

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

(16)

ORDER SHEET

ORDERS OF THE TRIBUNAL

24.10.2011

TA No. 13/2011 (CWP 3683/2005)

None present for applicant.

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

Second set of paper book
not filed.

The applicant has not filed second set of paper book.

List it on 25.11.2011. In the meantime, the applicant may file rejoinder.

Anil Kumar
(Anil Kumar)

Member (A)

K.S. Rathore
(Justice K.S. Rathore)
Member (J)

affd

25-11-2011

Mr. Vikram Singh Nain, Counsel for applicant.

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

Heard. The OA is disposed of
by a separate order

Anil Kumar
(Anil Kumar)
M(A)

K.S. Rathore
(Justice K.S. Rathore)

3000/-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 25th day of November, 2011

TRANSFER APPLICATION No. 13/2011
IN
SB CIVIL WRIT PETITION NO. 3683/2005

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Bhanwar Lal son of Shri Bhoor Singh, aged 34 years,
resident of 55/66, Mansarovar, Jaipur (Rajasthan):

... Applicant
(By Advocate : Mr. Vikram Singh Nain)

Versus

1. Union of India through the Secretary, Department of Agriculture, Central Government Secretariat, New Delhi.
2. The Director General, Indian Council of Agricultural Research, Krishi Anusandhan Bhawan, Pusa, New Delhi.
3. The Director, Central Sheep & Wool Research Institute, Avika Nagar, Malpura, Tonk (Rajasthan).

... Respondents
(By Advocate : Mr. V.S. Gurjar)

ORDER (ORAL)

The applicant has filed a Writ Petition before the Hon'ble High Court thereby praying for the following reliefs:-

"It is, therefore, most humbly prayed that this Hon'ble Court may kindly be pleased to call for the entire record relating to the case of the petitioner and after perusing the same may be pleased to accept and allow this writ petition:-

- I. by passing an appropriate writ, order or direction quash and set aside the impugned corrigendum (annexure-8) by which emoluments of the petitioner were reduced and the petitioner may kindly be declared entitled for the emoluments as Rs.10500/- w.e.f. the date of his appointment in the year 2000 w.e.f. 19.12.2000 and Rs.12000/- w.e.f.

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01.04.2002 when the revised fellowship emoluments were effectuated and the respondents may kindly be directed to make the payment of the difference of emoluments with interest @ 12% for the complete period during which the petitioner had worked as Research Associate.

II. Any other appropriate writ, order or direction which is deemed just and proper by this Hon'ble Court may also be passed in favour of the petitioner with cost of the writ petition.

2. Hon'ble High Court vide its order dated 03.08.2011 transferred this Writ Petition to this Tribunal on the ground of jurisdiction.

3. Brief facts, as stated by the applicant, are that the petitioner is having the doctoral degree and he was selected for the post of Research Associate in the Indian Council for Agricultural Research (ICAR) and joined duties on said post on 19.12.2000. His appointment letter 11.01.2001 has been annexed as Annexure A/1. That as per ICAR guidelines, the Research Associates, who are having doctoral degree, are entitled for fellowship @ Rs.10,500/- (consolidated) per month with other applicable benefits. That at the time of appointment, he was granted the emolument at Rs.8800/- per month (consolidated) while he was entitled for Rs.10,500/- per month (consolidated). To this effect, he submitted a representation dated 01.08.2001 (Annexure A/2) to the concerned authorities and the concerned official assured the applicant for considering the representation. His representation was rejected by the respondents vide Memo dated 18.08.2001 (Annexure A/3). Subsequently, the

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emoluments were revised by the ICAR and the Research Associates having doctoral degree declared entitled for Rs.12000/- per month (consolidated) and the revised scheme came into effect from 01.04.2002 (Annexure A/4). After the revision of the emoluments, the amount of fellowship of the applicant was fixed at Rs.12000/- (consolidated) vide office order dated 22.12.2003 (Annexure A/6) but vide office order dated 27.01.2004 (Annexure A/8), the emoluments of the applicant were reduced by the respondents from Rs.12000/- (consolidated) to Rs.11500/- (consolidated) without assigning any reasons. The applicant again represented to the respondents vide Annexure A/9. The respondents informed the applicant that the Research Associates with Ph. D Degree is not automatically entitled for higher rate of emoluments. Further this issue has to be looked into by the concerned Institute and accordingly the copy of the representation of the applicant was forwarded to the concerned institute for taking necessary action but the concerned institute has not given any reply to the applicant. Hence aggrieved by the action of the respondents, the Writ Petition was filed before the Hon'ble High Court.

4. The respondents have filed their reply. In their reply, the respondents have stated that the post of Research Associate was advertised in the newspaper vide advertisement No. 3/2000 and essential qualification was M.Sc. (Agriculture), in the discipline of Agriculture

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including animal science. Preference of higher qualification and experience of work was to be considered as per the terms and conditions of the advertisement. The petitioner was engaged on the basis of walk-in-interview held on 05.12.2000. The petitioner was paid @ Rs.8800/- per month + HRA (consolidated) as per advertisement in the leading newspaper and this office Memo No. 12(13)R/94/ dated 13.12.2000. The petitioner accepted the terms & conditions and joined the duties and now he cannot turn back and assail the same terms & conditions which he accepted on his free will. They have further stated that the mention of Rs.12000/- (consolidated) as the emolument of the applicant in the office letter dated 22.12.2003 (Annexure A/6) and office order dated 31.12.2003 (Annexure A/7) ^{were} ~~was~~ due to over sight whereas the applicant was entitled to draw emolument @ Rs.11500/- per month. Therefore, another office order was issued on 27.01.2004 (Annexure A/8) to correct the mistake committed earlier in which emolument of the applicant were fixed at Rs.11500/- per month (consolidated), which was according to the rules. The claim of the applicant that he holds Ph. D Degree and on that basis, he is entitled for emolument @ Rs.12000/- per month (consolidated) instead of Rs.11,500 per month (consolidated) is not true and as per the guidelines circulated by the council petitioner is entitled for Rs.11500/- per month (consolidated). Mere possession of Ph.D degree by the applicant is not a criterion, which would entitle the petitioner automatically for higher rate of

