IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. O.A.489/90 ~~199~~
~~T.A. No.~~

DATE OF DECISION ~~28.8.90~~

T. Neelakandan — Applicant (s)

Mr. P.V.Mohanan — Advocate for the Applicant (s)

Versus

Union of India (Secretary, Min. of Agriculture) & 2 others — Respondent (s)

Mr. P.V.Madhavan Nambiar (for R2 and R3) — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 17.6.90 filed under section 19 of the Administrative Tribunals Act, the applicant who is working as a Projector Operator in the Central Institute of Fisheries Technology (CIFT) under the Indian Council of Agricultural Research (ICAR), has prayed that the impugned order dated 24.4.90 at Annexure-I should be set aside and the respondents directed to fix his pay for pensionary benefits by taking into account the advance increments granted to him. He has also challenged the ICAR's letter of 10th March 1989 at Annexure-III by which the advance increments as a result of Five Yearly Assessment are not to be treated as pay for purpose of fixation of pay on promotion, drawal of allowances, pension and other retirement benefits. His further prayer is that the respondents be

directed to reckon his five years of military service between 1.4.56 and 31.3.61 as qualifying service for purposes of pensionary benefits. The brief facts of the case are as follows:

2. The applicant joined the CIFT as a Peon on 30.1.62 and was appointed as a Projector Operator on 16.10.75. He is governed by Technical Service Rules which came into force from 1.10.75. The post of Projector Operator was classified as technical and he was placed in the T-2 grade of Rs. 330-560. According to these Rules, for career advancement, employees are considered for promotion or grant of advance increments after five years of service in each cadre. Accordingly, the applicant was considered and promoted to T-1-3 grade with effect from 1.7.82 in the scale of Rs. 425-700 revised to Rs. 1400-2300. He completed five years of service on 31.12.87 and he was granted three advance increments in that scale with effect from 1.1.88. On grant of three advance increments his pay in the scale of Rs. 1400-2300 was fixed as follows:

Scale of Pay of T-I-3 - Rs. 1400-40-1800-EB-2300

Pay as on 1.7.87	:	1560
Pay as on 1.1.88	:	1680 (1560+120 being 3 advance increments)
Pay as on 1.7.88	:	1720 (1600+120 being 3 advance increments)
Pay as on 1.7.89	:	1760 (1640+120 being 3 advance increments)
His pay on 1.7.1990 will be	:	1800 (1680+120 being 3 advance increments)

The applicant is retiring on superannuation with effect from 31.8.90. In accordance with the impugned order dated 10.3.89 (Annexure-III) the advance increments granted to Scientists/Technical personnel as a result of Five Yearly Assessment has not to be treated as 'pay' for purposesof fixation of pay on promotion, drawal of allowances, pension and other retirement benefits, etc. The applicant's grievance is that in calculating his pension and average pay for the last 10 months of his service as at Annexure-I his pay between November 1989 and August 1990 has been reckoned as 1640/1680 without taking into account Rs. 120 per month accruing from three advance increments. He would thus suffer both by lower pension and lower DCRG.

His contention is that the impugned order at Annexure-III by which the advance increments have been ignored was issued under Rule 18 of the Agricultural Research Service / Rules which pertains to Scientists and therefore, it cannot be extended to the technical personnel who are governed by Technical Service Rules. He has also referred to the judgement of this Tribunal in OA 384/89 in which the same order at Annexure-III had been challenged in so far as it has excluded advance increments for calculation of allowances based on pay. The Tribunal held that there is no reason why the advance increments are not recognised as pay for any purpose. Since the advance increments are given in lieu of promotion as a second best reward, "there is absolutely no reason why advance increments should be treated differently from pay on promotion." The applicant further contended that he was a member of the Territorial Army as a permanent staff between 1.4.56 and 31.3.61 as clear from the service certificate at Annexure-VI. He had opted for pensionary benefits in the re-employed post in the CIFT and the ICAR had accorded approval for counting his military service btween 1956 and 1961 for pension. The Annexure-I order has not taken into account that service. He has also contended that since the respondents have not shown any financial liability outstanding against the applicant, they have no authority to withhold Rs. 2000 from the DCRG through the impugned order at Annexure-I.

3. According to the respondents, the impugned order at Annexure-III is under modification in view of the Tribunal's judgement in OA 384/89. The final outcome is not known. In case the ICAR decides in favour of excluding advance increments for purpose of pension, it would be difficult to recover over payments of pension and gratuity at that stage and hence the applicant's pension and gratuity have been reckoned by excluding three advance increments. In regard to counting of service rendered in the Territorial Army for purpose of pension, the Respondents have stated that the ICAR has approved inclusion of that service for pension subject to the

condition that the service gratuity received by the applicant is refunded along with interest from the date of its receipt and the matter is under correspondence with the Defence authorities. Regarding deduction of Rs. 2000 from his gratuity they have stated that the amount withheld can be released as soon as a 'No Demand Certificate' is obtained by the applicant after retirement. The respondents have insisted that Annexure-III orders are applicable to Technical personnel also.

