

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA**

ORIGINAL APPLICATION NO. 1197/1996

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MISC. APPLICATION NO. 311/1996

Date of order: 30.11.2004

CORAM:

HON'BLE MR. MUKESH KUMAR GUPTA, JUDICIAL MEMBER
HON'BLE MR. M. K. MISRA, ADMINISTRATIVE MEMBER

Dr. Dhurjati Prasad Das, S/o Late Dr. Lakshmi Narayan Das, Vill and P.O. Balisai, Dist. Midnapore, working as Scientist at C.R.I.J.A.F. In India Council of Agricultural Research.

....Applicant.

Mr. B. Chatterjee, counsel for the applicant.

VERSUS

1. The President, Indian Council of Agricultural Research.
2. The Director General, Indian Council of Agricultural.
3. The Director (Personnel), Indian Council of Agricultural Research.
4. The Director (Vigilance), Indian Council of Agricultural Research.
All having their offices at Krishi Bhawan, New Delhi – 110001.
5. The Director, Central Research Institute of Jute and Allied Fibres, P.O. Barrackpore, Dist. 24 – Parganas (North).
6. The Chairman, Agricultural Scientist Recruitment Board Dr. K.S. Krishnan Marg, New Delhi – 110012.

....Respondents.

7. Union of India, through the Secretary, Ministry of Agriculture, Krishi Bhawan, New Delhi -1.

....Proforma Respondents

Mr. B.K. Chatterjee, counsel for the respondents.

ORDER
:PER MR. M.K. MISRA, MEMBER (A):

Dr. Dhurjati Prasad Das, the applicant, has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985. He has prayed for the following relief:

- "i) to pay and disburse forthwith the applicant's current salary as claimed herein.;
- ii) to pay and disburse the applicant's arrear sum of

salaries as claimed herein through Bank draft or through General Provident Fund;"

2. The short history of this case is that the applicant is an employee of Indian Council for Agricultural Research who joined Jute Agricultural Research Institute, at present Central Research Institute for Jute & Allied Fibres on 28.09.1976 as Scientist S-I (Plant Breeding) and was posted at Sisal Research Station, Orissa. The applicant persuaded higher studies and therefore was granted study leave for a period of one year from 28.09.1981 to 27.09.1982 with the condition that certificate of the examination having been passed or special course of training would be submitted by him and he would report for duty at his original place of posting. However, the applicant made a request for extension of his study leave for a further period of one year w.e.f. 28.09.1982. The said leave was granted for another one year from 28.09.1982 to 27.09.1983. Subsequently, he further desired to extend his study leave upto 31.12.1984 but the same was refused on the basis of the extant rule. However, he was granted 9 days' Earned Leave from 28.09.1983 to 06.10.1983 and 451 days' Extra-ordinary leave from 07.10.1984 vide letter dated 24th August, 1984. The applicant again made a request for another one year's Extra-ordinary leave from 1.1.1985 to 31.12.1985 on the ground that his research work was under process of completion. However, the said leave was not granted and he was directed to join his duty immediately vide order dated 27.02.1985. The applicant did not report for duty. However, later on, he made a request to allow him to join his duty in the forenoon on 02.06.1986 after a gap of one and half years. Thereafter, he was allowed to join his duty on 23rd June, 1986. The period of absence from duty from 01.01.1986 to 22.06.1986 was considered as being absent unauthorizedly. The applicant was

awarded a penalty of censor by the Director General, ICAR, New Delhi vide Memo dated 20th April, 1988 for his unauthorized absence. Subsequently, the applicant also remained absent unauthorizedly w.e.f. 22.12.1987 to 15.11.1990 and this led to initiation of disciplinary proceedings by the Competent Authority against him. The end result of such disciplinary proceedings was that the long period of absence from duty by the applicant was treated as dies-non vide letter dated 25.09.1991. In view of this he was also transferred to Sisal Research Station, Bamra, Sambalpur.

3. During the unauthorized absence, the applicant filed an Original Application No. 723 of 1994 before this Bench of the Tribunal. This Bench of the Tribunal vide order dated 02.08.1994 disposed the said O.A. with the following observation:-

"In view of the above position as there are formal defects in this Application we give liberty to the applicant to withdraw this application and he may file application/applications for the reliefs prayed for in the instant case if not otherwise barred. Application is disposed of. No cost."

