

(2)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A No. 202/2000
T.A No.

(3)

Date of Decision 30-4-2001

Harsh Vardhan Agarwal ..Petitioner

Present in person ..Advocate for the petitioner(s)

Versus

The Director General ICMR ..Respondent
and Ors.

Sh. V.K. Rao, learned counsel ..Advocate for the Respondents
through proxy counsel Ms. Anuradha
Priyadarshani.

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

Hon'ble Shri Govindan S. Tampli, Member (A)

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

2. Whether it needs to be circulated to
other Benches of the Tribunal? No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 202/2000

New Delhi this the 30th day of April, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampli, Member (A)

Harsh Vardhan Agarwal,
S/O Sh.R.K. Agarwal,
R/O 550, Sahukara, Bareilly
presently employed at Malaria
Research Centre, Shahjahanpur (UP),
Under Indian Council of Medical
Research, New Delhi.

..Applicant
(Applicant present in person)

VERSUS

1. The Director General, Indian Council of Medical Research, Post Box-4508, Ansari Road, New Delhi-110029
2. The Director, Malaria Research Centre, 22, Sham Nath Marg, Delhi-54
3. The Director, Regional Medical Research Centre Farzand Ali Market, Aberdeen Bazar, Post Blair (A&N).

..Respondents

(By Advocate Shri V.K. Rao, learned counsel through proxy counsel Ms. Anuradha Priyadarshani)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J))

In this application, the applicant has impugned the order passed by the respondents dated 17.5.1999, regarding refixation of his pay as on 1.1.1996 and 1.2.1996, ^{He has P.} and also their action to withhold the annual increments beyond 1997 till the case stated to have been filed by him, which is pending before the Hon'ble Allahabad High Court against his transfer from Shahjahanpur to his Field Station, Chennai, is decided.

2. The main grievance of the applicant is that the respondents have failed to take his basic pay as Rs.3350/-in the pay scale of Rs.2000-3200/- for re-fixation of his pay in the revised pay scale of Rs. 6500-200-10,500/- consequent upon the implementation of the Fifth Central Pay Commission's recommendations as on 1.1.1996. In the impugned order, the respondents have stated that the applicant's pay, who is referred to as Research Assistant (RA), is fixed at Rs.9700/- as on 1.1.1996 and Rs.9900/- as on 1.2.1996 in the pay scale of Rs.6500-200-10,500/-. He further submits that in view of the Labour Courts orders passed in ID case Nos.3/1987,9/1992 and 44/1995 filed by him, his pay should have been fixed at Rs.10,100/-PM on 1.1.1996 and Rs 10,300 on 1.2.1996. He has relied on the order of the Labour Court dated 15.4.1996(Annexure A.6) disposing of his ID case No 44/1995, in which he had claimed the balance amount of money of Rs.38,964/-, as given in the statement from 13.12.1993 to 30.6.1995. According to him, the respondents have paid this balance amount of money i.e. Rs.38,964/-, whereby they had accepted that his basic pay was Rs.3350/- from Jan.,1994 to June,1995. He has, therefore, vehemently submitted that on the revision of his pay w.e.f. 1.1.1996 in accordance with the pay scale recommended by the Fifth Central Pay Commission and accepted by the respondents,his basic pay of Rs.3350/- should have been taken into account while fixing in the pay scale of Rs.6500-200-10,500/-. He has clarified that the respondents have paid some balance amount on his basic pay of Rs.3350/- in 1995 in the pay scale of Rs.2000-3200, granting him two increments by way of stagnation increments at the rate

18

of Rs.75/- for each year, which means that his basic pay was Rs.3200 + Rs.150 equal to Rs.3350/-. He has, therefore, claimed that in the revised pay scale of Rs.6500-200-10,500/-, which is admittedly the replacement pay scale of Rs.2000-3200/-, his pay should have been fixed at Rs.10,100/- instead of Rs.9700/- as on 1.1.1996 with subsequent increments. (b)

3. Another ground taken by the applicant is that the stay granted by the Allahabad High Court regarding his transfer from Shahjahanpur to Chennai by the interim order dated 7.6.1996 cannot come in his way of future increments beyond 1997. He has contended that there is no such Rule to support the action of the respondents. However, it is very relevant to note that the applicant himself has submitted at the Bar that the respondents have continued to pay him the full pay and allowances as RA for the intervening period from 1996 till date, that is for nearly more than 5 years, without taking any work from him either at Shahjahanpur or any other office. He has also submitted that the respondents have not allowed him to resume his duty as RA at Shahjahanpur Office but nevertheless they have chosen to pay him the full pay and allowances for doing no work whatsoever for the intervening period. We find that this state of affairs in the respondents' Office rather surprising and most disturbing.

