

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No.47 of 1990

Date of Decision ... 25th September, 1991.

C.V.N. Rao ... Applicant

Versus

Union of India & others ... Respondents

For the applicant ... M/s. Aswini K. Mishra,  
S. K. Das, S. B. Jena,  
Advocates

...

For the respondents ... M/s. Ganeswar Rath,  
Standing Counsel  
(Central)

...

C O R A M

MR. N. SENGUPTA, HON'BLE MEMBER (JUDICIAL)

...

1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? No.
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes

...

JUDGMENT

N.SENGUPTA, MEMBER (J), The applicant was initially appointed as a Scientist S-2 in the Central Institute of Fisheries Technology (CIFT), Cochin under the Indian Council of Agricultural Research (ICAR). The Government of India advertised inviting applications for appointment of a Deputy Director (Packaging) in the Small Scale Industry Development Organisation and the applicant was a candidate for the same and was selected. The terms and conditions of the appointment of the applicant were as prescribed in Annexure-1 to the application. According to Annexure-1 the Government of India were to bear the leave salary and pension contributions in respect of Scientific Personnel of ICAR who get selected or come on deputation to posts for a period of three years during which period the person who is appointed on deputation should either get himself absorbed in the post under the Government of India or revert back to the ICAR. Annexure-1 was issued on 24.5.1974, subsequently on 6.2.1975 another letter was issued from the Development Commissioner of the Ministry of Industrial Development curtailing the period of three years to two years for which the Government of India were to meet the liability of leave salary and pensionary benefits. The applicant really took over charge as Deputy Director (Packaging) on 11.3.1976 (See Annexure-3 to the application). In March, 1978 a letter was addressed by the Director, Administration of the Packaging Programme

*Mer. Eeph  
15.9.91.*

- 3 -

to the Director General of the CIFD, it was pointed out that the lien of the applicant in the ICAR was protected for the period two years ending 10.3.1978 and for this period leave salary and pension contribution were to be paid to the Government of India to the ICAR. However, there was an extension of the lien of the applicant in CIFD and to ~~meet~~ the liabilities of the Government of India ~~were~~ meet pension the leave salary and ~~xxxx~~ contribution of the applicant for one more year i.e. till upto 10.3.1979 (Annexure-4). The applicant continued to serve under the Government of India on deputation and he came back to the ICAR in September, 1982. As the applicant did not join the ICAR after three years, a disciplinary proceeding was initiated against the applicant by the ICAR authorities for overstaying beyond the period of deputation. The applicant's case is that he was made to remain ~~in~~ the Small Industries Development under the Government of India in the interests of the Government of India and not in his own interest and this was acknowledged by the Development Commissioner, Ministry of Industries of the Government of India in the letter dated 27.4.1982 (Annexure-8) to the application. Even though the Government of India met the liability of leave salary and contribution of pensionary benefits for three years, it declined to pay the amount for the period from March, 1979 till September, 1982, when he (applicant) reverted back to the ICAR. The applicant has also averred that he was not paid any T.A. for joining the post and he has been discriminated against in this regard in as much as others

*Manohar  
WS 91*

(such as one M.Mukundan) were paid T.A. on joining in the Small Scale Industry Development Department on transfer on deputation. He has also averred that the deduction made from his emoluments towards Insurance etc. have not been deposited by the Respondent No. 2 i.e. Development Commissioner, Ministry of Industry of Government of India. As Respondent No. 2 failed to make the deposit or the contribution, he made representation to the concerned authorities which did not meet with success so, it is pleaded by the applicant, he has been obliged to ask for the reliefs of deposit of the amount at the rate mentioned in Annexure-11 for the period from 11.3.1979 till September, 1982 to the credit of Respondent No. 3, to pay him the Transfer T.A. and Daily Allowances, to pay or deposit to the credit of Respondent No. 3 the deduction made under the Additional Compulsory Deposit Scheme and for payment of ~~the~~ interest on the arrears.

2. Respondents No.1 and 2 have failed a reply wherein they have stated that the letter said to have been written on 25.7.1978 by the Director, CIFD was not received in the office of the Respondent No.2. The case of ~~th~~ respondents is that for the payment of leave salary and pension contribution steps were taken but due to non-availability of certain relevant documents and clarification etc. payment could not be made, in the mean time the documents have been obtained. No. TA was really payable for joining on first appointment or on reversion to the parent office. The applicant had made a request

*Mani Supty  
25/9/91.*

- 5 -

and that was examined and it was found that the applicant could not be given T.A., of this fact the applicant was informed by a letter dated 11.1.1979. They have also stated that it is not possible to bear the financial liability for the maintenance of lien of the applicant in the the ICAR beyond 10.3.1979.

