

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~XXX~~ No. 2197 of 1995 Decided on: 6.8.96

Shri Kuldeep SinghApplicant(s)

(By Shri P.P. Khurana Advocate)

Versus

The Central Social Welfare Board...Respondent(s)
& Another

(By Shri P.H. Ramchandani Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter *yes* or not?
2. Whether to be circulated to the other *no* Benches of the Tribunal?

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(K. MUTHUKUMAR)
MEMBER (A)

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2197 of 1995

New Delhi this the 6th day of August, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Kuldeep Singh
C-90, Vishnu Garden,
New Delhi-110 018.

...Applicant

By Advocate Shri P.P. Khurana

Versus

1. The Central Social Welfare Board,
through its Chairman,
Samaj Kalyan Bhawan,
B-12 Tara Crescent South of I.I.T.,
New Delhi-110 016.

2. Union of India,
Ministry of Human Resource Development,
through its Secretary,
Shastri Bhawan,
New Delhi.

...Respondents

By Advocate Shri P.H. Ramchandani

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

This litigation has arisen due to the delay caused in making the appointment of Internal Financial Advisorcum-Chief Accounts Officer (IFAcumCAO for short) on regular basis under the first respondent, for a period of almost 5 years.

2. The brief facts in this case are as follows. The applicant was permanently absorbed as Accounts Officer under the first respondent after following the normal procedure for such absorption. Necessary orders in this

behalf were passed by the respondent No.2 by their order dated 28.2.1986. The applicant was appointed to the post of Internal Financial Advisor-cum-Chief Accounts Officer (IFA-cum-CAo) in the pay scale of Rs.3,000-4500 with effect from 30.10.1990 until further orders. Thereafter, by order dated 14.2.1991, he was appointed temporarily to hold the full charge of the post of IFA-cum-CAO on ad hoc basis until further orders (Annexure A-5) and his pay was fixed at Rs.3,300/- per month with effect from 30.10.1990. The applicant continued in the said post duly discharging the duties of the post from time to time and retired on superannuation on 30.06.1995 on a pay of Rs.3750/-. The respondents while fixing the pension and other retirement benefits of the applicant calculated the pensionary benefits on the basis of the basic pay that he was entitled to in the post of Accounts Officer i.e. 3500/- on the date of retirement and not on the basis of the pay drawn by him subsequent to his appointment as IFA-cum-CAO. It is due to this reason that this application has been filed alleging that the applicant had all along worked and drawn the pay in the pay scale of Rs.3000-4500 and he was holding the said appointment on full charge basis and, therefore, would be entitled to draw pension on the basis of the last pay drawn as IFA-cum-CAO. In the light of this, the applicant has sought a direction in this application to the respondents to calculate the pensionary benefits of the applicant on the basis of the pay last drawn by him, namely, 3750/- and to pay the difference in the pensionary benefits along with interest at 18% on the amount payable on account of arrears of pension and also delayed payment of his contribution to the Provident Fund dues. He has also sought a direction for the refund of Rs.20,638/-

recovered from him on account of difference in pay and allowances reducing his pay due as Accounts Officer from 30.10.90 along with interest from the date it was deducted from the pensionary benefits.

3. On notice, the respondents have filed their reply and the matter being a short one which relates to pension dues of the applicant, it was heard at considerable length for disposal at the admission stage.

4. The respondents in their counter-reply contend that the ad hoc appointment of the applicant temporarily to the post of IFA-cum-CAO was never confirmed by respondent No.2 or ratified by the Government, which is the competent authority empowered to decide the filling up of the post and as per the Recruitment Rules relating to the said post under first respondent, it is for the Government in consultation with the Chairman of the Board to nominate the Executive Director and the Internal Financial Advisor-cum-Chief Accounts Officer of the Board on such terms and at such remuneration as it may think fit and may, from time to time, remove them from office and appoint others in ~~their~~ ^{their} place. The respondents have annexed Annexure-IX to their reply in support of this averment. The respondents also aver that this appointment order dated 14.2.1991 to the said post of IFA-cum-CAO with effect from 30.10.1990 on ad hoc basis was void ab initio and not according to the rules and the authority which issued the order was not competent to issue it and, therefore, the action of the respondents in fixing the pensionary benefits which were calculated on the basis of the pay last drawn as IFAcumCAO was not in order. This appointment to the post of IFA-cum-CAO was not approved by the competent authority keeping in view the Recruitment Rules as well as Articles

of Association of first respondent. In view of this, the respondents have not entertained the claim of the applicant and have averred, that the application deserves to be dismissed.

