay scale of Rs.4500-7300. Learned counsel for the respondent further submitted that respondent has already retired in 1996 and on the peculiar facts of this case, therefore, this court may not interfere under Article 196 of the Constitution of India.

We have given our anxious consideration to these rival contentions. So far as the question of respondent's absorption in ARS is concerned, on a close look of the scheme of restructuring the erstwhile service of ICAR it appears to us that absorption of the erstwhile ICAR candidates was automatic. All the ICAR's candidates had to be considered for initial constitution of the Cadres in ARS. Our attention was invited to the contents of the New Personnel policy adopted by ICAR. Referring to the New personnel Policy it was stated in the scheme that the ICAR had restructured its personnel policies towards all the categories of the staff - scientific, technical, administrative and supporting. For the scientific staff, an Agricultural Research Service was started on 2nd October 1975. The composition of services included all the posts the incumbents of which were engaged in agricultural research and education (including extension education). All these posts had been grouped under various disciplines the details of which had been given in Appendix I to the Scheme. When we turn to Appendix I we find listed various disciplines for the purpose of recruitment to the ARS. The grades of service were to consist of Scientist (s), Scientist 1 (S-1), Scientist 2 (S-2) and Scientist 3 (S-3). The highest time scale was available to the cadre of S-3, i.e., Rs.1500-2000. About the initial constitution of ARS it was mentioned in the scheme that the service had been initially constituted with effect from 1st October 1975 out of the regular employees of the ICAR who were found of eligible and suitable by Agricultural Scientists Recruitment Board. Dealing with initial constitution of the Service, namely, ARS it was provided that the existing employees of the ICAR holding scientific and technical posts on the date of the constitution of the service, i.e., 1st October 1975 on regular basis and satisfying the other conditions of eligibility were to be treated as eligible for being inducted in the service. Screening for induction was to be done by the Board. Persons who were not absorbed at the time of initial constitution of the service could be considered again for appointment to the service at a subsequent stage or stages. Any person who did not desire to be absorbed in the service could continue to hold the position already held

by him provided that he informed the ICAR accordingly within a period of six months from the date of his selection for induction into the service. Dealing with Heads of Divisions in the Institutes it was provided That the posts of Heads of Divisions in the Institutes could be filled by rotation from amongst the professors in the Divisions or other senior scientists in the Scales of pay of Rs.1500-2000 or Rs.1800-2000. The suitable guidelines were being evolved for the purpose. Appendix II to the scheme dealt with service rules for ARS. 'Council's candidates' were defined by Rule 2(i) to mean, 'persons specified in Schedule I on the date of constitution of the Service'. When we turn to schedule I framed in the light of Rule 2 we find Council's candidates to be considered for initial constitution of this cadre being those who are employed on the date of sanction of the service on regular basis amongst others.

In the light of the aforesaid salient features of the restructured scheme ARS, it, therefore, becomes clear that all existing 'council's candidates' working on regular basis as scientists became eligible for automatic absorption and if on screening absorption was refused on any ground such unabsorbed persons also could be considered for appointment to the service at a subsequent stage. Therefore, there was no question of the respondent initially opting for the service. The only option which he had was to opt out of the service once he was originally absorbed. learned counsel for the respondent was right when he contended that there was nothing on the record to show that at any time the appellant had informed the respondent that he was not found eligible for absorption. Accordingly we may proceed on the basis that initially when ARS was introduced on 2nd October 1975 the respondent became entitled to be absorbed as S-3 scientist as there was no higher scale of S-4 grade of scientists in the time scale of Rs.1800-2250 was available for research management positions only and those who were eligible for S-4 grade onwards were only six categories of Scientists, namely, (i) Director-General, (ii) Dy. Directors-General, (iii) Directors of the Institutes, (iv) Project Directors, (v) Joint Directors, and (vi) Asstt. Directors General. Respondent admittedly did not fall in any of these categories. Therefore, he could not have been inducted in the time scale of S-4 scientists. In view of these circumstances despite the automatic absorption of respondent in S-3 grade from 1st October 1975 it appears that respondent was not willing to accept the said absorption in S-3 grade and insisted for induction and absorption in S-4 grade. That is clear from his own letter dated 7th February 1979 which he addressed to the Director General of the ICAR. The following averments made by respondent in the aforesaid communication speak for themselves. They read as under :

"However, we are also deeply concerned about the future developments of an unresolved issue which was receiving your kind and sympathetic consideration. This issue relates to the revision of the pay scale of Head of Divisions, presently in the grade of Rs.1800-2000 to Rs.1800-100-2000-125/2-2250.

