

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

APPLICATION NO. _____

Applicant(s)

Respondent(s)

Advocate for Applicant(s)

Advocate for Respondent(s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

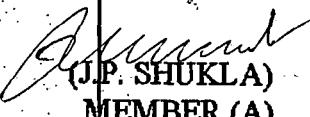
16.03.2007

OA No. 1/2003 with MA 67/2003 and MA 219/2006

Mr. Shiv Kumar, Counsel for applicant.

Mr. V.S. Gurjar, Counsel for respondents.

On the request of the learned counsel for the parties, list it on
22.03.2007.


(J.P. SHUKLA)
MEMBER (A)

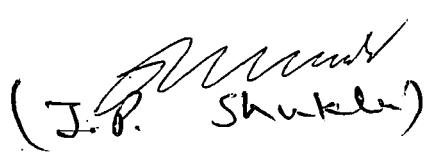

(KULDIP SINGH)
VICE CHAIRMAN

AHQ

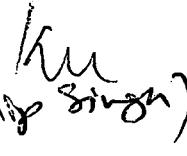
22-3-07

Mr. Shiv Kumar Counsel for applicant
Mr. V. S. Gurjar Counsel for respondents
Arguments heard.

Order reserved.


(J.P. Shukla)

Administrative Member


(Kuldip Singh)

Vice Chairman

29/3/07

Order has been pronounced
today in the open court by D.R.


43/32

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 28/3 day of March, 2007

ORIGINAL APPLICATION No. 01/2003

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR. J.P.SHUKLA, MEMBER (ADMV)

Sua Lal,
s/o Shri Suramjal,
aged about 60 years,
r/o CSWRI Campus Quarter No. TypeII/12,
via Jaipur Avikanagar,
last employed on the post of Tractor Driver
in CSWRI Avikanagar,
Tonk, Rajasthan.

.. Applicant

(By Advocate: Shri Shiv Kumar)

Versus

1. Union of India through
its Secretary,
Indian Council of Agriculture
Research,
Krishi Bhawan,
New Delhi.
2. Director,
Indian Council of Agriculture Research,
Krishi Bhawan,
New Delhi.
3. Director,
CSWRI,
Avika Nagar,
Tonk via Jaipur (Raj.)

.. Respondents

(By Advocate: Shri V.S.Gurjar)

[Signature]

O R D E RKULDIP SINGH, VC

The applicant has filed this OA seeking following reliefs:-

- "i) That the applicant may please be treated as employee of ICAR w.e.f. 1966 or atleast or 1976 and after treating the employee of ICAR the pay of applicant may please be fixed as per relevant rules, and Pension of applicant may also be refixed after fixation of pay and applicant may please be given all benefits which were available to other employees of ICAR with all consequential benefits including monetary benefits.
- ii) Any other order/direction may be passed in favour of applicant which may be deemed fit just and proper under the facts and circumstances of this case.
- iii) That the cost of this application may be awarded."

2. The facts, as alleged by the applicant, in brief are that the applicant was initially working under the Director, Central Sheep and Wool Research Institute (CSWRI), Avikanagar as Tractor Driver. It is submitted that initially CSWRI was a Government Department. Later on, its right and liabilities including employees were transferred to respondent No.2 after its registration as society registered under the Society Registration Act in the year 1966. It is further stated that at the relevant time the applicant was facing disciplinary proceedings and he was suspended and thereafter removed from service w.e.f.

1/1

1st August, 1978. The same was challenged before the competent court and the applicant was reinstated. The applicant was also taken in Technical services of CSWRI. However, in the year 1990, the respondents asked for the options regarding absorption. The applicant immediately made representation dated 5th October, 1990 and thereafter 11th November, 1992 to the concerned authority asking about his seniority and had also given his consent for absorption vide his application dated 22nd December, 1994 (Ann.A4). It is also pointed out that absorption is automatic and not giving the option does not deprive the applicant from absorption. The applicant made a number of representations but no cogent reason was given by the respondents as to why he was not absorbed w.e.f. 1966. It is further stated that now on 14th March, 2002 the applicant received a letter in which it was mentioned that no decision was taken by respondent No.3 till date for his absorption (Ann.A12). It is further stated that due to non-absorption, applicant's service career has been adversely affected. His pay and after his retirement his pension has been affected due to his non-absorption.

In the grounds pleaded in this case, the applicant has submitted that after registration of society, all the rights and liabilities including the employees of CSWRI were transferred to the Society, so there was automatic absorption, even then the

16

applicant has made an application for absorption w.e.f. 1966. It is further stated that there is no impediment for absorbing the applicant from such date. Thus, it is prayed that the applicant may be absorbed from 1966 or atleast from 1975 or 1976.

