

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:329/97

DATE OF DECISION:

Dr. Shrinath Pandey

Applicant.

Shri M.S. Ramamurthy

Advocate for
Applicant.

Verses

Union of India and others

Respondents.

Shri V.G. Rege

Advocate for

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

Hon'ble Shri S.L. Jain, Member (J)

(1) To be referred to the Reporter or not? *yes*

(2) Whether it needs to be circulated to *no*
other Benches of the Tribunal?

(3) Library. *yes*

S.L. Jain -
(S.L. Jain)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:329/97

Friday the 15th day of November 2002.

Coram: Hon'ble Mr.B.N.Bahadur
Hon'ble Mr.S.L.Jain

- Member (A)
- Member (J)

Dr. Shrinath Pandey
Residing at A-75
Shreerang C-Operative
Housing Society Ltd,
Thane(West)

...Applicant.

By Advocate Shri M.S. Ramamurthy

V/s

1. Union of India through
The President
Indian Council of
Agricultural Research,
Government of India,
Krishi Bhavan, New Delhi.
2. Director-General,
Indian Council of
Agricultural Research
(I.C.A.R)
Ministry of Agriculture
Krishi Bhavan, New Delhi.
3. The Secretary,
Indian Council of
Agricultural Research(I.C.A.R)
Ministry of Agriculture
Krishi Bhavan, New Delhi.
4. Director (Personnel)
Indian Council of Agricultural
Research (I.C.A.R)
Ministry of Agriculture,
Krishi Bhavan, New Delhi.
5. Finance & Accounts Officer,
Central Research Institute,
for Jute & Allied Fibres
(CRIJAF) 24, Parganas (N)
Barrackpore
6. Administrative Officer
National Research Institute
of Jute & Allied Fibres
Technology (Formerly known
as Jute Technological
Research Laboratory
Indian Council of Agriculture
Research, 12, Regent Park
Calcutta.

...Respondents.

By Advocate Shri V.G. Rege.

Rege

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O R D E R

{Per S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 for the declaration that order dated 7.1.1997 (Exhibit A) is illegal null and void, be quashed and set aside, respondents be directed to allot the scale of Rs. 5900 - 7300 or 7300 - 7600 in lieu of the scale of Rs. 4500 7300 with effect from 29.7.1988 or in alternative with effect from 29.11.1994 with all consequential benefits, to pay gratuity and commutation value of pension and other retiral dues with interest at the rate of 18% per annum till payment and be restrained from starting any false and/or malicious vigilance proceedings, pay regular pension to the applicant.

2. The applicant was selected and appointed by the Agricultural Scientist Recruitment Board for the post of Director, Jute Technology Research Laboratory Calcutta now National Research Institute of Jute and Allied Fibres with effect from 17.10.1985 to 16.10.1990, the said post was a tenurer post of 5 years in the scale of Rs. 1800 -2250 (Exhibit - D). The applicant was selected by the Agricultural Scientist Recruitment Board as director Jute Technology Research Laboratory Calcutta in the year 1988 and appointed vide office order dated 8.8.1988 in the scale of Rs. 2000 - 2500 (Exhibit E).

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3. In view of order dated 9.3.1989 (Exhibit F) revised pay scale was introduced on adoption of UGS pay package instead of Fourth Central Pay Commission with effect from 1.1.1986. The applicant applied for revised scale under the said UGS pay package with effect from 29.7.1988. A telegram was sent on 2.6.1989 (Exhibit - F) by the Office of the Director, JTRL, Jute Laboratory Calcutta to the Director (P), New Delhi and orders were sought as to how the pay is to be fixed for the applicant in the revised pay scale. It was followed by letter dated 15.12.1989 (Exhibit - G). Further letter dated 11.12.1991 (Exhibit - H). A reply dated 13.12.1991 (Exhibit I) was received to the effect that the pay of the applicant on 29.7.1988 would be fixed at Rs. 5400 /p.m. in the revised scale of pay Rs. 4500 - 7300 corresponding to his pay of Rs. 2375-/ with next date of increment 1.7.1989 provided he has exercised his option within the stipulated period.

4. The applicant was selected by Agricultural Scientist Recruitment Board as Director, Central Institute for Research on Cotton Technology Mumbai for a period upto 31.7.1995 in the scale of pay of Rs. 4500-150-5700-200-7300 (Exhibit - J). His services was extended for a period of six months and he was appointed as Acting Director of Central Research Institute for Jute and Allied Fibres, Barrackpore, 24, Parganas (N), West Bengal in the scale of Rs. 4500 - 7300 (Exhibit -K).

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5. The applicant vide his letter dated 28.4.1989 (Exhibit L) applied for parity in pay scale of Directors of Engineering Colleges who were being paid in the scale of Rs. 7200 -7600 on the basis of carrying more higher responsibilities and duties, followed by reminder dated 11/12.10.1989 (Exhibit L), to Union Minister for Agriculture dated 17.12.1989 and representation to Dy. Prime Minister dated 21.7.1990 (Exhibit - O).

6. The applicant retired from service with effect from 1.2.1996 on superannuation at the age of 60 years and six months as Director of CRIJAF Barrackpore (W.B). His basic pay at that time was Rs. 6700/- in the scale of Rs. 4500 - 7300. He sent a letter dated 8.7.1996 to the Senior Administrative Officer, Barrackpore for settlement of the pension and other retiral dues (Exhibit P). The retirement dues were not paid. He represented vide letter dated 26.7.1996 (Exhibit Q). Received letter dated 7.1.1997 (Exhibit A) which is being impugned by the applicant. Against the impugned order the applicant represented vide representation dated 31.1.1997 (Exhibit R). The respondents failed to reply the same. Hence this OA for the above said relief.

