

In the Central Administrative Tribunal,

Patna Bench : Patna

Date of Order:-

Registration No. OA-604 of 1996

P.C. Sarkar, Son of Late S.C. Sarkar,
working as Scientist at Indian Lac Research
Institute, Ranchi-10.

..... Applicant

Versus

1. Union of India
2. The Indian Council of Agricultural Research,
New Delhi.
3. The Department of Agricultural Research and
Education, Government of India through its Secretary
4. The Director, Indian Lac Research Institute,
Ranchi-10.
5. The Indian Lac Research Institute through its
Administrative Officer, Ranchi-10.

... Respondents

Counsel for the applicant .. 1. Mr. Gautam Bose
2. Mrs. M.M.Pal

Counsel for the respondents .. Mr. S.C.Dubey,
Additional Standing
Counsel

Coram:- Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman

O R D E R

Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman:-

1. This OA has been filed under section 19



of the Administrative Tribunals Act, 1985. The applicant is working as Scientist in the Indian Council of Agricultural Research (ICAR) since 10 June, 1986. He was posted at the Indian Lac Research Institute, Namkum, Ranchi. The ICAR has formed a Scheme known as Study Leave Regulations, 1991 for granting Study Leave to the Scientists working in the ICAR under which they could take up higher studies leading to M. Phil/Ph.D. so that they could take full advantage of the Career Advancement Scheme in the ICAR. Under this Scheme the applicant was granted Study Leave to work for Ph.D. Degree in the Ranchi College which is a constituent College of the Ranchi University. The applicant was to work under the supervision of Dr. A.K. Shrivastava, Reader, Chemistry Department, Ranchi College, Ranchi. The applicant was relieved from his office duty from the Indian Lac Research Institute in March, 1996 and immediately joined at Ranchi College for doing his research work. It is not disputed that the applicant is still on Study Leave and doing Research work at the above-mentioned college. A dispute has, however, arisen regarding the payment of salary and allowances to the applicant. It is asserted by the applicant that he has not been paid salary and allowances since September, 1996 on ^{the} ground that monthly absentee statement has not been submitted by him or by his Supervisor. It is contended that under Regulation 28 of the

Study Leave Regulations, 1991 only six monthly progress report from Supervisor or Head of the Institution is to be submitted, which has been regularly submitted in the present case. It is asserted that under the Regulations there was no provision for submitting monthly Attendance certificate (Absentee statement) by him or by his Supervisor. But the Respondent No.4, who is Director of the Indian Lac Research Institute, is insisting on the same and has even stopped payment of salary to the applicant. It is asserted that the applicant was entitled to have his salary under the 1991 Regulations and the action on the part of the Respondent No.4 was illegal. The applicant has prayed for direction for payment of arrear of salary as well as future regular payment. Certain other reliefs have also been claimed, but it is not necessary to refer to them as the same have not been specifically pressed nor in view of the orders which I propose to make, it is necessary to give a finding in respect of the same.

2. On behalf of the Respondents it has been contended that the applicant was bound to furnish monthly attendance certificate, but he has failed to submit the same in spite of the order by the Respondent No.4 and so payment of his salary was stopped. It has also been contended that there is precedence regarding the submission of monthly attendance certificate and

mu

4.

some other Scientists, who had availed Study Leave, actually submitted the same. Thus, according to the Respondents, as the monthly attendance certificates were not submitted by the applicant or his Supervisor his salary could not be paid.


3. In his Rejoinder the applicant has reiterated that there was no provision for submission of monthly attendance certificates nor the payment of his salary could be stopped on the ground that such certificates were not submitted.

