

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JABALPUR

O.A.NO.643/1999

Hon'ble Shri M.P.Singh, Vice-Chairman(A)
Hon'ble Shri G. Shanthappa, Member(J)

Jabalpur, this the 30th day of October, 2003

D.G.Danny
son of Late Shri Gajwa Danny
aged about 61 years
resident of Bhopal (MP). ... Applicant

(By Advocate: Ku. Malti Dadariya)

Versus

1. Union of India
Ministry of Tourism
through its Secretary
New Delhi.
2. Institute of Hotel Management
Catering Technology & Applied
Nutrition, Bhopal
through its Board of Governors
Miti Campus
Govindpura
Bhopal (MP).
3. Principal
Institute of Hotel Management
Catering Technology & Applied
Nutrition, Near Academy of
Administration, 1100 Quarters
Bhopal (MP). ... Respondents

(By Advocate: ~~Shri~~ Ku. P.L.Shrivastava)

O R D E R (Oral)

By G. Shanthappa, Judicial Member:

Heard the learned counsel on both sides.

2. Learned counsel for applicant has submitted that the above application is filed seeking the following reliefs:

- i. set-aside and quash order dated 7.1.99(ANN-A/1) passed by the non-applicant no.3;
- ii. the respondents may kindly be directed to consider the case of the applicant and to raise the age of superannuation of the Senior Lecturers upto the age of 60 years and be directed to take appropriate steps and

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reinstate the petitioner in service upto the age of 60 years and pay all consequential benefits like arrears of pay and all retiral benefits;

- iii. the respondents be further directed to pay the amount of Rs.35146/- as per the chart (ANN-A/13) towards 20% additional allowance admissible to the petitioner for performing higher duties of Lecturer belonging for the period w.e.f. 16.11.78 to 31.5.90 alongwith interest @ 12% per annum;
- iv. the respondents be further directed to make proper fixation of pay of the petitioner under the scale of pay of Rs.2200-3200 w.e.f. 1.4.86 and pay the arrears of the salary alongwith interest @ 12% per annum;
- v. Any other writ/direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case, may also be issued in favour of the petitioner;
- vi. Cost of the Application.*

3. After hearing the applicant's counsel he has requested the Tribunal for withdrawing the Relief No.ii above ~~particulars~~ accordingly, permission is granted. The OA is dismissed against the second relief only.

4. The other reliefs are considered.

5. The case of the applicant is that applicant was appointed as Senior Instructor in Industrial Training Institute under Manpower and Planning Department vide order dated 23.7.1962, and he was sent on deputation w.e.f. 16.11.1978. The applicant has come under the administrative control of the Ministry of Tourism, Govt. of India, on 1.4.1986.

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6. The applicant had come up on deputation in Food Craft Institute on 16.11.1978. The deputation allowance should have been given to him on 31.8.1984 which was not given to him even after his retirement. He submitted his representations to the respondents.
7. The services of the applicant were absorbed in the Institute w.e.f. 1.9.1984 on the post of Electrician-cum-Mechanic under the pay scale of Rs.860-1330.
8. Subsequently the pay scale has been enhanced and the pay was fixed in the pay scale of Rs.2000-3200/- consequent upon promotion to the post of Lecturer-cum-Instructor (Maintenance). Further pay scale has been fixed, on promotion to the post of Senior Lecturer, in the pay scale of Rs.2200-4000. Further the pay was fixed under the Central pay scale which has come into force on 1.4.1986. Since the applicant was absorbed in the service w.e.f. 1.4.1984, he was entitled for an additional allowance at 20% admissible to him for performing higher duties of Lecturer during this period from 16.11.1978 to 31.5.1990 in addition to his regular duties. However, the has not been given to him so far. The applicant has submitted his representations for grant of the additional allowance as mentioned above, but the respondents have not considered the same, however they have rejected the representations vide order dated 7.1.1999 on the ground that the absorption on

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an higher post, i.e., Foreman was considered by the Board of Governors and the Govt. of India in view of the long service/experience of the applicant in Industrial Training Institute by relaxing the laid down qualification for the post of Foreman, and as a procedure being followed. The applicant had been taking maintenance classes during duty timing of 9.00 AM to 5.00 PM as part of duty, he has not been given any additional hours for undertaking the classes, and he had not been promoted for the post of Lecturer (Maintenance) and subsequently promoted as Sr. Lecturer on the basis of his experience in the Institute as Lecturer.

9. The applicant has relied on Annexure-A3 dated 9.9.1981 in which he was directed to continue Maintenance Classes of House Keeping department in addition to his normal duties till further orders. Though there was a direction by the Principal to continue the Classes, the respondents are denying the payment of additional allowances is not appropriate.

10. Since the applicant is not satisfied with the reply, he has filed the above application seeking the reliefs as prayed in the OA.

