

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO.1026/1989

DATE OF DECISION : 27.02.1992

SHRI KARMA VEER

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

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SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...IN PERSON

FOR THE RESPONDENTS

...SHRI J.P. SINGH

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant joined as Assistant on 25.2.1983 in Indian Council of Agricultural Research (Administrative Side) by virtue of the appointment letter dt.12.3.1983 (Annexure-IV) on the terms and conditions laid down in the letter dt.11.2.1983 (Annexure-II). The scale of pay in which the applicant was appointed was Rs.425-15-500-EB-15-560-20-700-EB-25-800 plus the usual allowances as admissible under the rules from time to time. The applicant was allowed one increment of pay w.e.f. 1.2.1984 and his pay was fixed at Rs.440. The grievance of the

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applicant assailed in this application under Section 19 of the Administrative Tribunals Act, 1985 is that after 1.2.1984, he has not been granted any increment in the aforesaid time scale of pay and he has been granted the withheld increments w.e.f. 1.2.1992.

2. The applicant has claimed the relief that he should have been granted the regular increments and a direction be issued to the respondents to grant him all increments ^{at least} w.e.f. 1.2.1988 or alternatively direct the respondents to release all increments w.e.f. 1.2.1989 and further declare the application of the provisions as contained in the OM No.16(4)/76-CS(I) dt.3.6.1977 as bad and wrong and illegal. He has prayed for a further direction to the respondents to reduce the said period of 5 years mentioned in the OM aforesaid dt.3.6.1977.

3. The brief facts are that the applicant joined as Assistant as said above on 25.2.1983 on the terms and directions laid down in the Memo dt. 11.2.1983 (Annexure II). Item No.14 of these terms and conditions is as follows :-

"He/she will be required to pass a test in typewriting at the minimum speed of 30 w.p.m. within a period of two years from the date of his/her appointment. In the event of failure to pass the test within this period, his/her increments will be withheld until he/she passes the test or for a period of five years, whichever is earlier."

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The applicant was allowed to cross one increment on 1.2.1988 and after that he was not granted any increment in view of the above condition of item No.14. The applicant represented, but to no effect. The case of the applicant is that period of 5 years amounts to penalty of stoppage of increments and further the OM of Deptt. of Personnel and Administrative Reforms No.16(4)/76-CS(I) dt. 3.6.1977 does not apply to the applicant as in the aforesaid OM dt. 11.2.1983, at item No.8, it is specifically mentioned that the post is non Government, but pensionable. The applicant has also stated a number of other facts, which are not material for the decision of this case and are irrelevant.

4. The respondents contested the application and stated that the condition of passing the typing test is mandatory and no facilities to be provided during post recruitment for training as alleged by the applicant. It is also stated that the applicant did not pass the typing test which was the term and condition of the appointment and the clause regarding qualifying the type-writing test is based on the Department of Personnel and Training Office Memorandum dt.3.6.1977 in terms of the authority of the bye-laws of ICAR. The withholding of the increment is not penalty as envisaged under the CCS (CCA) Rules. In fact the increments were

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withheld due to non qualifying of the typewriting test in terms of the terms and conditions of the appointment of the applicant as Assistant. A direct recruit Assistant could be allowed first increment on completion of one year of service. The increments are to be withheld for a period of 5 years subsequent to the second increment. Thus the period of 5 years should be counted subsequent to the date of second increment and not from the date of appointment as the individual had already earned an increment on completion of one year of service.

5. I have heard the applicant in person at length.

None appeared for the respondents on 11.02.1992.

The grievance of the applicant is that the condition at item No.14 of the Memo dt. 11.2.1983 is arbitrary, but it is not so. For a clerical job, typewriting is necessary and the minimum speed laid down is 30 w.p.m.

However, since the applicant was a direct recruit, so a condition was attached that he has to pass the typewriting test within 2 years of his appointment, i.e., he should have passed the test by February, 1985. But the applicant did not qualify the typewriting test. In the event of not passing the typewriting test, it is laid down

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that failure to pass the test within this period, the increment should be withheld, until he passes the test, for a period of 5 years whichever is earlier. The applicant cannot resile from this because he has openly knowing well the terms and conditions of appointment joined on 25.2.1983. The applicant having agreed to terms and conditions of appointment cannot blow hot and cold in the same breath. During the course of the arguments, the applicant admitted that he did appear in the test, but he did not qualify. The applicant challenges the validity of the OM of Department of Personnel dt. 3.6.1977 but there is nothing wrong or arbitrary in the same. As per bye-law authority of the ICAR, this OM has been adopted in the service condition and also placed in the Memo of 11.2.1983 at item No.14. This is also not discriminatory. It is meant for all direct recruit Assistant without any distinction. The applicant was well aware that he has to pass the typewriting test within 2 years, otherwise his increments will be withheld for a period of 5 years. So there is nothing illegal or irregular in the said OM dt.3.6.1977. The contention of the applicant that this

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applies only to Central Secretariat Service Assistants is not tenable in bye-law authority of the Bye-Law ICAR has incorporated the same in the terms and conditions of appointment.

6. The terms and conditions of service which have once been accepted cannot be altered subsequently by other side. That is a binding contract on the parties.

7. The applicant has calculated his loss which he has sustained by non grant of the increments yearwise, but the loss which the applicant has shown actually did not accrue to him as he failed to qualify in the typewriting test.

8. As per item No.14 of the terms and conditions of the Memo dt.11.2.1983, after the grant of the second increment on 1.2.1984, the period of 5 years will commence and will end on February, 1989. The respondents have granted the increment to the applicant from 1.2.1990. The applicant argues that 5 years' period stands completed on 1.2.1988, but it cannot be accepted because the applicant has already earned one increment on 1.2.1984. After this, the 5 years' period will start. The first year completing itself in February, 1985, second in February, 1986, third in February, 1987, fourth in February, 1988 and the fifth in February, 1989

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Thus the applicant can claim the release of the increment only from 1.2.1989. The respondents, however, have released the increments w.e.f. 1.2.1990. The contention in the counter of the respondents is that he would be eligible for restoration of the increments only when he reaches the seventh increment's stage, but it is not so. The Memo of February, 1983 clearly shows that in the event of failure to pass the test within 2 years, the increment will be withheld for a period of 5 years. The 5 years' period stands completed in February, 1989. So the applicant is entitled to get the withheld increments w.e.f. 1.2.1989.

9. In view of the above discussion, the application is partly allowed and the respondents are directed to restore the increments of the applicant w.e.f. 1.2.1989 and the arrears of pay falling due should be paid to the applicant as he was allowed the restoration of increments w.e.f. 1.2.1990. The other reliefs claimed by the applicant are disallowed. The respondents to comply with the above order preferably within six weeks from the date of receipt of this order. In the circumstances, the parties shall bear their own costs.

J. P. Sharma

(J.P. SHARMA)
MEMBER (J)

21/2/92