

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO. 118/2009

Dated this the 27th day of April, 2011

CORAM

Hon'ble Mr. Justice S.M.M.Alam, Judicial Member
Hon'ble Mr. Sudhir Kumar, Administrative Member

Smt. Manju Mathur, w/o Shri Mukesh Mathur,
Aged about 48 years, R/o 18/656,
Chopasani Housing Board, Jodhpur
Presently working on the post of
Research Associate (Masters Degree Holder)
in the Office of Project Coordinator,
Rodent Control, CAZRI, Jodhpur.

....Applicant

(By Advocate Mr.S.K.Malik)

Vs.

1. Indian Council of Agriculture Research,
through its Secretary,
Krishi Bhawan, New Delhi.

2. The Director,
Central Arid Zone Research Institute,
Jodhpur.

....Respondents

(By Advocate Mr. Ashok Chhangani)

ORDER

Applicant Smt.Manju Mathur presently working on the post of
Research Associate (Master Degree Holder) in the office of Project
Coordinator, Rodent Control, Central Arid Zone Research Centre (CAZRI

for short) Jodhpur has preferred this Original Application for grant of following reliefs:

“(i) By an appropriate writ, order or direction, respondents may be directed to revise the pay and other benefits of the applicant as per letter dated 4th January 1995 Annexure.A.4, Office Order dated 24.11.1998 Annexure.A6, Letter dated 22.8.2003 Annexure.A8 and OM dated 28.2.2008 Annexure.A10 and make payment of arrears of pay and other allowances along with interest @ 12% per annum.

(ii) Exemplary cost be imposed on the respondents for causing undue harassment to the applicant.

(iii) Any other relief which is found just and proper in the facts and circumstances of the case be passed in favour of the applicant in the interest of justice.”

2. The brief facts of the case are as follows.

The applicant possesses qualification of M.Sc.Zoology. The applicant was appointed on the post of Research Associate vide Memorandum dated 18/19.6.1984 (Annexure.A.1). Initially her appointment was till 31.3.1985 on a consolidated pay of Rs. 700/- p.m. Time to time her services were extended upto 1991 and her pay was also revised. From 1.1.1986 the applicant's pay was revised from Rs. 700/- to 1600/- vide order dated 7.3.1986 (Annexure.A2). Thereafter vide order dated 29.12.1993 the applicant's pay was again revised from Rs. 1600/- to Rs. 2700-100-3200 with effect from 1.4.1988 vide Annexure.A3. Thereafter vide letter dated 4.1.1995 (Annexure.A4) the pay of Research Associates Masters Degree Holders, was increased to Rs. 3300-100-3800 along with other benefits like Contingent Grant, House Rent Allowance, Medical Benefits and leave etc., with effect from 1.4.1994. But this revised fixation of pay including the

benefits were not extended to the applicant till the filing of this application. The applicant filed representation on 16.11.1998 (Annexure.A5) for extending the same benefits along with fixation of her pay but with no effect. Further case is that vide order dated 24.11.1998 (Annexure.A6) again the pay of fellowship/research associate was revised from 3300-3800 to 8800. This revision was not implemented by the respondents. Vide representation dated 25.1.2000 (Annexure.A7) the applicant made prayer for revision of her pay as per order issued from time to time but of no avail. Again the pay of ICAR fellowship/research associates was revised as per letter dated 22.8.2003 and as per the revision the pay of Research Associate (Masters Degree Holders) was revised from Rs. 8800 to Rs. 11500/- per month. But even after representation the applicant's pay was not revised. Again vide order dated 28.2.2008 (Annexure-A.10) the pay of Research Fellows/Research Associates were revised from Rs. 11500 to 17000/- per month but the same was not given to the applicant in spite of representations and thereafter the applicant preferred this OA for grant of the above mentioned reliefs.

3. On filing of the OA, notices were issued to the respondents and in compliance of the notice respondents appeared through lawyer and filed reply of the OA. As per reply a preliminary objection has been taken by the respondents that the OA is barred by limitation. It has been stated in the reply that the applicant has claimed reliefs' on the basis of letter dated 4.1.1995 (Annexure.A4) Office Order dated 24.11.1998 (Annexure.A6), Letter dated 22.8.2003 (Annexure.A8) and Office Memorandum dated

28.2.2008 (Annexure.A.10) but legally the applicant cannot seek the relief which accrued to her three years before filing of the Original Application, which has been filed in the year 2009. It has also been stated that the OA is hit by the principles of *res judicata* as in previous OA bearing OA No. 550/1991 the relief regarding fixation of pay scale to Research Associates was claimed but the Tribunal did not pass any order with regard to fixation of pay which goes to establish that the relief claimed by the applicant in previous OA was not accepted by the Tribunal so in the present OA the applicant cannot claim this relief.

