

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 22/04

WEDNESDAY, THIS THE 22nd DAY OF FEBRUARY, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Dr. K.G. Pillai S/o P. Kuttappan Pillai
TC 27/1228, Uppalam Road
Thiruvananthapuram-695001
(ex- Principal Scientist and Project Director
Directorate of Rice Research
Hyderabad-500030

Applicant

By Advocate Mr. PV Mohanan

Vs.

- 1 The Indian Council of Agricultural Research represented by its Secretary
Indian Council of Agricultural Research
Krishi Bhavan
New Delhi-1
- 2 The Project Director (Rice)
Directorate of Rice Research
(Indian Council of Agricultural Research)
Rajendra Nagar
Hyderabad-30
- 3 Finance and Accounts Officer
Central Research Institute for
Dry Land Agriculture
Santhosh Nagar
Hyderabad-59.

Respondents

By Advocate Mr. P. Jacob Varghese

O R D E R

HON'BLE MRS. SATHI NAIR VICE CHAIRMAN

This application is filed praying for the following reliefs:

(i) To call for the records leading to Annexure A-11 and set aside the same in so far as it fixes reduced pensionary benefits.

(ii) To direct the 1st respondent to refix the pay of the applicant in the time scale of pay of 16400-22400 with effect from 1.1.1996 as recommended by Vth Central

Pay Commission approved by Government of India under CCS (RP) Rules 1997 and adopted by ICAR

(iii) To direct the respondents to fix the pay of the applicant with effect from 31.12.2000 in the scale of Rs. 16400-22400 for the purposes of fixation of pension and other pensionary benefits with effect from 1.1.2001.

(iv) To direct the respondents to refix the pensionary benefits of the applicant w.e.f. 1.1.2001 based on the revised scale of pay that may be fixed and disburse the arrears of pensionary benefits with 18% interest from 1.1.2001 till the date of payment.

(v) Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice.

2 The applicant while he was working as Project Director at Directorate of Rice Research, (ICAR) Hyderabad was approved for foreign service on deputation to the FAO as Chief Technical Adviser, Dhaka, Bangladesh w.e.f. 20.10.1995 for two years subject to certain terms and conditions as in Annexure A1. One of the conditions of the deputation was that the entire period of deputation will be treated as Extra Ordinary Leave and will be counted for increment in the time scale of the post held by him before his foreign service as also for promotion and pension. The period of deputation was extended upto 31.12.2000 by proceedings dated 31.12.1997 Annexure A-3A. On completion of five years of service on deputation, ICAR directed the applicant either to return to ICAR or to seek voluntary retirement. Therefore the applicant states that he was compelled to opt for voluntary retirement w.e.f. 1.1.2001 which was allowed subject to the condition that no pensionary benefit for the period of his deputation w.e.f. 20.11.1995 to 1.1.2001 will be made to him by the ICAR (Annexure A-4). In the meanwhile recommendations of the Fifth Central Pay Commission revising the scale of pay of Project Officer have been approved w.e.f. 1.1.1996. accordingly, the applicant was entitled to have his basic pay fixed in the revised scale to 16400-22400 w.e.f. 1.1.1996. The applicant had requested for fixation of pay notionally based on the revised Pay Scale and

to have his pension fixed w.e.f. 1.1.2001. He had submitted several representations thereafter and by proceedings dated 12.9.2002 he was intimated that pension papers have already been forwarded to the Central Research Institute for Dry Land Agriculture and by proceedings dated 26.2.2003 the pension payment order fixing a monthly pension of Rs. 3250/- and the DCRG amount of Rs. 1,53,368/- was issued (Annexure A-8). It seems that the retiral benefits have been fixed based on the last pay of Rs. 4500/- in the pre-revised scale of pay instead if the pay of the applicant would have been fixed in the revised scale of Rs. 16400-22400 as recommended by the Fifth CPC, he would have been granted terminal benefits at an enhanced rate. The applicant submitted representations pointing out these facts. The applicant was intimated that his request for revision of pension will be examined in consultation with the FAO, Central Research Institute for Dry land Agriculture and the Central Research Institute. Again the applicant submitted detailed representation to the Secretary, ICAR by Annexure A9 and A-10 and the applicant was informed that his representations have been forwarded to the ICAR with necessary comments and that the proposal for revision of pension has been sent to the FAO. The ICAR has not sent any reply to the applicant. However, the Project Director by Annexure A-11 order rejected his claim for fixation of pay and consequential retiral benefits holding that he is not eligible for fixation of pay as per note 3 of CCS (Revised) Pay Rules, 1997.

