

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 610/2000

Cuttack, this the 5th day of May 2004

Dr. (Mrs.) Manasi Mishra Applicant

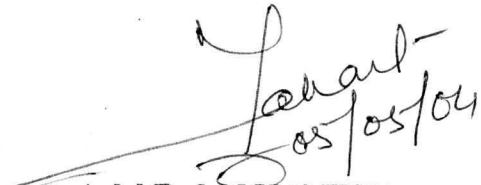
Vrs.


Union of India & Others Respondent

FOR INSTRUCTIONS

(1) Whether it be referred to the Reporters or not ? NO

(2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 74


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.610/2000

Cuttack, this the 5th day of May 2004

CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN

&

HON'BLE SHRI M.R. MOHANTY, MEMBER (J)

Dr.(Mrs.) Manasi Mishra, 40 years, w/o Sri S.P. Mishra, Ex-Research
Associate, Department of Land Pathology, CRRI, Cuttack.....

Applicant

Vrs.

1. Union of India, represented through Secretary cum Director
General, Ministry of Agriculture, New Delhi (ICAR).
2. Director, C.R.I., Cutack.
3. Principal Investigator of the Scheme, Department of Plant
Pathology, CRRI, Cuttack.... Respondents.

Respondents.

Advocates for the applicant -

M/s A.K. Mishra,
B.B. Acharya, J. Sengupta, D. Panda,
P.R.J. Dash & G. Sinha. K.C. Kanungo
& S. Behera

Advocates for the respondents -

M/s S.B. Jena, ASC.

ORDER

SHRI B.N. SOM, VICE-CHAIRMAN

Dr.(Mrs.) Manasi Mishra has filed this original Application challenging
the inaction of the Respondents for not paying her emoluments as Research
Fellow from 1.9.1988 to 9.6.1993, as per the appropriate scale of pay House
Rent Allowance with effect from 12.6.1995 and Travelling Allowance to

2

which she was entitled under the Rules for attending conference in Delhi in November 1997.

2. The facts of the case in a nutshell are that the applicant was awarded a Research Associateship from 1.9.1988 on her application in response to the advertisement issued by the Respondent-organisation on 21.3.1988 after completing her Post Graduation (Botany) and M.Phil in Botany. In the said advertisement, it was notified that a Research Associate having M.Sc. Degree with a minimum of two years research experience/Ph.D. in Agriculture, in Agricultural Botany/Botany/Plant Pathology, would be paid emolument in the scale of Rs.1800/- per month (Fixed). By order of appointment dated 1.9.1988 issued by Respondent No.2 she was called upon to submit work experience or Ph.D.certificate to be entitled to emolument of Rs.1800/-(Fixed), otherwise the value of the scholarship would be reduced to Rs.1600/-. The applicant accordingly produced a certificate of experience for two years dated (20.9.1988) from the Professor(Dr.) B.N.Mishra, Department of Botany, Berhampur University, whereupon on 10.10.1988 the value of her scholarship was enhanced to Rs.1800/-. By issuing a circular dated 24.4.1989 the rates of fellowships was revised by the Respondent-organisation by revising the existing rate of Rs.1600/- to the scale of Rs.2700-100-3200/- and fellowship of Rs.1800/- to the scale of Rs.3200-3700/-, and these rates were made applicable with effect from 1.4.1988. Respondent No.2 by issuing a corrigendum dated 3.6.1989 (Annexure 27) revised the value of the fellowship of the applicant with effect from 1.9.1988 from Rs.1800/- to

2

Rs.1600/- on the ground that she had not produced her Ph.D.Degree certificate. However, this order was cancelled by issuing another order dated 13.7.1989 (Annexure 28) declaring that the applicant was entitled to Rs.1800/- (Fixed) per month as scholarship. Then by order dated 19.8.1989 sanction was accorded to pay her fellowship in the scale of Rs. 3200-100-3700/-, but the same was cancelled by the order dated 1.11.1989 declaring that her fellowship has been extended in the scale of Rs.2700-100-3200/- with effect from 1.9.1989 to 31.8.1990. She submitted a representation dated 5.10.1989 against this order and requested Respondent No.2 to fix fellowship in the revised scale of Rs.3200-100-3700/-. Without redressing her grievance, her fellowship was extended from 1.9.1989 on yearly basis up to 9.6.1993 in the scale of Rs.2700-100-3200/-. Notwithstanding her representations that she was entitled to higher scale of pay, Respondent No.2 by issuing an order dated 12.6.1995 again awarded her a Research Associateship in the Plant Pathology Division in the scale of Rs.2700-100-3200/- under certain conditions. She was asked to join on or before 28.6.1995 if the award was acceptable to her, failing which it was stated in that order that the offer of associateship would be treated as automatically cancelled. She accepted the fellowship and joined the duty with effect from 12.6.1995. This fellowship was extended for two years from 12.6.1995 to 11.6.1997 in the scale of Rs.3750-125-4375/- with effect from 12.6.1995. The applicant by representation dated 7.2.1997 addressed to Respondent No.2 also ventilated her grievance about non-receipt of HRA and non-allotment of quarters on

concessional rate. Her repeated representations did not yield any result. It is in this background that the applicant has approached this Tribunal seeking the following reliefs:

