

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1967/88

NEW DELHI, THIS THE 27th DAY OF SEPTEMBER, 1994.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Shri H.S. Panwar,
Assistant Editor,
C.I.S. Grade III (Deputation),
Sanik Samachar,
DPR (Ministry of Defence),
New Delhi ...Petitioner

(By Advocate : Shri V.P. Sharma)

VERSUS

1. The Secretary,
Ministry of Information & Broadcasting,
Shastri Bhavan,
NEW DELHI.
2. The Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
North Block,
New Delhi.
3. Secretary,
Ministry of Finance,
Dept. of Expenditure,
North Block,
NEW DELHI.
4. The Secretary,
I.C.A.R.
Krishi Bhavan,
New Bhavan.
.... Respondents

(By Advocate : Shri M.K. Gupta)

JUDGEMENT

Hon'ble Shri J.P. Sharma, Member (J)

This O.A.No.1967/88 has been filed against the action of the Respondents in not paying to the applicant the minimum basic pay in the revised pay scale due to him after the implementation of the recommendations of the Fourth Pay Commission.

2. The applicant was appointed on 27.02.1981 in the Indian Council of Agricultural Research, New Delhi, a Government of India Undertaking, and has since been working as a Hindi Assistant in

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in the pay scale of Rs.425-800/-.. The vacancy was circulated vide letter No.12025/1/83-CIS dated 15.12.83 inviting applications for appointment to the posts in Grade-III of CIS, Group 'B' (Rs.650-1200) on deputation (adhoc) basis. This is Annexure 'B' of the Paper Book. The applicant applied for the said post in response to this invitation. The applicant was informed by the Respondent No.1 vide letter dated 30.08.85 that he had been selected and appointed as an Assistant Editor (Hindi) in the Sanik Samachar (on deputation) in the CIS Group 'B' Grade-III post in the pay scale of Rs.650-1200 (Pre-revised). This is Annexure 'C' of the paper book. The applicant joined his new post on 01.11.85 as Assistant Editor. The applicant exercised his option to have his pay fixed in the scale of the new post. The Respondent No.1, fixed his pay at the minimum of the pay scale in the new post i.e. Rs.650/-. The applicant continued to draw this pay and other allowances till October, 1986. In the month of November, 1986 the applicant was given an annual increment, thereby raising his basic pay to Rs.680/- and he continued to draw this pay till March, 1987. As a consequence of the implementation of the recommendations of the Fourth Pay Commission, the pay scale of CIS Group 'B' Officers were revised to Rs.2000-3500. The grievance of the applicant is that instead of allowing him this pay scale, the basic pay was fixed at Rs.1748/-. He has filed copy of his pay slips from September, 86; November, 86, March, 1987 and May, 1987. And this is collectively marked as Annexure 'A' of the paper book. At present, the applicant's basic pay was fixed at Rs.1748/- as on 1.01.86 is less by



Rs.252/- from the minimum of scale of pay of Rs.2000/- to which he has a claim. The applicant relies on the instructions contained in O.M. No.6/30/86-Estt.II dated 9.12.86 of the department of Personnel & Training, Govt of India for claiming minimum of scale of pay of Rs.2000/-. The copy of these instructions have been annexed as Annexure 'D' to the application. It is also alleged that there 12 Assistant Editors working in the same Office, out of which 5 are regular appointees of CIS Grade III and the remaining are on ad hoc deputation basis, similarly placed like drawing this minimum of Rs.2000/-. The applicant are/ The designations, status, duties and qualifications are the same and each one of them are equally responsible to the work of the language that he has been assigned. A Charter of duties has been placed as Annexure 'E'. The grievance of the applicant is that he has been discriminated in regard to the fixation of his basic pay.

3. Relief Sought

(a) The applicant has prayed for issue of an appropriate order or direction to the Respondent No.1 to pay the applicant the minimum of the basic pay of the revised scale of the ex-cadre post, which he is holding since 1st November, 1985.

(b) An appropriate writ order or direction directing the Respondent to pay equal remuneration to the Petitioner/applicant like those of his colleagues i.e. Rs.2000/- on the basis recommendation of the Fourth Pay Commission Report.

(c) Direct the respondents to pay the arrears and other benefits arising consequently to the applicant with interest.

(d) direct the Respondents to follow the law laid down by the Hon'ble Supreme Court, of 'Equal pay for equal work'.

(e) Issue an appropriate Writ, order or direction directing the Respondents to extend all those service benefits as are available to CIS Grade-III employees of the I&B Ministry.

