

Director, General Rice Research ... vs Khetra Mohan Das on 6 October, 1994

Equivalent citations: AIR 1995 SUPREME COURT 122, 1994 (6) SCC 727, 1994 AIR SCW 4150, 1994 AIR SCW 4154, (1994) 6 JT 475 (SC), (1995) 32 ALLCRIC 37, (1995) 1 MAHLR 789, (1995) 21 MARRILJ 207, (1995) 1 CRICJ 55, (1995) 1 DMC 86, (1995) MATLR 79, (1994) 4 CURCRIR 814, (1994) 3 CRIMES 608, (1994) 3 ALLCRILR 765, (1994) 3 RECCRIR 625, (1994) 5 SERVLR 728, 1995 (1) IJR 164, 1994 (6) JT 482, 1994 (3) SCC(SUPP) 595, 1995 SCC (L&S) 179

Author: R.M. Sahai

Bench: R.M. Sahai

CASE NO.:

Appeal (civil) 4726 of 1991

PETITIONER:

Director, General Rice Research Institution, Cuttack and Anr.

RESPONDENT:

Khetra Mohan Das

DATE OF JUDGMENT: 06/10/1994

BENCH:

A. M. Ahmadii & R.M. Sahai & K. Jayachandra Reddy

JUDGMENT:

JUDGMENT 1994 Supp(2) SCR 301 JUDGMENT K. Jayachandra Reddy, J.

1. This appeal by the Director, General Rice Research Institute is filed against the order of the Central Administrative Tribunal, Cuttack Bench, Cuttack holding that the respondent Khetra Mohan Das should be held to have been appointed in the Category II Grade T-II-3 in the scale of pay of Rs. 425-700 with effect from the date the Technical Services Rules of the Indian Council of Agricultural Research ("I.C.A.R." for short) came into force. To appreciate the point involved, it is necessary to state few material facts.

2. An advertisement was made inviting applications for appointment for a Senior Field Assistant, one of the technical posts mentioned in the Hand Book of the Technical Services under the I.C.A.R. The concerned employment exchange sponsored the name of the respondent who held a degree of B.Sc. (Hons.). He was appointed in the year 1971 in the Central Rice Research Institute ("C.R.R.I." for short) Cuttack, a wing of I.C.A.R. as a Senior Field Assistant in the scale of pay of Rs. 150-300.

On the report of the Third Pay Commission, that scale was revised to Rs. 330-560 with effect from 1.1.73. On 1.10.75 the Technical Service Rules of the I.C.A.R. came into force. Para 3.1 provides as under:

Categories and Grades of the Services

3.1 The Technical Services are grouped into three categories consisting of the following grades:

Category Grade Pay Scale Category - I (T-I i) Rs. 260-6-290-EB-6-326-8-366

-EB-8-390-10-430 (T-2 ii) Rs. 330-10-380- EB-12-500-EB -15-560 (T-I-3) iii) Rs. 425- 15-500-EB-15-560-20 -700 Category - II (T-II-3) i) Rs. 425-15-5-EB-15-560-20-700 (T-4 ii) Rs. 550-25-750-EB-30-900 (T-5 iii) Rs. 650-3-740-35-810-EB-35- 880-40-1000-EB-40-1200 Category- III (T-6 i) Rs. 700-40-900-EB-40-1100- 50-1300 (T-7 ii) Rs. 1100-50-1600 (T-8 iii) Rs. 1300-50-1700 (T-9 iv) Rs. 1500-60-1800-100-2000 The next relevant paras for the purpose of this case are Paras 3.2, 3.3 and 5.1 which read as follows:

3.2 The pay scales in Categories I & II replace the existing pay scales in the manner indicated in Appendix I. The new pay scales in Category III are the same as the existing pay scales.

3.3 The new pay scales will be applicable both to the future entrants as well as to the existing incumbents from 1.10.1975. However, the existing incumbents may, if they so desire, retain their existing scales as personal to them.

