

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 337/06

Wednesday this the 11th day of July, 2007

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Dr. E. Vivekanandan, aged 56 years,
S/o A. Elaya Perumal, Principal
Scientist and Head, Demersal
Fisheries Division, Central Marine Fisheries
Research Institute, Cochin residing at
No. 65/1120, Mother Teresa Road,
Pachalam, Cochin. 16.

...Applicant

(By Advocate Mr. T.C. Govindaswamy)

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- 1 Union of India, represented by
Secretary to the Government of
India, Ministry of Agriculture
Department of Agricultural Research and
Education, Krishi Bhavan, New Delhi.
- 2 Indian Council of Agricultural Research
(ICAR), Krishi Bhavan,
New Delhi-110 001 through its
Secretary.
- 3 The Director,
Central Marine Fisheries Research Institute,
Post Box No. 1603, North Post Office,
Cochin. 18.
- 4 Dr. Mohan Joseph Modayil
The Director, Central Marine Fisheries
Research Institute, Post Box No. 1603, North
Post Office, Cochin. 18.Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC for R.1
Advocate Mr. TP Sajan for R.2&3)

This application having been heard finally on 7.6.2007, the Tribunal on 11.7.2007 delivered the following:

ORDER

The applicant is aggrieved by the Annexure A1 Memorandum dated 10/12.5.2006 issued to him by the Respondent No.3 who has also been impleaded by name as Respondent No.4. The main relief sought for by the applicant is to direct the respondents to grant all consequential benefits, as if Annexure A1 Memorandum has not been issued.

2 The chronological events in the matter start with the Annexure R.5 letter dated 5.10.2002 from Dr. Abdulaziz M AL-Suwailem, Manager, Marine Studies Section/CEW-RI of Ministry of Higher Education, King Fahd University of Petroleum & Minerals (KFUPM for short), Research Institute, Dehran, Saudi Arabia to Director General, ICAR, New Delhi. According to the said letter the KFUPM was conducting an oceanographic research programme which included study of Saudi Arabian Fisheries Resources of the Arabian Gulf. They have requested to have the expertise of the applicant who was a Principal Scientist of CMFRI whose name has been known through his international publications. The University requested the Director General to depute the applicant to take up the programme with the University. Dr. Abdulaziz M AL-Suwailem has also written the Annexure A2 letter dated 17.10.2002 to the applicant directly requesting him to join the University at the earliest. The applicant vide Annexure A3 letter dated 18.10.2002 addressed to the Director, CMFRI, Cochin requested to depute him to KFUPM to take up the assignment as requested by the University authorities. The respondent No.3 (Director CMFRI, Kochi) took up the matter with the Respondent

No1. (Ministry of Agriculture, Department of Agricultural Research and Education, New Delhi) seeking the approval of the competent authority to send the applicant on deputation to KFUPM. Vide Annexure A4 letter dated 26.11.2002, the Respondent No.1 conveyed the approval of the competent authority for the deputation of the applicant "subject to the condition that he will be granted Extra Ordinary Leave (EOL) during the period of assignment and the Scientist has to pay pension contribution to the Council during this period of assignment". Respondent No.3 vide Annexure A5 letter dated 28.11.2002 conveyed the said approval of the competent authority to the Officer in Charge, Madras Research Center of CMFRI, Chennai where the applicant was working. According to the said letter the deputation of the applicant was subject to the following conditions;

- "(i) that Dr.Vivekanandan will be granted Extra Ordinary Leave during the period of deputation. He may be asked to submit necessary leave application accordingly.
- (ii) Dr.E.Vivekanandan,Principal Scientist has to pay pension contribution to the Council during the period of assignment.
- (iii) He will submit seven copies of requisite deputation report to this office for onward transmission of six copies to the ADG(TC), ICAR, Krishi Bhavan Bhavan, New Delhi through this office within one month of his return from abroad.
- (iv) There shall be no financial liability on the part of ICAR/DARE/CMFRI."