(f) Award cost of the proceedings.

4. A notice was issued to the Respondents who filed their reply, contesting the application and the grant of reliefs prayed for by the applicant. We heard the learned counsel Shri V.P. Sharma for the applicant and Shri M.K. Gupta for the respondents and perused the record of the case.

5. After the oral arguments were concluded the written submissions were also filed by the applicant on 23.2.94. During the course of arguments the learned counsel for the applicant said that as the applicant came on deputation and he had the option either to opt for the pay scale of the post i.e. Rs.650-1200 or his basic pay plus 30% per month as deputation allowance as per the extant rules. This argument of the learned counsel was also accepted by the learned counsel for the respondents. During the course of the

argument we felt that the arguments were not very convincing on the part of the applicant and that is the reason why he was asked to make some written submissions in this regard.

6. It is admitted that the pay scale of the post for which options were invited was Rs.650-1200. In his own parent department he was working as Hindi Assistant in the pay scale of Rs.425-800. He joined the deputation post on 1.11.85. The Annexure 'B' is the vacancy circular and Para-2 of this Circular lays down :

"The Officer selected will have the option to draw his grade pay plus deputation (duty) allowance in accordance with the Ministry of Finance O.M. No.10(24)-E-III/60 dated 4th May, 1981, as amended from time to time, or to have his pay fixed in the scale of Rs.650-1200 subject to such restrictions as may be imposed in accordance with the provisions contained in the Ministry of Finance O.M.No.F.10(2)-E-III(B)/60 dated 9.3.64 as indicated below :

(i) For Officers drawing 25% or Rs.225/- a basic pay above whichever is Rs.750/- less.

(ii) For Officers drawing 30% of the basic pay above Rs.300 pay or Rs.100/- and upto Rs.750/- whichever is more."

7. Annexure 'C' is the appointment letter issued to Shri H.S. Panwar. The Orders are reproduced below :~

"2. It has been decided with the approval of the competent authority to appoint Shri H.S. Panwar, Hindi Asstt. on deputation on purely ad-hoc basis for a period of



six months in the first instance in Grade-III of CIS Group 'B'.

3. Consequent upon appointment to Grade III on deputation (ad-hoc) basis, Shri H.S. Panwar working at present as Hindi Asstt. ICAR, New Delhi is posted as Asstt. Editor (Hindi), Sanik Samachar, DPR(D), New Delhi. He may be requested to report for duty within a month of issue of this offer. Editor-inChief, Sanik Samachar, DPR(D), New Delhi. "

Para-5 of the Circular says Shri HS Panwar will have no claim for absorption /regular appointment in Grade III of CIS on the basis of the selection."

Annexure 'D' at Page-16 enunciates the principles for pay fixation. These principles were introduced on the basis of the recommendations of the Fourth Pay Commission. This letter was issued vide O.M.No.6/30/86-Estt.(Pay)II dated 9th December, 1986 by the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel and Training). In this, it has been said in the case of deputation to a Public Sector Undertaking a deputationist will have the option either

(i) to draw the grade pay plus deputation allowance at the rate of 10% of his grade pay subject to a maximum of Rs.500/- p.m.
or ;

(ii) to draw pay in the scale of pay attached to the post in the public sector undertaking.

This Circular will have no application to the present case because I.C.A.R. is not a Public

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Sector Undertaking but is a Society registered under the Society's Act directly under the Ministry of Agriculture and they have a DG-cum-Ex-officio Secretary to the Government of India and the President of the governing body of the I.C.A.R. is the Union Minister of Agriculture. Therefore, in his case, the pay scale that would be available will be as indicated in the paragraphs which form part of Circular No.A-12025/1/83-CIS Government of India, Ministry of Information and Broadcasting, New Delhi dated 15th December, 1983. Shri Panwar has filed a representation to the Under Secretary, Ministry of Information and Broadcasting, vide Annexure 'E' at Page-20, for fixation of his pay in revised scale of Rs.2000-3500. In this letter, he has also mentioned in Paragraph 3 that when he joined the CIS in November, 85 his pay was fixed at Rs.650/-. He also mentions in this that his pay was subsequently reduced according to Fundamental Rule 35 to Rs.630, till January, 1986 and he was informed that it is only from February, that he would be entitled to Rs.650/- in the scale of Rs.650-1200. After going through the pleadings on record, we have come to conclusion that at the time of initial appointment he has never opted for the pay scale of Rs.650-1200. He was silent about it. It is only after the submission of the 4th Pay Commission Report that he opted for the pay scale of Rs.2000-3500. It is an undisputed fact that the respondents did not accept this option after the publication of the recommendations of the Fourth Pay Commission and they referred the matter to his parent cadre. It is also an admitted fact that in case of

