

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 402 of 1996

Present : Hon'ble Mr. Mukesh.Kumar.Gupta, Judicial Member
Hon'ble Mr. M.K.Misra, Administrative Member

Dr. Nirendra Kishore Roy, son of
late Nagendra Kishore Roy Formerly
Scientist, NDRI, aged about 69
years, resident of Milan Palli,
Prasadpara,
P.O. Barasat - 743201.

.. Applicant

Vs.

1. Union of India,
Through the Secretary,
Ministry of Agriculture,
Krishi Bhavan, New Delhi, 1,
Dr. Rajendra Prasad Road,
New Delhi - 110 001.
2. Director General of ICAR and
Secretary to the Govt. of India,
Department of Agricultural
Research & Education (D.A.R.E.),
Ministry of Agriculture,
Krishi Bhavan, 1, Dr. Rajendra
Prasad Road, New Delhi.
3. The Under Secretary,
Dept. of Agricultural Research
Education, D.A.R.E., Krishi Bhavan,
1, Dr. Rajendra Prasad Road,
New Delhi - 110 001.
4. The Sr.Accounts Officer,
Ministry of Agriculture,
Dept. of Agriculture & Coop.
Pay & Accounts Office,
16, Akbar Road Hutmants,
New Delhi - 110 011.
5. The Director,
National Diary Research Institute,
N.D.R.I., Karnal - 132001,
Haryana.

.. Respondents

For the applicant : Mr. S.Bhattacharyya, Counsel

For the respondents : Mr. B.K.Chatterjee, Counsel

Heard on : 24.11.2004 Order dtd. : 17.12.2004

O R D E R

Mr. M.K.Misra, AM:

The applicant prayed in this O.A. as under :-

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"A) Declaration that the applicant is entitled to receive provisional pension equal to full pension from 18.8.1984 to 22.2.1995 and the same outstanding on this account is payable to the applicant with interest for delayed period and to receive DCRG in full on 18.8.1984 and amount outstanding on this account is payable together with interest for the whole of DCRG for the period from 18.8.1984 to 7.12.1994 and for the balance sum for the period from 7.12.1994 till the next date of payment and to receive monthly his regular full pension from 18.8.1994 with arrears thereof along with interest for the delay in payment and that all his pensionary benefits are to be calculated taking his pre-retirement average pay as Rs.1900/- p.m."

2. Briefly the facts of this case are that the applicant was an employee in the Ministry of Agriculture, Govt. of India working as a Scientist (Diary Chemistry) in the National Diary Research Institute (NDRI) under the Indian Council for Agricultural Research (ICAR). Later on the applicant went to Algeria on foreign assignment from 7.3.81 to July 1983. He joined the same post after returning to India on 7.8.1983. Thereafter he went on long leave from time to time w.e.f. 15.8.83 to 14.7.84 due to his family circumstances. Such period was considered as unauthorised period of leave. In this circumstance the applicant applied for Voluntary Retirement on 28.4.84. However he joined his duty on 16.7.1984 and requested for regularisation of the period of unauthorised leave from 14.12.83 till 28.4.84. Later on he was allowed to retire voluntarily w.e.f. 18.8.84. In the meanwhile a charge-sheet for major penalty was served on him on 18.8.84 with the allegation that he remained on unauthorised absence from 14.12.83 to 15.7.84. The Enquiry Officer held him guilty of the charge of unauthorised absence from duty. On 16.10.87 the applicant was issued a show cause notice whereby the President treated the pending disciplinary proceedings against him under Rule 9 of the CCS (Pension) Rules and proposed that the entire monthly pension of the applicant as admissible to him was to be withheld on a permanent basis. In response to this show cause notice the applicant submitted that the proposal of the President should be considered in consultation with the UPSC as per rules. Later on, on 16.9.98 the President in consultation with the UPSC passed order that the entire pension of the applicant would be withheld as a permanent measure.