3 Vide Annexure.A6 letter dated 17.12.2002, the KFUPM confirmed the offer to the applicant offering monthly salary of SR 12000 (12000 Saudi Riyal) for a period of 12 months and other facilities like accommodation, health insurance and air travel expenses. Finally, the Respondent No.3/4 relieved the applicant of his duties in Madras Research

Centre of the CMFRI Chennai vide Annexure.A7 Office Order dated 10.1.2003 stating "the DARE, New Delhi vide letter No.7(49)2002-IC-I dated 26th November, 2002 have conveyed the approval of the Competent Authority to the deputation of Dr.E.Vivekanandan, Principal Scientist, Madras Research Center of CMFRI, Chennai to Saudi Arabia to take up the assignment with KFUPM, Dhahran, Saudi Arabia for one year from 16.1.2003 to 15.1.2004 subject to no financial liability on the part of the ICAR/DARE/CMFRI and also subject to the regulation of the remuneration received by him from the foreign agency as per the recommendation of the Johal Committee Report." It also contained the following other conditions

- "i) The deputation will commence from the date of his departure from India (ie., 16.01.2003) and would end on the date of his arrival in India on 15.01.2004.
- ii) The entire period of deputation would count for increment in the time scale of the post held by him before his deputation abroad and also for pension and promotion.
- iii) The post held by him will not be filled during the period of his deputation and arrangements would be made to carry out the current duties of the post without any extra expenditure.
- iv) He should not deviate from the prescribed schedule of activities envisaged under the present approved programme without the prior concurrence of the competent authority.
- v) All expenses on his international travel to and fro and per diem expenses during the period of deputation will be borne by Saudi Arabia. No expenditure on this account will be borne by the ICAR/DARE/Institute.
- vi) The entire internal travel cost and other expenditure in connection with the preparation of passport, visa, Airport tax, medical certificate etc. will be borne by Dr.E.Vivekanandan if not paid for by the foreign agency.
- vii) He should pay Pension Contribution to the Council during the period of assignment.
- viii) On his return from deputation abroad he will submit his deputation Report (7 copies) along with the Annexure.I and II and a one page Executive Summary incorporating therein and bringing out how the knowledge gained by him during his deputation abroad could be used in Indian conditions, within one month of his return from abroad

failing which he would not be considered for further deputation.

ix) The period of his deputation will be treated as Extra Ordinary Leave."

4 Vide Annexure.A9 letter dated 3.2.2003, the Sr. Administrative Officer of Respondent No.3 requested the Scientist-In-Charge, Madras Research Centre of CMFRI Chennai to ensure that the pension contribution of Rs. 4704/- per month and the GPF subscriptions are received from the applicant in foreign currency in which he was getting his salary. The applicant returned after about 11 months on 15.12.2003 instead of the period of one year from 17.1.2003, the date from which he was officially relieved. On his return, he submitted the Annexure.A8 deputation report dated 24.12.2003 to the authorities. After a period of about 2 years, the Respondent No 3 issued the Annexure.A10 Memorandum dated 28.3.2006 working out the share of remuneration payable to the Council's Account by the applicant. According to the said letter he was required to make 15% of the remuneration received by him from the foreign employer to the Council towards share of Intellectual fee as per the recommendations of Prof Johal Committee Report contained in Rule 2.7.2.1 of Rules and Guidelines on Training, Consultancy, Contract, Research and Contract Research Service in ICAR system. Accordingly, he was directed to deposit Rs. 2,65,529 immediately to the Council, CMFRI's account with the reasons, if any, for non-payment of the same so far as per the instructions contained in the Office Order of the Respondent No.3 dated 10.1.2003. In response to the said Annexure.A10 Memorandum dated 28.3.2006 the applicant made the Annexure.A12 representation dated 24.4.06. He has contended in his representation that

