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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 533/89  
T.A. No.

1989

DATE OF DECISION 18-12-1989.

~~CRII Staff Association~~ Applicant (s)  
through its General Secretary,  
Shri R.L. Arya

~~Shri Vivekanand~~ Advocate for the Applicant (s)

Versus

~~Council of Scientific and~~ Respondent (s)  
~~Industrial Research & another~~

~~Mrs. Seil Sethi~~ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*
4. To be circulated to all Benches of the Tribunal ? *no*

JUDGEMENT

(The judgment of the Bench delivered by  
Hon'ble Shri I.K. Rasgotra, Administrative  
Member)

The applicants (CRII Staff Association) have filed this application under Section 19 of the Administrative Tribunals Act, 1989 against the impugned paragraph 9.5 inserted by the respondents on 24.7.1981 in the CSIR procedures regarding transfer of technology and related matters, according to which consultancy fee upto 2/3rd of the amounts charged from the clients became distributable in the following ratio:-

- |                                     |     |
|-------------------------------------|-----|
| (i) Team of Consultants             | 85% |
| (ii) Supporting and auxiliary staff | 10% |
| (iii) Benevolent/Welfare Fund       | 5%  |
- L. S.*

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The applicants have contended that "most of the employees (are) getting a meagre share and handful of the employees getting the major share of the institutional fee." While the impugned paragraph was introduced on 24.7.1981, it has been claimed that the respondents have implemented the provisions made only after 1.4.1988 and that the management has now approved the distribution of the amount of Rs. 5 lakhs approximately in accordance with the plan approved by the management council in the meeting held on 15.2.1989. The applicants, therefore, have sought the following reliefs:-

- (i) to quash the rule 9.5 as approved by its governing body on 24.4.81 notified on 24.7.81 (Annexure A-4) as the same apart from being unlawful, unjustified, illegal, arbitrary violative of principles of natural justice equity and good conscience is also unconstitutional and discriminatory;
- (ii) to set aside/quash approved list of the persons passed by the Management Council of the respondents in its meeting dated 15.2.1989 (Annexure A-6) declaring by the persons named therein entitled to 85% of the institutional fees; and

Besides the above they have also sought a direction to the respondents to fix a reasonable, equitable, lawful mode/method of distribution of institutional fee on the basis of seniority of pay scale of all the employees of the respondents without discriminating between the alleged team of consultant and rest of the employees.

2. Before we deal with the merits of the case, we would refer to the relevant provisions of the scheme which have a significant bearing on the case:

"1.1 "Consultancy Service" envisages rendering technical or professional advice and assistance to help the industry in its various stages of development. It may be in the form of expert advisory service embracing overall aspects of an industry or assistance in the implementation of specific project covering any particular or all aspects from the initial stage of examining the economic and

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technical feasibility, selection of site, design engineering, fabrication and installation of plant, commissioning to the last stage of marketing and sales promotion of the finished product...."

"8.1 All consultancy work in the Laboratory/Institute shall be undertaken with the approval of the Executive Committee....."

"8.7 The staff involvement for a particular consultancy job shall be approved by the Executive Committee taking into account the overall interest of the laboratory/institute. Work load of individual scientist for laboratory research, experience, annual earning from consultancy and other fees etc. will be kept in view. Where industry has indicated its preference of person(s) such request will be given due consideration....."

"8.8 The Executive Committee shall decide regarding the amount to be paid as honorarium to the consultants taking into account the total fee received and the actual expenditure in each case. The share of each individual member of the team shall also be determined by the Executive Committee keeping in view the type of work put in by the Scientist and the time he spent on it etc.

In working out the maximum amount of honorarium admissible to the consultants, the laboratories may take into account the actual expenditure incurred on the consultancy service by the laboratory, the nature of work and the intellectual and physical inputs by the Consultants. The actual expenditure should normally be deducted from the total amount received from the consultancy (Letter No.11/26/75-L dated (27.3.1976))

"9.1 Consultancy days should not normally exceed 50 days in a financial year....."

3. We have heard the learned counsel of both the parties. The learned counsel for the applicants stated that the consultancy offered by the CRRI involves only transfer of technology developed

by the CRR I. He further contended that the consultants are CRR I and not the individuals who are detailed as consultants for the purpose of transfer of technology. In these circumstances the entire staff of the CRR I is entitled to an equitable share of the institutional fee. The present formulation given in paragraph 9.5 denies the applicants an equitable and just share of the consultancy fee charged by the CRR I from its clients, and is discriminatory and arbitrary.

