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

* * *

Date of Decision: 26.8.92

OA 2784/91

Dr. K.S. DHANRAJ

... APPLICANT.

vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

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

For the Applicant ... Self.

For the respondents ... SHRI MANOJ CHATTERJEE.

1. Whether Reporters of local papers may be Y/S allowed to see the Judgement ?

2. To be referred to the Reporters or not ? Y/S.

JUDGEMENT

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

The applicant was Research Assistant in the Indian Agriculture Research Institute (AIRI) in the year 1958. The applicant went on deputation from 16.2.1970 to 20.2.1973 in the Ministry of Food and Agriculture (Department of Food). He was working there as Agriculture Technologist in the pay scale of Rs.700-1250. The applicant joined the Modern Bakeries in the Ministry of Food & Agriculture on 21.2.73

and worked there upto 29.3.1974 as Chief Manager in the scale of Rs.1100-1800. After the assignment with the Modern Bakeries was over, the Deptt. of Food refused to take the applicant back on duty so the applicant filed a Writ Petition in the High Court of Punjab & Haryana which was decided on 15.7.1976. The Writ Petition was dismissed but taking into account the long service of the applicant it was ordered that the applicant may be taken back on duty by IARI in a suitable post. The applicant was allowed to join w.e.f. 1.4.1978 in the scale of Rs.700-1300 and the period from 31.3.74 to 31.3.78 was treated as leave. The applicant opted for IAR service w.e.f. 15.7.78. While he was allowed to join in IARI certain terms and conditions were given to him which are as follows :-

- *i) Dr. Dhanraj should first give an undertaking that he would pay the leave salary and pension contributions for the period of his employment in the office of Modern Bakeries Private Ltd.
- ii) The period of absence of Dr.K.S. Dhanraj between the date of his relief from Modern Bakeries upto the date he rejoins IARI will be treated as leave of the kind due and admissible including extraordinary leave without pay.
- iii) On his re-absorption in IARI, Dr. Dhanraj will be treated as an 'national foreign service of IAR'. No option documents should, however, be served on him without prior permission of the Council/department of Agricultural Research & Education."

Thus, the applicant joined the post of Junior Plant Pathologist on 1.4.78. The applicant has since been relieved from service

on 30.6.91 on reaching the age of superannuation.

2. The grievance of the applicant is that he has not been paid the salary, pension, gratuity etc. as well as the other benefits dues and fixation of scale of grade. The facts of the case are that the applicant falls in the grade of Rs.1500-2500 as per the IIIrd Pay Commission recommendations and the payment of salary, pension, gratuity and other benefits should have been decided by the respondents according to this grade. The applicant has claimed the following reliefs:-

- a) The respondents be directed to pay the pension, gratuity and other benefits to the applicant from date of his appointment i.e. 18.2.58 till the date of retirement.
- b) The respondents be directed to pay all dues in the grade of Rs.1500-2500 w.e.f. 30.3.74 alongwith interest till retirement and till dues are paid, the applicant should not be dispossessed from the allotted quarter and the CGHS Card be restored to him.

3. The respondents contested this application and stated in reply that the applicant has no cause of action; that the applicant has also filed the similar application OA 790/91 and that has also been dismissed as withdrawn by the order dated 17.5.91. The facts of the case are also disputed by the respondents stating that initially the applicant was appointed as a Research Assistant in IARI on 18.2.58.

The applicant was working as Junior Plant Pathologist in the scale of Rs.750-1300. He went on deputation with the Department of Food from 12.2.70 to 20.2.73 as Assistant Technologist. While on deputation he was selected as Chief Manager, Modern Bakeries and he joined that post without obtaining the permission of IARI/ICAR. When his assignment with the Modern Bakeries came to an end he approached the Department of Food where he was working prior to his assignment with the Modern Bakeries who refused to take him back. So, the applicant filed Writ Petition before the High Court, which was disposed of by the Judgement dated 15.7.1976 with the following observations:-

"For the reasons, the petition fails and is dismissed, but without any order as to costs, Mrs. Kuldip Singh the learned counsel appearing on behalf of respondents No.1 & 2 has drawn my attention to the affidavit dated 28th April, 1974 of Shri Narasimham wherein it has been stated that the petitioner can seek reversion to the post of Research Assistant in the IARI which he held in a substantive capacity. I find from the record that the petitioner was holding the post of Plant Pathologist w.e.f. 15.2.70 before he joined as Agricultural Technologist in the Indian Grain Storage Institute on 16.2.70. So, I am sure that the authorities concerned will consider the petitioner's case to take him back on the post of Plant Pathologist or any other post to which he would have been appointed had he continued to serve his parent Department."

As said above, the applicant on the directions of the Hon'ble High Court joined the post of Junior Plant Pathologist w.e.f. 1.4.78 and opted for ICAR on 15.7.78. The period from 31.3.74 to 31.3.78 could not be regularised because on this point of time the applicant was not working in any Government

or any of the Institute under the Council of ICAR. The applicant has not applied for the leave till the filing of the counter by the respondents. The respondents stated that the question of giving the scale of Rs.1500-2000 was duly considered by the Council, who did not agree for the permanent absorption of the applicant in the higher grade and since the applicant joined duties against the post of Junior Plant Pathologist. The Council's decision in this connection has been communicated to the applicant. The letter dated 26.7.88 (Annexure R-2) is on the subject of disposing representation of the applicant. The respondents have also stated that the payment has been made to the applicant under Annexure R-3 (Coll.). It is also stated that the provisional pension of the applicant has already been passed for Rs.1596/- p.m. It is stated that no dues are to be paid to the applicant and the present application is without any merit and is liable to be dismissed.