his assignment with KFUPM was on "Deputation" and it was not on "Training" or "Contract" or "Consultant Research" and hence the recommendation of Prof.Johal Committee is not relevant in his case. He has also made certain allegations that the Memorandum dated 28.3.2006 issued by the Respondent 3 /4 was an intentional harassment to cause mental agony to him as it was a vindictive action with malafide intention as he had filed a case before this Tribunal against the extension of the tenure of the 4th respondent as Director, CMFRI. It was also alleged in the letter that the malafide intention of Respondent 4 are further evident from the fact that he had taken up this matter three years after his deputation abroad after the case filed by the applicant against the Respondent No.4 was listed before the Tribunal. He further submitted that the action on the part of Respondent No.4 was coercive and intended to intimidate and pressurize him on account of the OA filed by him and others and it amounts to an unlawful interference in the due administration of justice with resultant legal consequences. He has, therefore, requested to withdraw the aforesaid Memorandum dated 28.3.2006. It is in response to the said representation of the applicant dated 24.4.06, the impugned Memorandum dated 10.5.06 has been issued by the Respondent 3 /4 wherein it has been stated that the respondents have no power or competency to relax the requirements for charging 15% of the emoluments received by the applicant during the period he was sent to the KFUPM. Respondent 3/ 4 has also mentioned in the impugned memorandum that the applicant has made highly objectionable and impolite statement against the Respondent No.4 in violation of the provisions of CCS(Conduct) Rules, 1964 which are

applicable to Council employees. He was, therefore, asked to explain as to why action should not be initiated against him.

5 The grounds taken by the applicant in the OA are that the Annexure.A1 Memorandum is violative of the constitutional guarantee enshrined in Articles 14 and 16 of the Constitution and the same has been issued without application of mind. It was submitted that the applicant was on deputation to Saudi Arabia and he fulfilled all the conditions applicable to government servants on deputation abroad as the entire period was treated as Extra Ordinary Leave without any pay and the applicant himself paid the pension contribution. He has also contended that it was not a consultancy service covered in Rule 2.7.2.1 of Rules and Guidelines on Training, Consultancy, Contract, Research and Contract Research Service in ICAR system referred to in Annexure A10 letter dated 28.3.2006. He has further submitted that the very foundation of A.1 Memorandum that the applicant was on consultancy service in Saudi Arabia was non est. He attributed malafide and ulterior reasons against the Respondent 3/ 4 in issuing the Annexure A10 Memorandum.

6 In the reply filed by the Respondents, it was submitted that the applicant has not made any objection against the Annexure A7 Memorandum which contained various conditions as stated earlier. They have also invited attention to Annexure.A2 dated 17.10.2002 issued by Dr.Abdulaziz NM.Al-Swailem, Manager, Marine Studies Section, Ministry of Higher Education, KFUPM Research Institute, Dhahran, Saudi Arabia which stipulated that the expertise of the applicant was required for organizing and execute the stock assessment programme and for scientific

interpretation of the research for which applicant was to be engaged for a period of 12 months. Further, the respondents have submitted that Para 2.7.2.1 contained in Chapter 2 of the "Rules and Guidelines of Training, Consultancy, Contract Research and Contract Service in ICAR System" has enunciated in detail regarding the sharing of intellectual consultancy fees both for the Institute as well as for the individual consultant. While the share for the individual is fixed at 85%, 10% is earmarked for institutional funds and 5% for the staff welfare fund. Hence it was an obligatory for the applicant under the above cited rules and guidelines for rendering his skills and expertise to the foreign agency and thereby earn more funds both for the applicant and the institution. In a similar case, when Dr.T.S Gopalakrishna Iyer was deputed for the services outside his normal employment, share towards Institutional funds (10%) and Staff Welfare Fund (5%) was recovered as per the ICAR guidelines. They have produced letters dated 29.12.2000 issued by the Director, CIFT Kochi addressed to Deputy Director (P) ICAR, New Delhi and reply therefor issued by the ICAR vide letter dated 12.4.2001. The applicant was informed well in advance about the condition for regulation of the remuneration received by him from the foreign agency as per the Johal Committee Report in clear terms. Applicant has proceeded on deputation from the Madras Research Center of CMFRI who were subsequently asked by the office of the third respondent to inform whether the regulation of remuneration received by the applicant from the foreign agency was made or otherwise vide letter dated 25/27.1.2006. The third respondent came to know only thereafter that no recovery towards the share of institutional fund

and staff welfare fund was effected from the applicant. Hence the third respondent was duty bound to recover the amount immediately as required under the existing rules. The deputation of the applicant to Saudi Arabia was to render his expertise in the field of Fisheries Stock assessment which is very well covered under the provisions of Rule 2.7 of Chapter 2 of ICAR rules and guidelines on Training, Consultancy, contract Service and Contract Research in ICAR System.