3 The case of the applicant is that his pension should have been fixed in the revised scale which came into effect on 1.1.1996 on which date the applicant continued to be in the Council's service on foreign deputation. He voluntarily retired on 1.1.2001 and he is a confirmed member of the ARS service having lien and he retained his lien till he voluntarily retired on

1.1.2001. The only condition stipulated in the voluntary retirement granted by the ICAR was that no pensionary benefits will be paid for the period of deputation between 20.11.1995 to 1.1.2001. The applicant is only claiming his entitlement to get fixation of pay in the revised pay scale. Annexure A-11 order is without any authority of law and it is a nullity.

4 A reply statement has been filed on behalf of the respondents. It is admitted that the applicant has completed 33 years 11 months and 5 days qualifying service before proceeding on deputation abroad and at the time when he proceeded to FAO he was drawing a basic pay of Rs. 6500/- in the pay scale of Rs. 4500-7300. The terms and conditions of deputation on which the extension was granted upto 31.12.2000 stipulates that the entire period of deputation will not count for pension under ICAR and the Extra Ordinary Leave granted does not count for increments. It is denied that the applicant was compelled to opt for voluntary retirement. In the D.O. Letter dated 1.8.1997 to the then Project Director the applicant stated that he was willing to opt for voluntary retirement w.e.f. 1.11.1997 in case there are any problems for extending the present phase of his foreign service deputation (Annexure R-3). This letter as well as his letter to the Director General (Annexure R-4) amply prove that the applicant was not at all willing to serve ICAR but was interested to continue on foreign service. According to note (3) of CCS(Revised Pay) Rules if the Government servant is on leave on the 1st day of January, 1996 he shall become entitled to pay in the revised scale of pay from the date he joins duty. The applicant has not rejoined duty even for a single day. The second respondent namely the Project Director is fully competent to fix the pay of the Principal Scientists. He has sent a proposal for revision of his pension to the CRIDA, Hyderabad as no relaxation is possible at his level and the period of deputation was treated as Extra Ordinary Leave the provisions of leave rules with regard to fixation of pay and increment of pay will apply. He has also not

met the requirement of Rule 48 of the CCS Pension Rules of working for one year before seeking retirement. Hence all the grounds raised in the OA are unsustainable and the OA is liable to be dismissed.

5 In the rejoinder the applicant submitted that he retired while on deputation and Note (3) of Revised Pension Rules will not apply in his case, thereby the applicant is deemed to be in the service of the ICAR as on 1.1.1996 and he retained his lien and has validly retired under Rule 48 of the CCS Pension Rules.

6 We have heard Shri P.V.Mohanan, the learned counsel for the applicant and Shri P.Jacob Varghese, the learned counsel for the respondents. They have also filed detailed argument notes. The learned counsel for the applicant discussed various provisions of law and submitted that the case of the applicant has been rejected by the respondents under Note (3) of Rule 7 of the Revised Pay Rules. He took us through the relevant provisions of the FR dealing with emoluments on foreign service and also Rule 33 of the CCS Pension Rules. According to him Note (3) of Rule 7 of CCS Revised Pay Rules is not applicable in the instant case as the applicant was on foreign service on deputation as on 1.1.1996. According to him Rule 33 and Note 3 of Rule 34 of the CCS Pension Rules have to be invoked in the case of the applicant, according to which, for the purpose of calculation of retirement benefits, the pay he would have been drawing had he not been absent from duty on the post he was holding before he proceeded on such leave, has to be taken into account. According to the respondents, Rule-7 of Rule 33 is not applicable as the applicant was on Extra Ordinary Leave and Rule 48 of the Pension Rules has been invoked in his case and hence his voluntary retirement can be treated as dismissal and not retirement. The decision of the Apex Court in Ali M.K. Vs. State of Kerala (2003 AIR SCW 2931) cited by the respondents is also not relevant in the present context as his deputation was on public interest. The judgment of the Apex

Court in State of Punjab and Others Vs. Inder Sing and others (1997(8) /SCC 372) will have to be applied wherein it was held that a person on deputation when on repatriation he will have to join the parent department in the position which he was holding, he cannot claim any promotion unless it is clearly contemplated while availing deputation.

7 We have gone through the provisions of the Rules referred to by the counsel appearing on both sides. The position regarding the service particulars of the applicant and the conditions of his deputation are admitted by both sides. The question for consideration here is only which rule will govern the request of the applicant for revision of pay scale and grant of consequential pensionary benefits. It is admitted that as on 1.1.1996, the applicant was on foreign deputation and he had spent five years on deputation from 20.11.95 to 31.12.2000. The deputation was granted in two spells on the conditions of deputation stipulated in and agreed to between the applicant and the ICAR which was initially for a period of two years and later modified by granting further extension in December, 1997. The conditions are the following:

The conditions in the initial sanction of deputation:

1. Period of deputation: The foreign service will commence from the date on which the officer had over charge of his office and will be terminated on the date on which the officer taken over charge of his office in ICAR. The deputation period will be treated as Extra Ordinary Leave (EOL) and should not exceed the period specified in the sanction order, plus the joining time if any as may be admissible under the rule of the foreign employer.

