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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO.1331/2000

New Delhi, this the 20th day of December, 2000

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Dr. Y.P. Singh,
S/o Late Shri V.P. Singh,
Aged about 43 years
R/o V/93, Canning Road,
Forest Research Institute, Dehradun
and working as Scientist 'SC' under
Ministry of Environment & Forests
but presently posted at Dehradun Applicant
(By Advocate : Shri S.S. Tiwari)

VERSUS

1. Union of India, through Secretary
Ministry of Environment & Forests,
CGO Complex, Paryavaran Bhawan,
Lodhi Road,
New Delhi
2. Under Secretary,
Ministry of Environments & Forests,
Paryavaran Bhawan, CGO Complex,
Lodhi Road,
New Delhi Respondents
(By Advocate : Shri N.S. Mehta)

O R D E R (ORAL)

Shri S.A.T. Rizvi, Member (A) :

After hearing the learned counsel on either side and perusing the material on record, orders have been passed in this OA in the following terms:-

"For the reasons to be recorded separately, the present OA succeeds and is allowed. The impugned orders of 9th February, 1988 and 11th January, 1999 at Annexure-A are quashed and set aside. The respondents are directed to grant the applicant in addition to pay already fixed, four increments as recommended by the Departmental Recruitment Committee with effect from 12th April, 1981, the day he joined service. The respondents will also grant all consequential benefits including pay fixation in terms of 5th Central Pay Commission report with effect from 1.1.1996. The applicant will be granted all consequential benefits including payment of difference in the arrears of pay.

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2. The aforesaid directions will be carried out within a period of 15 days from the date of issue of this order."

2. We now proceed to record our reasons in support of the aforesaid order.

3. The applicant in this OA, who is a Scientist in the Forest Research Institute (FRI), Dehradun, under the Ministry of Environment & Forests (MOEF) is aggrieved by the in-action on the part of the respondents in not allowing him pay protection in terms of Govt. of India, Department of Personnel & Training OM dated 7th August, 1989 over and above the advance increments sanctioned to him at the time of his selection by the Departmental Recruitment Committee (DRC) for the post of Scientist 'SC' in 1991. He has, in particular, impugned MOEF's decisions contained in that Ministry's letters dated 9th Feb. 1998 and 11th Jan. 1999. The prayer made is for setting aside the aforesaid letters issued by the MOEF and for directing the respondents to grant (to the applicant) four advance increments in accordance with the recommendations of the DRC with effect from 12.2.1991 on which date he joined as Scientist 'SC'. The prayer is also made for the grant of all consequential benefits including pay re-fixation in terms of the 5th Central Pay Commission Report from 1.1.1996.

4. The facts of the case, in brief, are that way back in 1989 the MOEF issued an advertisement in News Papers calling for applications for several posts including the post of Scientist 'SC' in the pay scale of Rs. 2200-4000. The same advertisement also held out that in deserving cases a higher initial start not exceeding five advance increments above the minimum of

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the scale of pay could be given on the recommendations of the DRC. The applicant, who was then working as a Specialist(PP) in the same scale of Rs.2200-4000 in the G.B. Pant University of Agriculture and Technology at Pant Nagar and at the time drawing a monthly pay of Rs. 2650 applied for the post of Scientist 'SC' and was duly selected by the DRC which recommended grant of four advance increments in favour of the applicant. Soon after joining the service in the Respondents' set-up, the applicant filed representations for pay protection as well as for the grant of the aforesaid advance increments. The first representation in the matter was filed by him on 17.5.1991. As a result, the applicant's pay was protected in February, 1993. However, the four advance increments sanctioned by the DRC were withdrawn without assigning any reason by the MOEF's letter of 4th February, 1993. The aforesaid letter merely stated that in the event of the guide-lines laid down in the OM dated 7.8.1989 being followed for protecting the applicant's pay, the four advance increments granted to him by the DRC would not be allowed. According to the applicant, in considering his pay, the respondents are mixing up the two issues, one of which relates to pay protection in terms of the aforesaid OM of 7.8.1989, while the other is concerned with the grant of advance increments sanctioned in his favour by the DRC on the basis of his individual merit and qualification.

5. We have carefully heard the arguments advanced by the learned counsel on either side and have also perused the material on record.

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6. We find that FR 22 provides for pay protection in cases such as this one and FR 27 separately and independently provides for grant of advance increments. We also find that the aforesaid OM dated 7.8.1989, which has been relied upon by the respondents provides for the fixation of pay of persons working in the PSUs, Universities etc. who are appointed in the Govt. as direct recruits on the basis of selection through a properly constituted agency. The relevant provision contained in the aforesaid OM is extracted below for the sake of convenience:

"....their initial pay may be fixed at a stage in the scale of pay attached to the post so that the pay and D.A, as admissible in the Government will protect the pay + DA already being drawn by them in their parent organisations."

Similarly, the relevant provisions contained in FR 22 and FR 27 are also extracted below:

"FR 22 (2) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis."

"FR 27. Subject to any general or special orders that may be made by the President in this behalf, an authority may grant a premature increment to a Government servant on a time-scale of pay if it has power to create a post in the same cadre on the same scale of pay."

7. The net effect of the provisions contained in the aforesaid FRs 22 and 27 and the OM dated 7.8.1989 clearly is that in cases such as the one at hand, there

is no justification for with-holding the advance increments (four in number in this case) while allowing the protection of pay at the same time.

8. The learned counsel for the respondents has raised certain basic contentions. The first point made by him is that the protection of pay in the manner claimed by the applicant can be sanctioned only by the Indian Council of Forestry Research & Education (ICFRE) in which the applicant is working, and which is an autonomous body, and not by the Govt. of India. According to him, the said ICFRE has not been impleaded in the present OA and the same is, therefore, bad for non-joinder of an essential party (ICFRE). The learned counsel has gone on further to contend that ICFRE, being an autonomous body, has not been notified for the purpose of settlement of disputes of its employees by this Tribunal. He has accordingly expressed the view that this Tribunal has no jurisdiction in the matter.

9. We have gone into the merits of the arguments made by the learned counsel for the respondents. We are not in agreement with the contentions raised by him. We have noticed that the posts of Scientists 'SC' were advertised by the MOEF and not by the aforesaid autonomous body (ICFRE). The said advertisement clearly stipulated that the services of Scientists are required by the MOEF. Following the applicant's selection by the DRC, the letter dated 5th April, 1991, offering appointment to the applicant to the said post was also issued by the MOEF and not by the aforesaid autonomous body. The said offer letter inter alia mentions as follows:

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".....I am directed to offer you an appointment to the post of Scientist SC in the Department of Environment, Forests and Wildlife in the scale of pay Rs.2200-4000"

10. In the endorsement of the aforesaid offer letter to the Director, FRI, Dehradun, it has further been mentioned that the DRC has recommended four advance increments to the applicant in the pay scale of Rs. 2200-4000 prescribed for the post and that his pay should be fixed accordingly. The applicant assumed charge of the post of Scientist SC at the FRI, Dehradun, on 12.4.1991. No mention has been made in the aforesaid letters that the applicant has been appointed to a post in the ICFRE. We also find that the representations made by the applicant for fixation of his pay have been considered and re-considered by the MOEF acting in consultation with the DOP&T and not by the aforesaid ICFRE. The impugned letter of 9th February, 1998 has also been issued by the MOEF after due consideration in consultation with the DOP&T. The same is the position with regard to the other impugned letter dated 11.1.1999. As already stated, the OM dated 7.3.1989 relied upon by the respondents themselves is concerned with appointments in Government made from amongst people working in the PSUs, Universities etc. The letter dated 14th June, 1996 (Annexure R-IV) which provides that the applicant could either avail of pay protection in terms of the OM dated 7.8.1989 or else agree to secure the benefit of four advance increments has also been issued by the MOEF after consulting the DOP&T. Lastly, the letter dated 6th November 1998 placed before us during the course of hearing and taken on record also provides that the decision in the matter was taken by the Ministry, namely, MOEF, acting in consultation with the

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DOP&T. Clearly, therefore, the aforesaid autonomous body in which the applicant is supposed to be working has, at no stage, taken a decision in regard to the fixation of pay of the applicant and in our view rightly so as all along the applicant has been dealt with as an employee of a University walking into Govt. employment on direct recruitment basis.

11. The picture, which finally emerges before us, is that of an employee working in a University being recruited directly for service in Government. The aforesaid OM dated 7.8.1989, therefore, finds application in this case insofar as the protection of pay of the applicant is concerned. Simultaneously, we have seen no problem in FR 27 being operated in addition, so as to enable the applicant to avail of the advance increments over and above the protection of pay in terms of the aforesaid memorandum dated 7.8.1989 read with FR 22. For these reasons and those outlined in the preceding paragraphs, the contentions raised by the respondents and referred to in paragraph 8 do not deserve to be considered and the OA must, therefore, succeed, resulting in orders already passed and reproduced in para 1.2

(ASHOK AGARWAL)
CHAIRMAN

(S.A.T. RIZVI)
MEMBER (A)

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