4. The Ld. Counsel for the respondents stated that the CRR I Staff Association has no role to play in the development and transfer of technology and that the distribution part of the consultancy fee was made in accordance with the guidelines as laid down in the CSIR. Further, CSIR advertisements for scientific posts clearly mention about the payment of honorarium to scientists for consultancy jobs and that the distribution of honorarium for the consultancy project among the staff contributing to the project is within the competence of the Governing Body. Granting a part of the sum to the supportive and auxiliary staff is gratuitous and by way of bounty and not as a matter of right. It was further stated that the fresh CSIR procedure regulating the distribution of consultancy was issued vide letter No.11/26/79-L Dt. 24.7.1981, while the applicants filed the application in the Tribunal on 10.3.1989. Even when the procedure was first implemented in April, 1988 no strong objections appear to have been taken by the Association.

5. We have gone through the record carefully keeping in view the arguments advanced by the Ld. Counsel for both parties. We find that part of the consultancy fee is distributed to the selected staff who contribute to the projects involving consultancy. Broad guidelines in this regard have been issued by the Ministry of Finance vide OM No.F.II(2)-E-II(B)/63 dated 6th May, 1963. The procedure laid down by the CSIR generally follows these guidelines.

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From Annexure A-6 of the application, we find that CRRRI undertakes consultancy in a wide area of its specialisation. This could be visualised from a view of the sample projects mentioned below:

- (a) Inspection of bridge at KM 329.3 on Leh Kargil Road.
- (b) Design and quality control of flexible pavement for 650 tonne crane at Kakrapur Atomic Power Station
- (c) Investigation of causes of distress on 12-30 runway surfacing of Jamnagar airfield.
- (d) Agatti airport project - Lakshadweep
- (e) Study of major land slides in Sikkim area etc.

6. Having regard to the variety of the projects undertaken it appears that the CRRRI consultancy is not a mere transfer of technology. It also involves investigation, research and development of the solutions to specific problems posed by the project concerned. It, therefore, cannot be said that the consultancy involves only transfer of technology in the laboratories of the CRRRI. We also find that the distribution of part of the consultancy fee constitutes a condition of service in the case of scientists and thus gives a vested right to them. There is no such <sup>right for claiming</sup> share in the consultancy fee by the supportive and auxiliary staff. The supportive staff being the employees of the CRRRI receive their salaries, wages, over-time and other allowances for the work done by them. As far as the scientists are concerned, part of the consultancy fee constitutes an essential ingredient of the compensation payable to them in accordance with the conditions of their service.

7. Nevertheless we find that CRRRI have made a provision for distribution of a part of the consultancy fee among the supportive and auxiliary employees. In our opinion, provision of 10% of the 2/3rd consultancy charges distributable to the supportive and auxiliary staff does not seem to be equitable, as the claimants for this part are a large number of employees. From the approved

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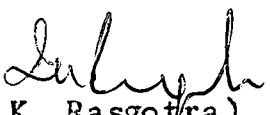
distribution for the consultancy, given in the Annexure-6 of the application, it is seen that a certain amount of honorarium has been invariably provided for the Director. The rationale for doing so is not understood. There is also an element of of arbitrariness in the scheme inasmuch as the supportive and auxiliary staff of a project who are entitled to a share of the consultancy fee distributed have been chosen without any guidelines. These are however matters for the respondents to consider so as to ensure the maximum good for the maximum number of persons which is the hallmark of good administration.


8. In the facts and circumstances of the case, we do not consider it appropriate to issue any directions to the respondents as the issues involved pertain to policy, except in one respect mentioned below. The respondents should as early as possible lay down guidelines for detailing the supportive and auxiliary staff for each project. The guidelines in this regard should be such that all members of the supportive and auxiliary staff of CRRRI will be given opportunity to be associated with the work of the projects, so that each one of them will get the share of the consultancy fee, in his own turn. This would also obviate the charge of arbitrariness in the matter of earmarking the staff concerned. In other words, the same personnel should not be attached to the project work all the time.

9. We also hope that the Respondents will review the distribution given in paragraph 9.5 of CSIR procedures for transfer of technology and related matters (A-3) so that the supportive and auxiliary staff receive adequate honorarium

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commensurate to their work so as to give them a greater measure of satisfaction in line with the sense of participation in the project. The application is disposed of with the above directions. The parties will bear their own costs.

  
(I.K. Rasgotra)  
Member (A) 18/12/87

  
18/12/87  
(P.K. Kartha)  
Vice Chairman(J)