xxxxxxx xxxxxxxx xxxxxxxx Initial Adjustment of Existing Employees 5.1 The existing permanent and temporary employees appointed through regularly constituted D.P.C./Selection Committees will be fitted into the grades specified in para 3.1. on "point to point basis" without any further screening irrespective of their qualifications. However, persons holding positions in the merged grade of Rs. 425-700 and possessing qualifications prescribed for Category II, will be fitted in grade T-II-3 (Rs. 425-700) As per these rules the respondent was inducted into Category I Grade T-2 and as seen above the scale of pay for the persons holding post in Category I Grade T-2 was fixed at Rs. 330-560. The respondent made a representation that as per the rules he ought to have been fitted in the lowest grade of Category II i.e. T-II-3 for which the scale of pay prescribed is Rs. 425-700 and also that a Field/Farm Technician holding either a 3 years diploma or a bachelor's degree in the relevant field should be fitted in Category II. As the representation was not fruitful he filed a writ application in the High Court of Orissa which after the establishment of the Central Administrative Tribunal was transferred to Cuttack Bench. In the counter-affidavit filed on behalf of C.R.R.I. it was stated that the respondent was correctly inducted into Category I Grade T-2 and that as per the provisions of Rule 5.1 the existing permanent and temporary employees will be fitted only in the grades specified in para 3.1 on point to point basis without any further screening irrespective of the qualification. It is, however, stated that only of the persons holding positions in the merged grade of Rs. 425-700 and possessing qualifications prescribed for Category II would be fitted in Category II

Grade T-II-3 carrying the pay scale of Rs. 425-700 and that since the respondent was not holding a post carrying the pay scale of Rs. 425-700 he would not be entitled to be inducted into Category II of the Technical Service Rules. The Tribunal, however, held that the moment the Rules became applicable the necessary consequence was that a person should be fitted in the category for which he possesses the minimum qualification required and that at any rate since the respondent has been promoted to Category I Grade T-I-3 carrying the same scale of Rs. 425-700 as that of Category II Grade T-II-3 he should be deemed to have been fitted into Category II Grade T-II-3. In this context the Tribunal also observed that if the respondent is made to remain in Category I then he can not have any further promotion to Grade T-4 and grade T-5 in Category II. In this view of the matter the Tribunal allowed the petition and held that the respondent should be deemed to have been appointed into Category II Grade T-II-3.

3. Questioning the findings of the Tribunal, it is submitted by the learned Counsel for the appellant that because of the revision of pay scale of Rs. 150-300 to Rs. 330-560 by the Third Pay Commission with effect from 1.1.1973 and when the I.C.A.R. Rules came into force, the respondent who was in the scale of Rs. 330-560 could only be fitted into Category I Grade T-2 and not in any other higher category. He also submitted that a careful reading of Para 5.1 would show that the existing permanent and temporary employees can be fitted into the respective grades specified in Para 3.1 on point to point basis without any further screening of their qualifications and that however only persons holding positions in the merged grade of Rs. 425-700 and possessing qualifications prescribed for Category II could be fitted in Grade T-II-3.

4. Therefore the only question that arises for consideration is whether the respondent who was admittedly in the pay scale of Rs. 330-560 was entitled to be fitted in Category I Grade T-I-3 and further by virtue of Rule 5.1 he ought to have been fitted in Category II Grade T-II-3. As noted above Para 5.1 lays down that all the existing permanent and temporary employees appointed would be fitted into their respective grades specified in Para 3.1 on point to point basis. The respondent who was in the pay scale of Rs. 330-560 could only be fitted into Category I Grade T-2 and only the persons holding positions in the merged scale of Rs. 425-700 i.e. Category I Grade T-I-3 and possessing the necessary qualifications prescribed for Category II could be fitted in Category II Grade T-II-3 for which also the scale is the same. Merely because one possessed the qualification, he cannot claim as a matter of right that he should be fitted into Category II Grade T-II-3. The initial induction should be only on the basis of pay scale. If the respondent was entitled to be fitted in Category I Grade T-I-3 (Rs. 425-700) on the relevant date and if he possessed the qualification for Category II then only he could be fitted in Category II Grade T-II-3 by virtue of Para 5.1 and the respondent could not be fitted in Category I Grade T-I-3 because of the difference in the pay scale. As per the Rules he could be fitted in Category I Grade T-II and merely because he possessed the qualification for Category II he cannot claim as a matter of right to be fitted in Category II Grade T-II-3. Para 5.1 does not permit such an induction.