5. The learned counsel for the applicant argued that it was the respondent No.1, the Executive Director in the said Association, who had issued the order appointing the applicant as IFA-cum-CAO on ad hoc basis. The applicant was allowed to continue in this position until further orders and the applicant drew his annual increments from time to time and finally retired from this post on 30.06.1995. The counsel argued that in the circumstances there was no question of the applicant being retrospectively treated as an officer who had retired on the last pay that he would have drawn in the lower post and fixing his pension on that basis. The learned counsel also argued that it was not given to the applicant to get himself appointed to the post of IFA-cum-CAO. It was the respondents who have issued proper order and if there was any problem to fill the said post by a regular appointee, the respondents should have taken appropriate action in reverting the applicant after giving due notice to him. This was also not done and the applicant was allowed to continue in the said post right till his date of retirement and the applicant had also discharged the duties involved, being IFA-cumCAO, by way of signing Annual Accounts of the Company and attending the Board Meetings as IFA-cum-CAO. The learned counsel for the respondents, however, argued that the appointment of the applicant on ad hoc basis as IFA-cum-CAO was without the specific approval of the competent authority and the applicant was all along aware that he did not hold the said post in a regular capacity. It is no doubt true that there was some delay in the

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appointment and when the matter was taken up by the respondent No.1 with respondent No.2, the respondent No.2 had intimated that it was decided to call for the panel of names from the regular Accounts Services to fill up the said post and, therefore, all that was permitted by respondent No.2 as a competent authority was that the applicant could hold the additional charge of the said post of IFA-cum-CAO till the regular incumbent was appointed. Because the matter was under consideration by respondent No.2, the applicant had continued in the said post on ad hoc basis and, therefore, this did not give any right to the applicant to hold the said post and claim pensionary benefits on the pay that would have been drawn by him on the said post.

6. I have heard the learned counsel for the parties and have carefully perused the records.

7. The recruitment rules for the post of IFAcumCAO provide for recruitment to the above post by way of nomination by the Government of India in consultation with the Chairman, Central Social Welfare Board. There is no dispute about the applicability of Central Civil Services (Pension) Rules, 1972, in respect of the applicant.

8. The appointment of the applicant as IFAcumCAO on ad hoc basis with effect from 30.10.1992 is admittedly not on the basis of nomination by the Government of India in consultation with the Chairman, Central Social Welfare Board. The appointment order was originally issued by the Executive Director (Establishment) by his order dated 30.10.1990 annexed as Annexure7 to the counterreply and also by the order dated 14.2.1991 wherein the applicant was appointed to hold full charge of the post of IFAcumCAO in the pay scale of Rs.3000-4500 w.e.f. 30.10.1990 on ad hoc basis, Annexure A5. In the aforesaid order it was made

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clear that the said appointment will not bestow any claim for regular appointment to the post of IFACumCAO. Admittedly, this appointment was, therefore, made on temporary ad hoc basis. When the matter was taken up with the Government of India, the respondent No.2 advised the respondent No.1 that pending the nominations for this post from regular accounts services, the applicant will hold the additional charge of the post of IFACumCAO till a regular incumbent is appointed. When it was reported to the Government that the applicant was appointed temporarily to hold full charge of the post, the respondent No.2 inquired how the applicant was allowed to hold the full charge when they were specifically advised by their letter dated 12.6.1991 to allow the applicant to hold only additional charge of the post. There is no record to show that consequent to this letter, the respondent No.1 had modified their order directing the applicant to hold only additional charge instead of full charge of that post. Though the admitted position is that the applicant has been holding the full charge of the post of IFACumCAO from 30.10.1990 till the date of his retirement on 30.06.1995, i.e., almost for a period of 5 years, yet it is no doubt true that the applicant's appointment to the said post on ad hoc basis and his functioning on the said post on full charge basis did not have the approval of the respondent No.2. Be that as it may, the fact remains that the applicant had held the full charge of the post of IFACumCAO for this period from October, 1990 to June, 1995 discharging the duties of the post which included among other things the signing of the balance sheet of the organisation as IFACumCAO and has also performed his duties ^{including} ~~to attend~~ Board Meetings of respondent No.2 from time to time. Let me now revert to