deputation, it is the parent department which is always asked to indicate the pay scale of the employee who is sent on deputation when revision takes place. As a matter of fact, I.C.A.R. did not accept the pay scale of the Fourth Pay Commission. A Sub-Committee was appointed with Shri M.B. Rao with 7 other members to look into the pay scales of the Fourth Pay Commission vis-a-vis those granted by U.G.C. to the Scientific personnel and other personnel working in the Technical Institutions.

8. The Fourth Pay Commissions' Terms of Reference also had nothing to do with the employees of I.C.A.R because in their terms of reference these autonomous bodies were not included. That is why a separate committee was constituted and this Committee did not accept the recommendations and of the Fourth Pay Commission/with the concurrence of the Ministry of Human Resource Development and also with the concurrence of Department of Expenditure, Ministry of Finance and the Chairman of the U.G.C.. they introduced the pay scale which was given by U.G.C. to the Scientific personnel working in the various Scientific Institutes, Universities, Engineering colleges, etc. Therefore, in the light of this action of the respondents in referring the case of the applicant to his parent cadre was perfectly justified. Initially also as stated he had not opted for the pay scale of Rs.650-1200 as must have been done by others who came from other departments/State Governments/ Public Sector Undertakings. Thus he is stopped from claiming the pay scale after the publication

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of the recommendations of the Fourth Pay Commission.

9. We have also gone through the counter and the rejoinder filed by the applicant. In the counter, it has been categorically stated that he was a deputationist to the post and his pay was fixed wrongly at Rs.650/- when he joined on 1.11.1985. He was in the pay scale of Rs.425-800 when he came to the Ministry of Information and Broadcasting/he was drawing basic pay of Rs.485/- in his parent department at the time of his deputation. By allowing him 30% over his basic pay, his pay should have been restricted to Rs.631/- It was a bonafide mistake committed by the office Pay & Accounts/which allowed a minimum of pay of Rs.650/- from 1.11.85 and Rs.680/- 1.11.1986. Since this was not permissible under the Statutory Rules the same was rectified at the time of refixation of the pay in the revised pay scale with effect from 1.1.1986. The over-payment made to the applicant had to be recovered under the rules. This is exactly what the respondents have done. The respondents have also filed a statement on the pay drawn by the applicant before the Fourth Pay Commissions' recommendations and the pay that was admissible to him. This is as follows :-

STATEMENT OF PAY DRAWN BY THE APPLICANT

Before IV Pay Commission's Recommendations

Date	Basic pay in Parent Deptt	Pay fixed	Remarks
1.11.85	Rs.425/- per month	Rs.650/- p.m. (Due was Rs.631 (Rs.485/- + 30% of basic)	Erroneously fixed on the basis of option exercised by the applicant to draw scale of pay of deputation post. Rectified in April 1987.

1.01.86 - do - Rs.650/-p.m.
(Pay drawn)

1.02.86 Rs.500/- p.m. Rs.650/- p.m.
(Due & drawn)

After IV Pay Commission's Recommendations

Date	Basic Pay in Parent Deptt.	Pay re-fixed
1.01.86	Rs.1480/- Per Month	Rs.1702/-p.m. --- (Rs.1480 + 15%)
1.02.86	Rs.1520/- per month	Rs.1748/- p.m. 'Re-fixed (Rs.1520/- + 15% 'in April, 1987. ---
1.04.88	Rs.1600/- per month	Rs.2000/-p.m. fixed in Nov., 88.

10. The undisputed facts are that he joined on deputation on purely (adhoc) basis in the Central Information Service with effect from 1.11.85. At that time, his basis pay in the parent department i.e. I.C.A.R. was Rs.485/- p.m. As per Office Memorandum dated 7.11.1975 issued by the Government of India, Ministry of Finance, the pay of the applicant under F.R.35 should have been fixed at basic pay drawn by Shri Pawar plus 30% of that basic pay or Rs.100 which-ever is more on this computation the pay of Shri Pawar should have come to only Rs.631 per month. It was wrongly fixed at Rs.650/- which is the minimum of the pay scale of Rs.650-1200.