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3 The entire period of his deputation will be treated as EOL and will count for increment in the scale of the post held by him before his proceedings on foreign service and also for promotion and pension.

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9 He will not join any pension scheme of the FAO. He shall pay pension contribution to ICAR in respect of his service at the rates in force from time to time in accordance with the orders issued under Fundamental Rules 116.

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Conditions in the extended term of deputation

(1) The entire period of deputation with effect from 20.11.1995 to 31.12.2000 will not be counted for pension under ICAR

(2) Under FR 26(b) the EOL granted otherwise than on medical grounds does not count for increment and as such the entire period of deputation will not count for increments under the ICAR

(3) For the period of deputation Dr. Pillai will draw pensionary benefits from the FAO and pension contribution paid, if any, by him for the period of deputation will be refunded to him.

8 The change in the terms are significant. The fact that he was reluctant to return to ICAR on 20.10.97 after the initial period of two years appears to have been taken into consideration and the extension terms were agreed to by him knowing fully well the terms and consequences. By the revised terms of the agreement it was made clear, that the period of deputation will not count for pension and the period will be treated as Extra Ordinary Leave and will not count for increments under the ICAR or pension whereas in the earlier order though the period was treated as Extra Ordinary Leave, it will count for increment in the scale of the post held by him before proceeding on foreign service and also for promotion and pension under the ICAR. Therefore there is no question for counting the period from 20.11.1995 to 31.12.2000 for pensionary benefits - he is not eligible for pension or increment from the ICAR during this period.

9 It has to be noted here that the prayers of the applicant in the OA is not for counting his period of deputation for pension. It is admitted by the respondents also that he has completed the qualifying period for pension

even before proceeding on deputation. The short question is whether the applicant is eligible for revision of his pay as per the Vth CPC Recommendations w.e.f. 1.1.1996 during the period of his deputation. The contention of the respondents is that Rule 7 and Note 3 of the CCS Revised Pay Rules stipulates that if a Government servant is on leave on 1.1.1996 he becomes entitled to the revised pay scales only from the date he joins duty and the applicant contends that this Note is not applicable to him as he was on foreign service on deputation. Rule 7 dealing with fixation of initial pay on revision of pay reads as follows:

7. Fixation of initial pay in the revised scale.

(1) The initial pay of a Government servant who elects, or is deemed to have elected under sub rule (3) of Rule 6 to be governed by the revised scale on and from the 1st day of January, 1996, shall unless in any case, the President by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if it had not been suspended, and in respect of his pay in the officiating post held by him in the following manner namely:-

(A) in the case of all employees-

(i) an amount of representing 40 per cent of the basic pay in the existing scale shall be added to the existing emoluments of the employees

(ii) after the existing emoluments have been so increased, the pay shall thereafter be fixed in the revised scale at the stage next above the amount thus computed.

.....

Note-3: Where a Government servant is on leave on the 1st day of January, 1996 he shall become entitled to pay in the revised scale of pay from the date he joins duty. In case of Government servant under suspension, he shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised scale of pay will be subject to final order on the pending disciplinary proceedings.

10 This rule only deals with the manner in which the pay has to be fixed if the Government servant who elects or is deemed to have elected under sub rule (3) of Rule 6 to be governed by the Revised Scales on and from 1.1.1996. Rule 6 deals with the exercise of option. Rule 6 reads as under:



(6)Exercise of option

(1) The option under the proviso to Rule 5 shall be exercised in writing in the form appended to the Second Schedule so as to reach the authority mentioned in sub rule (2) within three months of the date of publication of these rules or where an existing scale has been revised by any order made subsequent to that date within three months of the date of such orders

Provided that

(i) in the case of a Government who is, on the date of such publication or, as the case may be, date of such order, out of India on leave or deputation or foreign service or active service, the said option shall be exercised in writing so as to reach the said authority within three months of the date of his taking charge of his post in India and

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(2) The option shall be intimated by the Government servant to the Head of his office.

(3) If the intimation regarding option is not received within the time mentioned in sub rule (1), the Government servant shall be deemed to have elected to be governed by the revised scale of pay with effect on and from the 1st day of January, 1996.

