

Item No.8



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 1380/2021

M.A. No. 1781/2021

This the 26th Day of July, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Dr. A.K. Upadhyay
Assistant Research Scientist
S/o Late Sh.Chandra Bhan Upadhyay
Aged 59 years, Group: B
R/O NZG-49G,G-19,G-Block,
Gali No.02,Rajnagar-11,
Palam Colony,New Delhi-110077
Working at: National Institute of Malaria Research
Sector-8, Dwarka, Delhi-110077
Mob: 7761820802
Email: Upadhyay.ashok@gmail.com

... Applicant

(By Advocate : Shri Vaibhav Kalra)

Versus

1. Department of Health Research
Through, its Secretary
2nd Floor, IRCS Building
Red Cross Road, New Delhi- 110003
2. Indian Council of Medical Research
Through its Director General
Ansari Nagar, New Delhi-110029
3. National Institute of Malaria Research
Through its Director
Sector-8, Dwarka, New Delhi-110077

... Respondents

(By Advocates : Shri Ranjan Tyagi and
Shri Shashwat Sharma)

O R D E R (ORAL)

Mr. Justice L. Narasimha Reddy, Chairman :

This O.A. discloses as to how certain persons, who somehow make into important Organisations, keep on filing proceedings, one after the other, and get benefit to the hilt, at the cost of the Organisation, if not to the State Exchequer.

2. The applicant joined the service of the National Institute of Malaria Research on administrative side, long back. Initially, he filed OA No.228/2000, with a prayer to regularize his services. It was mentioned that he joined the Administrative Wing of ICMR for Eradication of Malaria on United Nations Fund Project and though he worked for quite long time, his services are not being regularized. The O.A. was disposed of, with a direction to consider the case of the petitioner and the other similarly situated persons.

3. Complaining that no final decision was taken thereon, the Malaria Research Centre, Employees' Welfare Association filed Writ Petition No. 1554/2003. By referring to the judgment of the Hon'ble Madras High Court which, in turn, was upheld by the Hon'ble Supreme Court, the Hon'ble High Court disposed of the Writ Petition on 20.03.2013, directing that the judgment of the Madras High Court shall govern the employees who are the members of the petitioners'

Item No.8



Association. No specific direction was issued as regards the regularization against any particular post, much less with any particular scale of pay. It is stated that the applicant was already extended the benefit of Assistant Research Scientist (ARS) and thereafter Research Scientist in the year 2014. Through an order dated 05.12.2014, he was also extended the pay scale of Research Scientist with Grade Pay of Rs.5400/-. However, stating to be in compliance with the judgment of the Hon'ble High Court in WP(C) No.1554/2003, the services of the applicant were regularized as ARS with Grade Pay of Rs.4600.

4. Through an order dated 09.06.2021, the respondents informed the applicant that he would retire from service on 31.07.2021, on attaining the age of superannuation. This O.A. is filed challenging the said order. The applicant contends that he is equivalent to a Scientist, for whom the age of superannuation is 62 years, and similar benefit was not extended to him. Earlier his case was that the post of ARS is no longer on the cadre and he was already holding the post of Research Scientist.

5. We heard Mr. Vaibhav Kalra, learned counsel for the applicant and Mr. Ranjan Tyagi, learned counsel for the respondents, at the stage of admission.



6. This is a typical case in which the lack of consistency orderliness, in an important organization like ICMR, is evident. Though the applicant is silent about the manner in which he joined the Organisation, the 1st sentence in a judgment of the Hon'ble High Court discloses that he joined on the administrative side. The curious part of it is that even while his services in the Organisation were not regularized, the Organisation went on promoting him to the post of ARS in the Grade Pay of Rs.5400/-. It is one year thereafter that an order was passed on 19.11.2015, regularizing him in service of ARS with Grade Pay of Rs.4600/-. What is shocking and astonishing is that the applicant states that notwithstanding the order dated 19.11.2015, he is drawing the pay scale with grade pay of Rs.5400/- and all benefits applicable to the post of Research Scientist. That only shows the lack of discipline or orderliness in the Organisation.

7. Be that as it may, in the context of age of retirement, one has to go by the Recruitment Rules for the concerned post. In spite of repeated queries, the learned counsel for the applicant is not able to cite any provision which dealt with the age of retirement of ARS. Though the applicant contends that he is entitled to be treated on par with Scientist as long as he is holding the substantive post of ARS, that too, on

Item No.8



administrative side, we just cannot extend the benefit. The age of superannuation is a matter of Recruitment Rules or at least policy and unless those rules or policy are challenged, we cannot entertain the O.A.

8. We do not find any merit in the O.A. and accordingly it is dismissed. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/sd/jyoti/vb/akshaya/