4. Learned proxy counsel for the respondents has raised a preliminary objection that this OA is not maintainable in the Tribunal, Principal Bench, New Delhi. Her contention is that the applicant is residing at Bareilly and the impugned order had also (b)

been served on him at the relevant time when he was posted at Shahjahanpur. Therefore, she has contended that the application should have been filed in the Allahabad Bench of the Tribunal. This contention is, however, refuted by the applicant who has relied on Rule 6 (ii) of the CAT (Procedure) Rules, 1987, and the order of the Tribunal dated 20.9.2000 in which the Bench was presided over by the Hon'ble Chairman of the Tribunal. In that order, it had been further noted that sufficient opportunities had been granted to the respondents to enable them to put in their reply by the earlier order dated 17.8.2000 and cost of Rs.5000/- (Rs Five thousand only) had been imposed on the respondents for the delay in submission of their reply. It was further noted that even on 20.9.2000, no reply had been filed by the respondents. In that order, the submission of the learned counsel for the respondents was also noted that Shri V.K.Rao, learned counsel will proceed in the OA without any reply and the fact that the applicant had to travel for over 400 KMs in order to attend the present OA. The OA was also admitted on that date by the Bench. In the circumstances of the case, the preliminary objection taken by the learned proxy counsel for the respondents with regard to the jurisdiction of the Principal Bench of the Tribunal to hear this case is rejected.

5. We are constrained to note that the learned counsel for the respondents was not able to assist us on the merits of the case regarding the claims of the applicant. We also have no hesitation to note that the applicant himself was not very clear as to what rules, or any other provisions of law or instructions he is relying upon to substantiate his

B,

claims. It may, however, be added that, *prima facie* the applicant's claim that his basic pay of Rs.3350/- should be counted cannot be accepted, as this would mean that his basic pay was higher than the maximum of the scale prescribed for the post of RA i.e. in the scale of Rs.2000-3200/-. At the same time, we are also unable to state that the fixation of pay of the applicant done by the respondents at Rs.9700/- as on 1.1.1996, and Rs.9900/- as on 1.2.1996, are also correct because no documents have been placed on record on the basis of which these have been arrived at. We, however, see some force in the submissions made by the applicant regarding the order dated 21.2.1998 passed by the Allahabad High Court staying the operation of the impugned judgement of the learned Single Judge dated 5.2.1998 (page 247 of the paper book). By this order, the petitioners, including the present applicant had impugned the order dated 7.6.1996 transferring them from Shahjanhanpur to Chennai. In the circumstances of the case, no rules or any other materials have been brought on record by the respondents to show as to how the annual increments due to the applicant beyond 1997 have been deferred till the final decision of the Allahabad High Court in the transfer matter. There is also no reason why the respondents are keeping silent or not taking necessary action as open to them in law. In the circumstances of the case how they are allowing a situation where they have kept the applicant absolutely idle as submitted by him at the Bar, and at the same time for a number of years continue to pay him full pay and allowances, is a matter which needs to be thoroughly looked into by them. The applicant has,

98

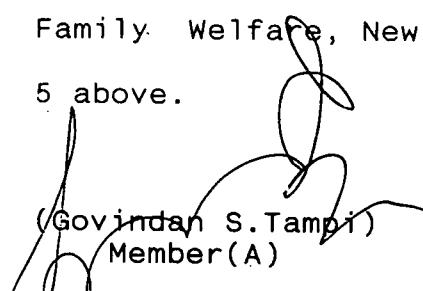
in fact, submitted that on a number of occasions he had approached the respondents to give him work which has been declined by them. This is a very serious and unsatisfactory state of affairs in a Govt. Organisation like the ICMR. It is also noted that in spite of several opportunities being given to the respondents they did not also care to file any reply so that their stand could have been explained in the OA or even as to how they are continuing to pay the applicant full pay and allowances for last several years without taking any work from him.

6. In view of what has been stated above, the OA is disposed of with the following directions:-

(i) The applicant is called upon to make a self contained representation, along with the provisions of law, rules and instructions he relies upon to substantiate his claim. This representation shall be submitted to Respondent No. 1 within two weeks from the date of receipt of a copy of this order. Respondent No. 1 shall dispose of that representation by a reasoned, detailed and speaking order, within two weeks thereafter, with intimation to the applicant;

(ii) In the facts and circumstances of the case, cost of Rs.1000/- (Rupees One thousand) only is awarded in favour of the applicant and against the respondents.

7. Let a copy of this order be issued separately to the Govt. of India, Ministry of Health and Family Welfare, New Delhi, particularly regarding Para 5 above.


(Govindan S. Tampli)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)