It is worth mentioning that the Hon'ble High Court of Calcutta while allowing the Application for modification of the order dated 6.3.1992 filed by the respondents authorities was pleased to direct that the order dated 01.10.1993 would not prevent the petitioner to seek remedies before the Tribunal subject to the law of limitation and in accordance with law. In view of that, the applicant filed O.A. No. 723 of 1994 in June 1994 before this Bench of the Tribunal.

4. The claim of the applicant is that the period of dies-non should be counted in the past services rendered by him and the payment of salary along with the arrears should be made to him along with

interest. The claim is also with regard to promotion, counting of past services w.e.f. 01.07.1972 and also with regard to current salary @ 8000/- per month along with other admissible allowances with effect from 1.7.1976; subject to the fixation as per recommendation of the forthcoming pay commission for Central Government Employees and as adopted by the I.C.A.R. The applicant also claims his arrear sum of salaries w.e.f. 28.9.76 as calculated/fixed, after counting 5 yearly promotions w.e.f. 1.7.72 together with interest thereon at the highest Bank lending rate, to date which is at present Rs. 21-75% per annum, cumulatively compounded at monthly basis till realization. The applicant also submits that he was not able to understand his position as to where he should report for duty.

5. The respondents have resisted the case of the applicant and have filed an exhaustive reply to the Original Application. It has been averred that the applicant remained absent from duty in an unauthorized manner and was also punished for his negligence on account of not joining his duties from time to time. The past services for the purpose of calculation are subject to the deductibility of the period of unauthorized absence. It was also submitted that the applicant did not join duty till this Original Application was filed by him on the ground that he was not able to find out the whereabouts of place of posting. The plea of the applicant that he is not in a position to understand where to report for duty is absolutely an after-thought. It is further mentioned by the respondents that having no valid order applicant at his own reported CMFRI on 9.8.1996 as it appears from the present application but there is no such record whether Incharge of the said

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Station allowed the applicant to join and work in the said Station. It has been noticed that CMFRI is not under the administrative control of Central Research Institute for Jute and Allied Fibres, Barrackpore. The learned counsel for the respondents also submitted that the application is barred by limitation. The applicant was appointed on 28.09.1976 to the post of Scientist S-I (Plant Breeding) for doing the research work but since December 1991 he kept absent himself from duty in unauthorized manner which was serious lapse on his own part, therefore, he is not entitled for any monetary benefit by following the principle of 'no work no pay'.

6. In the rejoinder, the learned counsel for the applicant submitted that the Secretary I.C.A.R. may be dealing with I.C.A.R. establishment matters and may be interacting control over other allied concerns viz. Where the applicant joined. It is stated that in the Misc. Application No. 311 of 1996, reply was given in para 5 on the question of maintainability of the above O.A. before the Tribunal. Since the matter relates to fixation of pay, therefore, it is a recurring cause of action. It was also submitted in the rejoinder that the applicant was not in the knowledge of having been awarded any penalty or warning in respect of alleged unauthorized absence. In the supplementary application, the applicant also submitted that the respondents should be directed to award promotion along with current and past arrears of salary along with interest and the Tribunal should allow his O.A.

7. We have heard the learned counsel for the parties at a considerable length and also perused the records available on record. We observed that it is a fact that the applicant remained absent from duties for a period of which no leave was sanctioned to him. It is

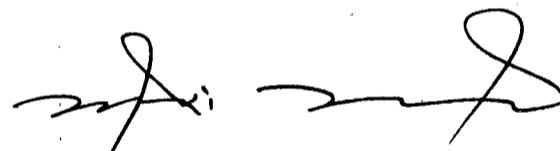
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also noticed that the applicant remained absent from duty in an unauthorized manner frequently and from time to time. Even he did not join the duty till this O.A. was filed. However, his claim that he joined another allied department is not supported by the relevant documents and such CMFRI is not under control of the ICAR, the main organization. Hence, the period of unauthorized absence from duty by the applicant was rightly treated as dies-non by the respondents and by following the principle of 'no work no pay' as held by the Apex Court in many decisions, the applicant is not entitled for any salary for that period and also the same period cannot be counted towards his past services.

8. In the light of the above discussion we noticed that the Original Application is bereft of any merit hence, it is dismissed. The Misc. Application No. 311/1996 is also disposed of accordingly. No order as to costs.



(M.K. Misra)
Administrative Member



(Mukesh Kumar Gupta)
Judicial Member

Kumawat