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Central Administrative Tribunal
Principal Bench

O.A. 276/2000

New Delhi this the 26th day of September, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Dr. Bhanu Iyengar,
Iyengar Farm,
Bijweasan Road,
P.O. Kapashera,
New Delhi-110 037.

... Applicant.

(By Advocate Ms. Hetu Arora)

Versus

1. Secretary,
Department of Health,
Ministry of Health & Family Welfare,
New Delhi.

2. Director General,
Indian Council of Medical Research,
Ansari Nagar,
New Delhi-110 029.

3. Director,
Institute of Pathology,
Safdarjang Hospital Campus,
New Delhi-110029.

4. J.P. Sharma,
Institute of Pathology,
Safdarjung Hospital Campus,
New Delhi-110029.

... Respondents.

(By Advocates Shri V.S.R. Krishna for Respondent 1, Ms. Geetanjali Goel for Respondents 2 and 3, Shri J.P. Sharma for Respondent 4).

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application alleging that the respondents have acted in a mala fide and illegal manner with regard to giving her due retiral benefits on her retirement from service w.e.f. 31.5.1998.

2. The applicant retired from service as Director, Institute of Pathology (IOP) - Respondent 3 on 31.5.1998 which is part of Respondent 2, that is ICMR. Ms. Hetu

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Arora, learned counsel for the applicant has submitted that when the applicant retired from service, all her retirement dues should have been paid to her promptly. She has submitted that a letter was issued by the respondents dated 28.8.1998, in which it is stated that per-diem allowances drawn by her for foreign tours for attending various conferences in Switzerland, USA and Australia in May, 1996, October, 1996 and June, 1997 are not admissible to her and so the same was deducted. Learned counsel has claimed that the action of the respondents in with-holding the leave encashment at the time of retirement of the applicant is illegal and thereafter deducting the per-diem allowance is also illegal and against the Rules. Therefore, she has sought a direction to the respondents for immediate payment of the amounts to the applicant with interest @ 18% per annum from June, 1998.

3. I have seen the reply filed by the respondents and heard Shri V.S.R. Krishna, learned counsel. According to him, the applicant did not submit the required pension papers before her retirement as she was hoping that her services will be extended for a further period of two years. Learned counsel has submitted that the respondents had also requested the applicant to submit her pension papers by their letter dated 22.9.1998 and subsequent reminders which have been mentioned in the reply. The respondents have, therefore, submitted that in the circumstances, the applicant has herself delayed the

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submission of the pension papers and so they are not responsible for the consequent delay, following the late submission of the papers by her. They have stated that the applicant was to refund the per diem charges as per Audit Memo issued by the Department of Scientific Audit, AGCR, Govt. of India. This amount of Rs.92,535/- was drawn by her which, according to them was not admissible to her in accordance with the relevant rules and instructions of her deputation to attend the conferences. Shri V.S.R. Krishna, learned counsel, has submitted that the sanction letter issued by the respondents for each of the three visits abroad undertaken by the applicant during her service were on the condition that no expenditure would be borne by the Respondent-Council/Government of India. However, he has stated that the applicant had withdrawn the aforesaid amount on account of DA for the foreign visits which had to be refunded by her to the Government. This has been done by the letter dated 28.8.1998, in which it has been ~~stated that~~ ^{Sum} ~~sum~~ of Rs.92,535/- on account of per-diem allowances drawn by the applicant was not admissible to her and hence, the same was to be recovered with interest. Learned counsel has, however, submitted that the Provident Fund has already been paid to the applicant, in spite of the delay on her part in signing the papers relating to final withdrawal of GPF and other papers. In the additional affidavit filed by the respondents, they have also explained how the necessary payments could not be made to the applicant for her service rendered as Associate Professor of Pathology, Maulana Azad

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Medical College (MAMC), New Delhi which was to be paid by the Govt. of India, Ministry of Health, Family Welfare which had not been received by respondents 2 and 3. They have also given in detail the various steps taken by them for release of pro-rata pension and DCRG amounts to the applicant, as well as commutation and pension from June, 1998 to December, 1998. They have also submitted that as there has been no wanton or intentional delay on the part of the respondents, the applicant is not entitled to any interest on the delayed payments of retirement, as according to him she had also delayed submission of necessary papers and she is not entitled for the per-diem allowances which have been earlier withheld and later adjusted from the other amounts due to her. In the circumstances, respondents' counsel has prayed that the O.A. may be dismissed.

4. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. From the documents on record, the contention of the respondents that the applicant had to refund the per diem charges as per the Audit Memo, for an amount of Rs.92,535/- drawn by her, which was not admissible to her under the terms of the Sanction letters for her to proceed abroad, is in order. In this view of the matter, the applicant could not have withdrawn this amount on account of DA for foreign visits as the same has not been

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sanctioned and was not to be ~~the~~^{be} part of the expenditure to be borne by the Council/Government of India. Therefore, the adjustment of this amount of Govt. dues by the respondents against the withheld amount of leave encashment otherwise due to the applicant is neither illegal nor arbitrary, on which the applicant can claim refund and that too with interest. Learned counsel for the respondents has submitted that at the time when the amount of Rs.92,535/- was withdrawn by the applicant to her credit, she was the Head of the Department and the same has been done contrary to the Sanction letters issued to her for attending the three conferences abroad and as such the per diem allowances were not admissible to her. Therefore, the claim made by the applicant for repayment of the amount of per diem allowances which had been withheld from her retirement dues with interest, cannot be sustained and is accordingly rejected.

6. From the facts mentioned above, it is seen that the applicant has also not submitted the necessary pension papers to the respondents in time and has been reminded to do so several times before her retirement, by the Officer-in-Charge. In the facts and circumstances of the case, it cannot also be stated that the delay in payment of the retiral dues to the applicant is entirely due to the non-action or any illegal action of the respondents for which the applicant will be entitled to interest as claimed by her at 18% per annum from June, 1998. Taking into account the totality of the facts and circumstances of the

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case, including the fact that she herself was the Head of the Department at the relevant time, this claim is also rejected.

7. For the reasons given above, I find no merit in this application and the O.A. is accordingly dismissed. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'