"8. RELIEF SOUGHT: Under the circumstances, it is humbly prayed that the Hon'ble Court may be pleased to hold that the petitioner is entitled to get the scale of Rs.3200-3700/- w.e.f. 1.9.88 upto 9.6.93 and further the petitioner is entitled to get Rs.10,500/- (Consolidated) from 1.4.98 to 11.6.98 since the petitioner had served with the Opp.Parties: AND further the petitioner is entitled to get her dues i.e. duty pay from September, 1997 up to 11.6.98 and further be pleased to direct that the petitioner is entitled to get the annual increment w.e.f. 1.6.96 in the scale of Rs.3750-4375/-: AND to direct that the petitioner is entitled to House Rent Allowance w.e.f. 12.6.95 and the petitioner is also entitled to T.A. and Registration fee which she had spent from her own pocket: AND pass such other order/orders as the ends of justice will require. And to allow the application."

3. The Respondents by filing a detailed counter have opposed the application. They have submitted that the relief sought by the applicant has no merit. They have pointed out that the applicant was given appointment on 1.9.1988 on the condition that she shall have to produce experience certificate or Ph.D. certificate to be entitled to get the scholarship value at the rate of Rs.1800/- per month. As per the statement of the applicant herself she had neither any experience nor Ph.D.Degree to get scholarship at the rate of Rs.1800/- per month from 1.9.1988. They have further stated that the rates of scholarships were revised with effect from 1.4.1988 for the Research Associates and it was clearly mentioned in the order that those who possessed Ph.D.Degree would be entitled to the scholarship at the rate of Rs.3200-3700/- and the non-Ph.D. Research Associates would be entitled to the scholarship at the rate of Rs.2700-3200/-. They have further submitted that

[Signature]

their letter dated 19.8.1989 was issued erroneously assuming her to be a Ph.Degree holder and therefore, they had to correct the mistake and her scholarship value was revised as per the rates prescribed for non-Ph.D. Associates as per Annexure 6 to the O.A. They have also submitted that the petitioner has only cited the replacement scale for consolidated value of scholarship of Rs.1800/-, i.e., Rs.3200-100-3700/- while remaining silent about the eligibility criteria and other conditions that an Associate should possess to be entitled to the scale of pay as revised. With regard to payment of House Rent Allowance, they have submitted that HRA is payable in case a Research Fellow is not provided with hostel accommodation at subsidised rate. They have also submitted that Research Fellows/Associates and Post Doctoral Fellows are not be liable to receive HRA in case hostel accommodation or accommodation at concessional rate is available. The case of the Respondents is that the applicant having not applied for hostel accommodation under the new Rules which were circulated by the Respondent-organisation by their letter dated 4.1.1995 (Annexure 30) she is not eligible to get HRA. They have also clarified that the applicant joined as Research Associate in a new Scheme with effect from 12.6.1995 without Ph.D.Degree and as such she was allowed the scholarship in the scale of Rs.2700-3200/- which was subsequently revised to Rs.3300-3800/- and when she was awarded Ph.D.Degree with effect from 20.11.1995 her scholarship was revised to Rs.3750-125-4375/- without any delay. With regard to her grievance about grant of annual increment in the scale, they have clarified that

2

increment in any grade is admissible after completion of one year period in the grade, as per the rule she was entitled to get increment in the scale of Rs.3750-4375/- with effect from 20.11.1996 only and not from 1.11.1996, as claimed. With regard to payment of T.A., the Respondents have submitted that the payment on that account was delayed due to non-availability of funds under the Scheme. Finally, they have submitted that the applicant is not entitled to scholarship in the scale of Rs.3200-100-3700/- during her tenure from 1.4.1988 to 9.6.1993 as she did not possess Ph.D.Degree. They have also submitted that her claim having been received after a gap of seven years of the closure of the Scheme, her claim is not tenable in the eye of law.

