

(4)

Central Administrative Tribunal. Principal Bench. New Delhi

O.A.No.618/2004

New Delhi, this the 22nd day of November, 2004

Hon'ble Mr.Justice V.S. Aggarwal, Chairman  
Hon'ble Mr.S.K. Malhotra, Member(A)

P.Sisupalan,  
Ex-Project Officer, NCRPB,  
Flat No.104,Nirman Apartments,  
Mayur Vihar Phase-I Ext.  
New Delhi-91

....Applicant

(By Advocate: Ms.V. Mohana)

Versus

1. National Capital Region Planning Board,  
India Habitat Centre,  
Lodhi Road,New Delhi-3  
Through the Secretary
2. Director (Administration & Finance)  
National Capital Region Planning Board,  
India Habitat Centre,  
Lodhi Road,  
New Delhi-3
3. Union of India,  
Through the Secretary,  
Ministry of Urban Development & Poverty Alleviation,  
Nirman Bhawan,New Delhi-1
4. Department of Personnel, Public Grievances and Pension  
Through its Secretary,  
Ministry of Pension and Public Grievances,  
Lok Nayak Bhawan,  
New Delhi

....Respondents

(By Advocate: Shri Sanjay Sarin with Ms.Manjusha Wadhwa)

(9)

Order (Oral)

**Justice V.S. Aggarwal, Chairman**

The applicant by virtue of the present application seeks quashing of the order of 8.7.2003 rejecting his request for payment of salary wrongfully deducted and further to hold that he is eligible to get pension w.e.f. 22.11.2000. As a consequence of the abovesaid reliefs, he also prays that respondent no.1 should pay the excess salary deducted from his Earned Leave Encashment. Besides, he also prays for interest.

2. Firstly, it will be appropriate to reiterate some of the facts which in fact are not in dispute.

3. The applicant had been employed by respondent no.1 (National Capital Region Planning Board) with effect from 3.10.90. He superannuated on 30.6.2000. An order was passed on 29.6.2000 whereby extension was granted for a period of four months or till such time a new incumbent is selected. On 31.10.2000, another extension was granted of one month. The applicant in this process served till he was relieved on 22.11.2000.

4. The applicant during this period even was granted an increment on 8.11.2000. When he was relieved of his duties, he prayed for full salary for the period for which he has served after 30.6.2000 and also that the said service should be counted and that he is admissible to draw the pension.

5. The claim of the applicant had been rejected pointing out to him that the matter regarding regularization of service had been taken up with the concerned Ministry but the same had not been acceded to. The applicant was treated as a Consultant and to that extent the payment of salary was not made in full but the balance amount taking the post



as a Consultant was given to him. The applicant accepted the same without prejudice to his rights in this regard.

6. It is in this backdrop that the abovesaid O.A. with the reliefs to which we have referred to have has been filed.

7. We have heard the parties counsel and have seen the relevant record.

8. The learned counsel for the applicant contended that when extension was given to the applicant, there was no stipulation that it was subject to the approval of the concerned Ministry. The applicant has served respondent no.1 and, therefore, he could not be paid the salary of a Consultant. On the contrary, he should have been paid the full salary i.e. salary and allowances and when he completed 10 years service, he was eligible for the pension. The respondents' learned counsel controverts these pleas.

9. On careful appraisal of the facts, the second part of the claim can be taken up first as to if the applicant is entitled to count the service rendered after superannuation for purposes of pension or not.

10. At the outset, it must be mentioned that our attention has not been drawn to any rule or instructions of the Government of India that after superannuation if a person is granted extension, the said service has to be counted for purposes of pension. In fact, one is constrained to observe that extension has been granted to the applicant without the approval of the concerned Ministry and, therefore, the service so rendered was irregular but not illegal. For the irregular service rendered by him, he would not be entitled to count it for purposes of the pension.

11. However, pertaining to the first relief, the position is little different.

LS Ag

12. When the applicant was to superannuate, he was granted extension by an order signed by the Member Secretary of respondent no.1 which reads:

“Sub: Grant of Extension in Service.

Shri P. Sisupalan, Project Officer 'A' in the NCR Planning Board in the pay scale of Rs.10,000-15,200 is due to retire on 30.6.2000 (A.N.) on attaining the age of superannuation at 60 years.

2. Action has been initiated for filling up the vacancy and advertisement for the post has appeared in the Employment News of 17-23 June, 2000. The post is also being advertised in other newspapers for wider publicity. The process of appointment of a new incumbent to the post will take about 3-4 months.

3. Shri P. Sisupalan has been associated with the preparation of Regional Plan 2021 & NCR Directory and is expediting the allocation of resources from various Ministries for the projects in the Annual Plan of the Board. Due to exigencies of these urgent works, the services of Shri P. Sisupalan cannot be spared now.

4. In the circumstances, Shri P. Sisupalan is granted extension in service for a period of four months or upto the date by which a new incumbent joins the post, whichever is earlier.

Sd/-  
(Sarita J.Das)  
Member Secretary”

13. It was followed by another letter signed by another Member Secretary of respondent no.1 dated 31.10.2000 which we also reproduce for the sake of facility:

“Subject: Grant of extension in Service.

Shri P. Sisupalan, P.O. 'A' who was to superannuate on 30.6.2000 was granted an extension for 4 months or till new incumbent joins. Whichever is earlier vide office order No. A-12024/1/2000- Estt. dated 29.6.2000.

The interviews for the post of Project Officer 'A' have been held on 30.10.2000 and offer of appointment has also been issued to the selected candidate. It may take another 15-20 days for the candidate before she joins the Board. NCRPB is busy in preparation of RP-2021 and with the meager staff it will not be possible to complete the task if any post is kept vacant. Shri P. Sisupalan handles the Social Sector of the Regional Plan and any gap in any sector will further delay the work.

In view of these circumstances, Shri Sisupalan is granted further extension in service for one more month i.e. upto 30.11.2000 or till the new incumbent joins the Board, whichever is earlier.

Sd/-  
(Sarita J. Das)  
Member Secretary”

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14. These letters clearly show that the applicant was requested to serve though approval of the concerned Ministry had not been taken. He was requested to serve under the exigencies because the new incumbent regarding whom the process was being conducted, had not joined.


15. The net result of the aforesaid would be that the applicant rendered services not as a Consultant but in the same capacity in which he was serving respondent no.1 before 30.6.2000. Having served as such, it is unjust, illegal and arbitrary to deny him full salary because he served respondent no.1 in the same capacity to which we have referred to above. Consequently, we find no reason as to why the applicant should be denied salary in this regard.

16. This salary was due to the applicant in November, 2000 but part of it has still not been paid. Therefore, he would be entitled to interest at the rate of 8% per annum on the balance amount that is due to him.

17. No other argument has been advanced.

18. For these reasons, we reject the claim of the applicant pertaining to pension, but we allow the application in part to the extent that full salary for the period from 1.7.2000 to 22.11.2000 should be paid to the applicant. The said amount has been calculated and it is stated, as not disputed at either end, to be Rs.58,440/-. It is directed *that* *it be paid* *X* that interest should also be paid on this amount from 22.11.2000 at the rate of 8% per annum till final payment is made. It should be paid within one month from today.

  
( S.K. Malhotra )  
Member(A)

  
( V.S. Aggarwal )  
Chairman

Idhm/