4. I have heard the learned counsel for the parties at length and have gone through the records of the case. The applicant has served the respondents from 1958 till 31.3.74 and then from 1.4.78 till superannuation. The

applicant himself has not applied for leave as per direction of the Hon'ble High Court for the period from 31.3.74 to 31.3.78. The applicant in the rejoinder has stated that there is no justification for applying for leave because the applicant has spent in litigation this period of 4 years due to mischief and misconduct of the respondents and the applicant should not suffer for such misconduct of the respondents. Thus, the contention of the applicant cannot be accepted because the applicant had gone on deputation to the Ministry of Food and Agriculture from there. He has accepted an assignment with Modern Bakeries, Department of Food without obtaining prior sanction of ICAR. From one deputation post he has gone to another post and the parent department was kept in dark. The applicant cannot re-agitate the matter since the Hon'ble High Court in 1976 dismissed the Writ Petition filed by the applicant. It is only on a sympathetic consideration the High Court directed the respondents to take back the applicant on the post, so he was allowed to join as Junior Plant Pathologist on certain terms and conditions referred to above. The applicant cannot,

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therefore, say that the respondents have kept him out of service for these 4 years when he was litigating before the Hon'ble High Court of Punjab and Chandigarh. The applicant desired that when the Writ Petition was dismissed by the High Court in 1976 and a direction was issued to the respondents to give the applicant some suitable post so according to the applicant he should have been given full benefit of seniority while giving him the suitable post in 1978. Apart from the merit of the matter the representation of the applicant was dismissed on 26.7.88 (Annexure R-2). The present application has been filed by the applicant on 20.11.91. This order of rejection of the representation has not been even assailed in this OA. The applicant has claimed as relief No.2 that the respondents should be directed to pay all dues in the grade of Rs.1500-2500 w.e.f. 30.3.74. However, the applicant was allowed to join as Junior Plant Pathologist in pursuance of the judgement of the Hon'ble High Court of Punjab and Haryana dated 15.7.76 by the letter dated 3.11.77. The applicant in pursuance of the letter of 1977 join the post of Junior Plant Pathologist on 1.4.1978.

The scale of Junior Plant Pathologist/Plant Pathologist has been at that time Rs.700-1300. The applicant, therefore, cannot seek a self appointment to the time scale of Rs.1500-2000. The matter was decided by a very reasonable order dated 26.7.88 (Annexure R-II). Thus, the applicant cannot revive this stale claim at this stage and the relief-2 of the application is hopelessly barred by time. Repeated representation does not give fresh cause of action and the law has been settled in the decision of S.S. Rathore Vs. State of Madhya Pradesh (ATR 1990 SC 10). Regarding the other reliefs claimed by the applicant the respondents in para 5(iv) have given a detail of the terminal benefits arranged to be paid to the applicant. In the rejoinder in reply to this paragraph, the applicant stated that he has accepted the claim under protest. However, he has not given the short amount paid to him or what remains unpaid by the respondents on account of retirement benefits. Thus, the applicant himself is at fault in not giving better particulars regarding the outstanding claims against the respondents. If the applicant has in mind the fixation of his emoluments in the pay

scale of Rs.1500-2500 w.e.f. 31.3.74 then that contention cannot be accepted in view of the reasons given in the earlier part of the judgement. The applicant has been paid on the basis of the last pay drawn on the date of superannuation. The period of four years from 31.3.74 to 31.3.78 could not be counted for because the applicant did not give any application to avail of the leave due to him for this period and the applicant should not have any grudge on that account also. The details of the payment made to the applicant are reproduced below:-

- *(a) Cheque No.402359 dt. 14.2.92 for Rs.19,830/- on account of pay arrears from 1.1.86 to 30.6.91.
- (b) Cheque No.403680 dt. 7.3.92 for Rs.52,100/- on account of provisional retirement gratuity.
- (c) His provisional pension has already been fixed Rs.1,596/- p.m. vide Office Order No.1-11/90-Pension/90-94 dt. 5.3.92.
- (d) Bill for provisional leave encashment has been submitted to Audit for payment (vide Bill No. 1067/MPP dt. 11.3.92 for Rs.43,080/-) and subsequently paid to him vide Cheque No.405868 dt. 4.4.92.
- (e) The applicant has been requested to submit his application duly signed by him for sanction/payment of GSLIS vide this office Registered letter No.F.2-400/78-MPP/8052 dt, 10.2.92."

5. In view of the above facts, the applicant is not entitled to any further claim and the relief-(i), (iii) & (v) are disallowed. As regards the

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retention of the allotted premises to the applicant
the applicant has no right whatsoever to retain the
same after retirement.

6. In view of the above facts, the present
application is totally devoid of merit and is dismissed
leaving the parties to bear their own costs.

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