

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

(b)

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Date of Decision:

24.4.92

OA 2341/91

Dr. D.N. SINGH

... APPLICANT.

Vs.

UNION OF INDIA

... RESPONDENT.

For the Applicant

... Shri V.S.R. Krishna,
Counsel.

For the Respondent

... Shri M.L. Verma,
Counsel.

CORAM:

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

1. Whether Reporters of local papers may be
allowed to see the judgement ?

2. To be referred to the Reporters or not ?

JUDGEMENT

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

The applicant has challenged the order dated 25.9.1987 and 4.1.1990 (Annexure A-1 & A-2) having the grievance that his pay has been wrongly fixed as on 1.1.1986.

2. The applicant claimed the relief that on 1.1.1986 the pay of the applicant should have been fixed at Rs.2000/- and both the impugned orders be set aside and quashed.

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3. The facts of the case are that on 15.4.1966 the applicant joined as Assistant Commissioner of Seed Development, in short AC (SD) in the scale of 700-1250 which was revised to 3000-4500 on the recommendations of the 4th Pay Commission. On 3.5.82, the applicant went on deputation as Joint Commissioner (Food Crops) in the scale of 1800-2000, which was revised to 4100-5300. While the applicant was working as Joint Commissioner (Food Crops) on deputation, the applicant was given promotion in the parent department as Deputy Commissioner (Seed Development) on 25.8.1983. That was to take effect from the date of joining of the applicant. The applicant was not relieved by the department of Food Crops and he was drawing on 1.5.1984 his basic pay as Rs.2000/- p.m. The applicant was nominated in Madagascar under Indian Technical Economic Cooperation programme, in short ITEC, for a period of on two years. Thus, the applicant has gone another deputation post where he joined on 2.2.1985 for a period of two years. The applicant applied for voluntary retirement soon after his return to India and a request was made while the applicant was still in the foreign service at Madagascar. The applicant arrived in India on 26.3.1987 and from the forenoon of the same date he has been voluntary retired vide order dated 22.6.1987. The applicant's pay was fixed on 25.9.1987 and the last pay fixed is Rs.4225/-. The applicant made a representation

that his pay be fixed on the pay he has drawn last i.e. Rs.2000/-. On his representation instead of relief being given to him, his pay was reduced and his pay was fixed at Rs.3875/- p.m. w.e.f. 1.1.1986 to 26.3.1987. This is the grievance of the applicant regarding fixation of pay.

4. The applicant has taken the ground that the order dated 4.1.1990 superceding earlier order dated 25.9.1987 which reduced the emoluments on 1.1.1986 has been passed without affording an opportunity to the applicant. Thus, on the principles of natural justice, he should have been given an opportunity of hearing.

5. It is further urged that the applicant has gone on deputation in public interest and while he was promoted as Deputy Commissioner (Seed Development) on 15.8.1983, at the time when he was joint Commissioner (Food Crops) he was not relieved from the deputation post and he was assured that he will get ^{all} benefits. While impugned order goes to show that even that promotion has been denied to him and his pay has been fixed in the parent cadre on the post of Assistant Commissioner (Seed Development) while fixing his pay in the cadre post and his pensionary benefits have been fixed in the revised scale of Rs.3000-4500. If the applicant had not gone to Madagascar, he would have

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continued to work as Joint Commissioner (Food Crops) on 1.1.1986 on which date he would have been drawing a basic pay of Rs.2000/- per month, which in turn would have been revised as per recommendations of the 4th Pay Commission and his pay would have been fixed taking into account the Maximum of Rs.2000/- per month. Further, it is also stated that the applicant could have been told before going to Madagascar that he would be deemed to have been reverted to the post of Assistant Commissioner (SD) and his pay has been fixed at Rs.1600/- per month Maximum scale of the Assistant Commissioner (SD), he would never have in the first place accepted the deputation to Madagascar.

6. The respondents contested the application and stated that the application is barred by time. The applicant asking relief w.e.f. 1.1.1986. His representation has already been rejected and the repeated representations would not extend limitation. It is further stated that the applicant has held the post of Assistant Commissioner (SD) on permanent basis. He was appointed to the post of Joint Director (HVP) in the department on deputation basis and to the post of Director (HVP) w.e.f. 2.11.1980 again on deputation basis and not on promotion basis. The applicant was appointed as Joint Commissioner (Food Crops) w.e.f. 3.5.1982 on deputation basis while he was working on

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the post of Director (HVP) on deputation basis from 24.11.1980. However, during his deputations to these Senior posts for specified period, he continued to hold his substantive post of Assistant Commissioner. The applicant had left the deputation/Ex-cadre post of Joint Commissioner (Food Crops) before 1.1.1986 for joining the post of Rice Expert, Govt. of Madagascar under ITEC Programme, he had no claim for the pay of deputation post of Joint Commissioner (Food Crops) and was, therefore, treated to have proceeded on foreign deputation to Govt. of Madagascar from his permanent post of Assistant Commissioner (SD). The pay of the applicant was fixed provisionally vide order dated 25.9.1987 under F.R. 35 because the regular fixation of pay of the applicant was going on in consultation with the Department of Personnel & Training.