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3. The applicant represented before the competent authority that the penalty order is invalid because there was no finding that the applicant had committed a grave misconduct as was imperative under the CCS (Pension) Rules for imposing any penalty on a retired Govt. employee. On earlier occasion the applicant challenged the said penalty order dt. 16.9.98 in the O.A. No. 1010 of 1988 before this Tribunal. This Tribunal by its order dt. 19.4.94 gave the following direction to the applicant :-

- "i) The impugned punishment order dated 16.9.88 be hereby set aside.
- ii) The respondents are directed to send back the records to the President for considering the representation of the applicant dated 10.11.87 afresh and to decide as to whether in the circumstances of the case, the applicant could be held to be guilty of grave misconduct or negligence or not. Even if the President comes to such a finding, he (the President) may consider as to whether in view of the mitigating circumstances pointed out in the above the penalty of withholding of entire pension of the applicant on permanent basis is warranted or not.
- iii) The decision of the President has to be communicated to the applicant within four months from the date of communication of this order.
- iv) We further direct that the respondents shall within two months from the date of communication of this order, sanction to the applicant provisional pension as admissible under the rules with effect from the date of his voluntary retirement till the final order to be passed by the President as aforesaid.
- v) No costs."

4. As per the direction of the Tribunal the respondent made a payment of Rs. 2,00,000/- and odd as his provisional pension and DCRG vide order dated 7.12.94. It was alleged that in the above said order the period and the method of calculation of provisional pension and DCRG was not given. The decision of the President as directed by this Tribunal was conveyed vide letter dated 22.2.95 in the manner that the applicant was found guilty of grave misconduct and the order of imposing penalty of 10% cut in the pension of the applicant for a period of 10 years from the date of his voluntary retirement i.e. 18.8.94 was passed. The applicant submitted that in that order of penalty dated 22.2.95 no deduction was sought to be made from DCRG, therefore, he was entitled to receive the same on 18.8.84 with interest for the period of delay. The period of 10 years with respect

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to cut in pension ended on 18.8.94 and it was alleged by the applicant that he is entitled to get full pension from that date with arrears and interest from that date.

5. In this OA also the applicant challenged the penalty order passed on 22.2.95 on the ground that the same was passed without considering the representation of the applicant and violative of Rule 9 of CCS (Pension) Rules being passed without consultation with the UPSC and the same was not passed within the time allowed by this Tribunal while deciding the OA No. 1010 of 1988.

6. In reply, the respondents submitted that the application is barred by limitation. The OA is not maintainable on the ground that the cause of action arose at Karnal, Haryana where in applicant was working. The applicant was on leave from 16.2.81 to 28.2.81 when he proceeded on to Algeria in order to take a foreign assignment without having the approval of the ICAR. However, subsequently the ICAR conveyed its approval vide order dated 5.5.81 enabling the applicant to join his teaching assignment in Algeria on usual foreign service terms and condition after retaining his lien initially for a period of two years. Another order was passed on 21.8.81 in partial modification of the order dated 5.5.81 extending the Earned Leave for six days from 1.10.81 to 6.10.81 in order to enable the applicant to join his assignment in Algeria on 7.3.81. The applicant remained on deputation in Algeria w.e.f. 7.3.81 to 8.8.83 and thereafter he joined duties in National Diary Research Institute (NDRI), Karnal on 9.8.83. After resuming his duties he applied for Earned Leave for a period from 16.8.83 to 13.12.83 which was sanctioned. Later on the applicant absented himself unauthorisedly from duty w.e.f. 14.12.83 to 15.7.84 without having sanction from the competent authority. Hence a charge-sheet was issued against him for contravention of Rule 3 of C.C.S. (Conduct) Rules, 1964 and enquiry was held and the enquiry officer came to the conclusion based on evidence that the applicant was found guilty under Rule 3 above and the competent authority decided to treat the period in which the applicant was

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unauthorisedly absent as "dies non", vide order dated 10.11.89. Sufficient opportunity was provided to the applicant to represent the case before the enquiry officer but the applicant did not participate in the departmental proceedings initiated against him. UPSC was also consulted before imposing the penalty of withholding the entire pension as permanent measure and the approval of the President of India was also taken.