4. We have heard the learned counsel for both the parties and have also perused the records placed before us.

5. Two issues have been raised for adjudication in this O.A. Firstly, that the applicant was entitled to the scale of Rs.3200-100-3200/- with effect from 1.4.1988, and, secondly, that she was entitled to HRA with effect from 12.6.1995. The applicant in her O.A. has referred to a number of representations that she had made with regard to the scale of pay in which she should have been placed for her associateship. In the vacancy circular dated 21.3.1988 it was clearly laid down that the value of the Research Associateship^{As} is Rs.1800/- per month (fixed) and the qualification for that post was advertised as:

"M.Sch. with a minimum of 2 years of research experience/Ph.D. in Agricultural Botany/Botany/Plant Pathology.


2

Desirable : Knowledge in modern methods of plant disease control, especially use of plant products."

The Respondents have submitted that since she submitted two years research experience, she was granted scholarship at the rate of Rs.1800/- per month (Fixed). However, with effect from 1.4.1988 the rates of fellowship, etc., awarded under Research Scheme financed by ICAR were revised. In terms of the revised rates the Research Associates were divided into two groups; one having Post Graduate Degree and another having Ph.D.Degree. The Post Graduate Degree holders were granted fellowship in the scale of Rs.2700-100-3200/- and the Ph.D.Degree holders in the scale of Rs.3200-100-3700/-. The Respondents have stated that as the applicant was a Post Graduate Degree holder only till 11.6.1995, under the rates of fellowship made applicable from 1.4.1988 she could not have been paid in the scale prescribed for the Ph.D.Degree holder. The applicant, on the other hand, has stressed that as her rate of fellowship was Rs.1800/- and under the circular dated 24.4.1989 the then existing rate of Rs.1800/- per month was revised to the scale of Rs.3200-100-3700/- she could not be denied the benefit of the scale. The Respondents in their counter have strenuously argued to say that the applicant has failed to see that under the revised rates of fellowship, the Research Associates were put under two categories, one having Ph.D.Degree and another having non-Ph.D.Degree, and she being a non-Ph.D.Degree holder, the rate applicable to her was only Rs.2700-100-3200/-. In other words, they have stated that the earlier condition as was notified in the

h

advertisement that M.Sc. Degree with two years experience was given equivalence to Ph.D. Degree had been amended by the circular dated 24.4.1989 when it was ruled that Ph.D. Degree holder will have a superior scale than the Post Graduate Degree holder. We do not see any unreasonableness in this re-classification and therefore, we have no hesitation in upholding the plea of the Respondents that with effect from 1.4.1988 for the purpose of drawing fellowship the applicant was legally governed by the eligibility conditions as laid down in the circular dated 24.4.1989 and that the eligibility condition for grant of scholarship at the rate of Rs.1800/- per month had no application. Further, as the value of the fellowship of the applicant was not decreased from Rs.1800/- but increased to a higher level, the applicant was not prejudiced and hence she could not have any grievance to ventilate. As a new classification was made for all the Research Fellows from 1.4.1988, she could not have been kept out of it. She also having not challenged the validity of the circular dated 24.4.1989 issued by the Respondent-organisation all these years, she cannot now come up with the plea that she should be placed at the revised rate of Rs.3200-100-3700/- during the period when she was not a Ph.D. Degree holder. She is now estopped from challenging the circular of April 1989, being barred by limitation. In the circumstances, we hold that she is not entitled to get the scale of Rs.3200-100-3700/- with effect from 1.9.1998 to 9.6.1993 as she did not possess Ph.D. Degree during that point of time.



6. With regard to the applicant's demand for grant of Rs.10,500/- (Consolidated) from 1.4.1998 to 11.6.1998, we hold that the applicant having obtained Ph.D.Degree with effect from 20.11.1995 and that revised rate of Rs.10,500/- (Consolidated) having come into being from 1.4.1998 she would be eligible to be paid at the same rate from 1.4.1998 to 11.6.1998.

7. With regard to her entitlement to get HRA with effect from 12.6.1995 we see no merit in her claim on the ground that the Respondents vide their circular dated 4.1.1994 revising the rates of emoluments of ICAR Fellowship/Research Associateship have clearly laid down that the Research Fellows/Associates and Post Doctoral Fellows will not be eligible to receive HRA in case hostel accommodation or accommodation at concessional rate is available. Since the applicant did not apply for hostel accommodation, she is not clearly eligible for grant of HRA. We order accordingly.

8. During the course of argument the learned counsel for the applicant submitted that the applicant has already received payment of TA and Registration Fee from the Respondents and therefore, there is nothing more to be adjudicated in this regard.

9. In view of our above discussion, this O.A. is disposed of. No costs.


(M.R. MOHANTY)
MEMBER(JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN