

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**JABALPUR**

**Original Application No.200/01133/2016**

Jabalpur, this Friday, the 17<sup>th</sup> day of January, 2020

**HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Dr. Jay Gopal Varshney

A/a 66 years

Son of Late Shri Biharilal

Retd. Joint Director in Agriculture Discipline

R/o 304 Rajul Park View

Tilhari Jabalpur (M.P.) 482020

**-Applicant**

(By Advocate –**Shri Praveen Dubey**)

**V e r s u s**

1. Union of India, Through Secretary Ministry of Agriculture and Farmer Welfare Department of Agriculture Research and Education Krishi Bhawan New Delhi 110001

2. Indian Council of Agriculture Research, (ICAR) through Secretary, Krishi Bhawan, New Delhi 110001

3. Indian Audit and Accounts Department through Director Office of Principal Director of Audit, Scientific Department Kolkata (WB) 700120

4. Indian Council of Agriculture Research, ICAR Research Complex NEH Region Umiam Meghalaya 793103

5. Directorate of Weed Science Research (ICAR) through Director Maharajpur Adhartal Jabalpur (MP) 482004

6. Dr. A.R. Sharma Director of Directorate of Weed Research Maharajpur Adhartal Jabalpur District Jabalpur (MP) 482004

**-Respondents**

(By Advocate –**Shri Vikram Singh**)

(Date of reserving the order: 31.10.2019)

## **ORDER**

This Original Application has been filed by the applicant against the order dated 01.10.2016 (Annexure A/1), 21.10.2016 (Annexure A/2) and audit report Annexure A/3 passed by respondent No.4 whereby recovery has been made against the retirement dues.

2. The applicant has prayed for the following reliefs:-

*“8.i) Quash the impugned order dated 01.10.2016 Annexure A/1, 21.10.2016 Annexure A/2 and audit report Annx. A/3, passed by respondent No.4 including the whole proceedings conducted against applicant leading to impugned recovery;*

*8.ii) To command respondents to stop the recovery of the amount which is being done from the pension of the applicant and to continue to pay the full pension, as is applicable to him;*

*8.iii) To direct respondents to pay the recovered amount to the applicant, which was illegally been recovered from him with 18% interest per annum;*

*8.iv) To call for the entire records relating to the applicant from respondents;*

*8.v) To grant any other relief deemed proper to the facts and circumstances of the case.*

*8.vi) to grant cost of Rs.5 Lakhs to the applicant, which may be recovered from the erring officers.”*

3. The facts of the case are that the applicant was appointed as Scientist by respondent No.2. The applicant was directly appointed by way of direct selection to a tenure post of Director under respondent No.2. The applicant worked at Jabalpur from May 2006 to 21.06.2011 and thereafter was transferred to ICAR Research Complex Sikkim. The applicant got retired on 30.11.2012. Provisional pension was sanctioned vide order dated 30.07.2014 and the final PPO was issued by respondent No.4 vide letter dated 30.12.2014. The same are annexed at Annexure A/4 and A/5. The objection was raised against the applicant that the applicant has failed to occupy the service quarter constructed for the Director and lived in a private rented accommodation. Therefore, the applicant was required to recover an amount of Rs.5,17,524/- for the period from 2004 till 2011. There are objections by audit relating to the use of personal car, employment of security person at the residence of applicant, claiming of LTC. These points have been clearly

explained by the applicant vide his representation dated 26.03.2012 (Annexure A/9). The applicant has also issued a clarification vide letter dated 27.09.2016 (Annexure A/10). The respondent No.5 vide its letter dated 31.10.2011 directed respondent No.4 to recover an amount of Rs.17,07,574/- towards four objections. The said letter was given to applicant on 22.02.2012 and the same was received by applicant on 07.03.2012. A copy of letter dated 22.02.2012 along with letter of respondent No.5 dated 31.10.2011 is annexed at Annexure A/11. A clarification note dated 21.09.2016 was issued by Under Secretary of respondent No.1 to this application as Annexure A/12. Without giving any information or any opportunity of hearing the pension of applicant was suddenly stopped from the month of April 2014. The applicant submitted various representations addressed to all the respondents including the President of ICAR New Delhi but no response has been given by the respondent-department. Vide impugned order an amount of

Rs.7,00,953/- has been recovered without following the principal of natural justice. Hence this Original Application.

