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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 2139/1990

Date of decision: 18.12.1992

Dr. E.B. Misra

...Applicant

Vs.

Delhi Administration & Others

...Respondents

For the Applicant

...In person

For the Respondents

...Mrs. Raj Kumari
Chopra, Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. E.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

1. Whether to be referred to the Reporters or not? No

JUDGMENT

(of the Bench delivered by Hon'ble Shri P.K.
Kantha, Vice Chairman(J))

The applicant who is presently working as Professor in the Maulana Azad Medical College, New Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (i) To direct the respondents to fix his pay and give arrears to him together with interest at 12%;
 - (ii) to direct his appointment as Associate Professor with effect from 27.03.1980 and fix his basic pay at Rs.1500/-;
 - (iii) to grant him Grade-I pay scale, i.e. Professor's pay scale of Rs.4500-5700 with effect from 27.03.1984;
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(iv) to grant him the designation of Professor with immediate effect; and

(v) to refix his seniority with all consequential benefits taking into account his army service of 4 years.

2. We have gone through the records of the case and have heard the applicant in person and the learned counsel for the respondents. At the time of the filing of the application the applicant was working as an Associate Professor in Physiology, Maulana Azad Medical College, Delhi Administration. He was given the designation of Professor with effect from 1.12.1991.

3. The applicant had served the Indian Air Force from June, 1975 to June, 1979 as Lecturer in Physiology, Institute of Aviation Medicine, Government of India, Bangalore before he joined the Central Health Service Group 'A' cadre on 26.03.1980 on his selection by the UPSC as Specialist Grade-II. He was drawing the pay scale of Rs.1150/- to Rs.1500/- before he joined the Central Health Service. By order dated 10.09.1986 his pay was fixed by the Government under FR 27 at Rs.1300/- notional on 27.03.1980 with next date of increment as 1.3.1981. His pay was accordingly fixed as under:-

"Notional pay w.e.f. 27.3.80 to 28.2.81.	Rs.1300/-
1.3.81 to 28.2.82	Rs.1350/-
1.3.82 to 28.2.83	Rs.1400/-

12

1.3.38 to 29.02.84	Rs.1450/-
1.3.84 to 31.10.84 Actual pay fixed w.e.f.	Rs.1500/-
1.11.84 to 28.02.85	Rs.1500/-
1.3.85 to 28.2.86 subject to clearing of his EB	Rs.1560/-
1.3.86	Rs.1620/-*

4. It was also clarified in the aforesaid order that the applicant was entitled to all arrears of pay and allowances on the basis of the above fixation with effect from 1.11.1984 to 28.02.1986. The applicant has argued that the denial of arrears of salary due to notional fixation is illegal, as he had worked in CHS during the period from 23.3.80 onwards.

5. The applicant was appointed as Associate Professor with effect from 2.11.1987 in the pay scale of Rs.3700-5000. According to him, he had by that time completed 7 years of regular service whereas for appointment as Associate Professor only 3 years regular service as Assistant Professor/Lecturer was required.

6. The applicant has contended that he was entitled for the pay scale of Professor of Rs.4500-5700 on completion of 8 years of combined service as Assistant

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13

and Associate Professor. On that basis, he was entitled for the said pay scale with effect from 27.3.1984 but he was given the said pay scale only with effect from 28.02.90.

7. The respondents have stated in their counter-affidavit that the pay of the applicant was correctly fixed at Rs.1300/- after allowing him 4 increments. The fixation of his pay was done in consultation with the Department of Personnel. His pay was notionally fixed at Rs.1300/- in the pay scale of Rs.1100-50-1500-EB-60-1800 on his appointment as Lecturer in Physiology with effect from 27.03.1980. His date of next increment was to be 1.3.1981 and 1st March of every year thereafter. He was allowed arrears of pay and allowances on account of pay fixation with effect from 1.11.1984.

8. The respondents have stated that the applicant was appointed as Assistant Professor with effect from 1.1.1983 and as Associate Professor with effect from 2.11.1987 in accordance with the provisions contained in Rule 7(9) of the CHS Rules, 1982. According to the said Rules, the officers holding the post of Assistant Professors immediately before

(14)

the commencement of these rules, who have rendered 5 years regular service as Specialists' Grade II Officers on the teaching side as Assistant Professors in the Central Health Service shall be designated as Associate Professors personal to them on the recommendation of the Department Promotion Committee and such redesignated Associate Professors shall be placed ^α in block junior to those who are already holding the posts of Associate Professors on a regular basis. Such officers carrying personal designation shall be subsequently adjusted against identical specific posts in their own speciality on the availability of clear vacancies. The applicant was appointed as Assistant Professor only on 1.1.1983 and as such he completed 8 years of service as Assistant Professor and Associate Professor on 31.12.1990. The Government had decided that the CHS Rules should be relaxed and that a doctor who had rendered 9 years of combined service as Lecturer/Assistant Professor/Associate Professor or 8 years of combined service as Assistant Professor/Associate Professor ^{selection α} could be given appointment to the non-functional/grade. In view of this, the applicant was given non-functional selection grade of Rs. 4500-5700 with effect from 28.02.1990 after obtaining

the approval of the competent authority. The respondents have denied that the applicant was entitled to the grant of non-functional selection grade pay scale on 27.3.1984 as he was not eligible on that date. The non-functional selection grade also did not come into existence in the CHS at that time.

9. The respondents have also stated that the designation of Professor could be given only when a specific vacancy exists in a particular speciality and the officer concerned is duly recommended by a DPC and approved by the competent authority. They have pointed out that a number of Associate Professors belonging to the speciality of the applicant who were much senior to him are yet to be promoted to the post of Professor.

10. The respondents have further argued that the service rendered by the applicant prior to entry into the CHS cannot be given any recognition for the purpose of appointment as Associate Professors.

11. The applicant has not produced any documentary evidence in support of his contention that the army service rendered by the applicant has been recognised by the respondents except for the purpose of his fixation of his pay under FR 27. In the absence of any such recognition, the period of service of 4 years rendered by him while working in the Indian Air Force cannot be reckoned for the

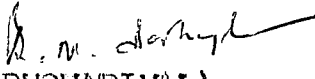
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purpose of appointment to the post of Associate Professor or Professor.

12. The respondents have taken into account the period of service rendered by him in the Indian Air Force while fixing his pay at Rs.1300/- in the scale of pay of Rs.1100-1800. However, he has been denied arrears of pay and allowances for the period from 1.3.1981 to 31.10.1984 by the impugned order dated 10.06.1986. In our opinion, justice and equity requires the applicant to be paid the arrears of pay and allowances as he had actually worked in the CHS during this period.

13. In the conspectus of the facts and circumstances of the case we, therefore, dispose of the present application with the direction to the respondents to pay to the applicant arrears of pay and allowances for the period from 1.3.81 to 31.10.1984 together with interest at the rate of 10% per annum. The respondents are directed to comply with the above directions expeditiously and preferably within a period of 3 months from the date of receipt of this order. The applicant is not entitled to any other relief.

There will be no order as to costs.


(B.N. DHOUNDIYAL)
MEMBER (A)
18.12.1992


(P.K. KARTHA)
VICE CHAIRMAN (J)
18.12.1992

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