7 The applicant in his rejoinder has reiterated that his assignment was only on deputation and not on consultancy basis. In the check list submitted to the ICAR, against column No.10, he had indicated "Foreign Visit on deputation" as the "nature of visit". In the Annexure.A4 letter dated 26.11.2002 , the approval of the Competent Authority was for 'deputation' of the applicant to the KFUPM, Saudi Arabia. After completion of his assignment abroad what was submitted was a deputation report and was not a "statement showing the details of Consultancy Project completed". Johal Committee Report is concerned with training, consultancy, contract and contract service in ICAR system. The deputation rules do not find a place in the rules and guidelines of ICAR. According to ICAR rules and guidelines, for undertaking a consultancy project, the scientist should submit project proposal followed by a MoU with the client which will be approved and signed by the Director of the Institute or the Director General, ICAR (in case of overseas client). The MoU will contain details regarding sharing of intellectual fee with ICAR. In the deputation of the applicant, no such procedures relating to consultancy were followed.

Dr.T.S.Gopalakrishna Iyer, referred to by the respondent, worked as a

"National Consultant" of Food and Agriculture Organization (Rome) within India for six months during 2000. During that period, he was on earned leave and received salary from CIFT. He did not pay or remit any pension contribution during the period of his consultancy as a "National Consultant". Therefore, his case cannot be compared with that of the applicant. On the other hand the applicant's case should be compared with (a) Dr.V.S.Sriramachandra Murty, Principal Scientist & Head, Demersal Fisheries Division who was deputed to Bangladesh during November and December, 2002. He received salary during deputation, but was not required to share the same with the ICAR. (b) Dr.L.Krishnan, Principal Scientist was deputed to Islamic Republic of Iran from 4.12.2001 to 18.2.2002. He was also not required to share the remuneration he received. (c) Dr.A.Lakshminarayana, Principal Scientists was deputed to Islamic Republic of Iran. In his case also the remuneration received was not required to be shared. (d) Dr.A.Lakshminarayana also deputed as Advisor to the Government of Mauritius from May 7, 2003 onwards. He is continuing there now for more than three years. He is receiving salary from CMFRI and deputation allowance from Government of Mauritius.

8 I have heard Shri T.C.Govindaswamy for the applicant and Shri T.P.Sajan for the Respondents. I have also perused the entire pleadings from both sides and also the argument notes submitted by the respective counsels. The main contentions of the applicant is that his assignment to KFUPM, Saudi Arabia was on deputation and, therefore, the rules and guidelines on Training, Consultancy, Contract and Contract Service in ICAR system based on Johal Committee Report would not



apply in his case. Contrary is the contention of the respondents. Undisputedly, the Annexure.R5 letter dated 5.10.2002 from Dr. Abdulaziz M.Al-Suwailem expressing his desire to engage the applicant in the Oceanographic research programme to Dr.Punjab Singh, Director General, ICAR, New Delhi is the initial correspondence in the case. The KFUPM has requested the ICAR to depute the applicant and make his expertise available to them. This was followed by the letter of Dr. Abdulaziz M.Al-Suwailem dated 17.10.2002 addressed directly to the applicant. According to the Annexure.A3 letter of the applicant, the purpose of the invitation of KFUPM was to organize and execute the stock assessment programme and for scientific interpretation of the results. The Competent Authority granted the approval subject to 2 conditions, namely, (i) that the applicant will be granted Extra Ordinary Leave during the period of assignment and (ii) he has to pay pension contribution to the Council during this period of assignment. While conveying the approval of the Competent Authority vide Annexure.A5 letter dated 28.11.2002, the Respondent No.3 stated that the applicant's assignment to KFUPM was by way of deputation and it was subject to two additional conditions that (i) he will submit seven copies of requisite deputation report for onward transmission to the ADG(TC), ICAR, Krishi Bhavan Bhavan, New Delhi within one month of his return from abroad and (ii) there shall be no financial liability on the part of ICAR/DARE/CMFRI. In the Annexure.A7 relieving Office Order dated 10.1.2003 Respondent 3 /4 introduced one more condition that the deputation of the applicant to KFUPM was also subject to the regulation of the remuneration received by him from the