4. I have heard the learned counsel for the parties and perused the material record. The only controversy which is to be considered in this OA is as to whether it was necessary for the applicant or his Supervisor to submit monthly attendance certificates and, in case such certificates were not submitted, whether the payment of his salary could be stopped. The Respondents have filed a copy of the Study Leave Regulations, 1991. It provides for the grant of Study Leave to the Scientists posted under the ICAR. Under the Regulation 4(5) it is provided that the period of Study Leave shall count as service for the purpose of retirement benefits provided the Scientists join the Organisation on the expiry of Study Leave and serve for the period for which he has executed Bond. Under Regulation 5 it provides that the Scientist who


W

has been granted Study Leave would be entitled to continue to draw his total emoluments for the duration of the Study Leave and would also be entitled to draw annual increments. Regulation 7 provides for execution of Bond by the Scientists. Regulation 8 provides that the Scientist shall submit to the competent authority 6 monthly reports of progress in his studies from his Supervisor or Head of the Institution. It is also provided that this report is to reach the competent authority within one month of the expiry of every six months of the study leave and in case it did not reach the competent authority within the specified time, then the payment of salary could be deferred till the receipt of such report. In the present case it is apparent from the material on record that six monthly progress report by the Supervisor has been submitted to Respondent No.4 within the period prescribed. The 1991 Regulations do not contain any provision regarding the submission of monthly attendance certificates by the Scientists or by the Supervisor. In the letter dated 11.12.1995 (Annexure-5) by Respondent No.4 the applicant has been directed to submit six monthly reports of the progress of his studies through his Supervisor. It nowhere directs the applicant to submit monthly attendance reports.

5. The learned counsel for the respondents has candidly admitted that the 1991 Regulations do not

provide for the submission of monthly attendance certificate, but he has asserted that there was precedence where other Scientists have submitted such certificates and so the applicant was also asked to do so. Some photostat copies of  certificates by some other persons have been filed to support this contention. It may be that some other persons had on being required submitted such certificates, but there does not appear to be legal basis for the same and merely on the ground of such alleged precedence the Respondent No.4 cannot withhold the salary of the applicant. In fact, the Respondent No.4 sent a letter dated 26.8.1996 (Annexure-22) to the Written Statement) addressed to Dr. A.K.Srivastava asking him to send monthly attendance certificates to him. In reply to this letter Dr. Srivastava sent letter dated 16.9.96 (Annexure-23) mentioning that it was not practicable since a Scholar has to visit different institutions including libraries towards the fulfilment of his research work and therefore, his attendance cannot be recorded. Dr. Shrivastava also mentioned that he will try to furnish a half yearly report regarding his progress in the research work and that any serious lapse on the part of Mr. Sarkar will be reported to him. The concluding para of the letter by Dr. Shrivastava is quite significant. It reads:-

"Furthermore, I shall request you to spare Mr. Sarkar of some unnecessary office orders/ Memos as this is seriously affecting his research



7.

work and mental peace which can never be conducive to good research work."

Even after receipt of this reply the respondent No.4 insisted on the submission of monthly attendance certificates and stopped the payment of salary to the applicant.

6. As will be apparent from the above discussion under 1991 Regulations it was not required that the Scientist or his Supervisor was to submit monthly attendance certificate; only six monthly progress reports were to be submitted. Dr. A.K. Shrivastava in his letter dated 16.9.96 clarified as to why it was not possible for him to send monthly attendance certificate. In my view the Respondent No.4 was not justified in insisting on the submission of monthly attendance reports and withholding the payment of salary to the applicant on the ground ^{that W} such monthly attendance certificate has not been submitted. ~~There~~ does not appear to be any justification for withholding the payment of salary to the applicant in the circumstances in the present case. By the Interim order dated 4.12.96 the respondents were directed to pay the salary of the applicant for the months of September, October and November, 1996. It is not disputed that salary for these months has already been paid. However, salary has not been paid for the month of December, 1996 and for the subsequent period. Proper directions in that regard should be passed in this O.A.

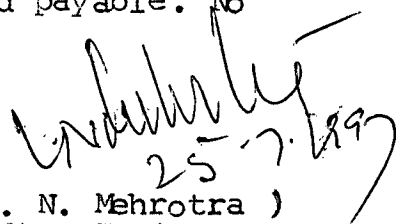
7.

This OA is allowed and the respondent No.4,

8.

Director, Indian Lac Research Institute, Ranchi-10,
is hereby directed to pay the arrear of salary and
allowances to the applicant within a period of one month
from the date on which a certified copy of this order is
produced before him or is received by him. Respondent
No.4 is also directed to continue to pay salary to the
applicant as and when it becomes due and payable. No
order as to costs.

SKS


25-7-1997
(V. N. Mehrotra)
Vice-Chairman