4. The respondents have filed their reply to the Original Application wherein it has been submitted by the respondents that the applicant joined ICAR Directorate of Weed Research Jabalpur, in the month of May 2006. It is submitted by the respondents that the Director of the ICAR institute has to reside in the accommodation built for the purpose in accordance with the guidelines issued by the council. It is further submitted that Type V quarters have been build up specifically for providing the accommodation to the Director held by the applicant and thereafter he was required to reside in the said accommodation. The applicant instead of residing in the said specific quarter opted for residing in the private accommodation. It is further submitted that the applicant was authorized to use the vehicles available in the office specifically for the Director and in accordance with the

Office Memorandum dated 10.07.2009 of the council the applicant had no option to draw transport allowance by claiming that he would not use the official car. The applicant was paid the transport allowance for the period from July 2009 to 2011 after the introduction of the O.M. dated 10.07.2009 and the applicant opted to draw the transport allowance by claiming to not have used the vehicles available in the office. The applicant's request to the DG ICAR for option of the transport allowance was not approved by the council and therefore, he was not entitled to the benefit of the transport allowance. It is further submitted that the applicant used the security engaged by the council for the private accommodation which as per the policy of the council is not permissible and therefore the expenses incurred in engaging the security personnel has to be borne by the applicant and accordingly the recovery of that amount has been initiated by the respondents for that period he engaged the security personnel. The answering respondents have initiated the

recovery in accordance with the existing rules and regulations of ICAR/Govt. of India and the applicant cannot escape from such liability as the applicant being an employee of the council accorded his implied consent at the time of entering into the service for following the instructions and directions issued by the employer with regard to the service conditions. The recovery has been initiated by the respondents in view of the audit objection in relation to the payment of transport allowance, HRA, LTC and employment of the security personnel at his private accommodation for which the applicant was not entitled in accordance with the rules and regulations of the Council/Government of India. It is further submitted that the pension of the applicant has been reduced by the office vide letter dated 30.12.2014 having commuted Rs.15,292.00 out of superannuation pension of Rs.38,230.0 and accordingly the pensionary benefits have been reduced to Rs.22,938.00 w.e.f. 06.12.2014 onwards. The recovery of the paid amount to the applicant for which

he was not entitled has been initiated by the respondents in accordance with the existing rules and regulations and the directions contained in the Office Memorandum. The recovery of Rs.517524/- is for the period from May 2008 to June 2011. The calculation sheet is annexed at Annexure R/1. As per the guidelines of the Council, the Director of the ICAR institute has to reside in residence built for the purpose, The CPWD handed over the quarter (Director residence) to Institute in April 2008. Therefore, the calculation was done for the period May 2008 to June 2011. Annexure A/6 submitted by the applicant was not found in the relevant file and is just a request to DDG (NRM) ICAR but no approval was received from the competent authority and in such situation the applicant has been found to be guilty in relation to drawing the HRA in spite of the fact that the Type V quarters were constructed for the purpose of the accommodation to the Director likewise the applicant. As per proceedings of 20<sup>th</sup> IMC meeting held on 15.09.2009, the proposal to use Type V



quarter for accommodation to NIWS staff was sent to the council's vide letter dated 18.12.2009. However, as per the approval conveyed by the Council vide letter dated 15.01.2010, approval was only for procurement of LCMS/MS, no specific approval for use of Type V quarter as a NIWS staff accommodation was conveyed to this Directorate. It has been further submitted by the replying respondents that one Jeep (Qualis) was procured on 20.04.2002 and one Ambassador Car specifically for the use of Director was procured on 23.01.2007 (Annexure R/2). As per the council's office Memorandum dated 10.07.2009, in case where official car is attached to the post as Directors of ICAR institution, Joint Directors of Deemed University and other similar posts, the incumbent would not be entitled to exercise option to draw transport allowance by claiming that he would not use the official car. So the recovery of transport allowance has been made only after the issue of Councils Office Memorandum dated 10.07.2009, the actual period of recovery is from July

2009 to June 2011. The applicant requested the DG, ICAR for option for transport allowance, but the same was not approved by respondent No.2. Therefore he was not entitled to the benefit of transport allowance. The recovery of the amount for deployment of the security personnel has been initiated having believed upon the reply given by the respective incharge security for that particular period and therefore the contention of the applicant of not engaging any security personnel at his hired civil accommodation does not have any substance. The refund of LTC amounting to Rs.16,042/- was adjusted from his gratuity and the double recovery of the same amount of LTC was not made from ICAR. The excess payment of LTC made during the period for 2006 to 2009 has been made vide letter dated 05.09.2014. Regarding letter dated 31.03.2011 which was received from the Head Office, Directorate of Weed Research Jabalpur on 22.11.2011 was duly forwarded vide letter dated 22.02.2012 to Dr. J.G. Varshney. The applicant has

acknowledged receipt of the same on 07.03.2012 which is prior to his retirement i.e. on 30.11.2012. The applicant's pension was stopped w.e.f. April 2014 due to non receipt of the pension bill from the Regional Station and when the bill was received along with the arrear pension, the payment of an amount of Rs.7,19,669/- was recovered and sent to the Directorate of Weed Research for adjustment. Subsequently as per the recommendation of the Council, the recovered amount as per the due drawn statement was called back amounting to Rs.7,19,669/- vide DD No.08077 dated 11.03.2016. Thereafter, further recovery of an amount of Rs.7,00,953/- and Rs.79,647/-, Rs.47,788/- Rs.47,788/- was made from his DR as per the due drawn statement and the same was forwarded to the Director, DWSR for settlement of outstanding recovery. Annexure R/4 Institute has acted upon the instructions received from the Directorate of Weed Research, so the appropriate action may be taken from dropping of the audit para by the DWSR. So as per the law laid down by Hon'ble Apex

Court the recovery can be initiated even from the pension and the gratuity if the loss to the Government ex-chequer has been prima facie found and therefore the provisions of Rule 9 of the CCS Pension Rules, 1972 are not at all applicable in the present case.

