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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, New Delhi.

O.A. 15/93

New Delhi, This the 24th day of January 1994

Hon'ble Shri J.P. SHARMA, Member(J)

B.R Chatterjee
Asstt. Administrative Officer
(on Deputation)
Central Potato Research Station,
Medipuram - 250110,
Distt. MEERUT (U.P.)

...Applicant

By Advocate Shri V.S.R. Krishna

Versus

Indian Council of Agricultural Research
Krishi Bhavan, Dr Rajendra Prasad Road,
New Delhi-110001.

Through:

1. The Secretary
Indian Council of Agricultural Research
Krishi Bhavan, New Delhi-110001.
2. The Director,
Central Institute for Research on Goats,
P.O. FARAH- 281122,
Dist, Mathura(U.P.)

...Respondents

By Advocate Shri V.K. Rao

O R D E R

Hon'ble Shri J.P. SHARMA, Member(J)

The applicant was initially appointed in Inland Fisheries Research Institute, Barrackpore, West Bengal as an Assistant in the pay scale of Rs.425-700. He was posted on deputation as superintendent in Central Agricultural Research Institute, Andaman & Nicobar Islands, Port Blair where he joined on 08 July 1980 and he opted to draw the pay scale of the deputation post Rs.550-900 and his basic was fixed at Rs.550/-. He worked on that post till 29 Aug 92 and the last pay drawn by him was 600. The applicant reverted to the parent department as an Assistant in the old scale of Rs.425-700 and was fixed

at Rs.530. The applicant was again posted as Superintendent in Central Institute for Research on Goats, P.O. Farah, Distt Mathura(U.P.) and joined the post on 6.3.84. This post carried the scale of Rs.550-900 which was identical to that of the first ex-cadre post that the applicant held on deputation from 8.7.80 to 29 Aug 82 in Central Agricultural Research Institute, Port Blair. This time the applicant opted for the parent scale of pay of Rs.425-700 and the deputation allowance. Subsequently, the applicant was absorbed in the ex-cadre post of Central Institute for Research on Goats with effect from 1.1.1988.

2. The grievance of the applicant is that he has not been granted protection of pay under FR 22(1)(iii) read with Government of India order No.2 below FR 22 C and his representation was rejected by the order dated 03 Apr 91 (A-3). The applicant ^{prayed for quashing} ~~in~~ the aforesaid order ~~prayed~~ for the grant of the reliefs that the pay of the applicant from 1.1.88 be fixed giving the benefit of Rule 22(1)(iii) of the fundamental rules read with Government of India Order No.2 below FR 22C in the post of Superintendent in the scale of Rs.1640-2900(revised) after counting his deputation service in the Central Agricultural Research Institute, Port Blair from 8.7.80 to 29 Aug 82 and in the Central Institute of Research on Goats at Farah, Dist Mathura from 6.3.86 to 31 Dec 87 for increment purposes and the impugned order rejecting his representation be quashed.

The applicant be also be given arrears of pay and consequent pay and allowances from 1.1.86 along with consequential benefits.

3. A notice was issued to the respondents who contested the application and took the preliminary objection that the said application is barred by time. It is stated that the pay of the applicant was fixed in Feb 1988 at the stage of Rs.1820 by the order dated 28 Feb 88

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with effect from 1.1.88 the next increment falling due on 1.1.89. The present application is barred by time as it was filed in Jan 93. Further it is also stated that the order of rejection by respondent was issued on 3 Apr 91 and even on that account he should have come for judicial review within one year but the application has been filed in Dec 92.

4. The respondents also contested the application on merits on the grounds that the pay of the applicant can only be fixed under FR 22C. The applicant was on deputation to CARI from there he was reverted back to parent department where he worked for 1½ years and only thereafter he joined CIRG on deputation basis. It is not a case where the applicant once went on deputation from one ex-cadre post in a department to another ex-cadre post directly but there is gap in between of about one and half years. On the second deputation to CIRG he opted for the parent scale of Rs.425-700 and the deputation allowances had been opted for the pay in the scale of Rs.550-900 to which he came on deputation. The applicant therefore cannot take any benefit under FR 22(1)(iii) and the application is devoid of merit.

