

3

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No. 1314/1990.

September 6, 1990.

Shri S.S.Arora

...

Applicant.

Vs.

The Secretary, Ministry of
Human Resource Development & Anr. .. Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the applicant None.

For the respondents ... Shri Rajender Virmani, proxy
counsel for Shri K.C.Mittal,
counsel.

(Order of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman).

This O.A. was directed to be put up for
admission today and a view was expressed that the
matter was short one and can be disposed of on merits
on the date of hearing itself. Parties have filed their
reply and rejoinder to the O.A. The case be deemed to
have been admitted. The respondent is also represented.
We, therefore, proceed to consider this matter on merits.

Shri S.S. Arora, the applicant who retired as
Under Secretary in the Department of Culture, Ministry
of Human Resource Development, New Delhi on 31.1.1990
was engaged by the same Department as a Consultant for the
purpose of finalising all pending accounts of the
Festival of India for a specified period of six months

with effect from 1.2.1990. In the appointment order dated 1.2.1990, it was stated that his consultancy fee would be fixed at Rs.4000/- per month with effect from 1.2.1990 in terms of the Department of Personnel & Training O.M.No.3/3/87-Estt.(Pay-II) dated the 12th October, 1988.

The applicant is aggrieved that his service as Consultant has been terminated abruptly by an order dated 1.6.1990 (Annexure IV). The applicant has filed the present O.A. and has prayed that the above order dated 1.6.1990 be declared as illegal and be quashed. He has further prayed that he be taken back on duty as Consultant for the remaining period, i.e. upto 1.8.1990, and paid consultancy fee at the rate of Rs.4000/- per month for the remaining two months. He has also prayed in the alternative that in case he is not taken back on duty, he be declared as entitled to the consultancy fee at the rate of Rs.4,000/- per month plus interest at reasonable rate for any delay in payment. The applicant has also prayed for leave salary amounting to Rs.2000/- for 15 days of Earned Leave.

On behalf of the respondents a reply has been filed where a preliminary objection is taken in regard to the maintainability of the O.A. before the Tribunal.

It is stated that the engagement of the applicant was in the nature of a contract and this Tribunal has no jurisdiction to enforce the contract. It is further stated that the applicant was not a Government servant and there is no statutory protection available to him.

In regard to the merits, it has been stated in the reply that the applicant was Under Secretary in the Department of Culture and he retired w.e.f. 31.1.1990 (AN) on reaching the age of superannuation. He was engaged as a Consultant for a period of six months ^{w.e.f. 1.2.1990} for the purpose of finalising all pending accounts of the Festival of India. Subsequently, it was decided that the post of Under Secretary may be filled in by an Indian Audit & Accounts Service Official who could easily finalise all pending accounts of the Festival of India in the Department of Culture. Shri R.S. Rangarajan, IA&AS was appointed as Under Secretary "for the work which was assigned to Shri S.S.Arora (Applicant), on 26.4.1990." It is further stated in the reply that as against a post of Under Secretary, a consultant (Shri S.S.Arora) and an Under Secretary (Shri R.S.Rangarajan) could not draw their salaries and it was decided that the applicant may be relieved of his duties in the Department of Culture with effect from 1.6.1990. Another plea taken was that the applicant had no right to continue as Consultant. The contents of paragraph 6 (3) were partially denied. It was stated that "it is true that the consultancy fee payable to the applicant was fixed at Rs.4000/-

6

per month w.e.f. 1.2.1990 in term of the Department of Personnel & Training's O.M.No.3/3/87-Estt. (Pay-II) dated 12.10.1990. While fixing his consultancy fee at Rs.4000/- pension equivalent of gratuity was to be ignored but basic pension was to be deducted and the same was not deducted. His consultancy fee was to be fixed at Rs.2068/- p.m. (Rs.4000/- minus Rs.1932/- basic pension). Hence he was paid an excess amount of Rs.7728/- from 1.2.1990 to 31.5.1990. The same amount is required to be refunded to the Government of India by the applicant." No reply was given to the remaining sub paragraphs of paragraph 6 nor to paragraphs 7 and 8 of the Application. Lastly, it was stated that the applicant was not entitled to any relief and he was not entitled to reappointment nor entitled to any consequential benefits of leave salary amounting to Rs.2000/- for 15 days of earned leave.

