

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.116/97

Wednesday, this the 3rd day of November, 1999.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Vijaya Dileep,
Stenographer,
Central Plantation Crops Research Institute
Regional Station,
Kayamkulam.

- Applicant

By Advocate Mr PV Mohanan

Vs

1. The Secretary,
Indian Council of Agricultural Research,
Krishi Bhavan,
Dr.Rajendra Prasad Road,
New Delhi-110 001.

2. The Director,
Central Plantation Crops Research Institute,
Kudlu.P.O.
Kasaragod.

- Respondents

By Advocate Mr C.N.Radhakrishnan

The application having been heard on 29.10.99, the
Tribunal on 3.11.99 delivered the following:

O R D E R

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A-6, to fix her pay at Rs.1500/-
in the scale of pay of Rs.1200-2040 with effect from 21.12.89 with
all consequential benefits and to declare that fixation of pay and
consequential recovery proceedings pursuant to A-1, A-3 and A-6
as illegal.

2. The applicant was appointed as Junior Stenographer on 7.9.81
at Central Sheep and Wool Research Institute, Jaipur, an Institute

of the Indian Council of Agricultural Research(ICAR for short). She was promoted to the post of Stenographer in the pay scale of Rs.1400-2600 with effect from 24.8.87 with next increment on 1.8.88. Applicant sought for inter-Institutional transfer to Kerala in Central Plantation Crops Research Institute(CPCRI for short). She was transferred to CPCRI as Junior Stenographer in the scale of Rs.1200-2040, since no substantive post of Stenographer in the scale of Rs.1400-2600 was available in the CPCRI. On joining at CPCRI, her pay was fixed at Rs.1500/- in the scale of pay of Rs.1200-2040 with effect from 29.1.89. At the time of her transfer she was drawing basic pay of Rs.1480/-. The 2nd respondent as per order dated 13.11.95 reviewed the pay fixation alleged to be on the basis of an Audit Report and pay of the applicant was refixed at Rs.1380/- with effect from 29.12.89. The excess amount paid to her was also sought to be recovered. This is as per A-1. Aggrieved by A-1, she submitted a representation to the 2nd respondent as per A-2. A-2 representation was rejected as per A-3. Subsequently, another representation was submitted before the 1st respondent to cancel A-1 and A-3 and to refix her pay protecting the last pay drawn in the category of Stenographer in the CPCRI invoking F.R.22. That representation was not attended to. The 2nd respondent initiated steps for recovering from the salary of the applicant to the tune of Rs.16,571/- being the excess pay and allowances drawn from 21.12.89 to 31.12.95. Thereafter the applicant approached this Bench of the Tribunal by filing O.A.1027/96. That was disposed of directing the 1st respondent to consider the representation dated 21.6.96 and the additional representation and pass final orders. The applicant thereafter submitted A-5 representation. As per A-6 that representation was rejected. As per A-6, steps are being taken to recover more than Rs.20,000/- being excess pay and allowances drawn from 29.12.89 onwards.

3. Respondents resist the O.A. contending that the applicant accepted the post of Junior Stenographer in CPCRI undertaking to abide by the terms and conditions put forward. Her pay in the lower post of Junior Stenographer carrying less scale of pay of Rs.1200-2040 was fixed at Rs.1500/- under F.R.22(I)(a)(2) with the concurrence of the then Senior Finance & Accounts Officer of the Institute. The Senior Finance & Account Officer of the Institute reviewed the case and suggested to refix the pay of the applicant at Rs.1380/- with effect from 29.12.89 under F.R.27 and accordingly the competent authority has passed necessary orders on fixation of the pay and to recover the excess payment made to her due to wrong fixation of pay in 1989. F.R.22(I)(a)(2) is not applicable in the applicant's case involving appointment to the post with duties and responsibilities of lesser importance. Transfer of the applicant was not covered under F.R.15(a). F.R.27 is the rule applicable in her case. Her substantive pay in the regular post of Stenographer applies only if she had continued at Central Sheep & Wool Research Institute where the sanctioned post exists. Since her posting in CPCRI was only as Junior Stenographer, her substantive pay in the regular cadre cannot be protected.

4. As per A-1 dated 13.11.95, on review of the pay fixation of the applicant on her reversion to the post of Junior Stenographer at her own request with effect from 29.12.89 was fixed at Rs.1380/-. It also says that excess payment made to her shall be recovered as per rules.

