

1/9-1/14

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JODHPUR BENCH, JODHPUR**

**ORIGINAL APPLICATION NO. 308/2002**

Date of decision: 26.04.2004

**CORAM:**

**Hon'ble Mr. J. K. Kaushik, Judicial Member**

**Hon'ble Mr. M.K. MISRA, Administrative Member**

S.L. Mathur S/o Shri Late Manoharlalji Mathur aged 46 years at present working as Senior Technical Assistant – A Defence Laboratory Resident of A-109, Shastri Nagar, Jodhpur.

...Applicant

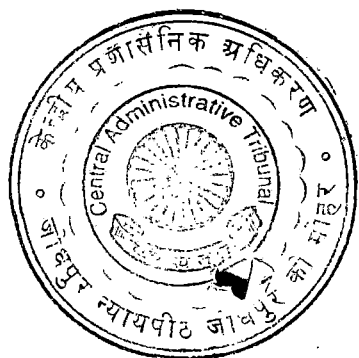
Mr. Sumeet Mehta, counsel for the applicant

**V e r s u s**

- (1) Union of India through Secretary (DRDO)/Scientific Advisor to Raksha Mantri, Ministry of Defence, Defence Research and Development Organisation, South Block, Room No. 137/S New Delhi – 110 011.
- (2) The Director Defence Laboratory, Ratanada Palace, Jodhpur.
- (3) The Joint Director (Administration), Defence Laboratory Ratanada Palace, Jodhpur.

...Respondents.

Mr. N.M. Lodha, counsel for the respondents



**ORDER**

**PER J.K. KAUSHIK, JUDICIAL MEMBER**

Shri S.L. Mathur has filed this Original Application for espousing his grievances relating to re-fixation of his pay when he was appointed to the post of Tech Asst in pay scale of Rs. 1320-2040 at Rs. 1440/- instead of at the minimum of the scale of Rs. 1320 w.e.f. 1.4.95 and has inter alia prayed for grant of

2/

all benefits including the payment of difference of arrears alongwith interest at Rs. 18 % p.a.

2. With the consent of the learned counsel for the parties, we heard the arguments advanced for final disposal of this case at the stage of admission and have given anxious thought to the pleadings and records of the same.

3. The factual scenario of this case is at a very narrow compass. The applicant was initially appointed to the post of Scientific Assistant on dated 17.8.90 in the grade of Rs. 1320-2040 after passing the requisite selection in Defence Lab Jodhpur. His name was sponsored through employment exchange. He was posted at Applied Chemistry Division in Rajiv Gandhi National Drinking Water Mission. His appointment was only for one year. It averred that he is continuing to discharge the same duties till date and his appointment was on substantive basis.

4. The further case of the applicant is that he obtained no objection certificate from his previous employer i.e. PHED, Govt of Rajasthan his lien was kept there for one year. He has been granted due increments and was continued beyond the period of one year, he felt satisfied and did not chose for any other option. His services came to be regularised w.e.f. 1.4.95. At that time he was getting basic pay as Rs. 1440/- but on regularisation, he was given fixation at the minimum of the scale i.e. Rs. 1320/-

2

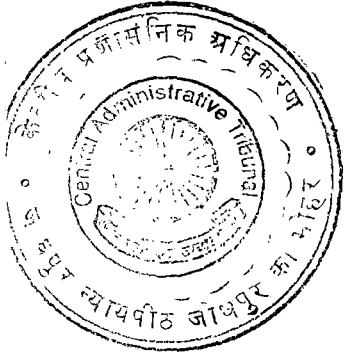


only. He was regularised on the post having same scale of pay as the one he held earlier. He protested against the same but it was only in the year 2001, when he was informed that his representation was under consideration and would be considered when his appointment in DRDO is regularised. A notice of demand of justice was also sent but no response was the result. The Original Application has been preferred on diverse grounds enunciated in para 5 and its sub-paras which we shall deal a little later in this order.

5. The respondents have contested the case and have filed an exhaustive reply to the Original Application. It has been averred that the applicant was not regularised but he was given a fresh appointment. The Original Application is apparently barred by limitation. He was appointed on temporary basis for a period of one year which was for the purpose of National Technology Mission. The next ground of the defence of the respondents is that the appointment of the applicant was purely temporary and not substantive as is reflected from Annexure A/3. He was given fresh appointment on 1.4.95 and given fixation of pay at the minimum of the scale of pay. Earlier his appointment was in a project under Rural development Ministry but his fresh appointment is in Defence Lab which is Under Ministry of Defence. The grounds have been generally denied.

6. A rejoinder has been filed controverting the grounds set out in the reply and also the facts mentioned in the Original

22



Application have been reiterated. Certain additional documents have been filed through additional submissions (which are not contemplated under the rules).

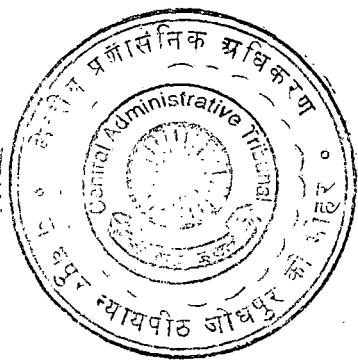
7. The learned counsel for the applicant has reiterated the facts and grounds mentioned in the Original Application as noticed above. He has contended that the subject matter of this Original Application related to fixation of pay which gives rise to continuous cause of action; hence the law of limitation is not attracted. He has endeavoured to persuade us that the applicant was holding the post of Scientific Asst. on regular and substantive basis and as per FR 22 (2) and his pay was to be fixed at Rs. 1440/- when he was appointed in Defence Lab w.e.f. 1.4.95. He has emphasised that no doubt the applicant was initially appointed for a fixed period of one year on temporary basis but he was continued for a long time on the same post and that would mean that he was holding the post on substantive basis. He has next contended that his case was also recommended for grant of due fixation of pay as per his continuity in service in the same pay scale vide communication dated 28.12.99 (A/34) but the respondents did not pay any heed to the same.

