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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1743/2001

New Delhi, this the ^{12/22nd} day of August, 2002

HON'BLE MR. S.A.T. RIZVI, MEMBER (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Dr. P.N. Bahl,
S/o Late Sh. Jai Kishan Dass Bahl
R/o A/9, Nirman Vihar,
I.P. Extension,
Delhi - 110 092 Applicant
(By Advocate : Shri S.K. Sinha)

Versus

1. Union of India Through
The Secretary (DARE) to Govt. of India,
Ministry of Agriculture,
Krishi Bhawan, New Delhi - 110 001
2. Director General of Indian Council
of Agricultural Research,
Krishi Bhawan, New Delhi-110 001
..... Respondents
(By Advocate : Shri C.B.N. Babu)

O R D E R (ORAL)

BY S.A.T. RIZVI, MEMBER (A) :

Heard the learned counsel on either side at length.

2. Briefly stated the facts relevant for the purpose of adjudication of the present OA are the following:-

3. The applicant was appointed as Assistant Director General in the Indian Council of Agricultural Research (ICAR) on 30.12.1988. By an office order issued on 6.8.1992 (Annexure Z-2), the applicant was directed to look after the work of the DDG (CS) in addition to his own duties till the post of DDG (CS) got filled up on regular basis or until further orders whichever happened to be earlier. The aforesaid order further indicated that for performing duties as above, he shall not be paid any extra remuneration. In pursuance of the aforesaid office order, the applicant performed the duties of the DDG(CS) in

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addition to his own duties as ADG until he retired from service on 31.3.1993. The pay of the higher post of DDG(CS) was denied to him and accordingly the applicant approached this Tribunal through OA No.1350/1996 which was decided on 18.5.1998 (A-2) by relying on the Tribunal's judgement in another OA, being OA No.2354/1989 (S.N. Sethi vs. Union of India and Others). The Tribunal in its aforesaid order dated 18.5.1998 directed the official respondents to allow additional remuneration to the applicant under FR 49(i). The Union of India filed a Writ Petition against the aforesaid order, but the same was dismissed (Annexure A-2 Colly.). The High Court held on 1.2.2000 that the applicant was entitled to additional remuneration for performing the duties of the higher post in accordance with FR 49(i). When the official respondents still failed to comply with the Tribunal's order dated 18.5.1998, the applicant filed a Contempt Petition (No.386/2000) which was decided on 22.5.2001 (A-5). In its aforesaid order passed in the Contempt Petition, the Tribunal held that entitlement to the benefits under FR 49(i) in terms of the order dated 18.5.1998 being made subject to the provisions of FR 35(2) does not per se make the respondents' order dated 15.5.2000 contemptuous. The Tribunal also held that since the aforesaid order dated 15.5.2000 issued by the respondents gives the applicant a fresh cause of action, he could impugn the same separately in accordance with law. Liberty thus being granted to the applicant, he has filed the present OA on 16.6.2001. By their impugned order dated 15.5.2000 (Annexure A-1) referred to above, the respondents have fixed the applicant's pay as follows:-

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- (a) Substantive Pay drawn as on 5.8.1992 in the post of ADG(F&FC) in the pay scale of Rs.4500-150-5700-200-7300. : Rs.5550/- pm
- (b) Officiating pay allowed under F.R. 49(I) read with F.R. 35(2) with effect from 6.8.1992 for officiating as DDG (CS), ICAR : Rs.6383/- pm
- (c) Allowed next due increment on his substantive pay raising the officiating pay with effect from 1.1.1993 : Rs.6533/- pm

As against the aforesaid calculation, the applicant has relied on the following calculation (A-8) for the grant of benefits under FR 49(i) :-

| | <u>Pay (Rs.)</u> | <u>Allowances (Rs.)</u> | <u>Total (Rs.)</u> |
|---|----------------------|-----------------------------|------------------------|
| (A) Monthly salary drawn as ADG as on 6.8.92 | 5550/- | 4042/- | 9592/- |
| (B) Monthly salary drawn as ADG w.e.f. 1.1.93 | 5700/- | 5033/- | 10733/- |
| (C) Monthly salary due as DDG as per FR 49(1) as on 6.8.92 | 7600/- | 5204/- | 12804/- |
| (D) Monthly salary due as DDG as per FR 49(1) w.e.f. 1.1.93 | 7600/- | 5584/- | 13184/- |
| (E) Total salary (Pay + allowances) drawn as ADG from 6.8.92 to 31.3.93 | - | - | 78612/- |
| (F) Total salary (pay + allowances) due as DDG as per FR 49(1) from 6.8.92 to 31.3.93 | - | - | 101507/- |
| (G) Additional remuneration due from 6.8.92 to 31.3.93 | | | 22895/- |

The respondents have, instead of paying Rs.22,895/-, sought to pay only Rs.10,751/- which was received by Cheque, but has not been accepted by the applicant.