5. The applicant also filed the rejoinder reiterating the same facts again. On limitation it is stated that applicant made another representation and the respondents have given a second thought to that representation and his representation was forwarded to Director(Finance) ICAR, Krishi Bhavan, New Delhi on 20 Nov 91. A similar representation was earlier forwarded in Nov 91. Thus the matter being still under consideration of the respondents at Delhi and the application is within time. The applicant also reiterated that his case is covered by FR 22(i)(iii) read with Government of India, Min of Finance O.M. dated 1-6-70. The said order reads as follows:-

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"In respect of appointments to ex-cadre posts on time scale of pay identical with time scale of pay of ex-cadre posts held on earlier occasion(s) the benefit of provision 1(iii) to FR 22 will be admissible. According to the applicant he was appointed to the ex-cadre post of ^{ent}superintendent having time scale of pay identical with the time scale of pay of ex cadre post held on an earlier occasion (CARI, A & N Islands, Port Blair) the benefit of provision 1(iii) to FR 22 is thus admissible. "

6. I have heard the learned counsels of parties at length and perused the records. Shri V.K.Rao for the respondent raised the subject of territorial jurisdiction arguing that the Principal Bench has no jurisdiction. However ^{the} the matter is pending with ICAR, Krishi Bhavan, New Delhi and in such a circumstances the learned counsels for the applicant rightly pointed out that final order was to be passed at Delhi and so the Principal Bench at Delhi had jurisdiction.

7. Regarding the point of limitation the Respondent No.2 has forwarded the case of the applicant to ICAR at Delhi and that is still under consideration and in view of this the application can not be said to be barred by limitation.

8. The provision of the FR 22 in the provision laid down is as follows:

"Provided both in cases covered by clause (a) and in other cases of re-employment after resignation or removal or dismissal from the public services covered by clause (b) that if he is either

(1) has previously held substantively or officiated in:

- (i) the same post or
- (ii) a permanent or temporary post on the same time scale or
- (iii) a permanent post or temporary post at a identical time scale; or

(2) is appointed substantively to a tenure post on a time scale identical with that of another identical post which he has previously held substantively or in which he has previously officiated:

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then the initial pay shall not, except in case of reversion to parent cadre governed by proviso (1)(iii) be less than the pay, other than special pay, personal pay, or emoluments classed as pay by the President under Rule 9 (21)(a)(iii) which he drew on the last occasion and he shall count the period during which he drew that pay on such last and any previous occasions for increment in the stage of the time scale equivalent to that pay"

8. Government of India decision of 1 Jun 1970 wherein it is laid down that in respect of appointments to ex-cadre posts on time scale of pay identical with the time scale of pay of ex-cadre posts held on earlier occasion(s) the benefit of proviso 1(iii) to FR 22 will, however, be admissible.
9. The contention of the counsel for the applicant is that due meaning has to be given to the phrase held on an earlier occasion which according to the applicant counsel indicates that the post of identical time scale of pay may be held on one or more occasions. In view of this he has argued that there is no question of continuity in service for appointments from one ex-cadre post to another ex-cadre post. However, this interpretation is not according to the spirit of the rules. The case would have been different if the applicant had gone from one ex-cadre post to another ex-cadre post on deputation basis. In the present case the applicant reverted to the parent post and worked there for 1½ years and thereafter he joined CIRG and opted for the parent scale. The positions might have been different if the applicant had opted for the scale of the post of which he joined second time and was ultimately absorbed from 1.1.88 in CIRG. The pay fixation of the applicant in Feb 1988 therefore cannot be said to be ^{not} in accordance with the fundamental rules as he is to be governed by the provisions of FR 22 C and not with the proviso under FR 22 (1)(iii).
10. The learned counsel for the applicant argued that the applicant had been in a dis-advantageous position, and that it is not so. He has been given the replacement scale

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with necessary increments while fixing his pay on 1.1.88. On the second deputation post the applicant never opted for the scale of the post i.e. Rs.550-900. The pay therefore last drawn on the first deputation at Rs.600/- was again fixed in the pay scale at Rs.425-700 when he joined his parent department. On the second deputation post he continued to draw in the very pay scale of Rs.425-700 and was given replacement scale on the recommendation of the Fourth Pay Commission. The applicant therefore is not in any dis-advantageous position 11. The application is therefore dismissed as devoid of merit. In these circumstances the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA)
Member (J)

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LCP