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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.212/2007
Dated , the 2^{1st} day September, 2007

CORAM :

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

K.P. Syed Mohammed
Bosun certified, Fishery Survey of India,
Kochi-5. Residing at Kuriyapapada House,
Agathy Island,
Union Territory of Lakshadweep. ... Applicant

By Advocate Mr.T.A.Rajan

- V/s.
- 1 Union of India represented by
Secretary, Ministry of Agriculture
Department. of Animal Husbandry,
Dairying and Fisheries, New Delhi
 - 2 The Director
Integrated Fisheries Project, Kochi-16
 - 3 The Director General,
Fishery Survey of India,
Botawala Chambers, Sir P.M.Road,
Mumbai-1/
 - 4 The Zonal Director
Fishery Survey of India,
Kochi-5 ... Respondents

By Advocate Mr.Sunil Jose ACGSC

This application having been finally heard on 13/9/2007, the Tribunal on
21.9.07 delivered the following :

(ORDER)

Hon'ble Mr. George Paracken, Judicial Member

The applicant is aggrieved by the Annexure A-5 Office Order
dated 1.2.2007 of the 4th respondent, namely, the Zonal Manager, Fishery

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Survey of India (FSI for short) Kochi ordering recovery of Deputation (duty) allowance paid to him during the period from 17/5/2001 to 30/9/2005.

2 The brief facts of the case are that the second respondent namely, The Director, Integrated Fisheries Project, Kochi vide Annexure A-1 Office Order No.57/2001 dated 2/5/2001 transferred the applicant and other 18 similarly placed persons working in the Integrated Fisheries Project (IFP for short) to the Fishery Survey of India on deputation basis and informed them that their service conditions will be governed by Rules and Instructions issued by the Government from time to time in that regard. Accordingly, the applicant joined the FSI on 17/5/2001. Though the normal period of deputation was three years, it was extended by another year and he continued to be retained in FSI against his interest without even considering his representation for repatriation to IFP dated 9/5/2005. In the meanwhile, the respondent no.1, Ministry of Agriculture, Department of Animal Husbandry, Dairying and Fisheries vide Annexure A-3 order dated 19/5/2005 revised the mandate of the IFP and decided to transfer some of the sections of the IFP to Central Institute of Fisheries Nautical & Engineering Training and FSI. Meanwhile, the respondent no.1, vide separate Annexure A-4 order dated 19/5/2005, identified and transferred many of the posts including the posts held by the existing incumbents to FSI from IFP. Accordingly, the applicant also stood relieved from IFP on 30/9/2005 with the direction to report to the FSI, Kochi immediately. The service conditions and seniority of the employees so transferred are now to be governed by rules and instructions issued by Government of India

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from time to time. However, the applicant had challenged the aforesaid order vide OA-792/2005, which has no bearing on the issues raised in the present OA.

3 The fourth respondent, consequent upon certain Audit report has now issued the impugned Annexure A-5 order dated 1.2.2007 for recovery of the Deputation (duty) allowance already paid to the applicant for the period from 17/5/2001 to 30/9/2005. According to the applicant, there was nothing wrong in granting him the deputation allowance. In his parent cadre, he was drawing Rs.7700/- in the scale of pay of Rs.6500-200-10500 prior to his deputation and on joining the FSI he was entitled to get the basic pay + 5% deputation (duty) allowance. He has also submitted, even if granting of the deputation (duty) allowance to him was a mistake, it cannot be recovered from him later in view of the dictum of the Apex Court in the case of Sahib Ram V/s. State of Haryana 1994(5)SLR 753 and Shyam Babu Verma V/s. Union of India & Ors 1994(2)SCC-21.

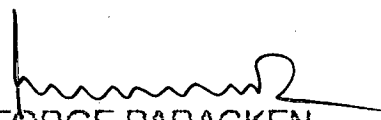
4 In the reply statement, respondents have submitted that the induction of staff from IFP to FSI was not at par with the normal deputation terms as the shift over from the IFP to the FSI was not prescribed in the Recruitment Rules. The applicant was holding the post of Boson (certified) in the scale of Rs.5000-150-8000 and he was given financial upgradation to the scale of Rs.6500-200-10500 under the ACP Scheme. An employee drawing higher pay scale under the ACP Scheme could not be posted against an ex cadre post having the upgraded payscale with deputation allowance because when the ACP pay scale was granted, he

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was not practically performing the duties attached to such higher pay scale. On the same analogy, deputationists are allowed to opt to draw the pay in the higher pay scale under the ACP Scheme without deputation allowance during the period of deputation, if it is more beneficial than the normal entitlements under the existing general orders regarding pay on appointment on deputation basis. However, the applicant who was transferred to FSI was drawing the pay in the upgraded scale of Rs.6500-200-10500 granted to him under ACP Scheme and, therefore, he was not eligible for any deputation allowance.

5 I have heard Advocate Mr.T.A.Rajan and Advocate Ms.Viji for Mr.Sunil Jose on behalf of the applicant and the respondents respectively. I am not going into the merits of the case regarding eligibility or entitlement of the Applicant to get deputation (duty) allowance on the ACP scale of Rs.6500-200-10500. The only question to be considered is whether the Respondents are justified in ordering the recovery of alleged excess payment already made to the Applicant. This question was, in fact, considered by this Tribunal in a recent case in OA 249/04 decided on 4/8/2006 and based on the judgment of Apex Court in Shyam Babu Verma V/s. Union of India & Ors (supra), the impugned orders directing recovery of over payment made to the applicants therein were quashed as the over payments were made to them by the respondents on their own and not because of any mis-representations by the applicants. The order issued by the respondents transferring the applicant in this OA from IFP to FSI clearly shows that it was done on deputation basis. It was the clear

understanding of not only the applicant but also of the respondents that the applicant was on deputation to the FSI and he was entitled for the payment of deputation allowance under the normal rules. It was only much later that the respondents have realised that the transfer of the applicant to FSI was not on usual deputation basis and he was not entitled to any deputation allowance. When there was no mis-representation on the part of the applicant and the excess amount according to the Respondents was received on the assumption that it was genuinely admissible to him, applicant cannot be held responsible for the same. The respondents have paid the deputation (duty) allowance to the applicant under the genuine understanding that the same was admissible to him and the Applicant had been receiving it in good faith from month to month. In my considered opinion, the principles laid down by the Apex Court in the cases of Sahib Ram (supra) and Shyam Babu Verma (supra) shall clearly apply in this case also. I, therefore, allow this OA. The impugned Annexure A-5 order. Is quashed and set aside Accordingly, the respondents shall not recover the Deputation (duty) allowance already paid to the applicant from 17/5/2001 to 30/9/2005. There shall be no order as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER

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