

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 401 of 1996

Wednesday, this the 22nd day of April, 1998

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

1. Anamma Mathew,
T5, Technical Officer,
Central Institute of Fisheries
Technology, Kochi-29 .. Applicant

By Advocate M/s Santhosh & Rajan (represented)

Versus

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

2. The Director,
Central Institute of Fisheries
Technology, Matsyapuri PO,
Kochi-29 .. Respondents

By Advocate Mr. P Jacob Varghese

The application having been heard on 22-4-1998, the
Tribunal on the same day delivered the following:

O R D E R

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

The applicant seeks to quash A4, A6 and A8, to direct
the respondents to grant stagnation increments as envisaged
in FR 26 based on the fixation of pay taking into account
the advance increments already granted and not to recover
the monetary benefits of stagnation increment already
granted to the applicant and to grant 2nd stagnation
increment which fell due on 1-7-1995 and to fix the retiral
benefits of the applicant after fixing her pay taking into
account the 3 advance increments plus 2 stagnation
increments.

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2. The applicant was working as Technical Officer (T5) under the 2nd respondent. Under the Technical Service Rules, the technical personnel will be assessed on completion of 5 years either for merit promotion or advance increments (maximum 3) as the best reward in lieu of promotion. Technical personnel who are not granted merit promotion will be assessed on consecutive years (yearly assessment) till they get promotion. So also the technical personnel who are working in the grade in a particular category will not be granted merit promotion in the next higher category. Advance increments granted are over and above the normal increments. On the recommendation of the Assessment Committee constituted for assessment of technical persons as on 31-12-1987, the 2nd respondent as per order dated 29-9-1988 granted 3 advance increments to the applicant with effect from 1-1-1988 in the pay scale of Rs. 2000-3500. The pay of the applicant was accordingly fixed at Rs. 3200/- with effect from 1-7-1988 as per Increment Certificate dated 14-10-1988 issued by the 2nd respondent. Later, as per Increment Certificate dated 11-10-1993 issued by the 2nd respondent, the applicant's pay was fixed at Rs. 3500/- with effect from 1-7-1991 adding Rs. 300/- to Rs. 3200/- as the normal increments for the years 1989, 1990 and 1991 and with effect from 1-7-1993 her pay was fixed at Rs. 3500/- plus Rs. 100/- stagnation increment. As per FR 26, a person who reaches the maximum of the scale of pay shall be granted one stagnation increment on completion of every 2 years. A maximum of 3 such increments shall be allowed. First stagnation increment was granted to the

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applicant with effect from 1-7-1993. Second stagnation increment was due to the applicant on 1-7-1995. The same has not been granted. As per Increment Certificate dated 30-10-1995 (A4) the pay of the applicant has been refixed superseding the Certificate at A3 and adjusting the advance increment granted in the year 1988. As per A4 the pay of the applicant has been fixed at Rs.3500/- with effect from 1-7-1994. The applicant says that there is no rule or provision in any of the orders to adjust the advance increments when pay increases as stated in A4. The advance increments granted are over and above the normal increments. No promotion to higher post was given to the applicant. The applicant has retired from service on 30-4-1996. She submitted a representation (A5) to the 2nd respondent requesting to cancel the adjustment made in A4 and to grant the 2nd stagnation increment which fell due on 1-4-1995. A6 is the reply to A5, wherein it is also stated that further action with regard to the issue would be taken only on receipt of a decision from the Council. The 2nd respondent again issued A8 order dated 5-3-1996 repeating what has been stated in A6.

3. The stand taken by the respondents is that the Audit party which audited the accounts of the Institute for the period from 1-4-1992 to 31-3-1993 raised certain objections and based on those objections the impugned orders are issued.

4. A Full Bench of the Tribunal to which one of us was also a party, in OA No. 737/96, had occasion to consider the following questions:

- (i) Whether on the basis of an observation by Internal Audit, the salary of the applicant can be reduced with retrospective effect.
- (ii) What is the legal effect of an observation made by the 'Internal Audit' and whether it has a binding or conclusive force as far as the Department or employee is concerned.
- (iii) Under what authority does 'Internal Audit' or like agencies derive power in the nature of the power exercised in the present case.

5. It was held by the Full Bench that:

"the role of an auditor is advisory in character. He has to tender advice with professional expertise and that is what is expected of him. He is to record his observations, his professional view; he is not to act as a decision maker. His role does not go beyond that. Such professional advice must be considered in all earnestness by the decision making authority, and the decision making authority has to make his decision guided by the counsel of the internal auditor, and not by his command. That is the position in law."

6. It is clear from the records that the 2nd respondent did not exercise his mind and acted on the dictation of the audit party. The benefits were granted to the applicant as per A1 office order dated 29th of September, 1988. That order stands good even today. There is no averment in the reply statement that A1 order has been subsequently cancelled or modified. In A1 it is stated that:

"The increments have been granted over and above the normal increments and the above persons will draw the next annual increment on anniversary of the previous annual increment, but on the increased pay drawn in consequence of the grant of these advance increments. The advance increments granted will not be counted for fixation of pay on promotion to next higher grade as a result of subsequent assessment as per existing orders on the subject."

7. In the situation, the impugned orders A4, A6 and A8 are only to be quashed.
8. There is absolutely no case for the respondents that any payment was made to the applicant in excess of what the applicant is entitled to due to any wrong act of the applicant. That being the position, in the light of what has been held by the Apex Court, the respondents cannot recover any amount from the applicant on the ground that there was excess payment by mistake.
9. Accordingly, the original application is allowed quashing A4, A6 and A8 and directing the respondents to grant stagnation increments as envisaged in FR26 based on the fixation of pay taking into account the advance increments already granted and not to recover the monetary benefits of stagnation increments already granted to the applicant and to grant the 2nd stagnation increment with effect from 1-7-1995 and also to fix the retiral benefits of the applicant after fixing her pay taking into account the 3 advance increments plus 2 stagnation increments. This shall be done by the respondents within two months from the date of receipt of a copy of this order. No costs.

Dated the 22nd of April, 1998


S.K. GHOSAL
ADMINISTRATIVE MEMBER


A.M. SIVADAS
JUDICIAL MEMBER