

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH: JODHPUR.

O.A. No. 351/1995

Date of Order; 20.7.1998

Dr. J.S. Choudhari, Sr. Scientist (Pedology), Resource Management Division, CAZRI, Jodhpur.

... Applicant

VERSUS

1. Union of India (ICAR) through the Secretary, ICAR, Krishi Bhawan, New Delhi.
2. The Director, CAZRI, Jodhpur.

... Respondents

Mr. S.K. Malik, Counsel for the applicant.

Mr. V.S. Gurjar, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member

O R D E R

Per Hon'ble Mr. Gopal Singh

Applicant, Dr. J.S. Choudhari, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying as under:

- (1) Appropriate order or direction to the respondents to fix the basic pay of the applicant taking basic pay of Rs. 960/= as basic drawn prior to joining the service at ICAR.
- (2) Award of substantial compensation for the mental agony, and harrasement in filling applications.
- (3) Payment of all arrears of pay and other allowances and interest thereon as has been awarded in O.A. No. 791/89.
- (4) Payment of award of cost of Rs. 500/= in O.A. No. 139/93.

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(5) Award of the cost of this application.

(6) Any other order and direction which this Hon'ble Tribunal may consider/deem just and proper in the facts and circumstances of the present case.

2. Applicant's case is that he was working in the Rajasthan State Government in the pay scale of 750-1350 and drawing a basic pay of Rs. 960/= in that scale before he was appointed as Scientist-I grade 700-1300 in the ICAR on 30.11.1977 through competitive examination conducted by Agricultural Scientists Recruitment Board. That in terms of ICAR Circular dated 26.9.1977 applicant's pay should have been protected, i.e., his pay should have been fixed in the ICAR scale of 700-1300 taking the basic pay of 960/= he was drawing in his previous appointment under the Rajasthan State Government. The applicant had earlier approached this Tribunal vide O.A. No. 791/89, 139/93, C.P. No. 46/94 in O.A. No. 139/93 and O.A. No. 337/94 on the same subject. Having failed to get justice from the respondents, the applicant has filed this O.A.

3. Notices were issued to the respondents and in their reply they have contested the application. In their reply the respondents have submitted that the total emoluments of the applicant has already been protected. That the pay fixation of the applicant has been done in terms of ICAR Circular dated 26.7.1977, 26.9.1977, 29.8.1977, 12.6.1979 and 12.11.1981. That FR 22 C is not operative in the case of the applicant in terms of Note 2 under Government of India (for short GOI) order (6) below FR 22 C.

4. We have heard the learned counsel for the parties and perused the records.

5. The bone of contention in this case is that the applicant wants protection of his basic pay of Rs. 960/= which he was drawing in his earlier assignment with the Rajasthan State Govt. as has been done in the case of Dr. G.C. Jain and Dr. J.C. Ghai while the respondents have protected the total emoluments the applicant was drawing earlier before joining the ICAR. The respondents have also submitted that the pay

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fixation done in the case of Dr. Jain and Dr. Ghai was erroneous and order have been issued on 13.12.1994 to recover the excess payment made to them (Annex. R/1). According to the terms and conditions laid down in the offer of appointment dated 29.8.1977, the applicant's pay was to be fixed at the minimum of the scale 700-1300, however the respondents have fixed the pay of the applicant at Rs. 740/- by way of protecting his total emoluments he was drawing in his earlier assignment. Apparently there must have existed some rules/instructions to protect the pay/emoluments of the employees joining the ICAR. At this stage it would be relevant to refer to this Tribunal order dated 1.3.1995 in O.A. No. 337/94, relevant portion of which is extracted below:

"5. In the letter at Annexure A/1 it has been stated that the pay of the applicant has been fixed with reference to the Council's Circulars of 26.9.77, 12.11.81 and 12.6.79 and the provisions of the Note No. 2 Below GOI's Order 9 Below FR 22 C. I find that the Council's Circular dated 26.9.77 is only an extension of the benefits of fixation of pay with reference to the pay drawn in the previous post, joining time pay etc. etc. to the persons appointed from organisations other than the Central and State Governments for eg. Agriculture Universities etc. This Circular does not specifically mention the mode of pay fixation on joining the Indian Council of Agricultural Research. As regards the Circular dated 12.11.81 ibid it is seen that this circular is applicable to all appointments made after 12.6.79. As the applicant had joined on 30.11.77 this circular apparently is not applicable to him. Similarly, it is seen that the Council's Circular of 12.6.79 (Annex. A/4) is applicable only to the appointments made on or after 12.6.79. Hence, this circular of 12.6.79 is also not applicable to the applicant. Thus, out of the various circulars and rules mentioned in the Indian Council of Agricultural Research letter of 20.6.94 at Annex. A/1 the only rule that seems to be applicable to the applicant is the Note No. 2 Below GOI's order 9 Below FR 22 C. This Note states that when FR 22 C is to be applied to State Government servants, the basic pay to be taken into account will be only the basic pay in the State Scales after the first revision on the pattern of the Recommendations of Second Pay Commission for Central Government employees and not the basic pay after the second or subsequent revisions of the State Scales, if any. There is, however, no mention that only the total emoluments drawn by the State Government employees prior to joining Central Government are to be protected.

