

6

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

O.A.NO.718/93

Dr. Prahalad Charan Samal ....

Applicant

Vrs.

Union of India and others ....

Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? *Y*
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *M*

*Narashimha*  
(N. SAHU) 17.3.97.  
MEMBER (ADMINISTRATIVE)

8

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 718/93

Cuttack, this 27<sup>th</sup> day of March 1997

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER (ADMINISTRATIVE).

....

Dr.Prahallad Charan Samal,  
Medical Officer,  
presently working at C.R.R.I.,  
Cuttack-753 006

...

Applicant

Advocate for applicant - Mr.Aswini Ku.Misra.

-VERSUS-

1) Union of India,  
represented through its Secretary  
to Government of India, Health Department,  
Nirman Bhavan,  
New Delhi-110 001.

2) D.G., I.C.A.R.,  
Krishi Bhavan,  
New Delhi-110 001.

3) Director,  
Central Rice Research Institute,  
Cuttack-753 006

....

Respondents.

Advocate for respondents - Mr.Ashok Misra.

O R D E R

N.SAHU, MEMBER (ADMN.)

Through MA No.747/96 filed on 26.11.1996

both the counsels agreed and requested the Court for taking up the hearing by a Single Bench in view of the hardships that the applicant had been undergoing and in view of the fact that this is an old matter relating to 1993.

2. The applicant claimed the following

reliefs:

"(i) quash the impugned order of rejection  
as at Annexure-12;

*[Signature]*

- (ii) direct/order to the respondent No.1 to revert the applicant to his parent cadre in Central Health Service with all the consequential service and monetary benefits thereto or in the alternate direct the respondent No. to absorb the applicant in C.R.R.I. with pay protection in the manner as prayed for by the applicant;
- And
- (iii) hold/declare that the deduction of all the allowances made from the salary of the applicant (as described in paragraphs 4.9 ante) from September, 1993 as bad, illegal in law; and
- (iv) pass such other order(s)/direction(s) as may be deemed fit and proper in the bona fide interest of justice."

2. The applicant was a Medical Officer under CGHS. He was posted to Central Rice Research Institute, Cuttack as at that relevant time the post was under the C.G.H.S. Later on C.G.H.S. had withdrawn that post and the applicant was treated as a deputationist. The applicant was promoted by respondent no.1 in the scale of Rs.3000-4500/- as a Senior Medical Officer and the matter was intimated to I.C.A.R. authorities for the purpose of fixation of pay. Accordingly, the ICAR authorities while allowing the scale fixed a ceiling of Rs.4000/- which would include pay and deputation allowance. It is the claim of the applicant that the I.C.A.R. authorities should protect the pay and salary of a deputationist at par with the scale drawn by him in his parent office. He, therefore, challenges the fixing of the ceiling at Rs.4000/- as illegal.



3. In the year 1990 there was a proposal by way of an option given to the applicant either to revert to the cadre post of Central Health Service or to get permanently absorbed in the C.R.R.I. organisation. The applicant opted for being permanently absorbed in the C.R.R.I. subject to his pay protection. A conditional offer for absorption was not acceptable. According to the applicant he was "compelled and forced" to accept the scale of Rs.2200-4000/- for his permanent absorption in the I.C.A.R. He accepted the same, but now challenges that even though he accepted it such arbitrary and artificial limitation is not in accordance with law and contrary to the guidelines governing the field for permanent absorption of Government employees under a Public sector undertaking. It is submitted that I.C.A.R. authorities had already allowed the Senior Medical Officer's scale in the C.H.S. cadre post between Rs.3000-4500/- for other officers similarly placed like the applicant. He cites Rule 37 of the Pension Rules and Appendix XII thereto to the effect that the last pay drawn by the Government employee plus deputation allowance is required to be protected by autonomous bodies on the permanent absorption of the said employee in the aforesaid autonomous organisation. He further mentions that the master and servant relationship between the Central Government and the applicant had not been severed because certain benefits that had accrued to him were not paid. He further pleads that his confidential report, personal files, etc., were called for consideration of his case for promotion to the post of Chief Medical Officer which shows his continuity with the parent organisation. Finally he states that I.C.A.R is bound to follow the rules and regulations of the Government of India. As no resignation