4. In the rejoinder the applicant has questioned the respondents' stand that since amendment of Annexure-III order is under consideration of the ICAR in so far as pension is concerned advance increments are being excluded from the pension so that the question of recovery does not arise in case the ICAR decides against the applicant. He has maintained that he has not to pay any dues or damage to the Government and also that he had not received any terminal gratuity for his military service and the question of refunding the same with 6% interest does not arise.

5. In the supplementary counter affidavit the respondents have further stated that the Tribunal's order in OA 384/89 does not touch upon the question of excluding advance increments for purpose of pension and other retirement benefits nor has the Tribunal set aside the impugned order dated 10.3.89. The question of amending this order is under consideration of the ICAR. Regarding counting his military service for pension, they have stated that the formalities regarding acceptance of proportionate pensionary liability by the Ministry of Defence remains to be completed and is under correspondence with that Ministry.

6. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The impugned order dated 10th March 1989 (Annexure-III) reads as follows:

> "I am to invite a reference to the Council's letter of even number dated the 8th/9th January, 1978, on the above subject and to say that it has been noticed that

> the words "On subsequent promotion of the Scientists" appearing the 6th line of the last para of the said letter are superfluous and, as such, may be deleted. The actual text of the said para is as under:
>
> > "In order to remove this anomaly, it has been decided in exercise of the powers embodied under Rule 18 of Agricultural Research Service Rules, that advance increment(s) granted to a scientist on the basis of Five Yearly Assessment will not be taken into account while fixing his pay on his promotion to the next higher grade as a result of subsequent assessment. Those increments will also not count for calculation of allowances which are based on pay."
>
> 2. As per the above instructions, the amount of advance increment(s) granted to Scientists/Technical personnel as a result of five yearly assessment is not to be treated as "PAY" for purpose of fixation of pay on promotion/ appointment to next higher grade/pose, drawal of allowances, pension and other retirement benefits etc."

This Tribunal in its judgement dated 8.1.90 in OA 384/89 (Annexure-V has set aside those portion of Annexure-III letter which direct that "advance increments will not count for calculation of allowances which are based on pay." In coming to the aforesaid finding in the judgement, the following observations were made:

> "I am unable to understand why the advance increment is not recognised as pay for any purpose. It could not be clarifiedby either counsel whether the advance increments were treated as pay for the purpose of recovery of house rent. The respondents have not been able to explain this discrimination in the treatment meted out to the advance increments. For, advance increment is only a substitute for merit promotion. After merit promotion, a person begins to draw a higher pay in the next grade and that pay is treated as pay for all purposes, inclusive of allowances based on pay. The advance increment is, as it were, in lieu of promotion as a second best reward. That being so, there is absolutely no reason why advanceincrement should be treated differently from pay on promotion. There is no rationale for discrimination in the treatment between similar kinds of financial benefits. The distinction is entirely unwarranted and is liable to be struck down." (emphasis added).

7. We are in respectful agreement with the learned Member of the Tribunal in his aforesaid findings and observtions. Increments axiomatically form an integral part of the pay and they cannot be distinguished from pay for certain purposes unless perhaps to remove some anomalies or discrepancies. The learned counsel for the respondents

has not been able to point out what anomaly or discrepancy will accrue if the increase in pay accruing from advance increments are counted for the purpose of pension and other retirement benefits. If the intention was not to grant these benefits resulting from advance increments, the ICAR could have granted honorarium instead of advance increments. There is nothing in the Fundamental Rules to exclude increments, or for that matter, advance increments, for the purposes of reckoning average pay for pension. Further, the text of the impugned order quoted above also is somewhat intriguing. In para 1 certain instructions have been quoted to say that increments will not count for allowances and based on these very instructions, conclusions have been drawn that these increments will not count for "pension and other retirement benefits, etc.". There is no logical nexus between the instructions and the final conclusions.

8. We are also impressed by the argument of the applicant that the instructions issued under Rule 18 of the Agricultural Research Service Rules cannot per se be made applicable to technical personnel who are governed by the Technical Service Rules as distinct from Agricultural Research Service Rules. It has, therefore, to be laid down that advance increments will have to count for pension and other retirement benefits as 'pay'.

9. As regards counting of the service rendered by the applicant in the Territorial Army for purposes of pension, the matter is under correspondence with the Ministry of Defence and has to be expedited. The deduction of Rs.2000 from the gratuity of the applicant should not be made if the applicant produce a 'No Demand Certificate'.

10. In the conspectus of facts and circumstances, we allow the application and set aside that portion of the impugned order dated 10.3.89 which excludes advance increments to technical personnel as a result of Five Yearly Assessment from being treated as 'pay' for the purpose of pension and other retirement benefits and direct that the applicant's pension should be calculated by including the

-7-

advance increments given to him as part of pay. We also direct the respondents to reckon the five years of military service between 1.4.56 and 31.3.61 rendered by the applicant as qualifying service for pensionary benefits in accordance with law and to release the full amount of DCRG, if the applicant produces the 'No Demand Certificate'. This will be without prejudice to making such deductions from the DCRG as are admissible in accordance with law. There will be no order as to costs.

28/8/90

(A.V.Haridasan)
Judicial Member

28.8.90

(S.P.Mukerji)
Vice Chairman