4. With regard to the merit it has been stated by the respondents that although it is true that Indian Council of Agriculture Research (ICAR for short) revised the rates of emoluments of ICAR fellowship/research associates along with other emoluments but the applicant is not entitled to get the revised emoluments because of the fact that (i) the applicant was initially appointed in All India Coordinated Research Project on Rodent Control with effect from 21.6.1984 to 31.3.1985 (ii) Thereafter the applicants services were extended from time to time in that project upto 23.9.1987 till the posts of technical staff was filled up in the project. Consequent upon filling up of technical posts under the All India Coordinate Research Service Project on Rodent Control, the applicant was adjusted as Research Associate in the Professor of Eminence Scheme w.e.f 23.9.87 to 31.3.98 vide CAZRI Office Order dated 9.10.1987. In the said scheme the applicant's services were extended from time to time upto 31.12.1991 when her services were terminated with the termination of

Professor of Eminence Scheme on 31.12.1991. The order of termination was issued on 30.11.1991 vide Annexure.R.1. After issuance of the said order dated 30.11.1991, the applicant filed OA 550/1991 before this Bench of the Tribunal and the Tribunal was pleased to grant interim relief staying the order dated 30.11.1991. The Tribunal decided the O.A. on 12.10.1993 (Annexure.R.2) whereby a direction was issued to the respondents that the applicant's services shall not be terminated, rather the respondents will find out some scheme/project where she can be re-employed on the same emoluments while continuing her in service. Against the said order a Special Leave Petition before the Hon'ble Supreme Court of India was filed along with four other SLPs. The Hon'ble Supreme Court allowed the SLP and set aside the decision of the Central Administrative Tribunal passed on 12.10.1993 (Annexure.R.3) remitting back the matter for disposal on merits in accordance with law. The matter again came up before the C.A.T. Jodhpur Bench and the O.A. was again disposed of vide order dated 15.5.1998 (Annexure.R.4). The order was passed in absence of the applicant and her lawyer. However, the Tribunal has been pleased to issue a direction to the respondents to consider the case of the applicant along with others for recruitment against T-II-3 vacancies at CAZRI, Jodhpur in the light of communication dated 26.12.1997 received from the ICAR, New Delhi. It is further stated that at present there is no vacancy in the cadre of T-II-3 post, therefore the services of the applicant could not be regularized and she is continuing on the same post on same emoluments on which she is working. It is stated that the availability of vacancy was condition precedent for

regularization on that post and moreover looking to the termination of the project to which the applicant was appointed, the services of the applicant were liable for termination on completion of the project. But respondents taking a lenient view allowed to continue the applicant in the department.

5. Shri S.K. Malik, advocate, appeared on behalf of the applicant, whereas Shri Ashok Chhangani, advocate, appeared for Respondent Nos. 1 & 2, and argued the case.

6. As per the pleadings and submissions of both the parties, the following facts are admitted in this case:

The applicant, Smt. Manju Mathur, was appointed in All India Coordinated Research Project on Rodent Control with effect from 21.06.1984 to 31.03.1985 on a fixed emoluments of Rs. 700/- p.m., then her services were extended from time to time in the said project upto 23.09.1987, the date on which the post of Technical Staff was filled up in the project, and then the applicant was adjusted as Research Associate in the Professor of Eminence Scheme w.e.f. 23.09.1987 to 31.03.1998 where her services were extended from time to time upto 31.12.1991 when her services were terminated with the termination of Professor of Eminence Scheme on 31.12.1991. The respondents have annexed the order of termination of the said Scheme, which was issued on 30.11.1991, and which has been made Annexure R.1. There is no dispute between the parties on these points as it is admitted case of the applicant that against the said termination order, she had preferred O.A. No. 550/1991 before this Bench of the Tribunal, in which interim relief of staying of the termination order was granted on 30.11.1991.