was submitted by the applicant before being absorbed in the said autonomous body, the aforesaid absorption cannot be construed to be valid in law. His representation as well as for fixation of pay / his representation either for his reversion to the parent Department or for a direction to the I.C.A.R. for fixation of his pay at Rs.3000-4500/- was turned down in a brief order. One point raised by the learned counsel for the applicant is that the option submitted by the applicant for permanent absorption is no option in the eye of law as it is contrary to law as per decision reported in AIR 1986 SC 1571. The next point mentioned is that certain allowances attached to the post were stopped because such allowances would raise the final ceiling of Rs.4000/-.

4. Respondent no.1 states that once the applicant had submitted his willingness for permanent absorption at C.R.R.I., Cuttack in the scale of pay of Rs.2200-4000/- by his letter dated 11.7.1991, he cannot now resile from that stand. It is stated that by letter dated 14.2.1992 the applicant was conveyed that he was free to negotiate his emoluments with the autonomous body. His present pleading for protection of pay, failing which repatriation to parent Department, did not merit consideration. The applicant ceased to be the member of the C.H.S. consequent upon his absorption in CRRI, Cuttack, with effect from 8.8.1991. It has no authority to direct ICAR regarding fixation of pay of the applicant and accordingly respondent no.1 in the counter pleaded that there is no merit in the applicant's claim.

5. Respondent no.3 stated that I.C.A.R., New Delhi is an autonomous registered Society fully financed by the

Government and therefore, excluded one post of Medical Officer at C.R.R.I., Cuttack, from Central Health Service. The applicant continued as Medical Officer at C.R.R.I., Cuttack, on deputation basis from 8.8.1986. It was at this stage, due to the change of policy, as every official intending to serve a public sector undertaking could do so only on permanent basis and not on deputation basis, the applicant was asked to exercise the option as stated above. The Council approved the absorption with effect from 8.8.1991. The applicant was promoted to the cadre of Senior Medical Officer with effect from 21.8.1987 whereupon his pay was fixed at Rs.3700/- with effect from 8.8.1991. It is also stated that C.R.R.I. Dispensary does not have a sanctioned post which carries a pay of more than Rs.2200-4000/- for any medical specialist. There was no compulsion to accept the absorption. All the documents, according to the respondents, reveal that the option was independently and voluntarily exercised. After giving sufficient opportunity to the applicant for repatriation, his option was accepted. Conveyance allowance is not allowed to the applicant because he did not have to make calls beyond office hours. As he is not a specialist nor doing research education, he could not draw P.G. and Annual Allowance. It is also mentioned that the appointment clearly stated that he would be governed by all the rules and regulations of the autonomous body. Voluntary/normal option for permanent absorption once made is irrevocable. It is, therefore, stated that the applicant cannot be considered for promotion to the higher grade of Chief Medical Officer as he ceased to be a member of C.H.S.

6. Learned counsel for the applicant makes some important submissions. The first submission made by him is

that an employee acquires a lien on a post only when he has been confirmed and made permanent on that post and not earlier. For this purpose, he cited the decision of the Apex Court in *Triveni Shankar Saxena v. State of U.P.* (AIR 1992 SC 496). Applying this decision to the facts of the present case, he stated that the applicant has not been confirmed and made permanent in the post and therefore, he continues to have lien with his parent Department. The second decision cited by him is that of the Apex Court in AIR 1990 SC 311, *Dr. Ms. O. Z. Hussain v. Union of India and others*, to support his claim that allowances, such as book allowance, risk allowance, conveyance allowance and higher degree allowance admissible to doctors in Medical Wing in Directorate of Health Services should also be admissible to non-medical category 'A' Group Scientists. It is also stated that Group 'A' Scientists in Non-Medical Wing in Directorate of Health Services are entitled to benefits of promotion which are available to similarly placed Scientists in other Ministries. In this case, the Supreme Court has observed as under:

"This Court has, on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service."