3. After the filing of the counter the applicant has filed a rejoinder in which ~~he has stated that the~~ denial of receipt of the letter of the Director CIFT dated 27.5.1978 should not be accepted as a copy of the said letter ~~was~~ received by him (the applicant) while he was serving in the Small Scale Industry Development Department. He has in the rejoinder admitted to have subsequently received the leave salary and pension contribution for three years and also the amount deducted under the Additional Emoluments Compulsory Deposit Scheme. In the rejoinder he has reiterated that at the instance of Government of India the period of deputation was extended, so Respondent Nos. 1 and 2 must be directed to bear the liability of leave salary and pension contribution for the period beyond 10.3.1979 till 30.9.1982 when he came back to the ICAR, his parent department.

4. In view of the averments in the application, the reply of the respondents and the rejoinder filed by the applicant, only two questions remain for adjudication viz. the one relating to the liability of respondent No. 1 & 2 to deposit with Respondent No. 3 contribution towards leave salary and pensionary benefits of the applicant for the

Mer. S. S. B.  
25/9/91.

period from 11.3.1979 till 30th September, 1982 and the second is about the liability of respondent no. 1 & 2 to pay to the applicant TA & Daily allowance for the journey undertaken at the time the applicant joined as Deputy Director(Pkg). Mr.Ganeswar Rath, the learned Standing Counsel for the respondents, has contended that apart from the fact that according to the terms of appointment of the applicant as Deputy Director(Pkg) no T.A. or Daily allowance being payable when he first joined in the Small Scale Development Organisation, the claim is not entertainable being barred by time. The applicant has filed a series of correspondence, in none of the letters excepting the one dated 3.9.85 (Annexure-9) is there any reference to the claim of T.A. Though in annexure-9 a mention of transfer TA has been made, there was no promise by the Development Commissioner(SSI) that the applicant would be paid any T.A. or D.A. on his first joining as a Deputy Director(Pkg). In para-4 of their reply the respondents No. 1 & 2 have stated that the applicant's request to pay him T.A. on his joining the appointment or the T.A. when he left the Small Scale Industries Organisation was not accepted and the applicant was informed of this by a letter dated 11.1.1979. The applicant in his rejoinder in para-3 has made a reference to para-4 of the counter filed by respondent nos. 1 & 2 and there, even though he has mentioned about others in similar circumstances having been allowed T.A. and D.A. has not denied the receipt of the letter dated 11.1.1979. Thus it would be seen that the grievance of the applicant relating

*Kenya*  
25.9.91.

- 7 -

to the T.A. & D.A. at the time of joining arose much prior to 1.11.1982 therefore, this Tribunal cannot entertain that claim in view of Section-21 of the Administrative Tribunals Act, 1985.

5. So far as payment of leave salary and contribution towards the pensionary benefits for the period commencing from 11.3.1979 till 13.9.1983 is concerned, reference may be made to annexures-6, 8 and 12. In annexure-6 dated 28.2.1981 it was stated by the Deputy Director (Administration) of the Office of the Development Commissioner (SSI) that there was a proposal to absorb and confirm the applicant and a request was made to extend lien of the applicant in the ICAR upto 31.3.1981. In annexure-8 it was mentioned that the services of the applicant in the Small Scale Industries Department were in public interest and not in his own interest. These two annexures leave absolutely no room to doubt the case of the applicant that his continuance in the SSI Department was at the instance of respondent no.2 or the organisation of which he is the Head. Till upto 14.10.1986 no deposit of credit of any amount towards leave salary and pension contribution of the applicant was made by respondent no.2. When a person is retained on deputation in the interest of the borrowing organisation, it will be a travesty of justice if the applicant is denied the deposit of the contribution towards leave salary and pensionary benefits to the credit of the proper authority by the borrowing organisation. Once again it may be stated only in April, 1982, respondent no.2

Mar 1991

- 8 -

informed that the applicant could be repatriated to his parent department on any date suggested by CIFT. The matter remained under correspondence without any final order till upto 16.5.1989 when a letter was addressed to the applicant by the DC (SSI) for giving copies of the letters relating to the payment of salary and pension contribution. In these facts and circumstances it has to be found that respondent no.2 is liable to deposit or transfer to the credit of respondent no.3 contribution towards leave salary and pensionary benefits of the applicant for the period commencing from 11.3.1979 till the applicant was actually relieved from the post of Deputy Director (Pkg), Small Scale Industries Development Organisation. Respondent No.2 is directed to pay the contribution towards the leave salary and pensionary benefits from 11.3.1979 till the applicant's relief from SSI, this to be done within three months from the date of receipt of a copy of this judgment failing which interest at the rate of Rs. 12 per cent per annum would be payable from the date of decision of this case till payment. The case is accordingly disposed of leaving the parties to bear their respective costs.

*Hee Sd/ 22-9-91*  
( MEMBER (JUDICIAL) )

Central Administrative Tribunal  
Cuttack Bench, Cuttack  
dated the 25th Sept 1991 / BK Sahoo