3. The respondents are contesting the OA. The respondents in their reply pleaded that the OA is hopelessly barred by time, since it is a matter of 1966 and as per provisions of the Administrative Tribunals Act, the same cannot be agitated by the applicant in the year 2003. Thus, the present OA is not maintainable. It is also submitted that when the applicant had filed representation, after six months he had a right to file OA. The OA filed in the year 2003 has become barred by time. However, on facts it is submitted that after formation of Indian Council of Agricultural Research (ICAR), it was necessary for the applicant to exercise option as per letter dated 6/9th July, 1990 of the Director (Vig.) DARE, New Delhi and the applicant was requested to furnish the same but he had submitted option only on 4th November, 1993. It is further stated that ICAR has accepted the option of the applicant w.e.f. 4th November, 1993 but the incumbent submitted representation for extending the benefit to him from retrospective effect i.e. from the year 1966, 1976 and 1978. The representation of the applicant was sent to the ICAR and the ICAR conveyed

the decision vide letter dated 4/5th April, 2002 and the applicant was informed accordingly.

4. We have heard the learned counsel for the parties and gone through the record.

5. It is admitted case of the parties that at the time of formation of respondent No.2, the applicant was facing certain disciplinary proceedings and he was not asked to opt for ICAR. Even otherwise, since entire assets and liabilities of the CSWRI were taken over by the ICAR, so it was only ~~now~~ a formality that the applicant should have given an option.

6. From perusal of record, we find a letter dated 15th September, 1990 annexed as Ann.MA/1 with MA No.67/2003, which reads as under:-

“The Administrative control of this Institute was transferred from the Government of India to I.C.A.R. a society under Societies Registration Act, 1860 w.e.f. 1st April, 1966. The staff working with the Institute were also to be absorbed in that Council on exercising their option. Shri Sua Lal Tractor Driver did not exercise his option for said absorption till date. He is, therefore, asked to exercise his option within a period of one month from the date of receipt of this communication failing which he will be declared surplus at this Institute and his services shall be placed at the disposal of Surplus Cell of the Department of Personnel and Training. The terms and conditions of absorption are enclosed Annexure I for his reference.”

In response to this letter, the applicant has submitted letter Ann.A1 dated 5th October, 1990 vide which he has formally exercised his option when he has stated that he is ready to opt the services of ICAR if

he is provided all the benefits of seniority and five yearly assessment from time to time as given to other employees but it seems that no decision was taken thereupon. Thus, it shows that in the year 1990 itself the respondents had asked the applicant to exercise his option, therefore, it cannot be said that the cause of action had arisen in the year 1966, 1976 or 1978. The applicant had been making representations but the department had not closed his case, then probably within six months when no case was filed, the applicant would have lost the remedy, but that is not the case here as the respondent No.3 has written a letter to respondent No.2 referring to their previous references on the subject of requests of Shri Sua Lal (applicant) Tractor Driver, to be absorbed in ICAR service from retrospective effect. This letter was written before the applicant was about to retire from service i.e. on 14th March, 2002. It appears that since the respondent No.3 was to settle retiral claims of the applicant, so he had written letter to the ICAR about his absorption, but they had not received any discretion ^{option}. The reply of the respondents also suggests that option of the applicant has been accepted w.e.f. 4th November, 1993. However, his representation sent to the ICAR has not been agreed by the ICAR. His request was considered and the ICAR has conveyed that the decision already taken vide letter dated 4-5th April, 2002 will stand and it is further stated that the

applicant was informed accordingly, but no letter dated 4th/5th April, 2002 has been placed on record refusing to accede his request, which shows that the OA is barred by time. Since his request was turned down only on 4th/5th April, 2002 and the OA has been filed on 23rd December, 2002, which is well within time.

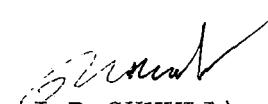
7. It is not disputed now that the applicant was earlier working under respondent No.3 and his absorption was accepted by 4th November, 1993 but his pay fixation etc. has not been conveyed to him, so whatever decision the respondents have taken by 4th/5th April, 2002, since the same has not been placed on record, so we hold that on the basis of the reply of the respondents themselves that the applicant has been absorbed in ICAR w.e.f. 4th November, 1993 and he is entitled to all consequential benefits thereon.

8. We are surprised as to why the counsel for the applicant did not ask for production of the letter dated 4th/5th April, 2002, so that he could have challenged the order passed by the respondents when the reply itself was filed sometime on 12th November, 2003. In the present circumstances, we allow the OA to the extent that the applicant has been absorbed in ICAR w.e.f. 4th November, 1993 and he is also entitled to all consequential benefits. The respondents are

directed to accord him fixation of pay with all consequential benefits taking him that he was absorbed w.e.f. 4th November, 1993, within a period of two months from the date of receipt of copy of this order.

9. The OA is disposed of accordingly with no order as to costs.

10. Since the OA has been disposed of, MA Nos. 67/2003 and 219/2006 are also disposed of accordingly.


(J.P. SHUKLA)

Administrative Member


(KULDIP SINGH)

Vice Chairman

R/