According to the learned counsel, the ruling in the above decision fully applies to the applicant. Even assuming that his consent for absorption is irrevocable, that does not mean that the applicant would be bound down to a rigid moratorium like the fabled Sysiphus condemned to carry a burden. First of all, his pay scale should have some relevance to the pay scale conferred on equivalent posts in other Ministries. Second, there should be some avenues of promotion



and he should not be allowed to retire on a particular saturated maximum even after several years. This point is further explained in a very early decision of the Apex Court in AIR 1989 SC 1972 (Council of Scientific & Industrial Research v. K.G.S.Bhatt). I shall do no better than to extract their Lordships' observations as found in the headnote:

"Respondent is not a lay-man. He is highly qualified engineer. Although joined service with a diploma in Engineering, he later passed Bachelor of Engineering (B.E.) and also acquired M.Tech. degree and one more diploma (D.P.M.). He was, however, left without opportunity for promotion for about twenty years. This is indeed a sad commentary on the appellant's management. It is often said and indeed, adroitly, an organisation public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well.

- (1) Principles of Personnel Management by Flipo Edwin 4th Edition p.245.  
(2) Personnel Management by Dr. Udai Pareek, p.277.  
(3) Management of Personnel in Indian Enterprises by Prof. N.N. Chatterjee, Chap. 12, p.128 foll.

(Para 9)

Further, it may be borne in mind that the exercise of power under Art. 136 while granting special leave and while hearing appeal is one continuous process, and the Supreme Court will apply the same principles even at the time of disposal of the appeal. In the instant case, the respondent has suffered and stagnated for about twenty years in the same scale from inception due to defective promotional policy. Therefore, the Supreme Court would decline to interfere with the relief granted by the Tribunal although the views expressed on the scope of bye-law 71(b) (ii) by the Tribunal could not be upheld."

6. I am of the view that the absorption based on consent is irrevocable. This conclusion has become inevitable because the very basis of deputation changed with the directive of the Ministry of Health & Family Welfare dated 18.7.1990 (Annexure-6). Because Government servants have to be sent only on permanent basis and not on deputation

basis, the Ministry had excluded all the medical posts belonging to C.R.R.I. from the Central Health Service and gave a clear option to the incumbents either to revert to C.H.S. posts elsewhere or get permanently absorbed in the posts they were holding. The letter of the applicant dated 27.7.1990 states that he served under C.H.S. for a long period of 16 years including the service at C.R.R.I. He claimed that though he has been promoted to the post of Senior Medical Officer in C.H.S. in August, 1987, his salary has been limited to Rs.4000/- per month at the C.R.R.I. vide ICAR letter No.F2-46/86 dated 18.12.1987. He mentioned that his scale of pay of Rs.3000 - 4500/- should be taken into account while fixing his pay on permanent absorption. He further mentioned that his next time scale promotion to the scale of Rs.3700-5700/-as per scale of pay of ICAR plus usual allowances applicable to medical officers of C.H.S. is due. He, therefore, requested to be given this superior scale. His third point was that the post of Medical Officer is in auxiliary cadre of I.C.A.R. which may be covered under a special cadre or Scientific cadre of ICAR. This was recommended by the Director of C.R.R.I. The I.C.A.R. by its letter dated 28.6.1991 replied that the undertaking of the applicant was a conditional one and therefore, could not be accepted. Thereafter on 11.7.1991 the applicant gave his unconditional option for absorption. By letter dated 14.2.1992 detailed terms were spelt out by the Ministry. The permanent absorption was accepted to take effect from 8.8.1991. ~~Paragraph 5 states that the applicant was given a box to sign below this document with the new stamp. It also mentioned that the applicant would be entitled to all the benefits admissible to the corresponding employees of the C.R.R.I.~~ It also mentioned that the applicant would be entitled to all the benefits admissible to the corresponding employees of the C.R.R.I. He finally gave a further representation on

16

October 29, 1991. He requested for a reconsideration of his case, but this was turned down. In the above background, the applicant had been given several opportunities. He had been asked to exercise his option with open eyes. The option exercised by him cannot be treated as one under compulsion or constraint and therefore, the consent given was free, voluntary and irrevocable.

7. Having said that, it appears to me that this is a case of obvious injustice done to the applicant. The fact is that he was promoted to the post of Senior Medical Officer on 21.8.1987 by respondent in the scale of pay of Rs.3000-4500/-. The ceiling of Rs.4000/- fixed by respondent no.2 appears to be inconsistent and dichotomous. The ICAR by its letter dated 30.3.1994 in F.No.54-7/89-IA.IV has turned down the proposal for upgradation of the post of Medical Officer from Rs.2200-4000/- to Rs.3000-4500/-. In view of the principles laid down by the Supreme Court above, it will not be proper to stifle the prospects of an employee for a long period. It is true under the guidelines by the Government of India in respect of Government servants, particularly the one dated 31.1.1986, a Government employee selected for a post in public sector enterprise will be free to negotiate his emoluments with the enterprise. On appointment to a post in a public sector enterprise on immediate absorption basis a Government servant will be at par with other employees of the enterprise and will be governed by the rules of the enterprise in all respects. This is a case of interpreting the terms of absorption very literally. The applicant's case has to be considered by respondent no.2 as far as upgrading his post and considering his case for various allowances are concerned. In the letter dated 30.3.1994 the question of

grant of various allowances is stated to be still under consideration. It is true that the officers who are sent on deputation are entitled to get the minimum prescribed scale of pay in the parent Department along with deputation allowance as admissible. But this has been subsequently modified because the applicant had desired to take absorption voluntarily. The respondents claim that having negotiated and accepted the scale prevalent for a Senior Medical Officer in C.R.R.I., he cannot now ask for more, is a very narrow and technical view. Respondent no.2 may keep in mind the observations of the Supreme Court and consider upgradation of the post to the scale of Rs.3000-4500/- within a period of three months from the date of receipt of copy of this order and allow the scale prospectively from that date. All the allowances, like NPA, PG Allowance and Conveyance Allowance, the applicant was drawing till August 1993 shall be immediately restored to him and all arrears be paid to him in this regard within two months of receipt of copy of this order.

8. However, one submission of the applicant has not been addressed. The applicant is entitled to be considered for promotion to the post of Chief Medical Officer on 15.9.1989, i.e. the date when his junior was promoted to the said post under C.H.S. cadre or in the alternative from 21.8.1990 which will be one year from the date of completion as a Senior Medical Officer. The respondents' plea that he cannot be considered because he ceased to be a member of CHS cadre does not appear to be correct because he is permanently absorbed in C.R.R.I., Cuttack with effect from 8.8.1991. It is incumbent on respondent no.1 to consider the applicant for promotion in view of the applicant's claim that his junior has been promoted before the date of absorption. This aspect of the matter has not been contradicted at any place in the counter affidavit. This matter was mentioned by the applicant in the

rejoinder at paragraph 4, page 4. At paragraph 12, page 4 of the counter, as a reply to para 5.2 of the Application, this matter was very summarily ignored. The applicant should be treated as a Central Health Service officer till he was absorbed on 8.8.1991. If there was a D.P.C. for promotion to the cadre of Chief Medical Officer and a junior was considered and promoted before 8.8.1991 and the applicant was not considered, the respondents are obliged to consider the applicant for promotion to the said post within a period of three months from the date of receipt of this order by convening a special D.P.C. for this purpose and communicate the results thereof to the applicant. If the D.P.C. finds him fit for promotion, all the consequences in law that follows from it shall be given effect to.

The Original Application is disposed of as above.

No costs.

*Narasimha A.*  
(N.SAHU) 17.3.97.  
MEMBER (ADMINISTRATIVE)