6. Considering the facts and circumstances of this case I deem fit to order the respondents to give a reply to the applicant specifically on the following points:

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(1) How the ICAR Circulars of 12.11.81 and 12.6.79 ibid have been applied to the applicant when he was appointed prior to 12.6.79.

(2) Whether the State Pay Scale taken into account while fixing his pay under Note No. 2 Below GOI's order 8 Below FR 22 C was the pay scale after the first revision on the pattern of the recommendations of the Second Pay Commission of Central Government or whether it was the pay scale after the second or subsequent revisions of the State Scales. The respondents shall also explain the manner in which the benefit of FR 22 C has been applied in the applicant's case by notionally increasing his pay by one increment in the State Scale of pay and then fixing the pay in the Central Pay Scale at the stage next above.

(3) Why the respondents are wanting to ensure that only the total emoluments drawn by the applicant are to be protected when the said Note No. 2 Below GOI's order 9 Below FR 22 C does not speak of the same. The particular rule or circular under which the total emoluments have been sought to be protected should be intimated to the applicant stating how that particular order would be applicable to him considering that his date of appointment is 30.11.77.

(4) The reasons as to why the pay of the applicant has not been fixed in terms of the instructions at Sl. No. 1 under the subject "Pay Fixation" on page 2.43 of the "Agriculture Research Service Rules" (Edition 1985) and if it has been fixed in terms of these instructions to explain to the applicant that these instructions have actually been applied in his case.

Further, if there are other persons similarly placed as the applicant in whose case the pay fixation has been done in a different manner than in the case of the applicant, the reasons as to why the difference has been made should be intimated to the applicant. The applicant may give the names of any such persons known to him to the respondents within a period of fifteen days from date."

6. It would be seen from above that this Tribunal has held that Note No. 2 Below GOI's order No. 9 under FR 22 C seems applicable in the instant case. The respondents while replying to the applicant vide their letter dated 27.5.1995 (Annex. A/1) in compliance to the orders of this Tribunal order in O.A. No. 337/94 have held that FR 22 C is not operative in terms of Note 2 of GOI's order (6) Below FR 22 C in this case. It has been further held by the respondents that "going by the instructions contained in Council's Circular No. 8-25-77-Per. IV dated 26.9.1977 read with Note 2 Below GOI's order No. 6 Below FR 22 C, the total emoluments drawn by you prior to joining ICAR were protected".

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7. It would thus be relevant to examine the concerned Circular No. 8-25-77-Per. IV dated 26.9.1977, Note No. 2 under GOI's order 6 Below FR 22 C and Note No. 2 under GOI'S order 9 Below FR 22 C for better appreciation of the issue involved. Relevant portions of these circular/rules are extracted below:

Extract from Circular dated 26.9.1977:

According to the existing recruitment rules for various categories of posts under the Council, direct recruitment is required to be made to various grades either through the competitive examination or by open advertisement, whether by Agricultural Scientists' Recruitment Board or by the Appointing Authorities themselves. It has been observed that the persons selected for these posts, especially those in the scientific category, already hold positions in Central/State Governments, Agricultural Universities and other scientific organisations. Since the ICAR is mutatis mutandis following the service and financial rules and other regulations of the GOI issued from time to time, the persons appointed from organisations other than the Central/State Governments are not allowed benefits like the continuity of past service, retention of lien in the previous post, fixation of pay with reference to the pay drawn by them in the previous post, joining time pay and T.A. However the employees of the Central/State Government, on their appointment to posts under the Council are eligible for the aforesaid benefits.

2. One of the objectives of the revised personnel policies recently introduced in the Council is to induct proven talent and experts in various fields. In order to achieve this object and to encourage the mobility of personnel, particularly those in the scientific stream, from one organisation to another, the question of extending the above mentioned facilities to employees of scientific organisations has been considered. It has been decided with the approval of the Governing Body and the President of the Council to extend the service benefits at present admissible to Central and State Government employees on their appointment to the Council, to the employees coming from the scientific organisations/Universities which are wholly or substantially financed by the State/Central Governments. Accordingly, such employees would, like the Central/State Government employees, be eligible for servicie benefits like continuity of past service, retention of lien in the previous post, fixation of pay with reference to the pay drawn by them in the previous post, joining time pay and travelling allowances.

2. Government of India's order (6) below FR 22 C:

(i) When a State Government Servant is appointed to a post under the Central Government and the post carries

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duties or responsibilities of greater importance than those attaching to the post held by him under the State Government, the initial pay of the official in the post may be fixed under FR 22 C (emphasis supplied).