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foreign agency as per the recommendation of the Johal Committee Report. The applicant completed his assignment within 11 months and returned to his parent office on 15.12.2003. During the assignment, the respondents have scrupulously ensured the compliance of all other conditions imposed on the applicant except the condition regarding the regulation of the remuneration received by him from the foreign University. The Respondent No.3 has even asked the Scientist-In-Charge, Madras Research Center of CMFRI, Chennai to ensure that pension contribution and the GPF subscription are received from him in foreign currency in which he is getting his salary. However, it was after 3 years, that the respondents have woken up to issue the Annexure.A10 Memorandum dated 28.3.2006 asking the applicant to deposit Rs. 2,65,529/- equivalent to 15% of the remuneration received from the KFUPM. The applicant also ignored the condition regarding regulation of the remuneration received by him from the foreign University issued to him before he proceeded on his foreign assignment to KFUPM way back on 10.1.2003. Neither before he had taken up the assignment nor during the period of his assignment nor after his return to his parent office after completion of the assignment, the applicant made any representation to the respondents denying his responsibility to share the remuneration he received from the KFUPM. He ought to have made representation against Annexure.A7 Office Order dated 10.1.2003 by which his foreign assignment to KFUPM was made subject to Prof. S.S.Johal Committee Report, as soon as possible. The applicant has chosen to ignore those conditions imposed upon him. Again, when the respondents have quantified his liability towards the refundable

part of the remuneration as Rs. 2,65,529/- (Rupees two lakhs, sixty five thousand five hundred and twenty nine) as per the recommendations of the Prof.S.S.Johal Committee report contained in Rule 2.7.2.1 of Rules and Guidelines on training, Consultancy Contract Research and Contract Research Service in ICAR System and directed him to pay the said amount vide Annexure.A.10 Memorandum dated 28.3.2006, the applicant did not make a proper representation against it except saying vide the Annexure.A.12 letter dated 24.4.2006 that his assignment with KFUPM was on deputation and it was not Training,Consultancy Contract Research and Contract Research Service . The rest of the contents of his said letter were certain personal allegations against the Respondent No.4 which have been considered by the respondents vide the impugned Annexure.A1 Memorandum dated 10-12/5/2006 as violation of the provisions of the CCS (Conduct) Rules, 1964, for which he has been asked to submit his explanation. It was only in the present OA, that too by way of the rejoinder that the applicant has claimed that in the cases of several other scientists of CMFRI who were stated to be identically situated, sharing of remuneration received from foreign agencies was not insisted upon by the respondents. Hence the relief sought by the applicant to quash the Annexure.A1 and to direct the respondents to grant all consequential benefits as if Annexure.A1 had not been issued is not granted and the applicant cannot be exempted from submitting his explanation as sought for. However, I dispose of this O.A with the liberty to the applicant, if he so desires, to make a detailed representation to the Respondent No.2, namely, the Secretary, ICAR, New Delhi explaining the reasons as to why

his assignment with KFUPM was not to be subject to the regulation of the remuneration received by him from the foreign agency as per the recommendation of Prof. Johal Committee Report as stated in the Annexure.A7 Office Order dated 10.1.2003 within two weeks from the date of receipt of a copy of this order. The Respondent No.2, on receipt of such a representation, shall consider the same and pass a reasoned and speaking order within a period of two months thereafter and convey the decision to the applicant. Till such time, the Respondent No.3/4 shall not take any steps to recover the amount of Rs. 2,65,529/- (Rupees two lakhs sixty five thousand five hundred and twenty nine) ordered to be deposited by the applicant vide the Annexure.A10 Memorandum dated 28.3.2006.

9 The Original Application is disposed of in terms of the aforesaid directions. No costs.

Dated this the 11th day of July, 2007


GEORGE PARACKEN
JUDICIAL MEMBER

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