the grievance of the applicant. His main grievance is that the respondents have not taken the pay drawn by him as IFACumCAO for purposes of determining his pension. Pension is determined under the CCS (Pension) Rules, 1972 on the basis of the qualifying service rendered by the applicant. The respondents have averred that in terms of Rule 14(1) of the CCS (Pension) Rules, 1972, which are applicable in the case of the applicant, the service of a Government servant shall not qualify unless his duties and pay are regulated by the Government or under conditions determined by the Government. They contend that in the instant case, the service rendered by the applicant as IFACumCAO did not have the approval of the Government nor was the appointment determined by the Government. In my view, there is some force in this contention. In terms of the recruitment rules for the said post, the appointment as IFACumCAO has to be made by nomination by the Government of India in consultation with the Chairman, Central Social Welfare Board as per Annexure A1 to the counterreply. It is an admitted position that the applicant was not nominated by the Government and, therefore, the said appointment cannot be said to have been determined by the Government. So when the appointment of the applicant to the said post by the second respondent is de hors the rules, the applicant has no claim for reckoning the pay drawn by him as IFACumCAO for purpose of determining his pension and the action of the respondents in determining the pension on the basis of pay he would have drawn as Accounts Officer, cannot be said to be irregular or illegal. The prayer of the applicant for a direction to the respondents to calculate pensionary benefits on the basis of IFACumCAO, the pay last drawn at Rs.3,750/, is not tenable and is, therefore, rejected.

9. In regard to the other grievance of the applicant that the respondent No.2 has recovered a sum of Rs.20,688/- towards the difference in pay and allowances reckoning his pay as Accounts Officer from 30.10.1990, I am of the considered view that this action of the respondents is not sustainable. Even if the applicant had not been regularly appointed to the aforesaid post, the fact remains that the applicant has been appointed by the order of the second respondent directing him to hold the full charge of the post and also allowing him to draw the pay of the post from time to time and the applicant had, in fact, actually discharged the duties of the post. This has not been denied by the respondents and, therefore, the action of recovery of the amount which has already been paid to him as pay and allowances for the duties performed by him as IFACumCAO in the scale of pay of the said post from time to time, cannot be denied to him and cannot be recovered from the pensionary benefits. Besides, respondent No.2 have also not taken any action to modify the appointment of the applicant directing him to hold the additional charge and not the full charge of the post. No show cause notice has also been given to the applicant before proceeding with the recovery of the said amount. In the whole case, there has been no violation of any rules/order on the part of the employee in drawing the pay as IFACumCAO and in the absence of any fault of the employee, the respondents' action in recovering the pay and allowances drawn by him for the actual discharge of the duties of the post of IFACumCAO, cannot be justified at all.

10.. In the conspectus of the above discussion, the application is partly allowed only to the extent of directing the respondents to refund to the applicant a sum

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of Rs.20.688/- deducted from the pensionary benefits of the applicant, within a period of one month from the date of receipt of a copy of this order by respondent No.2. There is, however, no case for payment of interest on this amount, as the recovery of the amount had been made on the bona fide belief that the applicant was not entitled to it. As regards his prayer for interest on the amount of contribution to the General Provident Fund (GPF), there has been no substantial delay and, therefore, his prayer for interest on the delayed payment is rejected. In the circumstances, there shall be no order as to costs.



(K. MUTHUKUMAR)
MEMBER (A)

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