

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.421/99

Wednesday, this the 6th day of February, 2002.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Dr.M.K.Nair,
Retired as Director,
Central Plantation Crops Research Institute,
Kasaragod,
'Sreeraj', Bedradka,
(P.O.) Kudlu,
Kasaragod - 671 124. - Applicant

By Advocate Mr PV Mohanan

VS

1. The President,
Indian Council of Agricultural Research,
Krishi Bhavan,
Dr.Rajendra Prasad Road,
New Delhi-1.
2. The Director General,
Indian Council of Agricultural Research
Krishi Bhavan,
New Delhi-1.
3. The Director,
Central Plantation Crops
Research Institute,
Kasaragod, (Post) Kudlu. - Respondents

By Advocate Mr CN Radhakrishnan

The application having been heard on 16.11.2001 the Tribunal
on 6.2.2002 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant while functioning as Director, Central
Plantation Crops Research Institute, Kasargod under the
Indian Council of Agricultural Research (ICAR for short) was
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served with a memorandum of charges dated 3.10.1996. The Articles of Charges were as follows:

"1. While functioning as Director in 1990-1992, grave irregularities were committed by him in sanction of one Club Hall without being competent to do so which included deliberate splitting of cost in order to avoid seeking approval of the Council, not floating of open tender and getting it constructed from private parties at a cost of Rs.3.12 lakhs (appx.) and thereby failed to maintain absolute integrity, devotion to duty:

(2) While functioning as Director 1990-92 grave irregularities were committed by him in sanction of one Conference Hall without being competent to do so, which included deliberate splitting of cost in order to avoid seeking approval of the Council, not floating of open tender, getting it constructed from private parties at a cost of Rs.5 lakhs (appx.) and for getting this construction done. Dr.M.K.Nair showed favour to one P.D.Nair, Contractor whose signature are also different as in the tenders submitted by him and at the stage when payments were received by him.

(3) While functioning as Director from 1990-92 grave irregularities were committed by him in sanction of one Coconut house without being competent to do so, which included deliberate splitting of cost in order to avoid seeking approval of the Council, not floating of open tender and getting it constructed from private parties at a cost of Rs.2.06 lakhs(appx.)".

During the pendency of the enquiry, the applicant retired on superannuation on 31.8.1997. The enquiry was continued even after his retirement and the enquiry report was submitted on 7.10.1997 holding that the charges were established. The applicant made a representation on 15.10.1997 explaining as to how he was not guilty of the pending charges. However, the impugned order (A-1) dated 26.3.1998 for and on behalf of the first respondent, signed by the Secretary of the ICAR, was issued holding the applicant guilty of the charges and imposing the penalty by way of a cut of 5% in the pension of the applicant for a period of two years. The applicant is

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aggrieved by A-1 order. He also questions the respondents' failure to allow leave encashment, arrears of revised salary, revised gratuity and revised commutation of pension on the basis of the orders of the ICAR in implementation of the report of the 5th Central Pay Commission. His further grievance is that he was given only a restricted lumpsum amount of Rs.15,000/- as against his entitlement of Rs.25,000/- allowed to all similarly placed Scientists who were governed by the Pay Commission's order in November 1998. The applicant has filed this application for the following reliefs:

- i) To call for the records leading to Annexure A-1 proceedings dated 26.3.1998 and set aside the same.
- ii) To direct the respondents to pay the arrears of pay to the applicant of revised basic pay of Rs.19,300/- in the scale of Rs.16400-22400 from 1.1.1996 to 31.8.1997, as per the revision of pay scale ordered by Indian Council of Agricultural Research by proceeding No.F.1(15)/98/PER IV dated 27.2.1999.
- iii) To direct the respondents to revise the pension, death-cum-retirement gratuity, commutation, based on the revision of pay scale with effect from 1.1.1996 and to disburse the same with 12% interest.
- iv) To direct the respondents to grant leave encashment for 300 days at revised scale of pay fixed with effect from 1.1.1996."

2. It is alleged in the application that the President of the ICAR is not competent to impose a cut in the pension which is the exclusive privilege of the President of India under Rule 9 of the Central Civil Services(Pension) Rules. It is also alleged that the finding that the applicant is guilty is based on no evidence and that the cut of 5% of pension for a period of two years is, in any case, disproportionate to the alleged misconduct. The facts regarding other benefits like

leave encashment, arrears of revised salary, revised gratuity and commutation, revised pension etc. are also furnished in the O.A.