5. Learned Counsel for the respondent, however, strongly relied on Para 7.2 as it existed then which reads as follows:

Promotion xx xx xx 7.2 Vacancies in Grade T-II-3 in Category II may also be filled by promotion of persons in Category I possessing qualifications prescribed for Category II." According to the learned Counsel, a plain reading of this Rule as it stood makes it clear that any person in Category I of any grade possessing qualifications prescribed for Category II would be entitled to be promoted to Category II Grade T-II-3 and that as the respondent who was in Category I Grade T-2 and who possessed qualifications prescribed for Category II, would automatically be entitled to be promoted to Category II Grade T-II-3. We see no force in this submission which overlooks fact that between Grade T-2 of Category I and Grade T-II-3 of Category II, there is Grade T-I-3 of Category I for which the scale of pay is Rs. 425-700. A person fitted in Grade T-2 in Category I can not straightaway make a claim to Grade T-II-3 of Category II skipping over the higher grade T-I-3 of Category I which is in between. If this submission has to be accepted, then a person in Grade T-I of Category I which is the lowest in that grade can on the basis that he possesses the qualifications for Category II also claim that he should also automatically be promoted to Grade T-II-3 of Category II as per above Rule 7.2. That can not be the object underlying the above mentioned Rule 7.2 and such an interpretation of the Rule can not be given. It is pertinent to note at this stage that Rule 7.2 deals with only promotions of persons in Category I possessing the necessary qualifications to the higher Category II and has nothing to do with induction contemplated under Rule 5.1. This is only made obvious by virtue of a later amendment of Rule 7.2 which reads as follows:

Promotion xxxxxxxx xxxxxxxx xxxxxxxx 7.2 20% vacancies in grade T-II-3 may also be filled by promotion of persons in grade T-I-3 possessing qualifications prescribed for Category II." From the amended Rule it can be seen that vacancies in Grade T-II-3 of Category II can be filled by promotion only of those persons in Category I Grade T-I-3 possessing qualifications prescribed for Category II. So far as the initial adjustment of existing employees is concerned, it is only Rule 5.1 dealing with induction which is relevant and as per that Rule, as discussed above, only persons holding positions in the merged scale of Rs.

425-700 which is the scale for Category I Category T-I-3 can be fitted in Category II Grade T-II-3 for which also the scale is Rs. 425-700 provided such persons holding positions in the merged sale of Rs. 425-700 possess the qualifications prescribed for Category II.

6. Learned counsel for the respondent, however, submitted that it is unamended Rule 7.2 as extracted above which is applicable to the case of the respondent. As mentioned above even as per the unamended rule the respondent cannot claim induction into Grade T-II-3 of Category II straightaway from Grade T-2 of Category I merely on the basis of qualifications. He can only claim promotion to Category II Grade T-II-3 provided he was holding a position in the next lower grade namely Grade T- I-3 of Category I. A promotion is different from fitment by way of rationalisation and initial adjustment. Promotion, as is generally understood, means; the appointment of a person of any category or grade of a service or a class of service to a higher category or grade of such service or class. In C.C. Padmanabhan and Ors. v. Director of Public Instructions and Ors. : [1981]1SCR128

this Court observed that "Promotion" as understood in ordinary parlance and also as a term frequently used in cases involving service laws means that a person already holding a position would have a promotion if he is appointed to another post which satisfies either of the two conditions namely that the new post is in a higher category of the same service or that the new post carries higher grade in the same service of class. Viewed from any angle it is clear that when these Rules came into force only a person in Grade T-I-3 of Category I (Pay scale - Rs. 425-700) would be entitled to be inducted in Grade T-II-3 of Category II provided he possessed the necessary qualifications prescribed for Category II. The promotion to Category II in the case of the respondent can be only as per Rule 7.2 and not by way of induction as claimed by the respondent. As a matter of fact I.C.A.R. while replying to the further representations made by the respondent, made it clear by its letter dated 5th April, 1978 that those persons who are in Grade t-2 of Category I and who possess qualifications for Category II and earn merit promotion as a result of performance assessment for five years service would be promoted to next higher grade T-1-3 and on the basis of further assessment of performance in that grade would be considered for promotion to Grade T-II-3 of Category II provided they possess the qualifications prescribed for Category II.

7. The Tribunal, however, observed that in the meantime the respondent has been promoted to Grade T-I-3 of Category I carrying the same scale as Grade T-II-3 of Category II, therefore he should be deemed to have been inducted into Grade T-II-3 Category II. This reasoning is erroneous. The crucial date is 1.10.1975 on which date the Rules came into force and for fitment into the necessary categories Rule 5.1 has to be applied and the existing employees should be fitted only in the grades specified in Para 3.1 on point basis on the basis of their existing scales of pay on that date. The subsequent promotion of the respondent from Grade T-II of Category I to Grade T-I-3, the higher grade in the same Category can not make any difference so far as the initial fitment on 1.10.1975 is concerned as contemplated under Rule 5.1. The Tribunal also made a reference to Rule 8.1 which applies only to direct recruits and it has no relevance so far as the case of the respondent is concerned.

8. For all the above reasons, the finding of the Tribunal that the respondent should be held to have been appointed in Grade T-II-3 of Category II in the pay scale of Rs. 425-700 with effect from 1.10.75 is set aside. Accordingly the appeal is allowed but there shall be no order as to costs.