7. The direction of the Hon'ble Tribunal vide order dated 19.9.94 was complied with and the final order in compliance with the direction was issued by the President of India on 22.2.95 in the manner that the applicant was paid an amount of Rs. 2,00,000/- and odd on account of his provisional pension upto 31.10.94. It is worth mentioning that the applicant did not submit the requisite forms for the purpose of payment of pension well in time and in proper way. However, after receipt of such papers from the applicant the case was processed on priority basis for payment of provisional pension upto 31.10.94. The Govt. of India order dated 22.2.95 issued for final pension order in respect of the applicant was passed by the Pay and Accounts Section, Ministry of Agriculture. It was also reiterated by the respondent that the penalty order was passed on 22.2.95 after observing all the prescribed procedure and as per direction of the Hon'ble Tribunal.

8. The applicant filed the rejoinder and submitted therein that his qualifying service has been curtailed without any basis. According to the applicant the provisional pension being equal to, maximum pension admissible to the applicant as provided in Rule 69(1)(a) of the CCS (Pension) Rules was paid to the applicant for the period 18.8.84 to 21.2.95. In terms of the President's order dated 22.2.95 applicant's pension is reduced by 10% for 10 years from 18.8.84 to 17.8.94 as such his pension is restored to full with effect from 18.2.94, thus the applicant even if he had received provisional pension equal to full pension for 10 years period, 10% cut in pension cannot be imposed in view of the Rule 69(2) of the CCS (Pension) Rules. The applicant further submits that his service between 18.4.58

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and 22.9.61 under the Ministry of Health has not been taken as his qualifying service even though he was initially appointed by the Director General of Health Services as Class -II Gazetted Officer and later on he joined the NDRI under ICAR with lien with the Ministry of Agriculture after being released by the Director General of Health Services from his posting from the Medical College at Pondicherry. Record from the Ministry of Health were not made available to the Ministry of Agriculture hence no action could be taken, however, there is no fault on the part of the applicant hence as per Evidence Act whatever has been stated by the applicant had to be accepted by the respondents. The period of deputation taken by this respondents as "dies non" is also wrong on the part of the respondents.

9. The applicant submitted supplementary application which was allowed by this Tribunal be treated a part of this OA as new facts were brought on record vide order dated 13.1.97. In the Supplementary application the following relief was sought :-

" Order directing the respondents to calculate the applicant length of qualifying service correctly and to arrive at the correct pre-retirement basic pay for recomputing the amounts of provisional pension, pension and gratuity and the difference be paid to the applicant with interest as also the interest for the period of delay in making payment of provisional pension, pension and gratuity.

ii) Order allowing this Supplementary application to be treated as part of OA No. 402 of 1996.

iii) Order allowing Director General, Health Service, New Delhi to be added as necessary party as respondent No. 6."

10. The main submission of the applicant is that he is entitled to the provisional pension equal to the maximum pension which would be admissible to him on the basis of qualifying service upto the date of his retirement and 10% cut should be applicable from 18.8.84 i.e. the date of retirement till 17.8.94. He also made a claim for payment of interest in the following manner. Claim for interest on account of delayed payment is as under :-

" (i) Provisional Pension of Rs. 2,04,184.00 for the period 18.8.1984 to 31.10.1994.
 (ii) Gratuity amount of Rs. 21,300.00.

(iii) Pension arrear of Rs. 29,921.00.
 (iv) Pension amount of Rs. 20,358.00 for the period from 1.7.1996 to 31.12.1996.