3. In the reply statement, the respondents contend that the application is not maintainable as the ICAR can be sued only through its Secretary as per Rule 24(c) of the Bye-laws, that the cut in pension was imposed by the competent authority, viz, the President of the ICAR who was satisfied that the grave charges of misconduct were proved, that the arrears of pay and allowances as also arrears of pension and gratuity on account of the pay revision were made available to the applicant before 10th May 1999 and that there was no inordinate delay in the disbursement of the dues. It is further stated that by order No.1(13)/98-Per.IV dated 10.11.1998 while lumpsum payment of Rs.25,000/- was admissible to the Scientists in position as on 1.1.1996, in the case of Scientists who joined after 1.1.1996, the payment was restricted on pro-rata basis, that on the same analogy, the applicant who retired on 31.8.97, was given Rs.15,000/- on pro-rata basis and that there is no violation of rules as perpetration of any injustice.

4. We have considered the rival pleadings and have heard the learned counsel appearing on either side.

5. Shri P.V.Mohanan, the learned counsel of the applicant would invite our attention to Rule 9 of the Central Civil Services (Pension) Rules and argue that the right to withhold or withdraw pension or gratuity is an exclusive privilege of the President of India, and that therefore, the impugned order

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imposing a cut in pension for a period of two years issued by the Secretary of the ICAR in the name of the President of the ICAR is without jurisdiction and hence null and void. Though the powers exercisable by the President of India under the CCS(CCA) Rules and other Rules can be exercised by the President of the ICAR in respect of the ICAR employees, there would be no employee-employer relationship between persons retired from ICAR and the Society (ICAR) itself, according to Shri Mohanan. Further, Rule 9 of CCS(Pension) Rules specifically provides that the President of India exclusively reserves the right to himself with regard to withholding or reducing pension etc. It was, therefore, essential to have a specific provision in the ICAR Rules in regard to reservation of such a significant right to the President of the Society, learned counsel would urge. It is strongly pleaded that in any case, the whole penalty is based on no evidence and that therefore, it is liable to be quashed. Counsel would reiterate the pleadings in the O.A. in relation to the other prayers.

6. Shri C.N.Radhakrishnan, learned counsel for the respondents would take us through the CCS(CCA) Rules, CCS(Pension) Rules and other related rules and regulations of the Government of India as well as the provisions of Delegation of Powers and the Bye Laws of the ICAR and other related provisions and contend that in the application of various rules and regulations of the Government of India as made applicable to the Society, the President of the Society is empowered to exercise all the powers vested in the

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President of India under those rules and regulations. CCS(Pension) Rules is also a set of rules of the Government of India and therefore the powers of the President of India under Rule 9 of the CCS(Pension) Rules can be exercised by the President of ICAR. The competence of the President of the ICAR in that regard cannot be disputed, the learned counsel would urge. He would maintain that the charge is proved as it is based on evidence regarding violation of financial rules and hence the impugned order cannot be considered as unduly harsh or disproportionate. Learned counsel for the respondents would draw our attention to the averments in the reply statement in regard to other related matters.

7. In our considered opinion, in the light of the facts obtaining in this case, it is difficult to accept the respondents' proposition that the President of the ICAR could exercise the right of the President of India which he reserves to himself in terms of Rule 9 of the CCS(Pension) Rules, for the following reasons:

8. It is true that as per the Delegation of Powers in ICAR, "in the application of various Rules and Regulations of the Government of India, as amended or altered or modified from time to time and applicable to the Society, the powers vested in the President of India shall be exercised by the President of the Society". It is also true that as per Bye Law 31 of the Memorandum of Association of the ICAR Society, reference to the President and Government servants in the

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CCS(CCA) Rules shall be construed as reference to the President of the Society and officers and employees of the Society respectively. (see page 47 of the Memorandum of association, Bye Law 31, Sub clause(i) (Emphasis supplied).