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It is also admitted that the said OA was decided on 12.10.1993 vide Annexure R.2, whereby a direction was issued to the respondents that the applicant's service shall not be terminated, rather she will be adjusted in some other Scheme or can be re-employed in any Scheme or Project on the same emoluments. It appears from Annexure R.3, which is the order of the Hon'ble Supreme Court passed in S.L.P. (C) Nos. 9743, 9744, 9312 and 9978, 17664 of 1994, whereby the Hon'ble Supreme Court was pleased to set aside the order dated 12.10.1993 passed in OA No. 550/1991 and observed in the following manner – "The direction is that on the completion of one scheme/project the employer should find out some other scheme/project and absorb him there on the same emoluments, etc. treating him as continuing in service. We find it difficult to uphold such an order. It is one thing to make a recommendation and a different thing to give such a direction and at the same time to continue him in service. We, therefore, set it aside and remit the matters to the Tribunal for disposal on merits and in accordance with law rather than disposing them of by such ad hoc orders."

From the above order of the Hon'ble Apex Court, it is clear that the order passed by this Tribunal on 12.10.1993 in OA No. 550/1991 was set aside by the Hon'ble Apex Court, meaning thereby that for the present, the order dated 12.10.1993 passed in OA No. 550/1991 is not in existence. It is admitted position that OA No. 550/1991 was filed for setting aside the termination of the applicant from service on termination of the Scheme itself. Since the Hon'ble Apex Court set aside the order of this Tribunal, through which order, the Tribunal had directed the respondents to allow the

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applicant to continue in other scheme / project, so after setting aside of the order by the Hon'ble Apex Court, this order is also not in existence. Therefore, the only conclusion will be that the order of termination passed by the respondents still subsists and it is altogether a different matter that due to the interim order of this Tribunal, the applicant was allowed to continue in service.

7. From perusal of the order dated 15.05.1998 (Annexure. R.4), it appears that OA No. 550/1991 filed by the applicant was again taken up for disposal on merits after remand by the Hon'ble Apex Court and vide another order dated 15.05.1998, the O.A. was disposed of with the following direction – “we dispose of this application with a direction to the respondents to consider the case of the applicant along with others for recruitment against T-II-3 vacancies at CAZRI, Jodhpur, in the light of the communication referred to above.”

Thus, from the above order passed by this Tribunal in OA No. 550/1991, after remand from the Hon'ble Apex Court, this Tribunal had simply directed the respondents to consider the case of the applicant along with others for recruitment against T-II-3 vacancies at CAZRI, Jodhpur, and it would be incorrect to say that the applicant was allowed to continue as Research Associate (Master Degree Holder). Under such circumstances, and in the absence of any finding that the order dated 30.11.1991 (Annexure.R.1) whereby the applicant's services were terminated was illegal, we are unable to issue any direction to the respondents to make payment of the salary to the applicant at revised rate as revised from time to

time by Annexures A.4, A.6, A.8 and A.10, although, it is true that the applicant is allowed to continue in the department, even after her services were terminated with termination order of the Scheme / Project.

8. The learned advocate appearing for the applicant has argued that since the applicant is allowed to continue in the service by the respondents, by virtue of the stay order granted by the Tribunal in OA. No.550/91 as such the respondents are duty bound to pay the emoluments of Research Associate (Master Degree Holder) to the applicant, which has been revised from time to time, but we find ourselves not capable of issuing such direction to the respondents in view of the fact that the Hon'ble Apex Court had rejected the claim of the applicant for setting aside the order of termination and even after remand, no such order was passed by the Tribunal that the termination of the applicant was illegal. However, it is observed that when the respondents have allowed the applicant to continue in the service and it is established from the papers produced by the applicant's lawyer that the respondents are still taking some research work on "Rodent Control" from the applicant so it is for their consideration that the applicant should be paid emoluments according to her qualification and status, or she may be adjusted to another suitable job like T-II-3 post as ordered by this Tribunal in its previous order dated 15.05.1998 passed in OA No. 550/1991. (However, this observation is only for consideration of the respondents and it will not give any legal right to the applicant to file fresh O.A).

9. In the result, we find no merit in this Original Application, and as such the same is hereby dismissed with the above observation. We hope

that the respondents shall favourably consider the above observation of this Tribunal and pass necessary orders in this regard within a reasonable time.

In the circumstances of the case, there shall be no order as to costs.

Dated this the 27th day of April, 2011



Sudhir Kumar
Administrative Member



Justice S.M.M. Alam
Judicial Member

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