

(2) CENTRAL ADMINISTRATIVE TRIBUNAL. PRINCIPAL BENCH (11)

OA No.865/2001

New Delhi, this 10th day of January, 2002

Honble Shri Justice Ashok Agarwal, Chairman
Honble Shri M.P.Singh, Member(A)

Dr. V.K. Gupta
P.O.Farah, Mathura (UP) .. Applicant
(By Shri Nalin Tripathi, Advocate)

versus

1. Director General
Indian Council of Agricultural Research
Krishi Bhawan, New Delhi
2. Director, Central Instt. for Research
Goats, Makhodoom, PO Farah,
Mathura, (UP) .. Respondents

(By Shri N.S.Dalal, Advocate)

ORDER(oral)

By Shri M.P. Singh, Member(A)

By the present OA, the applicant seeks a direction to the respondents to withdraw the letter dated 28.3.2001 by which the applicant was conveyed the decision regarding stoppage of five advance increments granted to him w.e.f. 24.6.2000 and also the order dated 2.8.2001 rejecting the representation of the applicant.

2. Heard the learned counsel for the parties and perused the records. Briefly stated, the applicant was appointed as a Medical Officer in the pay scale of Rs.2200-4000 vide letter dated 2.11.1987 under the respondent department. During interview, the selection committee recommended grant of 5 advance increments to the applicant which was approved by R-2, who incidentally was also the Chairman of the Selection Committee. However by letter dated 10.7.2000, the ICAR without affording any opportunity of hearing to the applicant decided to

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withdraw the 5 advance increments given to the applicant at the time of his selection/appointment w.e.f. 24.6.2000. Applicant made a representation on 25.8.2000, which was recommended by R-2 to the Secretary, ICAR. Vide its letter dated 29.8.2000, Admn. Officer of R-2 wrote to the Under Secretary(AS), Krishi Bhavan explaining the circumstances under which five advance increments were granted to the applicant vide OM dated 1.9.87 as per the decision and approval of the then competent selection committee alongwith the approval of the then Director, CIRG, Makhdoom and the then Institute Management Committee and also requested to regularise the increments in question so that medical facilities are available to the staff of the Institute in the remote location. However, R-1 has passed impugned order dated 28.3.2001 without application of mind.

3. Applicant would also contend that one Dr. Dinesh Kansal who was working prior to the applicant as Medical Officer was also granted 4 advance increments.

4. Respondents while contesting the case have stated in their reply that action has been taken by them as per rules and since the grant of increments was against the rules and the Director has acted beyond his powers in grant of the same and he was not competent to grant the same, the competent authority decided to withdraw the benefit of 5 increments. They have also taken the ground that there is no question of applicability of principle of estoppel against the statute and against the law and more particularly when there was no power with the Director to grant the increments.



5. The learned counsel for the applicant drew our attention to the Office Order dated 28/29.1.82 issued by the AO, CIRG wherein it is mentioned that "The Director, CIRG has been pleased to create one post of MO in the scale of Rs.700-1300 at CIRG with immediate effect. The expenditure involved is debitible to the sanctioned budget grant of CIRG under Plan". In addition, he also drew our attention to Schedule III (Annexure P-III) relating to powers delegated to the Director of Research Institutes/Laboratories which provides for grant of higher initial pay on initial appointment not exceeding 5 increments in the case of direct recruits only, provided appointment is to the post created under own powers. Even in the offer of appointment dated 10.9.1987, it is clearly mentioned that "five advance increments have also been granted". That apart, even the present Director of CIRG vide his letter dated 29.8.2000 addressed to the Secretary, ICAR has in clear terms stated as under:

- 1) The post of MO in this Institute was created by the Director, CIRG by virtue of the powers delegated by the Council and after clearance from the Council;
- 2) Under Schedule III of the delegation of powers at Sl.No.10, the Director was empowered to grant 5 advance increments in case of direct recruits on the post which was created by the Director himself (FR-27).

Under the circumstances grant of 5 increments was perfectly in order and was within the powers of the Director at that time. His case of appointment was also recommended by the Institute Management Committee, and the proceedings of the Committee were approved by the Council. It is my opinion that if the Council insists of withdrawing 5 advance increments legally granted to Dr. Gupta a litigation will ensue. The very fact that it has taken 13 years for the Council to decide adversely on the recommendations of the Selection Committee is in itself a weak point. Moreover, the then Director was within his powers for granting 5 increments as is evident from the delegation of powers which are attached along with this letter".

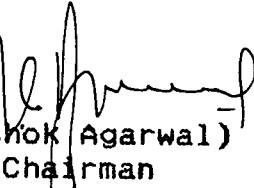
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6. On the other hand, the respondents have not able to produce any rule or law under which the benefit of 5 increments granted to the applicant at the time of his appointment on 11.9.87, can be withdrawn after a lapse of 13 years. Neither they have come with the plea that there was an audit objection to this effect nor is it their case that the said benefit was granted to him erroneously. Therefore, the action of the respondents to withdraw the said benefit at this stage is unwarranted and not unjustified, particularly when the fact that such a benefit was granted to applicant's predecessor Dr. Dinesh Kanwal has not been specifically denied by the respondents.

7. For the reasons aforementioned, we allow the present OA and quash and set aside the order dated 10.7.2000 and also the letter dated 28.3.2001 rejecting the representation of the applicant.

8. In the pecuniary circumstances of the case, we impose a cost of Rs.2,500/- on the respondents to be payable to the applicant within a period of two months from the date of receipt of a copy of this letter for unnecessary compelling him to approach this Tribunal.


(M.P. Singh)
Member(A)


(Ashok Agarwal)
Chairman

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