

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2455/96

New Delhi this the day of 3rd April 2000

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. V.K. Majotra, Member (A)

Ms. Chitra Kataria,
W/o Shri N.K. Kataria,
R/o D-7/7256, Vasant Kunj,
New Delhi.

...Applicant

Versus

1. Union of India
through the Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. Government of Rajasthan,
(through the Secretary,
Ministry of Health)
State Government Secretariat
Jaipur.

..Respondents

ORDER (Oral)

By Mr. V.K. Majotra, Member (A)

The applicant has challenged the following:

- i) Order dated 2/7.9.93 issued by the General Manager, Northern Railway, New Delhi Respondent No.2 fixing her pay in the deputation post (Annexure-I).
- ii) Letter dated 13.3.95 issued by the Head of the Department, Professor & Head Rehabilitation Research & Regional Limb Fitting Centre, SMS Hospital, Jaipur recommending acceptance of resignation of the applicant (Annexure-II).

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2. Applicant has also assailed negligence of respondent No.2 in payment of arrears of pay and allowances due to the applicant in the deputation post and refusal of Respondent No.2 to permit her to resume duty as requested in her letter dated 10.6.94.

3. According to the applicant, on her request vide their letter dated 21.9.92 Annexure-IV Ministry of Railways, issued orders for appointment of applicant as a Physiotherapist in the Central Hospital, New Delhi on deputation for a period of three years. A vacant post in the scale of Rs. 1400-2300 was transferred from Moradabad to Central Hospital, New Delhi on temporary basis and the applicant was appointed thereon in relaxation of the rules. The applicant held a post in SMS Medical College & Hospital Jaipur in the scale of Rs. 1640-2900. She reported for duty at the Central Hospital Northern Railway New Delhi on 25.1.1993. At the time of release from the parent organisation, she was drawing a basic pay of Rs. 1820/- in addition to other allowances. The pay of the applicant in the new post was fixed by respondent No.2 at Rs. 1400/- i.e. at the minimum of the pay scale of Rs. 1400-2300 vide Annexure-I dated 2/7-9-93. Respondent No.2 ordered fixation of applicant's pay in the scale of Rs. 1400-2300 at the stage just below Rs. 1820/- p.m. on the ground that the transfer on deputation is not in interest of public service and the terms of deputation will not applicable in her case. The aforesaid order did

118

not mention about protection of loss of basic pay of Rs. 20/- by grant of personal pay. The applicant has alleged that her pay was wrongly fixed by the respondents in violation of Government of India vide Memorandum F.1 (11)-EIII(B)/75 dated 7.11.75. The applicant has stated that compelled by the circumstances created by respondent No.2, she submitted three month's notice of resignation which was subsequently withdrawn by her as per her letter dated 10.6.94. She reported for duty on 10.6.94 and had been visiting the hospital daily but was not permitted to resume duty. Later on, applicant submitted her resignation to S.M.S. Hospital, Jaipur on 15.6.94 (Annexure-XI). The S.M.S. Hospital, Jaipur vide their communication dated 13.3.95 addressed to the Director & Medical Health Services Rajasthan (Annexure-II) stated that as the applicant had been relieved from State service w.e.f. 22.1.93 the resignation should be accepted from the said date. The applicant submitted a representation dated 6.6.95 (Annexure -XII) to the Director Medical & Health Services, Rajasthan with a copy to the General Manager, Northern Railway, New Delhi which remained unrepplied.

4. The applicant has sought quashing of order dated 2/7.9.93 (Annexure-I) letter dated 13.3.95 issued by SMS Hospital, Jaipur (Annexure-II) and directions to respondents No. 1 & 2 to treat the applicant as on duty in terms of the orders dated 29.1.93 (Annexure V) for the sanctioned period of deputation of three years and to consider her further continuation on deputation. She has further

sought directions to be issued to respondent No.2 to fix applicant's pay in the deputation post in accordance with the rules and to pay her arrears of pay and allowances due to her with interest @ 24% p.a.

5. Respondents have contended in their counter that the applicant had come on a temporary transfer on her personal request otherwise than in public interest and cannot be treated as on deputation. The protection of her pay was allowed in the scale of Rs. 1400-2300 at the stage just below Rs. 1820/- P.M. what she was getting in her parent department i.e. Rajasthan Government and was to be adjusted as personal pay in future increments but due to over sight the instruction for adjustment of balance as personal pay to be absorbed in future increments could not be intimated to the Central Hospital authority which mistake was later on rectified through instruction dated 16.5.97 Annexure R-I. Respondents have pointed out a contradiction in applicant's resignation and withdrawal thereof. According to the applicant, she had submitted her resignation on 15.6.94 and request for withdrawal of her resignation on 10.6.94. Respondents are of the view that they are not concerned with her resignation and withdrawal thereof which has to be accepted by the Director Research and rehabilitation Centre SMS Hospital, Jaipur. According to the respondents, the applicant joined the Central Hospital on 1.2.93. She was on maternity leave from 22.6.93 and joined back on 19.11.93. She remained

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20

on unauthorised absence from 23.11.93. She put in an application on 10.6.94 to take her back on duty. She submitted her resignation also simultaneously.