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emolument. That the applicant has been accorded the benefit of revised rate of emolument in accordance with the relevant guidelines. The applicant already had higher qualification at the time of his initial appointment and, therefore, he cannot now claim the benefit of any circular whatsoever. Therefore, the present TA preferred by applicant is not sustainable on any of the grounds taken by him and in this connection, the respondents have referred to the judgment of the Hon'ble Supreme Court in the case of **State of Haryana & Others vs. Sumitra Devi & Others**, 2004 (12) SCC 322. Therefore, the respondents have stated that this TA has no merit and it may be dismissed.

5. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant argued the same facts as has been stated by him in his TA. He reiterated that since the applicant is Ph. D Degree holder, therefore, as per the circular dated 22.08.2003 (Annexure A/4), his emoluments should have revised @ Rs.12000/- (consolidated) per month. That the respondents revised the emolument of the applicant to Rs.12000/- per month (consolidated) vide Annexure A/6 and Annexure A/7 but subsequently, the respondents in an arbitrary manner reduced the emolument of the applicant from Rs.12000/- (consolidated) to Rs.11500/- (consolidated) per month. No reasons were recorded by the respondents to issue this office order (Annexure A/8).

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Therefore, he prayed that his emolument be restored to Rs.12000/- per month (consolidated).

6. On the contrary, learned counsel for the respondents argued that the applicant was Ph. D Degree holder at the time of his initial appointment. His appointment was made vide office order dated 11.01.2001 (Annexure A/1) in which his emoluments have been fixed at Rs.8800/- per month (consolidated) plus HRA as admissible under the rules. He accepted these terms & conditions and joined the post of Research Associate. After joining the post, he started making representations to revise his emoluments, which is not admissible under the rules. The same can only be done according to the relevant guidelines of the respondent's department. He further argued that vide circular dated 22.08.2003, the existing rate of emolument were revised and as per that circular, his emolument was to be fixed at Rs.11500/- per month (consolidated) because earlier he was drawing emolument of Rs.8800/- per month (consolidated) but due to the over sight of the office, his emolument was fixed at Rs.12000/- per month (consolidated). To correct this mistake, a corrigendum was issued vide office order dated 27.01.2004 (Annexure A/8). Thus there is no illegality/irregularity in the action of the respondents in issuing the letter dated 27.01.2004.

7. Having heard the rival submission of the parties and on perusal of the documents on record and circulars, we are of the opinion that there is no ground to interfere in

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the action of the respondents in fixing the emolument of the applicant at Rs.11,500/- per month (consolidated) vide office order dated 27.01.2004 (Annexure A/8). It is not disputed that the applicant was a Ph. D Degree holder at the time of his initial appointment in 2001. The applicant has himself accepted the emolument of Rs.8800/- per month (consolidated) + HRA as per admissible rules. According to the respondents, the post of Research Associate which was advertised in 2000 had Master Degree as an essential qualification but persons having higher qualification could also apply. The applicant was selected through the process of walk-in-interview and he accepted the emolument of Rs.8800/- per month (consolidated). It is also not disputed that these emoluments were revised vide circular dated 22.08.2003 (Annexure A/4) and the Research Associates whose emolument were Rs.8800/- per month (consolidated) were revised to Rs.11,500/- per month (consolidated). Since the applicant was drawing Rs.8800/- per month (consolidated) in the old scheme and, therefore, his emoluments were correctly revised by the respondents to Rs.11500/- per month (consolidated). Merely the issuance of an order by over sight/mistake by the respondents to fixed his emolument at Rs.12000/- per month (consolidated) will not give any right to the applicant to draw Rs.12,000/- per month (consolidated). Since the applicant had himself accepted emolument of Rs.8800/- per month (consolidated) at the time of his initial appointment, now he cannot raise the objection that his emolument be revised from Rs.8800/- per month

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(consolidated) in the old scheme to Rs.12000/- per month (consolidated) in the new Scheme. Under the old scheme, Research Associates with Doctoral degree were to receive Rs.10,500/- per month (consolidated) but the applicant was not given this emolument at the time of his initial appointment though he was holding the doctoral degree at that time. Therefore, the applicant was at liberty not to have joined at the lower consolidated emolument of Rs.8800/- per month (consolidated) but once he has accepted the emolument of Rs.8800/- (consolidated) and then after the revision of the emolument, he would ^{be} entitled to the equivalent of what he was getting at the time of the revision of the emolument. We have gone through the judgment of the Hon'ble Supreme Court in the case of

State of Haryana & Others vs. Sumitra Devi & Others

(supra) and we are of the opinion that the ratio laid down by the Hon'ble Supreme Court in this case is squarely applicable in the present case. In our opinion, his emoluments have been correctly fixed at Rs.11500 per month (consolidated) + HRA as per admissible rules. Therefore, there is no illegality/infirmity in the order passed by the respondents vide order dated 27.01.2004 (Annexure A8).

8. Consequently, the TA is dismissed being devoid of merit with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)
AHQ

K. S. Rathore
(Justice K.S.Rathore)
Member (J)