

28

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

05.01.2012

TA 35/2009 (CWP 204/2008) with MA No. 47/2010

Mr. Anupam Agarwal, Counsel for applicant.
Mr. V.S. Gurjar, Counsel for respondents.

MA No. 47/2010

This MA has been moved by the applicant for taking certain documents on record. The MA is allowed. The documents annexed with this MA are taken on record.

The MA stands disposed of accordingly.

TA 35/2009

Heard. The TA is disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

ahq

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Jaipur, the 05th day of January, 2012

TRANSFER APPLICATION No. 35/2009

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

N.K. Sharma son of Shri Hori Lal Sharma, aged about 50 years, resident of 20 Staff Colony, S.K.N. College of Agriculture, Jobner, District Jaipur, Rajasthan.

... Applicant
(By Advocate : Mr. Anupam Agarwal)

Versus

1. Indian Council of Agricultural Research, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi through its Secretary.
2. Central Sheep and Wool Research Institute, Avika Nagar (Malpura), District Tonk (Rajasthan).
3. The Rajasthan Agricultural University Bikaner through its Registrar.

... Respondents

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

ORDER (ORAL)

The applicant has filed a SB Civil Writ Petition No. 204/2008 before the Hon'ble High Court of Rajasthan. Hon'ble High Court vide its order dated 01.05.2009 had transferred this Writ Petition to the Central Administrative Tribunal. Through this petition, the applicant has prayed for the following reliefs:-

"It is, therefore, prayed that the original application may kindly be accepted. The respondents should be directed to remit the service record of the applicant alongwith entire amount of EPF, service gratuity or prorate pension etc. alongwith interest as per the demand of respondent no. 3 vide letter dated 14.11.2006. Any other direction which this Hon'ble Tribunal deems fit in the facts and circumstances of the case may kindly be passed in favour of the applicant.

Anil Kumar

2. Heard learned counsel for the parties and perused the documents on record. The short controversy involved in this case is that the applicant while serving with respondent no. 1 & 2 proceeded on study leave. The applicant while working with the respondents department had executed a bond on 14.08.1991 for Rs.99,500/- for resumption of his duties and serving thereafter for three years with the respondent department while he was proceeding on study leave. On completion of study leave, the applicant joined the respondent department and while working he applied for the post of Associate Professor with respondent no. 3 through proper channel, which was duly forwarded on 08.09.1995 by issuing 'No Objection Certificate' (Annexure A/1). The applicant was under the bond with the respondent no. 2 for a period of three years w.e.f. 16.08.1994 but in the meanwhile, he was selected with respondent no. 3 to the post of Associate Professor and he joined the duties there during the bond period. Learned counsel for the applicant argued that on being selected on the post of Associate Professor with respondent no. 3, the applicant tendered his technical resignation, which was accepted by respondent no. 1 vide their letter dated 03.05.2006 (Annexure A/5). This relieving order was affected from 14.06.1996. That the applicant's request for relief has been accepted by respondent nos. 1 & 2 and, therefore, respondents cannot now claim bond money. In the relieving order (Annexure A/5), there is no condition that the applicant has to pay the bond money. He further argued that bond was only for a period of three

Anil Kumar

years and bond period was to expire in 1997 but till date after a lapse of 14 years, no demand has been raised by the respondent nos. 1 & 2 vis-à-vis the bond money.

3. Learned counsel for the respondents argued that the applicant himself executed the bond to serve with the respondents after expiry of his study leave and, therefore, he is bound by the terms & conditions of that bond but before the bond period was over, he was selected on the post of Associate Professor in the Rajasthan Agricultural University and he joined there after submitting his relinquishing letter dated 14.06.1996 to the CSWRI, Avikanagar. He further argued that he joined Rajasthan Agricultural University without being formally relieved and without completing other formalities. This conduct of the applicant was of unbecoming of a disciplined employee. It was only after repeated correspondence and clarifications that resulted into ex-post-facto approval of the competent authority, which was conveyed on 03.05.2006. That the Rajasthan Agricultural University has been informed that once the bond money is received, the pro-rata liability will be worked out with reference to pension liability qua CSWRI for the period the applicant had worked in CSWRI and the same would be released. He also referred to a judgment of the Hon'ble Supreme Court in the case of **Dr. Anil Bajaj vs. Post Graduate Institute of Medical Education & Research and Another**, 2002 (2) SCC 240, and argued that the ratio laid down by the Hon'ble Supreme Court in this case squarely

Anil Kumar

applicable in this case. Therefore, the OA is barred by the principle of estoppel.

4. Having heard the rival submissions of the respective parties and perusal of the documents on record, I am of the view that the applicant has made out a case for interference of this Tribunal. It is not disputed between the parties that the applicant executed the bond with respondent nos. 1 & 2. It is also not disputed between the parties that during the bond period, the applicant left respondent nos. 1 & 2 and joined respondent no. 3 without getting the formal relieving order from his employer. Therefore, he breached the condition of the bond. Hence, he is liable to pay the bond money to respondent nos. 1 & 2 but looking to the facts of the case that the application of the applicant was duly forwarded by respondents nos. 1 & 2 to respondent no. 3 and thereafter on being selected, the applicant joined respondent no. 3. It was well within the knowledge of the respondents nos. 1 & 2 that applicant has joined respondent no. 3 and they could have raised a demand for refund of the bond money. The respondents have not been able to show any document that they have issued notice for the refund of the bond money till date. Moreover, respondents have issued the relieving order (Annexure A/5) on 03.05.2006. If there was any issue of bond money to be paid by the applicant, then this ex-post-facto approval would have been withheld. In any case it took ten years to issue this relieving order in favour of the applicant.

Anil Kumar

During this period the respondents would have easily demanded the bond money from the applicant. Since the relieving order had been issued on 03.05.2006 without any condition that the applicant would require to pay the bond money, the applicant is not at fault in any way as no demand has been raised by respondents nos. 1 & 2. Therefore, now after 14 years to raise this demand would not be just and fair viz.-a-viz the applicant. The judgment cited by the learned counsel for the respondents in the case of **Dr. Anil Bajaj vs. Post Graduate Institute of Medical Education & Research and Another** is not applicable to the facts & circumstances of this case. Therefore, I allow the OA and direct the respondent nos. 1 & 2 to remit the service record of the applicant alongwith entire admissible amount of EPF, service gratuity or prorata pension etc. to respondent no. 3. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

5. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