6. On 3.11.97 learned counsel for applicant was directed to produce additional documents in support of the case to show that the applicant had actually tried to rejoin duties consequent on the date of the withdrawal of the letter of resignation and that she was on the post for a few days. Such documents have not been produced on behalf of the applicant till date.

7. On 9.12.97, an effort has made to understand whether the applicant was placed on deputation with the Railways by a competent authority and whether she had been on any definite terms of deputation. The Tribunal asked for copies of letter dated 20.1.93 and letter dated 21.1.93 which have been referred to by the applicant in Annexure-I. The learned counsel for the applicant was directed to file them within a period of three weeks. These letters have not been produced till date.

8. We have examined the material available on file. Neither side has produced adequate material in support of their rival contentions. Whereas the respondents have contended that the applicant was not taken on deputation, the applicant has persisted being on deputation for a period of three years. Annexure-I dated 2/7.9.93 states that applicant came on transfer on her own request on

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21

acceptance of lower scale of pay of Rs. 1400-2300 and not in the interest of public service and as such the terms of deputation are not applicable in her case. Her pay was fixed in scale of Rs. 1400-2300 at the stage just below of Rs. 1820/- per month which she was drawing in her parent cadre in scale of Rs. 1640-2900. The normal terms of service on deputation vide Swamy's Hand Book-1992 on page 179 are as under:-

- i) An employee on deputation may select to draw either pay in the scale of pay of the deputation post fixed under the normal rules (FR 22 (i) (a) (1). department from time to time plus personal pay, and deputation (duty) allowance.
- ii) When an employee elects to draw pay in the scale of deputation post, the minimum of which is substantially in excess of his basic pay plus deputation (duty) allowance, pay in deputation post should be restricted so that it does not exceed his pay by more than the limit prescribed.
- iii) However, in the case of employees regularly appointed on deputation in accordance with the provision of relevant recruitment rules to hold post in the Central Govt, the pay fixed in deputation post shall not be less than the minimum for that post.
- iv) An employee whose basic pay is more than the maximum of the scale of any of the deputation post, should not be deputed to that post".

9. The applicant claims that her case is covered under term-iii above and her pay cannot be fixed at less than what she was drawing in the earlier post in her parent department in addition to the other benefits applicable as per rules. We find that respondents have arbitrarily fixed applicant's pay vide Annexure-I without referring to any rules.

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22

10. In this view of the matter, we treat this case as one of deputation on a post transferred from Moradabad to Delhi to accommodate the applicant in a lower scale i.e. 1400-2300. Her pay had to be fixed at Rs. 1820/- which the applicant has been drawing in her earlier assignment in the State of Rajasthan if there is a stage in the scale of Rs. 1400-2300. If the stage of Rs. 1820/- is not available in the scale of Rs. 1400-2300 she would be fixed at a stage in the new scale which is a little less than Rs. 1820/- and the deficiency would be met by according her personal pay to that extent. Respondents have also erred in taking a view that she would not earn any increment in future. We are of the view that she cannot be denied annual increments and the element of personal pay would be absorbed in her future increment/increments. The applicant submitted notice of resignation dated 28.2.94 which was sent to her parent department by a registered post on 22.3.94. Her case would become effective after passage of three months from 22.3.94 i.e. her date of resignation would in the event of acceptance of her resignation would be 22.5.94. The applicant has stated that she withdrew her resignation on 10.6.94 before her resignation was accepted under the rules. Even if a notice of resignation is not accepted by the competent authority it becomes effective as soon as the period of notice expires. In the present case, as the State Government had not issued acceptance of applicant's resignation by 22.5.94 it

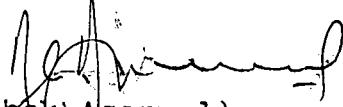
would automatically be deemed to have been accepted w.e.f. 22.5.94. The applicant withdrew the notice of resignation on 10.6.94 and again resigned on 15.6.94. These communications are meaningless. She could have withdrawn her resignation within three months of submission of her notice of resignation and before acceptance of the resignation. She did not do so before the expiry of the period of notice i.e. before 22.5.94. Withdrawal of resignation on 10.6.94 and re-submission of resignation on 15.6.94 are ineffectual communications.

11. From the record before us, the applicant had reported for duty to the respondents on 25.1.93. Her deputation was for a period of three years. She could have remained on deputation till 24.1.96 until her deputation was extended further which stage did not reach at all.

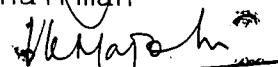
12. In the circumstances, Annexure-I is quashed and set aside to the extent that the respondents will fix applicant's salary as on 25.1.93 in the scale of Rs. 1400-2300 at the stage of Rs. 1820/- or at the stage just below Rs. 1820/- per month and make up the deficiency by granting personal pay to reach the level of Rs. 1820/- alongwith other admissible allowances. She would also be entitled to have annual increment, in the scale of Rs. 1400-2300 ^{as per Rules.} Respondents are further directed to pay her pay and allowances till 21.5.94, to sanction her due leave. We do not deem it necessary to pass any orders on a letter dated 13.3.95 issued by SMS Hospital Jaipur.

24

13. Respondents are directed to pass orders in terms of above directions and pay arrears to the applicant within a period of three months from the date of receipt of a copy of this order. No costs.


(Ashok Agarwal)

Chairman


(V.K. Majotra)

Member (A)

cc: