

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

DA No.1911/2000

Date of decision: 6.7.2001

Shri Jatinder Mohan Singh ... Applicant

(By applicant in person)

versus

Union of India & Ors. ... Respondents

(By Advocate: Shri P.S.Mehandru)

CORAM:

The Hon'ble Shri Kuldip Singh, Member (J)

The Hon'ble Shri M.P. Singh, Member (A)

1. To be referred to the report or not? Yes

2. Whether it needs to be circulated to other Benches of the Tribunal?

M.P. Singh
(M.P. Singh)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1911/2000

New Delhi, this 6th day of JULY, 2001

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri M.P.Singh, Member(A)

Jatinder Mohan Singh
M-22, IInd Floor, Saket, New Delhi .. Applicant
(By applicant in person)

versus

1. Indian Council of Agricultural Research
through Secretary, ICAR, Krishi Bhavan
New Delhi
2. Shri B.K. Chauhan, Secretary
ICAR, Krishi Bhavan, New Delhi
3. Director General, ICAR
Krishi Bhavan, New Delhi .. Respondents

(By Shri P.S.Mehandru, Advocate through proxy
counsel Shri D.S.Mehandru)

ORDER

By Shri M.P. Singh

The applicant in this OA has challenged the order dated 17.9.1999 passed by the respondents by which the request of the applicant for payment of salary of the post of Legal Advisor was rejected.

2. The facts in brief are that the applicant was appointed to the post of Junior Law Officer in ICAR on 9.11.89. Thereafter he was appointed to the post of Assistant Legal Officer w.e.f. 2.12.96. When Shri B.N.P.Pathak, Legal Advisor, ICAR proceeded on deputation as Registrar, Central Administrative Tribunal, Bangalore in June, 1998, the applicant was asked to look after the work of the post of Legal Officer in addition to his normal duties without any extra remuneration vide order dated 22.6.98 (A/4). This was done after obtaining the approval of the DG, ICAR, who is the appointing authority



to the post of Legal Advisor. At that time the applicant was having a total of 8 years and 7 months of legal experience in the ICAR. In addition, he has also possessed 4 years experience as Legal Practitioner. The applicant made a detailed representation on 16.8.99 for payment of salary of the post of Legal Advisor under FR 49(i) for discharging the functions of that post. It was followed by a reminder on 28.12.99. However, his request for payment of the salary of the post of Legal Advisor was rejected by the impugned order dated 17.9.1999.

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3. The contention of the applicant is that when Shri Pathak, who was given regular appointment as Legal Advisor w.e.f. 6.10.86, was ordered to look after the work of the post of Legal Advisor from 9.7.85 to 5.10.86, he was given the salary of the post for this period. Aggrieved by this, he has filed the present OA seeking directions to the respondents to quash the impugned order dated 17.9.1999 and further directions to them to pay to the applicant the salary of the post of Legal Advisor with effect from 22.6.1998 (Rs.10000-15200) under FR 49(i) including annual increments with interest @ 18% p.a.

4. In support of his claim, the applicant has also cited a large number of judicial pronouncements including that of OA No.1350/96 decided on 18.5.98 (Dr. P.N.Bahl Vs. UOI).

5. Respondents in their reply have stated that the R/Rules for the post of Legal Advisor at the time Shri Pathak proceeded on deputation provided for filling up of the post by direct recruitment/deputation. Furthermore,

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Shri Pathak had only gone on deputation assignment, hence filling up this post by direct recruitment basis/deputation was never an issue. Respondents had only decided to get the services of an officer, who fulfilled the eligibility conditions as per the provisions of the R/Rs till such time. The applicant had never objected to the terms of the order dated 22.6.98 and continued to look after the work of the post of Legal Advisor in addition to his normal duties. Representations dated 28.12.99 and 27.3.2000 are under consideration of the competent authority in consultation with the Finance Division of the Council. As regards the judgements cited by the applicant, respondents submit that the particular judgement is applicable to the facts of the particular case and is not automatically applicable to the other cases. Furthermore judgement in OA 1350/96 (supra) is not applicable to the present case as the Tribunal has allowed the benefit of additional remuneration to the applicant in that case under FR 49(i), whereas the applicant in the present case is praying for the salary of the post of Legal Advisor.

6. Heard the applicant appearing in person and the learned counsel for the respondents and perused the records.

7. During the course of the arguments, the learned counsel for the respondents submitted that the applicant was not formally appointed to the post of Legal Advisor and thus he cannot claim the salary of that post. He was merely asked to look after the additional duties of the post of Legal Advisor. At that relevant point of time, R/Rules did not provide for promotion to the post of



Legal Advisor as the same was required to be filled by direct recruitment/deputation. It was only in the year 2000 that the R/Rules have been amended so as to provide for direct recruitment as well as promotion. On a careful perusal of FR 49(i), it is clear that where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same cadre in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the competent authority reduces his officiating pay under Rule 35; but no additional pay shall, however, be allowed for performing the duties of a lower post. In this case, the applicant has been given full charge of the post of Legal Advisor which involves shouldering higher responsibilities. He should therefore be allowed the pay attached to the post of Legal Advisor.

8. The learned counsel has produced a copy of the order dated 29.3.2001 according to which the competent authority has decided to grant extra remuneration to the applicant under FR 49(i) for looking after the duties of the post of Legal Advisor in addition to his own duties from 22.6.98 to the date when the regular incumbent on the post of Legal Advisor (Shri Pathak) returns from his deputation assignment or until further orders whichever is earlier. The order further stipulates that the monetary benefit on this account shall be restricted under the provisions of FR 35.

9. The applicant drew our attention to note 3(3) to Government of India's orders issued under FR 35, which provides as under:

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"The effect of this order is that restrictions under FR 35 are not to be invoked where a Government servant holding the post in substantive or temporary or officiating capacity is promoted or appointed in substantive or temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant R/Rules, to another post carrying duties and responsibilities of greater importance."

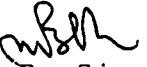
10. The admitted position is that the applicant was asked to perform the duties of Legal Advisor which involve shouldering greater responsibilities. R/Rules did not provide for promotion at that relevant point of time when he was asked to perform the duties of Legal Advisor. It is because of this reason that he was not promoted to that post on temporary basis as the lower post which he was holding was not in line of promotion. Since the applicant was formally asked to look after the work of the post of Legal Advisor and he fulfilled the eligibility conditions as prescribed in the R/Rules, the restrictions under FR 35 cannot be invoked. As per R/Rules for the post of Legal Advisor, a person should possess a first or second class Bachelor's degree in law with 7 years experience as a Legal Advisor in any Government Office to be eligible for appointment to the post. The applicant had obtained a first class degree in law and also possessed 8 year and 7 months experience at the relevant point of time i.e. 22.6.1998 as required under the R/Rules. In fact, the respondents themselves have admitted this fact in para 4.7 of their reply. Hence, the action of the respondents in restricting the monetary benefit vide order dated 20.3.2001 is not justified.

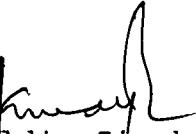


11. In the case of Dr. Bahl (supra) relied upon by the applicant, Dr. Bahl who was working as Assistant Director General in ICAR and was asked to also look after the work of DDG in ICAR in addition to his own duties without any extra remuneration, this Tribunal directed the respondents to allow the additional remuneration to Dr. Bahl under 49(i). This order was confirmed by the Delhi High Court in CW No.3202/98 decided on 1.2.2000.

12. Following the ratio of the judgement in the case of Dr. Bahl (supra) and fact that Shri Pathak who was also ordered to look after the work of the post of Legal Adviser w.e.f. 9.7.85 to 5.10.86 and that he was paid the salary of the post of Legal Advisor for that entire period as admitted by the respondents, we are of the considered opinion that the applicant is entitled for the salary of the post of Legal Advisor and denial of the same by the respondents is not justified.

13. In the result, the OA is allowed and the impugned order dated 17.9.1999 is quashed and set aside. We hold that the applicant is entitled to the pay scale of the post of Legal Advisor (Rs.10000-15200) under FR 49 with effect from the date he has been discharging the duties of the post, along with increments, if any, till the date he was functioning as such. Respondents are directed to pay the arrears as a result of this to the applicant within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

/gtv/