11. The date of increment in the parent cadre was due on 01.2.86 and consequent on Fourth Pay Commissions' Recommendations the scale of pay of Rs.425-800 was revised to Rs.1400-2600 and the scale of pay of Rs.650-1200 was revised to Rs.2000-3500. By granting one increment which

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fall due on 1.2.86. the applicant's basic pay comes to Rs.500/- i.e. (Rs.485+15) + 30% of the basic pay which would be equivalent to Rs.650/-. As a result of the revision of the pay, his parent department I.C.A.R. fixed the pay of Shri HS Panwar (applicant) at Rs.1480/- per month w.e.f. 1.01.86 by adding one increment of Rs.40/- w.e.f. 1.02.86, the basic pay comes to Rs.1520/- per month. After adding 15% over and above the same as provided under instructions, the basic pay comes to Rs.1748/- per month w.e.f. 1.02.86. The pay was wrongly fixed at Rs.650 per month w.e.f. 1.11.85 and at Rs.680/- per month w.e.f. 1.11.86. It is only in 1987 when the new pay scales were introduced on the basis of the recommendations of the Fourth Pay Commission that the mistake was detected. The respondents could have been subjected to serious audit objection if they had not rectified the mistake committed by them. Accordingly, the applicant's pay was refixed as per the Office Memorandum dated 9.12.86 and 24.12.87. While as per Office Memo dated 29.4.88 and 10.8.88 the applicant's pay was refixed at Rs.2000 w.e.f. 1.04.88 at the minimum of the scale of pay on his deputation post. The perusal of the various instructions issued by the Ministry of Finance as well as DOPT and also adopted by all the Ministries including Information & Broadcasting, it is clear that the pay was erroneously fixed w.e.f. 1.11.85. And it was only the case of rectifying a mistake committed by the Respondents which would have resulted in audit objections, This is a rectification

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as per the provisions of the rules and instructions. The respondents have categorically stated that they have adjusted the excess payment made to the applicant against the arrears of pay as a result of the Fourth Pay Commission. And this is in conformity with the rules and instructions and no irregularity or illegality has been committed by them. He has challenged the validity of FR-35 in the written submissions as an outmoded British concept and has claimed that he is performing similar duties and functions as is being performed by similarly situated people. The Hon'ble Supreme Court in a catena of judgements according to him has held that persons are entitled to "Equal pay for equal work." It is an admitted fact that the deputationists are not regular employees and, therefore, they cannot compare themselves with those who are regular employees of that department or government servants who have come from other Ministries or have come from Public Sector Undertakings, who form a different class altogether. This kind of classification is not artificial but a real one and there are different rules and regulations governing payment of pay and allowances to the deputationists even though they may be discharging same and similar functions as regular employees or employees who are absorbed in a Ministry. It is not fundamental Rule 35 which has been made by the Britishers but as a matter of fact the entire Fundamental Rule itself which has been adopted and accepted by us as governing principles on service matters and on the basis of these FRs the service rules have been framed as these have also been the genesis in the F.R. framed by British people. There is no violation in fixation of the pay scale of the applicant and Article 14,

and 16 and 39(d) as alleged by him, are not attracted in the matters of pay when he is governed by Fundamental Rule 35. In the present O.A. he has not challenged the vires of this rule and, therefore, unless this rule is taken out of the Statute Book his pay has to be fixed under the provisions of the FR-35.

12. Even after going through the written arguments on behalf of the applicant we find that employees of I.C.A.R. cannot be equated with regular employees of the Central Government who got the replacement scale on the basis of the Fourth Pay Commission's Recommendations. The same is not true about the I.C.A.R. and its employees. There was a separate committee headed by Shri M.B. Rao which went indepth on the pay scales which should be given to the employees of ICAR and, they accepted the pay scales admissible to Scientific personnel given by U.G.C. It is not known whether for non-scientific personnel I.C.A.R. accepted the recommendations of the Fourth Pay Commission. Even if the recommendations of the Fourth Pay Commission was adopted in the case of non-scientific personnel, the applicant was working in the pay scale of Rs.425-800 and his replacement scale even after the Fourth Pay Commissions Rcommendations are applied, could be Rs.1400-2600 and not Rs.2000-3500.

13. In the conspectus of the facts and circumstances of this case we do not find any merit in the application and the same is dismissed leaving the parties to bear their own costs.

(B.K. SINGH)
MEMBER (A)

J. P. SHARMA
(J.P. SHARMA)
MEMBER (J)