A rejoinder has been filed wherein it was stated that the applicant was appointed for a period of six months against the same post of Under Secretary which he was holding immediately prior to his retirement on 31.1.1990 although he was designated as Consultant. It amounted to a virtual re-employment of the applicant for the post of Under Secretary for a specified period of six months. It was further stated that the rules for fixation of pay of re-employed Government

servants have been made applicable in the case of the applicant. The emoluments of the applicant on re-employment were worked as under:

1. Pay Last drawn in the scale of Rs .3000-100-3500-125-4500	Rs .3875/-
2. Deduct pension	(-) <u>Rs .1932/-</u> Rs .1943/-
3. Allowances as admissible on 1 above on 31.1.90	<u>Rs .2090/-</u> <u>Rs .4033/-</u>

It was further stated that:

"Thus taking into account the above calculation the emoluments payable to the applicant on re-employment were fixed at Rs .4000/- which for technical reason were termed as fee.."

Lastly, it was stated that since he had been re-employed against the existing post of Under Secretary, he was to be treated as temporary Government servant for the purpose of leave. He denied that excess payment had been made to the applicant and pre-mature termination of the re-employed applicant was wholly unjustified, arbitrary and illegal.

No one has appeared for the applicant today. But Shri Rajender Virmani, proxy counsel for Shri K.C. Mittal, counsel for the respondents appeared and argued the case for the respondents. His contention was that the Tribunal has no jurisdiction to entertain or pass any order in this O.A. as the matter was pure contract and the remedy of the applicant was to approach the Civil Court and file a suit for recovering damages.

we have heard the learned counsel and perused the material on the record and we are of the view that the aforesaid arguments are not tenable. We have referred to the pleadings in extenso. This clearly indicates that this was not merely a contract for the reference made in the appointment Order dated 1.2.1990 to the Office Memorandum No.3/3/87- Estt. (Pay-II) dated 12.10.1988 issued by the Department of Personnel & Training pertains to fixation of pay of re-employed pensioners. This O.M. makes it clear that when a pensioner is re-employed, he is subject to the terms mentioned in the O.M. The applicant immediately on his superannuation on 31.1.1990 was re-employed from the very next day and he continued to discharge the same duties which he was doing a day before. He was treated as a re-employed government servant. Since the applicant was to be treated as a re-employed pensioner, it cannot be contended that he functioned merely on contractual basis and not in the service of the Government of India. The length of that service was for a specified period of six months. It is also necessary to mention here that the appointment letter itself makes it clear the purpose for which he was appointed, viz., "for the purpose of finalising all pending accounts of the Festival of India." Whether the

work of finalisation of pending accounts was done within a period of six months or not, his term could have been extended but could not have been terminated abruptly at any time within that period. The reason being that the appointment letter made it very clear about the time limit and he had to be continued for that period of six months according to the terms of his appointment.

An argument was raised that there was no work left for him and, therefore, his services were terminated. This is not borne out from the material on the record. As a matter of fact, the appointment of Shri R.S.Rangarajan makes it clear that the work remained and he was appointed to carry out and complete the same. Shri R.S.Rangarajan, IAS, was appointed as Under Secretary, for the work which was assigned to the applicant. This shows that the work was not completed. It appears that the fee of Rs.4000/- was a consolidated amount fixed for being paid to him. Reference has been made to the emoluments of the applicant on re-employment which works out at Rs.4033/- per month. It appears that the applicant agreed to the sum of Rs.4000/- per month. There could be no deduction from that amount. We are, therefore, of the view that there is no question of any excess payment made to the applicant as claimed in paragraph 6.3. of the reply.

Having considered the matter carefully, we are

of the view that the applicant is entitled to the fee for the remaining two months at the rate of Rs.4000/- per month. We also hold that he has not been paid an excess amount of Rs.7728/- nor the said amount is liable to be refunded. We are further of the view that the applicant is not entitled to consequential benefits of leave salary amounting to Rs.2000/- nor to any interest.

We, therefore, conclude that the applicant is entitled to a limited relief in the present case. He is entitled to a sum of Rs.8000/- as the fee for two months, we order accordingly and direct the respondents to pay the same within a period of three months. We reject the prayer for payment of any amount as leave salary for 15 days and interest on the sum of Rs.8000/- mentioned above. Since the O.A. is partly allowed and partly dismissed, we direct the parties to bear their own costs.



(B.C. MATHUR)
VICE-CHAIRMAN (A)
6.9.1990.



(AMITAV BANERJI)
CHAIRMAN
6.9.1990.