11. The respondents in their reply to the Supplementary application vehemently averred that the applicant was an employee of ICAR on National Foreign Services basis because he did not opt for ICAR service. The payment of provisional pension was delayed due to noncompliance of the formalities by the applicant and late submission of pension papers which were submitted on 15.9.94. The payment of provisional pension was made on 31.10.94 the balance amount was paid through Demand Draft dated 19.4.97 which was sent to his residence through a messenger on 6.5.97 but he was not found at his residence and on enquiry from the adjacent neighbour his whereabouts could not be known as such Demand Draft could not be delivered to the applicant. However, the said Demand Draft was sent through registered post to his counsel on 21.7.97. The payment of pension/arrears are to be made by the concerned bank mentioned in the pension paper w.e.f. 22.2.95 (date of penalty order). The complete details of pension vide PPO dated 23.7.96 along with complete details of provisional pension after deducting 10% as imposed by the President of India and difference of amount on account of pension from 18.8.84 to 30.6.96 had been sent to the applicant and to the concerned bank making payment w.e.f. 22.2.95. The applicant joined NDRI on 12th October, 1961 and voluntarily retired from service on 18.8.84 under FR56(K). Accordingly, his pension has been authorised under Rule 69 of the CCS (Pension) Rules. As regards the services rendered in the Health Department from 18.4.58 to 22.9.61 as claimed by the applicant at Pondicherry it was submitted by the respondents that this facts were never disclosed by the applicant at the time of joining NDRI, therefore, there is no record of the applicant available with the ICAR. Further the applicant was on foreign assignment in Algeria between 7.3.81 to 6.8.83 and further between 14.12.83 to 15.7.84 and subsequent unauthorised absence such period was treated as "dies non" and after deducting this period his total length of service comes to

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19 years 10 months and 3 days.

12. We have heard the 1d.counsel for both parties and also perused the pleadings along with the service book of the applicant which was produced during the course of hearing of the case. It is observed from the contents of the service book that the applicant was, prior to joining of the NDRI, Karnal i.e. before 12.10.61 ~~was~~ working as Lecturer in Chemistry at the Medical College, Pondicherry w.e.f. 18.4.58. Later on he joined as Asstt. Professor of Physical Chemistry at NDRI, Karnal w.e.f. 12.10.61. Since service book contains all the details of the past-services, therefore the respondents are directed to consider the claim of the applicant regarding the inclusion of the period served in Medical College, Pondicherry for qualifying service for the purpose of computation of pension as per rules and as per terms and conditions prevailing at the time when he joined as Lecturer in Medical College, Pondicherry. The respondents are also directed to pass a reasoned and speaking order in this respect within a period of 3 months from the receipt of the certified copy of this order.

13. Regarding the contention of the applicant that the period treated as "dies non" should also be included for the calculation of qualifying service for the purpose of pension, it is observed that the applicant remained absent unauthorisedly. Therefore the period of "dies non" cannot be included in the qualifying service as per Pension Rules. Therefore this contention of the applicant is rejected.

14. Regarding payment of interest on the delayed payment of retiral benefits it is observed that the pension papers and formalities were completed by the applicant only in the month of September 1994 and the payment of provisional pension was made on 7.12.94. Therefore there is no delay on the part of the respondents. Hence the question of payment of interest to the applicant does not arise as the provisional pension was paid within 3 months from the date of submission of pension papers. This contention of the applicant is also rejected.

15. As regards the payment of full pension after 17.8.94 *after*

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making compliance of the order of pension cut by 10% for the period of 10 years duly approved by the President of India is concerned, it is observed that the matter is between the applicant, the nominated Bank and the competent authority for making the payment of full pension. The applicant is therefore directed to make a representation before the competent authority for payment of full pension w.e.f. 18.8.94 as per rules and the competent authority would accordingly make the payment of full pension to the applicant as per rules immediately along with arrears if any.

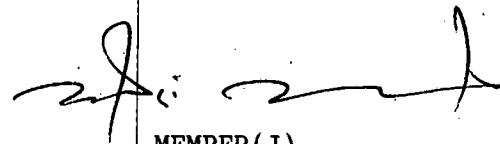
16. As regards any other retiral benefits, if any due to the applicant, the respondents are directed to settle the issue of making the payment immediately to the applicant as per rules within a period of 3 months from the receipt of the certified copy of this order.

17. The application is partly allowed. No order as to costs.



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