

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 382/94

New Delhi this the 18th August 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, VC(J)
Hon'ble Mrs Shanta Shastry, Member (A)

Dr. B.M. Arora
S/o Lt. Sh. Lal Chand
R/o Director Bungalow,
National Zoological Park,
Mathura Road,
New Delhi -110 003.

...Applicant

(By Advocate: Shri M.K. Gupta)

Versus

1. Union of India
through the
Secretary,
Ministry of Environment & Forests,
C.G.O. Complex,
Lodhi Road,
New Delhi-110 003.
2. Indian Council of Agricultural Research, & Secretary
through
its Secretary,
Krishi Bhawan,
New Delhi-110 001.

Do PT,
M/ Personnel
New Delhi

...Respondents

(By Advocate: Shri N.S. Mehta)

ORDER (Oral)

By Reddy, J.:-

The applicant submits that he was working as a Scientist in ICAR. He was offered an appointment as Director, National Zoological Park, New Delhi (in short Zoological Park) for a period of two years under the terms and conditions shown in letter dated 14.5.99. It is the case of the applicant that he was offered two options with regard to pay, either to draw the pay as admissible for the Director of Zoological Park or to draw the pay as applicable to him in his grade in his parent office plus deputation allowances and the applicant opted for the second option. He opted for the second pay scale and it was accepted by

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the respondents. At the time of the deputation, the applicant was offered pay scale of Rs. 3700-5000. The applicant accepted his appointment as Director, Zoological Park on the pay scale payable to his post in his parent office. The deputation was initially for a period of two years but it was extended subsequently for another period or periods extending one-and-half years. It is submitted that at the time of the applicant's appointment on deputation, his case was under adjudication before the Tribunal in OA 511/90 which was disposed of by order dated 15.2.91 and the said decision was subsequently upheld by the Supreme Court in its order dated 13.11.92. In accordance with the judgement of the Supreme Court, the applicant's pay was revised and fixed at Rs. 4500-7300 with effect from 1.1.96. His claim for payment of his pay at the revised rates was rejected by the respondents claiming that the applicant is entitled for protection of pay in the scale of Rs. 4500-7300 and to fix his pay at Rs. 5100 from 2.4.90 i.e. the date of his appointment as Director, Zoological Park, he approached this Tribunal in this O.A.

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2. The relief claimed in the OA was subsequently amended whereby the order dated 31.12.93 was sought to be quashed and a direction was also sought for payment of Rs. 12,960/- towards leave salary and pension contribution for the period from 1.4.93 to 30.12.93. It was also prayed for a suitable direction to protect the pay and allowances of the

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applicant as would have been drawn by him in his parent department and fix his salary in the pay scale of Rs. 4500-7300 with effect from 1.4.90 *to 30.11.93 and for other consequential benefits.

3. Learned counsel for the applicant submits that he is entitled for pay protection of pay in the scale of Rs. 4500-7300 as was determined by the Supreme Court in its order dated 13.11.92. It is however the case of the respondents that the applicant was appointed on deputation basis as Director, National Zoological Park in the scale of pay of Rs. 3700-5000 (Group A) and the applicant has opted only for a grade of pay scale in the parent department plus deputation (duty) allowance. It was further contended that the applicant was entitled to in view of the terms of option made by the applicant, the maximum pay payable for the post in the organisation of National Zoological Park. Accordingly his pay was fixed at Rs. 4500-7300 after the pay was revised by the Tribunal and the Supreme Court but he was entitled to the maximum pay in the scale of 3700-5000 applicable to his post in Zoological Park.

4. There is no dispute with regard to the fact ~~of~~ deputation of the applicant in the Zoological Park. It is also not disputed that the applicant was asked the option at the time of deputation to opt either of the two pay scales. Two pay scales mentioned in the option form are as follows in the amended OA.

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"During the period of foreign service he will be allowed to draw pay on the basis of either (i) or (ii) below, as he may opt:-

i) Pay as admissible to him from time to time in his parent office, plus deputation (duty) allowance in terms of Ministry of Finance (Department of Expenditure) O.M. No. 10(24)-E.III(E)/60, dated the 4th May, 1961, as amended or may be amended from time to time, subject to the condition that the total of the pay and deputation (duty) allowance shall not exceed the maximum of the scale attached to the deputation post.

OR

ii) Pay in the scale of Rs. _____ of the deputation post as admissible under the normal Fundamental and Supplementary Rules, subject to restrictions contained in the Ministry of Finance O.M. No. 10(24)-Estt.III/60, dated the 9th March, 1964 and such other orders as have been or may be issued from time to time. No deputation (duty) allowance will be admissible in this case.

5. Admittedly, he opted for the first option. It no doubt provides for protection of the pay in the parent office, plus deputation (duty) allowance, but it is also made clear that the said pay protection is subject to the condition that the total of the pay and deputation (duty) allowance shall not exceed the maximum of the scale attached to the deputation post.

6. It is also not in dispute that the maximum of the scale of pay of deputation post is Rs. 5000/-.. The contention of the learned counsel for the applicant that he is entitled for the pay scale attached to his post in the parent department is not

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thus correct. The option is hedged with a condition of payment of the maximum scale attached to the deputation post. Immediately after the revision of pay scales the respondents had taken care to pay the maximum scale of Rs. 5000/- to the applicant. The further contention of the applicant is that certain other deputationists like Mr. Kamal Naidu were paid an amount exceeding Rs.5000/- will not carry his case any further. Learned counsel for the respondents submits that the deputation of Mr. Kamal Naidu in the Zoological Park was on the basis of the Indian Forests Service Rules and he was, therefore, paid in accordance with the said rules. It is also clear from the OM dated 29.4.88 under which the applicant was deputed that the deputationist's pay protection in parent department is subject to the maximum of the scale of pay of the post held on deputation. The decision cited by the learned counsel for applicant, P. Sukumaran Nair vs. U.O.I. 1994 (27) ATC 503 of the Ernakulam Bench will not help the applicant. It is true that a deputationist is entitled for his pay protection but in the present case as the applicant's deputation was in terms of the OM dated 29.4.88 and the option made by him which clearly stated that the pay protection is subject to the maximum of the scale of the deputationist, the applicant is not entitled for the pay contrary to his option.

7. We are satisfied that there is no merit in the OA. The OA is, therefore, dismissed. No costs.

Shanta S-
(Mrs. Shanta Shastry)
Member (A)

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(V. Rajagopala Reddy)
Vice-Chairman (J)

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