9. A conjoint reading of the rules regarding the powers of the President of the respondent Society and the provisions concerning the powers of the President of India as referred to in the Memorandum of Association and the Delegation of Powers and the Rules and Bye Laws of the ICAR, it would appear that no specific power is conferred on the President of the ICAR to exercise the right which the President reserves to himself in relation to Rule 9 of the CCS(Pension) Rules(Emphasis supplied). Rule 9 is quoted below for easy reference:

"9. Right of President to withhold or withdraw pension:

1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon reemployment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed: Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy five per mensem.

(2)(a) The departmental proceedings referred to in sub-rule(1), if instituted while the Government servant was in service whether before his retirement or during his reemployment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were

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commenced in the same manner as if the Government servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

- (2)(b).....
- (3) deleted
- (4)
- (5)
- (6)

(Emphasis added)

It is clear from the above, that what is referred to is an exclusive right of the President which he alone can exercise. It is not one of a generality of Presidential powers referred to in the CCS(CCA) Rules.

10. A substantially similar issue has been considered by this Tribunal in O.A.No.1102/98 dated 22.5.2001. That was a case where the Presidential powers were claimed to have been exercised by the DG of the ESI Corporation under authority from the Standing Committee which had been statutorily empowered to exercise all the powers and functions vested in the President of India under various Central Government Rules. The order impugned in the said O.A. turned on reduction of pension in terms of Rule 9 of the CCS(Pension) Rules under circumstances substantially similar to those arising in this case. After considering the factual and legal position, this Tribunal held:

... Accepting for argument's sake that the powers and functions vested in the President and which are exercisable by the Standing Committee by virtue of Regulation 24-A can be delegated to the D.G. of the ESIC, we have no hesitation in holding that such delegation has not taken place by means of the amendment sought in R1(A) (i.e. A-4). It is at best a proposal only. It does not have the force of a regulation. There is no such regulation to our knowledge, empowering the D.G. to exercise the Presidential prerogative enshrined in Rule 9 of the

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CCS(Pension) Rules. The records do not suggest that he has passed the order for and on behalf of the President of India. The impugned A-3 order is silent about this statutory necessity. The provisions of Rule 9(2) of the CCS(Pension) Rules quoted supra (at para 8), would make it abundantly clear that where the departmental proceedings are initiated by an authority subordinate to the President, that authority shall submit a report recording its findings to the Government. It is then for the Government to consider the findings and take a final decision under the Rule. If the Government decides to take action under Rule 9, in the light of the findings of the Disciplinary Authority, the Government will consult the UPSC. If, as a result of such a consideration in consultation with the Commission, it is decided to pass an order, necessary order will be issued in the name of the President. This procedure would apply even to a case where the President himself functions as the Disciplinary Authority - vide G.I., M.F., O.M.No.F.19(9)E/V/66 dated 6.6.67 at page 11 of Swamy's Compilation of CCS(Pension) Rules (13th Edition). The impugned A-3 order is an order simpliciter passed by the D.G. of the ESIC. It is not an order of the President of India made in accordance with the prescribed procedure."

11. After doubting the finality of the proposed amendment in the Regulation to delegate the Presidential powers vested in the Standing Committee of the ESIC to the Director General of ESIC, this Tribunal held that the proposed amendment has not taken the full shape of a resolution and that therefore the intended delegation, if at all possible, has not taken place. With regard to the competence of the Standing Committee to delegate the Presidential powers further down, this Tribunal observed as under:

"... We have great reservation even otherwise on the powers of the Standing Committee to delegate the Presidential powers vested in it further to a subordinate authority. Having regard to the gravity and significance of the words in which the provisions of Rule 9 are couched, it would be well-nigh impossible to hold that the Standing committee has the competence to delegate such powers. If it were the intention of the Rule makers, such a provision should have been incorporated in Rule 9 itself enabling the various departmental heads, or other competent authorities to further delegate the Presidential

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prerogative. This view is reinforced by G.I., M.F., O.M. dated 6.6.67 referred to at para 10 above."