5. The applicant has filed the rejoinder to the reply filed by the respondents. It has been submitted by the applicant that he had functioned as Director of Respondent No.5 for the period from 11.05.2006 to 21.06.2011. During this tenure the officers of respondent No.3 conducted annual audit for the period 2006-2007, 2007-2008, 2008-2009 and 2009-2010. During all these audit periods regular audit was conducted and no such objections on the basis of which the recovery has been ordered were raised. Objections have been raised by the respondents after his departure from Jabalpur for the period from 2006 to 2010 (Annexure RJ/1) contrary to their own audit report. The applicant further submitted that Dr. Anil Dixit who was in charge of Finance in the Directorate at Jabalpur was

questioned by order dated 20.06.2011 and the matter was reported to respondent No.2 which invited annoyance of Dr. Dixit and respondent No.6.

6. Heard the learned counsel for both the parties and perused the pleadings and documents attached with the file.

7. From the pleadings the facts regarding the appointment of the applicant as Scientist by respondent No.2 is admitted. It is also admitted fact that the applicant was posted as Director and the applicant worked at Jabalpur from May 2006 to 21.06.2011 and thereafter was transferred to ICAR Research Complex Sikkim and ultimately got retired on 30.11.2012. It has also admitted fact that the applicant was required to recover an amount of Rs.5,17,524/- for the period from 2004 till 2011.

8. The recovery was to be made on the objections raised by the audit relating to the use of personal car, employment of security person at the residence of applicant, claiming of LTC etc. The arguments on behalf

of the applicant are that the respondent-department without giving any information or any opportunity of hearing the pension of applicant was suddenly stopped from the month of April 2014 and despite various representations given by the applicant no response was given by the respondents.

9. On the other side the argument of the respondents is that the applicant while working as Director ICAR has to reside in the accommodation built for the purpose in accordance with the guidelines issued by the council as the applicant was entitled for Type V quarters specifically built for the Director and the applicant instead of residing in the said specific quarter he opted for residing in the private accommodation. The applicant had drawn transport allowance by claiming that he will not use official car and was paid transport allowance for the period from July 2009 to 2011. The applicant had made request to the DG ICAR for option of the transport allowance but that was not approved by the council. Furthermore, it has been argued by the respondents that the applicant used the security

engaged by the council for the private accommodation and as per the policy of the council, the same is not permissible. So, it is very clear from the reply and the documents from the record that the accommodation was earmarked for the Director and the Director was supposed to acquire that accommodation but the Director/applicant has opted to reside in the private accommodation and for which the applicant is not entitled to get the house rent. Secondly, vide office memorandum dated 10.07.2009 of the council, though the applicant had made the request from DG ICAR for option of the transport allowance but the same was not approved by the council. So the transport allowance if paid to the applicant is liable to be recovered. Especially in the present circumstances the car was specifically attached with the Director. Moreover, the security personnel were engaged by the council. As per facts from the pleadings, the security persons were used for private accommodation and as per policy of the council it is not permissible in the law. Moreover the audit

objection has indicated in relation to the payment of transport allowance, HRA, LTC and employment of the security personnel at his private accommodation. The recovery of the paid amount to the applicant was initiated by the respondent department as Annexure R/1. The refund of LTC amounting to Rs.16042/- was adjusted from his gratuity and the excess payment of LTC was made during the period for 2006 to 2009 has been made vide letter dated 05.09.2014. Letter dated 31.03.2011 was duly forwarded to the applicant which was received on 07.03.2017 which is prior to his retirement i.e. on 30.11.2012. So, the recovery was made accordingly.

**10.** Though from the rejoinder, applicant has tried to justify his action but from the pleadings it is clear that despite the earmarked accommodation the applicant has claimed HRA, further the private vehicle was used despite being car attached to the post of Director. Moreover, payment against the rules for LTC has been claimed by the applicant and the audit department has rightly taken



objections. So, from the pleadings itself and the specific reply from the respondents it is very clear that the applicant has taken money against the rules and there is loss to public money.

**11.** In view of the above, I do not find any illegality and ambiguity in the impugned action taken by the respondent-department.

**12.** Resultantly this Original Application is dismissed.  
No costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

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