8. Per contra, the learned counsel for the respondents has submitted that for enjoying the benefits under FR 22 (2) one must be holding the previous post on regular basis and under the same employer. But the applicant does not fulfil any of them

2



and therefore he has been given fixation of his pay at the minimum of the scale and nothing wrong can be fastened with the action of the respondents. The learned counsel for the respondents has made us to travel through various documents and tried to persuade us that the applicant was not holding the post of Scientific Asst of substantive or regular basis. He was appointed on a fixed term basis for one year. He was continued since the project period was extended. He was also granted extensions. It was next contended that the respondents have extended favour to the applicant by giving appointment on the equivalent post after completion of the project on which he was earlier employed otherwise he would have been conveniently thrown out of employment. The applicant did not submit any representation till 2001 and has in fact acquiesced to the action of the respondents. Now he cannot take a turn and complain against the same. It was fresh appointment and not regularisation. The Original Application is misconceived and deserves dismissal.



9. We have considered the rival contentions made on behalf of both the parties. Before advertent to the crux of the matter, we would prefer to dispose of the peripheral issue relating to the preliminary objection of limitation. There is no doubt that the applicant for the first time made a representation in the year 2001 but it is equally true that the subject matter of this Original Application related to fixation of pay which has admittedly been held to be giving rise to a recurring cause of action by the Apex

Court in case of **M R Gupta vs. Union of India AIR 1996 SC 669** and law of limitation is not attracted. However, the relief can be restricted in such cases if there is any delay in preferring the claims. Thus the preliminary objection stand overruled.

10. To appreciate the controversy, we would like to reproduce the relevant portion of the rules for fixation of the pay. Rule 22(2) and 22 (3) are relevant and contents are extracted as under:-

"(2) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the next above his pay in respect of the old post held by him on regular basis:

Provided that where the minimum pay of the time-scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay:

Provided further that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time-scale of the post, in cases where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time-scale of the new post.

On appointment on regular basis to such a new post, other than to an ex cadre post on deputation, the Government servant shall have the option, to be exercised within one month from the date of such appointment, for fixation of his pay in the new post with effect from the date of appointment to the new post or with effect from the date of increment in the old post.

(3) When appointment to the new post is made on his own request under sub-rule (a) of Rule 15 of the said rules, and the maximum pay in the time-scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay.

(b) If the conditions prescribed in Clause (a) are not fulfilled, he shall draw as initial pay on the minimum of the time-scale:"

11. Perusal of the aforesaid rule would reveal that for getting the benefits of fixation under rule 22(2) one must have been holding the earlier post on regular basis. The controversy therefore boils down and is cut short to the point that if we come



2

JHS  
1/20

to the conclusion that the applicant was holding the previous post on regular basis he would swim otherwise he would sink. For this purpose, we find that the applicant was initially appointed for a period of one year on temporary basis in a project which was completed in the year 1995. The applicant was continued on the same without any interruption. We also find that no specific written orders are on records to indicate that any extension was ever granted to him. However, the project came to an end in the year 1995 and the applicant was appointed in the Defence Lab on an equivalent post in the same pay scale. It was definitely not a case of regularisation since the regularisation can be done only as per some specific scheme which is not there even though in pleadings the applicant has, frequently, used the word regularisation. However, if the plea of the applicant is accepted that it was a case of regularisation, the same would be a plea of volta face and act as counterproductive to his contentions.



12. We also find that the very order dated 28.12.99 A/34, relied upon by the learned counsel for the applicant makes it evident that the appointment of the applicant was on purely on temporary basis. The natural corollary would be that it was not on regular basis. Next, the applicant was given appointment to the post of JSA Grade vide letter dated 8.1.96(R/A), w.e.f. 1.4.95 and he has been confirmed on the same vide letter dated 23.6.2000 (R/C). We do not find anything on the records to show that applicant had any grievance against any of these

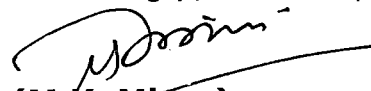
I/16  
21

orders. One gets confirmation only once in service and there can be no question of his regular appointment from initial appointment. We have not been shown any law that if no extension is granted and if one is continued without any break in a project till its completion, one would be treated as a regular employee.

13. The contention of The learned counsel for the applicant that the case of the applicant was recommended for fixation of pay taking into account the increment earned by him on earlier post can be of no help to him since the same is not in consonance with the rules in force. It, rather clearly, fortifies the ground of defence of the respondents that the applicant was not holding the post on regular basis at the time of his fresh appointment as JSA. Thus we can safely conclude that the applicant was not holding the previous post on regular basis within the meaning of FR 22(2) and if that be so the applicant is bound to sink and has no case for our interference. We therefore do not find any illegality and arbitrariness with the action of the respondents in fixing the pay of the applicant at the minimum of the scale w.e.f. 1.4.95.



14. The upshot of the aforesaid discussion is that the Original Application sans merits and the same fails and stands dismissed, accordingly; however, without any order as to costs.

  
(M.K. Misra)  
Administrative Member

  
(J.K. Kaushik)  
Judicial Member

Read Copy

Subscribed  
for M.M. Zedler  
10/5/09 Adm.

Read up

Hand

Part II and III of the  
in my presence on 24/10/13  
under the supervision of  
section officer of the  
order dated 18/10/13.

S. K. Sharma  
Section officer (Record) 24.10.2013