12. Granting that the employees of the ICAR are not Central Government servants in the real sense and that the President of India cannot be called upon to exercise his powers or rights in relation to the service matters of the ICAR employees, we still consider that an extraordinary event of exercising the right of the President of India by the President of the ICAR cannot be approved of without there being a specific provision in the Rules governing the ICAR to that effect. The Presidential powers and privileges mentioned in the CCS(CCA) Rules cannot be equated with the reserved right of the President referred to in Rule 9 of the CCS(Pension) Rules. Such right therefore, cannot be assumed to have been delegated as per Rule 1 in Section-II of the Delegation of Powers in ICAR except under an express provision in that regard. In other words, a routine adoption of the generality of the Central Government Service and Financial Rules and other rules in the case of employees of the ICAR would not be sufficient for that purpose.

13. Another point that we have noticed is that reduction or withholding of pension by the President of India under Rule 9 of the CCS(Pension) Rules is not a punishment. It is not a penalty. The right to continue to draw pension would depend upon good conduct of the Government pensioner and it is in this context that the President retains the exclusive right to deal with reduction/withholding of pension. There is no sufficient legal support for the proposition that in the instant case, 5% cut in pension has been considered for any failure to maintain good conduct. In a situation where

disciplinary proceedings initiated against a Government servant is continued after his retirement and the Government servant was found guilty of contumacious conduct, the President exercises his exclusive right only after the elaborate procedural requirements regarding consultation with the UPSC, detailed report to the President etc. are fulfilled. These requirements should have been adequately taken care of within the frame work of the ICAR society. The fact in the instant case, however, is that 5% cut in pension is inflicted on the applicant as a penalty. This is not consistent with the provisions of Rule 9 of the CCS(Pension) Rules and there are no matching provisions in the ICAR Rules.

14. The powers vested in the President are different from the right which the President exclusively reserves to himself in the matter of withholding a pension or gratuity or both either in full or part or withdrawing a pension in full or part as mentioned in Rule 9(1) of the CCS(Pension) Rules. It is not a power that is vested in the President that is to be exercised in a case of withholding or reduction of pension. It is an exclusive right retained by the President and without a specific reservation of an exclusive right to the President of the ICAR, a pensioner's right cannot be infringed upon.

15. Regarding the non-payment of arrears of pay and allowances, revised pension, difference in commuted value of pension and gratuity, it has been stated in the reply statement that these amounts have been paid to the applicant by 10.5.99 which has not been disputed. As the arrears of

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revised pay and allowances etc. had been paid to the serving employees of the ICAR only in April 1999, it cannot be said that there has been inordinate delay in making payment to the applicant. However, the respondents have admitted in the reply statement that as per ICAR order - No.1(13)/98-Per.IV dated 10.11.1998 a lumpsum payment of Rs.25,000/- was admissible to the Scientists in position as on 1.1.96 and that an amount of Rs.15,000/- alone was given to the applicant under that head. The reduction of Rs.15,000/- is sought to be justified on the ground that in the case of Scientists who joined service after 1.1.96 payment was restricted on pro-rata basis and it was on that analogy the amount was restricted to the applicant upto the date of his retirement namely 31.6.97. We do not find any justification for such a reduction. If a lumpsum payment of Rs.25,000/- was admissible to the Scientists who were in position as on 1.1.1996, the applicant who was in position on that date and retired only on 31.8.97 should have been paid the entire amount of Rs.25,000/-. We do not find any rationale for making payment only of Rs.15,000/-. An amount of Rs.10,000/- (i.e. 25000-15000) is due to the applicant on account of the unpaid lumpsum payment..

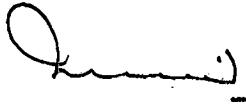
16. On the facts and in the circumstances of the case discussed above, we hold that the impugned A-1 order is liable to be set aside. Accordingly, we set aside A-1 order dated 26.3.98. The applicant shall get all consequential benefits. We further direct the respondents to pay Rs.10,000/- being the unpaid balance of lumpsum payment. The respondents are directed to give effect to the above directions within a

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period of two months from the date of receipt of copy of this order.

17. The O.A. is disposed of as above. There is no order as to costs.

Dated, the 6th February, 2002.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures

1. A-1: True copy of the Proceedings No.15-1/91-Vig. dt.26.3.98 issued by the 1st respondent.
2. A-2: True copy of the Proceedings F.No.15(1)/91-Vig. dt.7.4.98.
3. A-3: True copy of the Pension Calculation Memo
4. A-4: True copy of the representation dt.8.12.98 submitted by the applicant.