3. Government of India's order (9) below FR 22 C:

"Protection of last pay not actually drawn on reversion and repromotion to the same post"

It would be seen from the Circular dated 26.9.1977 that employees of Central/State Governments on their appointment to posts under the Council are eligible for fixation of pay with reference to the pay drawn by them in the previous post. GOI's order (6) Below FR 22 C deals with the applicability of FR 22 C to State Government employees who have been appointed to a post under the Central Government and the post under the Central Government carrying duties or responsibilities of greater importance than those attached to the post held by him under the State Government. In the instant case the applicant was drawing salary in the scale of 750-1350 before he joined the ICAR in the scale of 700-1300. It would be clear that the new post under ICAR cannot be treated as having higher duties or responsibilities than the post occupied by the applicant in the State Government. Thus, GOI's order No. (6) under FR 22 C does not apply in the instant case. GOI's order No. (9) under FR 22 C deals with protection of last pay not actually drawn on reversion and repromotion to the same post. This is not the situation in the present case and as such GOI's order No. (9) under FR 22 C also does not apply in the instant case.

8. A perusal of Fundamental Rules reveal that the case of the applicant is covered by FR 22 (1) (ii) which has now been replaced by GOI's order No. (9) under FR 22. This GOI's order No. (9) deals with the case of pay fixation of government servants on appointment to a post which does not involve assumption of duties or responsibilities of greater importance than those attached to the post already held by him. It has been pointed out in this decision that prior to the clarifications given by GOI, Department of Personnel and Training O.M. dated 22nd May, 1989, the initial pay in such a situation will be fixed at the stage of the time scale which

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is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay plus personal pay equal to the difference. Relevant portion of GOI's decision No. (9) under FR 22 is reproduced below:

"As the Ministry of Finance, etc., are aware, the Fundamental Rule 22 (a) (ii) provides that when a Government servant is appointed to a post which does not involve assumption of duties and responsibilities of greater importance than those attached to the post already held by him, then he will draw as his initial pay the stage of the time scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the next below that pay plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time scale of the old post or for the period after which an increment is earned in the time scale of the new post, whichever is less. The rule also provides that if the minimum pay of the time scale of the new post is higher than his substantive pay in respect of the old post, he would draw that minimum as initial pay."

9. In the light of the above discussions, we are of the view that the applicant is entitled to protection of his basic pay drawn under the State Government, on his appointment in the ICAR, under FR 22 (1) (ii) now substituted by GOI's decision No. (9) under FR 22. In other words the pay of the applicant on his appointment in the ICAR should be fixed at the stage of Rs. 960/= in the scale of 700-1300 and if there is no such stage in the scale of 700-1300 then his pay would be fixed at the stage next below and the difference between that stage and Rs. 960/= will be paid as personal pay to be absorbed in future increases of pay.

10. The applicant had first approached this Tribunal in 1989 vide O.A. No. 791/89 in regard to protection of his pay consequent on his appointment in the ICAR. Subsequently he filed O.A. No. 139/93, C.P. No. 46/94 in O.A. No. 139/93 and O.A. No. 337/94. This Tribunal had in all these applications remitted the case back to the respondents to consider the case of the applicant in terms of rules on the subject and at par with Dr. G.C. Jain and Dr. J.C. Ghai. The respondents have, however, not considered the orders of this Tribunal and had always contested the issue and contended that the pay has been correctly fixed. Apparently the case has not been very

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closely examined by the department so as to grant the relief to the applicant and the applicant has been forced to approach this Tribunal time and again. This Tribunal vide its order dated 14.10.1992 in O.A. no. 791/89 had observed that in case the representation is allowed then he shall also be paid arrears as also interest over it @ of 12% per annum. Further in its order dated 18.1.1994 in O.A. No. 139/93 the applicant was awarded a cost of Rs. 500/=. As has been mentioned above the applicant has been forced to approach this Tribunal time and again on account of respondents not examining his case properly, it would be just and proper to award special cost to the applicant which we fix Rs. 2000/=.

11. The application is accordingly allowed and disposed of with the following directions to the respondents:

(i) Applicant's pay on his appointment in ICAR should be fixed at Rs. 960/= in the scale of 700-1300 and if there is no stage of Rs. 960/= then at the next lower stage and the difference between Rs. 960/= and that lower stage should be sanctioned as personal pay to be absorbed in future increases of his pay. Arrears on refixation of his pay alongwith interest thereon @ of 12% per annum should be paid to him.

(ii) Respondents should pay a sum of Rs. 500/= to the applicant as awarded in this Tribunal's order in O.A. No. 139/93.

(iii) A further sum of Rs. 2000/= be paid to the applicant by the respondents as special cost.

(iv) Applicant is awarded cost of this O.A. which we quantify as Rs. 500/=.

12. These orders should be complied with within a period of three months of the issue of this order.

Gopal Singh
(Gopal Singh)
Administrative Member

30/11/94
A.K. Misra
Judicial Member

Aviator/

(
Spines cast on 23/7/98
also with this
order)
23/7/98



Rec

Copy of order
alongwith cast Bill
sent to V.S. Gurjar Adm
by Legal AD vial No 290
23-7-98
23/7/98

Units I and III despatched
in presence on 23/7/98
under the supervision of
Section Officer _____
order dated 23/7/98

Section Officer (Record)