11. Per contra, the respondents have filed the reply stating and denying the allegations and the averments made in the OA. The specific contentions raised by the respondents which are as follows,-

11.1 It is submitted that the applicant joined the respondent No.2 Institute on deputation from Govt. of M.P., Employment and Training Department, Jabalpur vide order No.737 dated 30.10.1978 as per his request. As per the conditions mentioned in the said order, the

of the following two:-

- i) Pay as would have been admissible to him under the State Govt. from time to time but for the transfer place, a deputation allowance at 10% thereof and DA at the rates sanctioned by the State Govt. from time to time. The deputation allowance shall further be restricted that his basic pay does not exceed the maximum of the scale of pay the post held on deputation or where the post or where the post held on deputation has a fixed pay, that fixed pay (OR)
- ii) Pay on the scale of pay on the post of as sanctioned by the foreign employer, pay being fixed under the normal rules and dearness allowance at the rates sanctioned by the foreign employer.

As explaining in the rule mentioned in the Deputation order, the applicant is not entitled to the deputation allowance as his basic pay was exceeding the maximum of the pay held on the post on deputation. A copy of the order and the copy of ^{ep} pay scale are marked as Annexure R-2 & Annexure R-3 respectively.

11.2 The duty of ~~tax~~ ^{ep} Foreman cum Caretaker mentioned in recruitment rules reads that "Overall responsibility of all maintenance work and security matters of the Institute and such other duties and responsibilities assigned by a competent authority from time to time". As per the above, taking practical classes of maintenance of House Keeping for two hours a week is considered to be a part of the applicant's duty as Foreman which was assigned to him by the competent authority.

11.3 The applicant has not performed any duty in addition to his normal duties performed by him in various capacities from 16.11.1978 to 31.5.1990. As already explained in Para 4.8 the practical classes conducted by the applicant was within his duties and responsibilities therefore, applicant is not entitled to any Additional honorarium.

ep

12. The respondents have supported the action taken by them and they have requested the ^{Tribunal} ~~the~~ / for rejection of the OA without ~~considering~~ ^{any} of the reliefs prayed in the OA.

13. In the rejoinder, the applicant has reiterated his pleas taken in the OA and also clarifying the reply, it is stated that the time table in which he has ~~performed~~ performed his additional duties for the year 1988-89 to show that he has performed his duties. He has also produced an office order dated 9.7.1987, wherein at Sl. No.15 it is stated that "Overall responsibility for all maintenance work and security matter of the Institute, Hostel & Staff Quarters and such other duties and responsibilities as may be assigned by a competent authority from time to time". In Annexure A-18 dated 14.12.1998 which is issued by the Principal of the Institution stating that the applicant is hereby sanctioned extra allowance at Rs.1000/- P.M. for the following period:

- | | |
|-----------------|--|
| 1. August, 98 | - 3.8.98 to 13.8.98 & 24.8.98 to 31.8.98 |
| 2. September | - Full Month |
| 3. October | - 20.10.98 to 30.10.98 |
| 4. November, 98 | - Full Month |
| 5. December, 98 | - As per Attendance. |

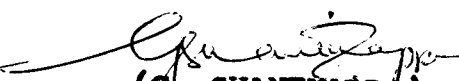
14. After hearing both the parties, we have decided the above application on the ground whether the ~~application~~ ^{impugned} order (Annexure A1) is sustainable in the eyes of law or not. The impugned order speaks that they have considered the representations of the applicant and rejected the same on the grounds already enumerated in para 8 above. As such we have come to the conclusion that though the impugned order is passed without hearing the applicant, without considering the order dated 9.9.1981, in which applicant was directed to continue Maintenance Classes of House


Keeping department in addition to his normal duties, till further orders. Though there was a specific direction to the applicant, the respondents have denied for grant of Additional Allowance which is not proper.

15. In support of the case of the applicant, he has produced the time table, in pursuance ~~of the~~ ~~direction~~ a direction was given to continue Maintenance Classes of House Keeping department. When the applicant was actually worked during particular period he should not be denied for the additional allowance. Accordingly, we have considered the case of the applicant and the respondents, and quashed the impugned order at Annexure-A1 dated 7.1.1999 issued by Respondent No.3. Consequently, applicant is entitled for the additional allowance at 20% from 16.11.1978 to 31.5.1990. It is further observed that the applicant is not entitled for the interest on the said amount since the correspondence was pending with the respondents.

16. Regarding proper fixation of pay of the applicant under pay scale of Rs.2200-3200 w.e.f. 1.4.86 and also payment of arrears of salary along with interest at 12%, it is hereby directed to respondents to consider the case of the applicant for pay fixation vide Vth Central Pay Commission w.e.f. 1.4.86, if the applicant is found fit for the said pay fixation, the respondents shall consider the case of the applicant for proper fixation of pay scale in accordance with rules.

17. With the above observations, we allow the application in part. No order as to costs.


(G. SHANTHAPPA)
Judicial Member


(M.P. SINGH)
Vice-Chairman(A)