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4. On behalf of the applicant, the basic and the only contention raised is that the respondents have incorrectly and wrongfully restricted the payment under FR 49(i) by applying FR 35. The learned counsel appearing on behalf of the applicant has, in support of the aforesaid contention, relied on the judgement rendered by this Tribunal on 6.7.2001 in OA No. 1911/2000 (Jatinder Mohan Singh vs. Secretary, ICAR & Others). The applicant in that OA was appointed as Assistant Legal Advisor w.e.f. 2.12.1996. When the Legal Advisor, ICAR, proceeded on deputation in June 1998, the applicant was asked to look after the work of the post of the Legal Advisor in addition to his own normal duties without any extra remuneration. The applicant's request for payment of salary and allowances applicable to the post of Legal Advisor was, accordingly, rejected. The applicable Recruitment Rules at the material time did not provide for promotion of an Assistant Legal Advisor to the post of Legal Advisor. In other words, the applicant was not in the line of promotion to LA's post. The Tribunal noted that it was because of this reason that the aforesaid applicant was not promoted to the post of Legal Advisor even on temporary basis. After noting this, the Tribunal still held that since the aforesaid applicant was formally asked to look after the full work of the post of Legal Advisor and he fulfilled the eligibility conditions as prescribed in the Recruitment Rules for the post of LA, the restrictions under FR 35 cannot be invoked. In the result, the aforesaid OA was allowed. The Tribunal held that the aforesaid applicant was entitled to the pay scale of the post of Legal Advisor under FR-49 with effect from the date he discharged the duties of the post along

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with increment till the date he continued to function as such. The aforesaid order passed by the Tribunal in OA No. 1911/2000 has been implemented by the official respondents (ICAR) in that case on 4.6.2002 (Annexure Z-3). The aforesaid applicant had discharged the duties of Legal Advisor in addition to his own duties from 22.6.1998 to 2.7.2001. His pay was fixed at Rs.10,000/- in the pay scale of Rs.10000-325-15200 applicable to the post of Legal Advisor on 22.6.1998, the date on which he started discharging the duties of the post of Legal Advisor in addition to his own duties. Three annual increments were granted to him thereafter on 1.6.1999, 1.6.2000 and 1.6.2001. He was thus getting Rs.10,975/- on 2.7.2001 which is the date on which he gave up the post of Legal Advisor when the regular Legal Advisor returned from deputation and joined his post in the ICAR. From 3.7.2001 the applicant was put back in the pay grade of Assistant Legal Advisor of Rs.6500-10500/- and his pay was fixed at the stage of Rs.8,300/-.

5. The learned counsel appearing on behalf of the respondents has submitted that FR 49(i) itself contemplates that where a Government servant is formally directed to hold the full charge of the duties of a higher post in the same office in addition to his ordinary duties, he shall be allowed the pay admissible to him in the higher post unless the competent authority decides to reduce his officiating pay under rule 35. FR 35, according to the learned counsel, gives discretion to the Central Government to fix the pay of an officiating Government servant at an amount less than that admissible under these rules. According to

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him, since the applicant was not formally appointed to hold the full charge of the post of DDG and the aforesaid higher post was not included in the same cadre/line of promotion, the applicant was not entitled to any benefits under FR 49(i). In the circumstances, even if the benefits under FR 49(i) has been extended to the applicant, the respondents have acted well within their power by reducing the benefits in terms of rule 35. He has drawn our attention to the Government of India decision No.2 recorded below FR 35 which shows the scale by which the payments under FR 49(i) can be restricted. In accordance with the aforesaid decision of the Government of India, in such circumstances the pay may be restricted under FR 35 so as not to exceed the basic pay by more than 15 per cent of the basic pay subject to a maximum of Rs.1000/- per month. He has further contended that the restrictions in payment under FR 35 is not attracted only in the cases covered by the following decision, and the applicant does not fall in this category.

"It has been decided that the restrictions of officiating pay under FR 35 should not be invoked in respect of regular cadre promotions where the employee becomes due for promotion, falls within the zone of consideration and fulfils all qualifications prescribed for promotion"

6. On consideration, we find that since the respondents themselves have granted him benefits under FR 49(i), albeit on a reduced scale, the plea that he was not entitled to any benefit under that rule cannot be sustained. The other plea also raised in the preceding paragraph that the cut under FR 35 will not apply only when it is a matter of regular cadre promotion in which the

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employee has become ^{due} for promotion, cannot be accepted either. The aforesaid, in our view, is one of the types of cases in which the cut under FR 35 will not apply. If we go by this Tribunal's judgement in OA No.1911/2000, the other type of cases in which the cut under FR 35 will not apply will be the one in which the employee, similarly circumstanced, though not in the line of promotion in the same cadre, fulfils the qualifications for holding the higher post of which he held full charge.

7. We have considered the submissions made by the learned counsel on either side and in conclusion find that having regard to the judgement rendered by the Co-ordinate Bench of this Tribunal in OA No.1911/200, the present applicant will be entitled to full benefits under FR 49(i) without any restrictions under FR-35 only if he fulfilled the eligibility conditions prescribed under the relevant Recruitment Rules for appointment as DDG (CS) at the material time. Whether or not the applicant actually fulfilled the aforesaid conditions is a matter to be decided by the official respondents by having regard to the relevant Recruitment Rules.

8. In this view of the matter, the OA is partly allowed. The Office Order dated 15.5.2000 placed at Annexure-1 is quashed and set aside. The official respondents will ascertain, after proper application of mind, whether the applicant was, at the material time, qualified to hold the post of Deputy Director General (Crop Science). If it is found that he was so qualified, the official respondents will proceed to extend to the

applicant the benefit of the judgement rendered by this Tribunal in the case of Jatinder Mohan Singh vs. Indian Council of Agricultural Research & Ors decided on 6.7.2001 in OA-1911/2000 (Annexure Z-1) and in due course implemented in June 2002. In other words, if the applicant is found qualified to hold the post of Deputy Director General (Crop Science), the benefit of Rule FR 49(i) will be extended to him without applying the restrictions under FR-35. Insofar as the payment of pensionary and other benefits is concerned, the official respondents will proceed to decide the matter in accordance with the relevant rules and instructions. The entire exercise involved in this will be completed in a maximum period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

S. Raju

(SHANKER RAJU)
Member(J).

S. A. T. Rizvi

(S.A.T. RIZVI)
Member (A)

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