

(11)

Central Administrative Tribunal, Principal Bench

O.A.No.1088/96

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 13th day of May, 1997

Dr.(Mrs.) Pragati Dhawankar  
w/o Shri Purushottam Dhawankar  
Occupational Therapist  
Govt. of N.C.T. of Delhi  
now Sr. Occupational Therapist in  
Lok Nayak Hospital  
New Delhi

r/o B-461, Delhi  
Govt. Flats, Timarpur  
Delhi - 110 054.

(By Shri M.L.Sharma, Advocate)

... Applicant

Vs.

The Secretary  
Department of Social Welfare  
Govt. of N.C.T. of Delhi.  
(By Shri Raj Singh, Advocate)

.... Respondent

O R D E R (Oral)

The applicant was working as Occupational Therapist in the School for Mentally Retarded Children under the Delhi Administration (now Govt. of NCT of Delhi) when she applied for the post of Sr. Occupational Therapist in the National Institute for the Orthopaedically Handicapped (NIOH), Calcutta on 3.11.1989 through proper channel. She was duly selected. There upon she made a request A3 on 16.3.1990, to relieve her by keeping her lien with the Delhi Administration. However, the respondents vide A4 order dated 10.4.1990 converted this request into a resignation with immediate effect and also stated that her lien could not be retained. The applicant thereafter, pointed out that she never submitted any resignation and ultimately A4 order was superceded by A7 order dated 10.5.1990 wherein she was treated as relieved with immediate effect and her lien was also kept for two years. The applicant joined her new assignment on 28.4.1990. She came back from NIOH on 11.11.1991. She is aggrieved that on her return, her pay has not been fixed correctly nor her increments have

Ph

12

been released till date. Further the respondent vide his letter A1 dated 29.2.1996 has directed her to deposit the pension and leave salary contribution amounting to Rs.8,788/- and penal interest w.e.f. 26.11.1991 to 31.1.1996. In the circumstances, she seeks a direction to quash the impugned order, A1 and also to direct the respondents to grant her due increments before her release on 28.4.1990 and notional increments for the period from 30.4.1990 to 10.11.1991 and to grant her yearly increments thereafter upto 7.3.1996 and pay the arrears with interest thereon at the rate of 18%. The respondents in reply state that the question of grant of annual increments cannot be settled until a decision is taken regarding the manner in which the period spent at NIOH, Calcutta is decided.

2. I have heard the counsel on both sides. The learned counsel for the applicant, Shri M.L.Sharma, argues that the applicant had applied for the post of NIOH through proper channel. She had never submitted any resignation and therefore, the respondent could not have passed the first order dated 10.4.1990. Further as per FR 111 Order No.3, Swamy's Compilation of 1995, in <sup>case</sup> terms of foreign deputation, terms and conditions should be settled well in advance. In this case the responsibility of fixing the foreign deputation terms was on the respondents and the applicant cannot be made to suffer for the negligence in their matter. The learned counsel for the respondents on the other hand points out to an affidavit filed by the applicant on 27.2.1996, A15 in which she has undertaken to pay the pension contribution and leave salary contribution along with penal interest thereon.

(13)

3. I have considered the matter carefully. Even though the learned counsel for the applicant states that the undertaking given by the applicant in the aforesaid affidavit is under duress, inasmuch as she has given it at the time of a fresh deputation to another post, I am of the view that this undertaking has been given willingly and applicant has to <sup>abide</sup> ~~avoid~~ by it. Therefore she has to pay the pensionary contribution in case she wishes to have the period of her foreign deputation counted towards her service benefits in the parent department. At the same time, the respondents cannot absolve themselves of the charge of negligence inasmuch as <sup>wrong</sup> ~~an~~ order of <sup>resignation had to be</sup> ~~deputation letter~~ was superseded by an order of transfer on foreign deputation. The applicant made a number of representations and the respondents failed to have the matter settled with the NIOH. In the circumstances, they are not entitled to any interest whatsoever on the delayed payments.

4. In the circumstances of the case, I, therefore, partly allow this OA and direct the respondents not to charge the penal interest in case the applicant deposits the amount in respect of her contributions within the period of three months from the date of receipt of a copy of this order. Thereupon, the respondents will also regularise the period of her foreign deputation and grant her increments for <sup>the period of</sup> ~~which~~ foreign deputation as well as the subsequent period upto date. No doubt, they will also issue a revised LPC if she goes <sup>on</sup> further deputation.

5. OA is disposed of with the above directions. No costs.

*R. K. Ahooja*  
(R.K.AHOOJA)  
MEMBER(A)

/rao/