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11 Proviso (i) to Rule 6 deals with the case of a Government servant who is on the date of such order is out of India on leave or deputation or on foreign service, etc. and the said option shall be exercised in writing so as to reach the said authority within three months of the date of his taking charge of his post in India and if the intimation regarding option is not received within the time the Government servant shall be deemed to have elected to be governed by the revised scale of pay w.e.f. the 1st day of January, 1996. A combined reading of Rule 6 and 7 will convey the impression that cases referred to under Note (3) of Rule 7 do not cover those on deputation or foreign service. Since the applicant herein has not indicated whether he has given his option it has to be deemed that he has given his option for revision of the pay scale during the period of his deputation. On completion of the foreign service on deputation he will become entitled to pay in the revised pay scale since the applicant's lien was not terminated during the period of deputation and his request for

voluntary retirement was considered and accepted by the ICAR. The ~~real~~ contention now taken by the respondents that Note 2 under Rule 34 and Note 3 under Rule 33 of the CCS Pension Rules have to be applied to the case of the applicant, should have been done at the time of dealing with his request for voluntary retirement and the respondents would have been well within the rules to reject his case for voluntary retirement under Rule 48 as he had not complied with the terms of the Rule for resuming the post. The respondents have not taken any such steps at the time of consideration of grant of his request and granted him voluntary retirement from 1.1.2001. They have granted the request of the applicant for voluntary retirement stating that the applicant's lien was continuing in the Department. Therefore the respondents are now estopped from contending that his voluntary retirement should be deemed to be dismissal under Rule 48 of the CCS Pension Rule. Note 2 of Rule 34 and Note 3 of Rule 33 deals with absence on Extra Ordinary Leave or due to suspension and are not directly related to the applicant in whose case foreign service on deputation was treated as Extra Ordinary Leave with only two conditions that it will not count for pension in the ICAR and that it will not count for increments. The prayer of the applicant in this OA is for neither of these two benefits and therefore his case has to be examined strictly with reference to the terms of his deputation. We do not find any express condition in his terms of deputation that he shall not be entitled to revision of his pay scales as and when such revision take place in accordance with Pay Commission awards made from time to time.

12 The applicant strongly relies on the OM dated 30.12.83 issued under Rule 34 of the CCS Pension Rules which reads as thus:

■Computation of average emoluments for the period of leave prior to retirement without return to parent department while on reversion from deputation- The procedure for determining the emoluments and average emoluments for the purpose of pension under the Central Civil Services (Pension) Rules, 1972, has been laid down under Rule 33 and 34. The position in respect of the Government servant who is on deputation to the Armed Forces or foreign service or on deputation from one Department to another in this regard has also been clarified vide Notes 6 and 7 below Rule 33 ibid. There is however, no provision as to what should be the pay for computing the average emoluments in respect of deputationist from one department to another who while under order of reversion to parent department (where the pay of the post might be different) gives notice to retire voluntarily and also applies for leave co-terminus with the period of notice. It has been decided that in such cases, the emoluments for the leave period for the purpose of calculation or retirement benefits should be taken as what they would have been, had he not been absent from duty from the post he was holding under the borrowing department before he proceeded on such leave.■

13 He also relies on Note 7 of Rule 33 which reads as follows:

■Note-7: Pay drawn by a Government servant while on foreign service shall not be treated as emoluments, but the pay which he would have drawn under the Government had he not been on foreign service shall alone be treated as emoluments.■

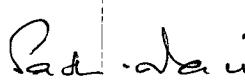
14 On the combined reading of both the above mentioned Rules and the Government of India decision in OM dated 30.12.1983, we find support for the contention of the applicant that the emoluments for the purpose of calculation of retirement benefits should be taken as what he would have drawn had he not been absent from duties from the post he was holding under the Department before he proceeded on such leave. The above OM is seen to be directly relevant to the ^{factual} technical situation in which the applicant is ^{placed} freed. The scale of pay of the post which he was holding as Principal Scientist (Project Director) with the basic pay of Rs. 6500 as on 1.1.95 stood revised to the scale of Rs. 16400-22400 by which time the deputation of the applicant was extended on the revised terms in

December, 1997. Therefore at the time he signed the extension order itself, the pay of the post had been revised as per the Vth Pay Commission. The applicant, as mentioned earlier has completed the minimum period of service for pension even before going on foreign deputation and was thus entitled for pension. Therefore the claim of the applicant that he is entitled to notional fixation of his pay in the revised scale of pay of Rs. 16400-22400 and to have pension re-fixed is found to be well in accordance with Note 7 under Rule 33 and the OM referred above. However, it has to be made clear that he is not entitled to any increment in that scale for the period of deputation upto 1.1.2001 and that there should be no pension liability on the ICAR for the period of deputation.

15 It is admitted by the respondents that the request of the applicant is still pending with the competent authority in the ICAR. In that view of the matter, we direct the respondents to refix the pensionary benefits of the applicant based on the revised scale of pay in accordance with the above observations and disburse the arrears of pensionary benefits to the applicant with effect from 1.1.2001 within a period of three months from the date of receipt of a copy of this order. The OA is allowed as above. No costs.

Dated 22.2.06


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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