

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 332/1990
T.A. No.

199

DATE OF DECISION 15.9.1990.

<u>Shri Vijender Kumar Sharma</u>	Petitioner
<u>Shri K.K. Khetan</u>	Advocate for the Petitioner(s)
Versus	
<u>Indian Council of Agricultural Research & Others</u>	Respondent
<u>Shri J.P. Singh</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

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 ? */m*
4. Whether it needs to be circulated to other Benches of the Tribunal ? */m*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. D.K. Chakravorty, Administrative Member)

The short point involved in this application filed under Section 19 of the Administrative Tribunals Act, 1985, is whether the applicant is entitled to terminal benefits including payment of gratuity, amount of group insurance and transfer of his leave account to the National Hydro Electric Power Corporation Limited (A Government of India enterprise) of which he is presently an employee.

2. The applicant was appointed as Junior Law Officer in the ICAR on probation with effect from 18th December, 1982. The period of probation was for a period of 2 years from the date of his joining the post, which may be extended at the

discretion of the competent authority. No order of extension of probation or ~~no order~~ of confirmation in the said post was issued. On 19.11.1986, the respondents, however, issued an order to the effect that he is deemed to have completed probationary period on 25.11.1984.

3. The applicant applied for the post of Law Officer in NHPC pursuant to an advertisement. His application was forwarded through proper channel. The respondents gave to the applicant a "No Objection Certificate" ~~to him~~ for that purpose. He was selected for the post on 19th February, 1988.

4. The grievance of the applicant is that he has not been given terminal benefits including gratuity, earned leave, group insurance etc. The respondents have informed him that the benefit of gratuity cannot be given to him as he was a temporary employee and as he had resigned the post in the ICAR himself. They have also contended that there is no provision for transfer of leave at the credit of the temporary Government servant who resigns from a post to take up another appointment. They have also contended that as the applicant has already resigned from the service of ICAR, the benefit of confirmation with retrospective effect cannot be allowed.

5. The case of the respondents is that no permanent post of Junior Law Officer was available at the relevant time in the ICAR so as to consider the confirmation of the applicant. Three posts of Junior Law Officers were made

permanent with effect from 7.8.1987. Thereafter, the applicant's case was being processed for confirmation. In the meanwhile, the applicant resigned from the service of the ICAR with effect from 15.3.1988 to take up the post of Law Officer in NHPC. His case was placed for confirmation before the DPC on 24.2.1989. The DPC noted that the applicant had resigned from service and had severed his connection with the ICAR and as such, the benefit of confirmation from retrospective effect could not be allowed to him. In view of this, the DPC did not recommend his confirmation as Junior Law Officer with effect from 7.8.1987. The DPC also observed that even on the basis of his confidential report, the applicant was not fit for confirmation.

6. The respondents have also contended that the CCS(Temporary Service) Rules, 1965 apply to the applicant and that the said rules do not envisage giving of gratuity to the applicant.

7. We have gone through the records of the case carefully and have considered the rival contentions. The respondents are right in their contention to the extent that a temporary Government servant who resigns his post will not be entitled to gratuity in terms of Rule 10(3) of the CCS(Temporary Service) Rules, 1965. The real grievance of the applicant is that he should have been considered for confirmation when a permanent post was available in the ICAR before he joined NHPC. In fact, three posts of Junior Law Officers were converted into permanent posts with effect from 7.8.1987. The applicant joined the

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service in NHPC only in March, 1988. The respondents have not given any plausible explanation for not considering the suitability of the applicant for confirmation during the period from 7.8.1987 to March, 1988. A DPC was held only in February, 1989. The respondents have stated that the DPC had observed that having resigned from the service of the ICAR, the applicant was not entitled to the benefit of confirmation from retrospective effect. In our opinion, there is nothing illegal or improper to consider an officer for confirmation with retrospective effect from the date when he became eligible to be considered for such confirmation. The employee cannot be made to suffer for the delay by the administration in processing the case for confirmation of an employee. In all fairness, even if there were some administrative difficulties in convening the meeting of the DPC before the applicant joined the service of NHPC, the DPC which was held subsequently should have considered the suitability of the applicant by taking into account the Confidential Reports of the applicant for the period upto March, 1988.

8. We also do not see any substance in the contention of the respondents that the applicant is not entitled to encashment of leave. By virtue of the provisions of Rule 39(6) of the CCS(Leave) Rules, 1972, if a Government servant resigns or quits service, he may be granted, suo motu, by the authority competent to grant leave, cash equivalent in respect of the earned leave at his credit ^{up} to a maximum of 240 days. The CCS(Leave)

Rules do not, however, contain a provision that the leave account of a Govt. servant may be transferred to a Corporation, where a Government servant after resigning from Government service, takes up a job.

9. The applicant has worked in the service of the ICAR for a period of more than 5 years and 3 months. In case he is confirmed as Junior Law Officer in the ICAR, he would be entitled to proportionate gratuity in terms of Rule 50 of the CCS(Pension) Rules, 1972.

10. In the light of the foregoing, the application is disposed of at the admission stage itself with the following orders and directions:-

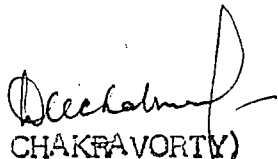
(i) In the interest of fairness and equity, the respondents are directed to convene the meeting of the DPC to consider the suitability of the applicant for confirmation in the post of Junior Law Officer which was made permanent with effect from 7.8.1987. The DPC should consider his suitability by taking into account his ACRs upto the year 1987. If necessary, he should also be considered for

confirmation during the subsequent year by taking into account the confidential reports for the period upto March, 1988 when he resigned from ICAR to join NHPC as its Law Officer. In case the DPC finds him suitable for confirmation, he shall be confirmed from the due date for the purpose of enabling the applicant to receive the retirement benefits admissible to a confirmed^m employee.

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- (ii) The respondents are directed to give to the applicant the cash equivalent of the leave which stood at his credit before he resigned from the ICAR to join the NHFC in accordance with the provisions of Rule 39 of the CCS(Leave) Rules. Alternatively, in case he is found suitable for confirmation, the leave standing to the credit of the applicant may be transferred to NHFC to be credited into the leave account of the applicant.
- (iii) The respondents shall comply with the above directions within a period of three months from the date of communication of this order.

There will be no order as to costs.


(D.K. CHAKRAVORTY)
MEMBER (A)

5th September, 1990


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