5. As per A-3, the applicant's request has been rejected. Her further representation was also rejected as per A-6.

6. According to the applicant, she is governed by F.R.22(I)(a)(2) and F.R.22(I)(a)(3).

7. F.R.22(I)(a)(3) says that 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 old post held regularly, he shall draw that maximum pay as his initial pay. In order to attract F.R.22(I)(a)(3), the appointment to the new post on request should be under Sub Rule(a) of Rule 15. Rule 15(a) says that the President may transfer a Government servant from one post to another provided that except(1) on account of inefficiency or misbehaviour, or (2) on his written request, a Government servant shall not be transferred to, or except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien.

8. In order to attract F.R.15(a) the transfer from one post to another should be by the President of India. If it can also be done by the competent authority, we shall see what is the position.

9. The file relating to the inter-Institutional transfer of the applicant was made available for our perusal by the learned counsel for the respondents. From the same it is seen that the inter-Institutional transfer of the applicant was not made by the President or by the ICAR, the competent authority. That being the position, F.R.15(a) is not attracted here.

10. Then the question is whether F.R.22(I)(a)(2) is applicable. F.R.22(I)(a)(2) says that when the appointment to the new post does not involve such assumptions of duties and responsibilities of greater importance, he shall draw his 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 stage next above his pay in respect of the old post held by him

on regular basis. F.R.22(I)(a)(2) applies only when an appointment to the new post is made does not involve assumption of duties and responsibilities of greater importance. Here it is the admitted case that the applicant sought inter-Institutional transfer from Central Sheep & Wool Research Institute, Jaipur while holding the substantive post of Stenographer in the scale of pay of Rs.1400-2600 to CPCRI and she was appointed as Junior Stenographer in the scale of pay of Rs.1200-2040 in CPCRI. She has accepted the transfer undertaking the conditions including that her pay will be fixed as per rules. Here it is the admitted case that the applicant got inter-Institutional transfer from a higher post to a lower post. When it is a posting from a higher post to a lower post, it can only be said that her appointment was to a post involving duties and responsibilities of lesser importance. In that case it cannot be said that F.R.22(I)(a)(2) is attracted.

11. The pay of the applicant has been fixed by the respondents under F.R.27 by giving weightage for the completed years of service in the higher grade for the purpose of advance increment in the lower grade. The stand of the applicant that F.R.22(I)(a)(2) and F.R.22(I)(a)(3) are applicable in her case cannot be accepted and the stand of the respondents that the said two provisions are not applicable in her case and F.R.27 applies cannot be faulted with.

12. As per A-1 there is an order for recovering the excess payment made to the applicant. That has been confirmed as per A-3 and A-6. According to the respondents, due to erroneous fixation of the pay of the applicant, excess payment was made and that is ordered to be recovered. There is no indictment against the applicant. The erroneous payment was only due to error committed by the respondents. In Shyam Babu Verma and others Vs Union of India and others, (1994) 2 SCC, 521 it has been held

that:

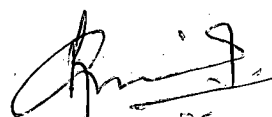
"11. Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

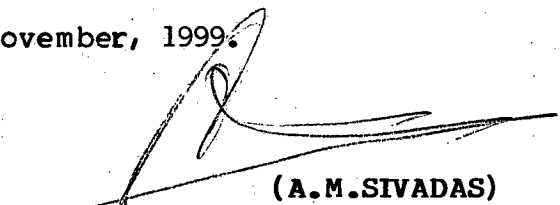
13. In the light of the said ruling respondents are to be directed that no steps should be taken to recover or adjust any excess amount paid to the applicant due to the fault of the respondents.

14. Accordingly, we do not find any ground to quash A-6 except to the extent of recovery of excess payment ordered and to grant the consequential reliefs claimed. We direct the respondents that no steps should be taken to recover or adjust any excess amount paid to the applicant due to the fault of the respondents.

15. The O.A. is disposed of as above. No costs.

Dated, this the 3rd of November, 1999.


(G. RAMAKRISHNAN)
ADMINISTRATIVE MEMBER


(A.M. SIVADAS)
JUDICIAL MEMBER

trs/21199

List of Annexures referred to in the Order:

1. A-1: True copy of Office Order F.No.6(1293)/94-Estt. dated 13.11.95 issued by Assistant Administrative Officer, Central Plantation Research Institute, Kasaragod.
2. A-2: True copy of the objection by the applicant to the 2nd respondent dated 6.12.95.
3. A-3: True copy of proceedings No.F.6(1293)/94-Estt. dated 6.4.96 issued by 2nd respondent.
4. A-5: True copy of the representation by the applicant to the 1st respondent dated 3.10.96.
5. A-6: True copy of proceedings No.F.No.6-20/97 IA V dated 9.1.97 issued by the Under Secretary, ICAR, New Delhi.