7. The claim of the applicant is resisted by the respondents stating that the applicant has availed all the benefits of the old Scheme, knowingly neglected to exercise the option in favour of the revised pay scale within stipulated time. The UGC package which was introduced vide council's letter dated 9th March 1989

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bearing No. 1-14/87-Per IV came into effect retrospectively with effect from 1.1.1986. The Scientist of Agricultural Research Service (ARS) were given option to come over to the UGC Pay package or to remain in the old scheme which was to be exercised within three months from 9.3.1989, failure to which preremitted scale would be operative. The applicant opted for the UGC pay package with effect from 29.7.1988, the date on his second appointment as Director, JTTL, Calcutta which is impermissible as per rules, the result thereof is preremitted scale and operative on adoption of UGC pay package. The pay scale of Rs. 1500 - 2000, Rs. 1800 - 2250 and Rs. 2000 - 2500 were merged into one scale of Rs. 4500 - 7300.

8. The letter dated 13.12.1991 is explained which contains provided he had exercised the option with the stipulated period. It is further stated that the applicant has misused his power for selfish motive and got violated the rules in getting his pay fixed in revised scale ;from a date which was impermissible. The memorandum dated 23.12.1994 made clear to the applicant the terms and conditions including that of the pay scale of the post of Director, JTTL, Calcutta subject to which offer of appointment to the said post was made to him. The pay scale in which the applicant would be entitled to have his pay fixed is Rs. 4500 - 15- - 5700 - 200 - 7300 and the applicant joined as such without any demur and protest. Thus the applicant has accepted the terms and conditions of the appointment and as a result he has acquiesced in the same and deemed to have waived his right in

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the matter. Therefore, he is estopped to contend about the pay scale of Rs. 5900 - 7300. About letter dated 8.8.1996 and 13.3.1997 it is stated that it is a correspondence between both offices / two officers of the Institutes. Even before expiry of six months, the applicant filed the OA on 1.4.1997, till the time representation dated 7.1.1997 (Exhibit A) could not be considered, as such OA is premature and liable to be rejected.

9. Para 2 of Exhibit X letter dated 9.3.1989 makes it clear that three scales namely 1500 - 6 - 1800 - 100 - 2000, Rs. 1800 - 100 - 2000 - 125/2 - 2250 and Rs. 2000 - 125/2 - 2800 are merged together and the new scale provided is of Rs. 4500 - 150 - 5700 - 200 - 7300.

10. Para 3 (1) (2) (3) and (4) of Exhibit X letter dated 9.3.1989 applies to the council's employees while Note 1 and 2 applies to Ex-employees who failed to exercise the option which also included resignation and they are entitled to the revised scale. As such when on 9.3.1989 and three months there after the applicant was ex-employee on account of fact that after due selection vide office order dated 8.8.1988 he was appointed in the scale of Rs. 2000 - 2500 - 200 - 7300 with effect from 1.1.1986 till he joins the post in view of next selection followed by order dated 8.8.1988 with retrospective effect of 29.7.1988.

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11. We are not convinced with the arguments of the learned counsel for the respondents that the option exercised by the applicant is with effect from 29.7.1988, as such he is not entitled either to revised pay package with effect from 1.1.1986 or even thereafter.

12. The applicant has not exercised any option in the Grade of Rs. 1800 - 2250, as he was not occupying the said post on 29.7.1988. His option with effect from 29.7.1988 is only for the post in the Grade of Rs.2000 - 2500.

13. This being a peculiar case as the applicant who was selected and appointed by the Agricultural Scientist Recruitment Board for the post of Director, Jute Technology Research Laboratory Calcutta with effect from 17.10.1985 to 16.10.1990 in the scale of Rs. 1800 - 2500 before the expiry of his term vide order dated 8.8.1988 with retrospective effect from 29.7.1988 was appointed in the higher scale of Rs. 2000 - 2500 in an open recruitment joined the said post on 27.8.1988. As such he ceases to be an employee on the said post as soon as he joins the new posts in the higher scale.

14. When he joined the new post i.e. 29.7.1988 his basic pay was admittedly Rs. 2375/-. Every employee gets the pay protection in such situation. As such his pay which was fixed at Rs. 5400/- in the revised pay package is in accordance with the circular dated 9.3.1989 which was made applicable with

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retrospective effect. The calculation is Rs. 2375/- Basic Pay + D.A. 758.80 + I.R. I & II Rs. 338/-. Existing total emoluments RS. 4921.10 + 20% of the basic pay Rs. 475/-, total comes to Rs. 5396.60 and as there is no stage in the new scale at Rs. 5396.60 and the next stage is only Rs. 5400/- as such pay fixed at Rs. 5400/- is just one to which the applicant was entitled.

15. As the applicant has not filed any option in view of his post in the grade of Rs. 1800 - 2250/-, he is entitled to the revised scale as discussed above.

16. Claim regarding scale of Rs. 5900 - 7300, this being the distinct relief the applicants is at liberty to approach by separate OA if he chooses so.

17. In the result OA is allowed, order dated 7.1.1997 Exhibit A is quashed and set aside with costs amounting to Rs. 1000/- payable by the respondents to the applicant. The Applicant's pay be fixed at Rs. 5400/- in the new revised scale with effect from 27.8.88 with all further consequential benefits including the pension and pensionary benefits. This exercise be completed within a period of three months from the date of receipt of copy of the order.

S.L.Jain
(S.L.Jain)
Member (J)

B.N. Bahadur

(B.N. Bahadur)
Member (A) 15.11.2002

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