Although I have not heard anything specific regarding the development of this case, i understand that this proposal may be acceptable

provided it becomes operative from October 1, 1975. In this connection i have to submit that I am agreeable to accept the revision of the pay scale from this date under my existing terms of appointment."

The aforesaid communication by respondent leaves no room for doubt that he was not willing to be absorbed in the pay scale of Rs.1800-2000 meaning thereby S-3 grade in ARS and he wanted induction in S-4 pay scale of Rs.1800-2250. As we have seen above under the scheme such a higher pay scale was not available to the respondent for being inducted in ARS. Consequently even accepting the contention of learned counsel for the respondent that he stood automatically absorbed on 2nd October 1975 as scientist S-3 in ARS, by his own volition he exercised his option not to be absorbed as scientist of S-3 grade of ARS. Learned counsel for the respondent submitted that he only wanted a higher pay scale but it would not amount to his opting out of ARS. Once he was automatically absorbed therein. It is not possible to agree with this contention of the learned counsel for the respondent. Respondent was already Head of the Department and he made it clear in so many terms in the said communication dated 7th February 1979 that he was agreeable to the revision of pay scale as suggested by him meaning thereby short of that he was not willing to accept lower pay scale of Rs.1500-2000. The reason was obvious. He was also Head of the Department. Thus there was no economic gain to him by accepting a lower time scale of Rs.1500-2000 by getting inducted as S-3 grade scientist in ARS which would, apart from not bringing him any monetary gain, result in his losing the post of Head of the Department as by rotation he would have been required to vacate the same if he had joined ARS as S-3 grade scientist. Therefore, his stand was justified in not being absorbed in ARS in those days. Not only that because of his insistence the president of ICAR order dated 16th July 1985 treated respondent to be out of ARS and made him permanent as Head of the Department on an independent pay scale in ICAR. It is not possible to agree with the contention of learned counsel for the respondent that the said order was incompetent. Respondent had not thought it fit to challenge the said order at any time on that ground. Not only that but he accepted the benefit flowing out of the said order by remaining outside ARS and enjoying the headship of the Department on a permanent basis till he retired in 1996. Consequently it must be held that the respondent on his own volition had remained out of ARS. Consequently the subsequent escalation of the pay scales of ARS scientists under UGC pay scales with effect from 1.1.86 could not have been automatically earned by the respondent.

On the aforesaid conclusion of ours the respondent would ex facie appear to lose his battle. However there is one silver lining to the dark cloud which otherwise engulfs the respondent's case and that silver lining is highlighted by the Tribunal and which in our view stands well sustained. We may now advert to the said aspect of the matter.

The Tribunal has held that the work which the respondent was doing as a scientist was of the same type as was being carried out by scientists who had been inducted in the ARS. Not only that his juniors who were actually working under him, as he was the Head of the Department, and who had joined ARS got the benefit of higher pay scale of Rs.4500-7300. The nature of work which they were doing was of the same type as was done by their Head of the Department. Qualification wise there was no distinction between the two

sets of employees. Their initial source of recruitment was also the same. Their initial source of recruitment was also the same. Their employer was also the same, namely, ICAR. It is the same employer who had two sets of employees, one governed by ARS system of service and the others who were outside ARS but still very much doing the same type of work as scientists and belonging to the same institution, namely, ICAAR, of course forming a separate wing of employees. Under these circumstances, therefore, the doctrine of Equal pay for Equal work got squarely attracted. The conclusion to which the Tribunal reached on this aspect, therefore, cannot be faulted from any angle. Not only that but in the case of one Dr. Gupta who also was a scientist working under the ICAR and who was outside ARS was directed to be given same pay scale of Rs.4500-7300 as was made available to ARS scientists by decisions of this Court in the case of Dr. Y.P.Gupta V. Union of India & Ors. (1984) 2SCC 141. Under these circumstances, therefore, it could not be said that the Tribunal had committed any error in directing the appellant to make the same pay scale of Rs. 4500-7300 available to the respondent as was made available to a similarly situated employee like Dr. Gupta who was almost equally circumscribed as the respondent and although being out of ARS was still held entitled as per this court to the same escalated time scale of Rs4500--7300 which was made available to ARS scientists. it is also to be kept in view that the respondent has already retired from service and his is almost an isolated case. under these circumstances, without treating this case as a precedent we deem it fit not to interfere with the order of the Tribunal under Article 136 of the constitution of India.

For all these reasons, therefore, this appeal fails and stands dismissed. Interim stay granted earlier by an order of this Court dated 30th August 1994 shall stand vacated. The appellant shall work out all the monetary benefits available to the respondent pursuant to the order of the Tribunal as confirmed by us and make them available to the respondent preferably within a period of four months from the date of receipt of a copy of this order at its end. In the facts and circumstances of the case there will be no order as to costs.