This was done/enable him to receive the pensionary benefits in time as the finalisation of payfixation case was likely to take some time. Since on 1.1.1986, the applicant was eligible to draw only the grade pay in the pre-revised scale of the regular post of Asstt. Commissioner (Seed Development) and not the pay of the deputation post of Joint Commissioner (Food Crops), the question of fixing the pay of the applicant in the post of Joint Commissioner (Food Crops) w.e.f. 1.1.86 did not arise. Thus, according to the respondents, the applicant has no case for fixing the revised pay

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on the basic pay of Rs.2000/- which he was drawing on the post of Joint Commissioner (Food Crops). It is also stated by the respondents that the applicant has proceeded to Madagascar on his own volition.

7. I have heard the learned counsel for both the parties at length and have gone through the records of the case. The objection to the application on the ground of limitation has no basis when the respondents have themselves stated that the pay was provisionally fixed on 25.9.1987. In this case, the applicant has made a representation and further the order dated 4.1.90 has been passed without giving any opportunity to the applicant to show cause against the same. The order dated 25.9.1987 though, ofcourse, does not show that the fixation of the pay of the applicant is on 1.1.1986 is provisional; Nor letter dated 25.9.1987 goes to show that it was sent to the Ministry of Personnel for its opinion. The order dated 4.1.1990 also does not show that it was at the instance of Department of Personnel that the earlier order has been revised. It only shows that while issuing this letter dated 4.1.90 concurrence of the Department of Personnel was taken. Almost after three years, the applicant has been shown another scale of fixation to his detriment w.e.f. 1.1.86. The impugned order dated 4.1.90 goes to show that the pay of the applicant has been fixed

on the permanent post of Assistant Commissioner (SD) while his promotion to the post of Joint Commissioner (Food Crops) has been totally ignored. The applicant has filed on record sufficient evidence to show that while he was given a promotion in his parent department as Joint Commissioner (Food Crops) by the order dated 25.8.1983 in the scale of 1500-1800 on promotion basis (Annexure A-4) he was not allowed to join and the Agriculture Commissioner in the endorsement dated 12.9.83 (Annexure A-5) has recommended that Dr. D.N. Singh cannot be relieved from the post of Joint Commissioner (Food Crops), suggested that he may be given proforma promotion from the post of Deputy Commissioner (SD) and he may be allowed to complete his full term of deputation in the post of Joint Commissioner (FC) in ~~iance~~ the interest of work. In compl_u to this note of Agriculture Commissioner dated 12.9.83, the Under Secretary to the Govt. of India in the memo dated 15-2-84 allowed Dr. Singh to join the post of Deputy Commissioner (Seeds) on promotion basis after the expiry of his present term of deputation in the post of Joint Commissioner. By the memo dated 14.2.84, Department of Agriculture desired certain persons for the ITEC programme in the field of rice cultivation and the name of the applicant was nominated and he was finally selected. Thus, it was the Ministry of Agriculture who sponsored the name of

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the applicant for a deputation post while the applicant was still on unfinished period of deputation as Joint Commissioner (FC). All these facts are such which required reconsideration by the respondents after giving an opportunity to the applicant and going through the various documents on the record. It is not a case where by stroke of a pen, the pay already fixed of the applicant can be revised without giving any opportunity to him against his interest. The averment in the counter by the respondents is incorrect that the applicant has gone on deputation in Ministry of External Affairs on his own volition. It was the Ministry of Agriculture which has sponsored the name of the applicant and the applicant has been for two years in Madagascar. No order can be passed against a person without giving him an opportunity of hearing. The person cannot be condemned unheard. The reduction in the salary of the applicant shall be material not for a few months, but for the whole of his remaining life as a pensioner.

8. The applicant was promoted as Deputy Commissioner (S&D) w.e.f. the date of joining the post by the order dt. 25.8.1983. It is the respondents who deferred his joining the promoted post in the parent cadre protecting his pay by retaining him on deputation post as Deputy Commissioner (Food Crops). The applicant's posting to the foreign service in Madagascar Minister of also has been at the instance Agriculture. Thus, had the applicant ^{been} relieved from the deputation post, he would have been fixed in the R.P.S. w.e.f. 1.1.1986. He cannot, therefore,

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be deprived ^{of} that benefit on his voluntary retirement.

9. The application is, therefore, disposed of as follows :-

(i) The impugned order d.t.4.1.1990 is set aside.

(ii) The applicant shall be given notional promotion to the post of Deputy Commissioner (SD) w.e.f.

25.8.1983 and his pay in the R.P.S. shall be fixed

w.e.f. 1.1.1986 notionally in the pay scale

(RP) of Deputy Commissioner (Seed Development).

His pay shall again be refixed notionally on the

date of premature retirement on 26.3.1987.

He shall be allowed terminal benefits on his last

pay drawn, as fixed above notionally.

The respondents to comply with the directions within

three months from the date of receipt of the copy of this

order. In the circumstances, the parties to bear their

own costs.

J. P. SHARMA
(J. P. SHARMA) 26.4.90
MEMBER (J)