

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.1756/2015
M.A.No.1575/2015

Order Reserved on: 08.11.2016
Order pronounced on 16.12.2016

Hon'ble Shri V. Ajay Kumar, Member (J)

Dr. Dilip Kumar (Aged about 67 years)

S/o Late Sh. B.N.Sharma,

Retd. Director/CIFE, ICAR

R/o C-9/9698 Vasant Kunj

New Delhi – 110 070.

... Applicant

(By Advocate: Shri Ajesh Luthra with Shri B.L.Jangira)

Versus

1. Indian Council of Agricultural Research (ICAR)

Through the Secretary, Krishi Bhawan

Dr. Rajendera Prasad Road

New Delhi – 110 001.

2. Director

Central Institute of Fisheries Education (CIFE)

Panch Marg, Off. Yari Road

Versova, Andheri (West)

Mumbai – 400061 (Maharashtra)

3. Finance & Accounts Officer

Central Institute for Research on Cotton Technology

(CIRCOT)

Adenwala Road, Mantunga

Mumbai – 400 019 (Maharashtra). Respondents

(By Advocate: Shri S.K.Gupta with Sh. Vikram Singh)

ORDER

The applicant, a retired Director of Central Institute of Fisheries Education, filed the OA, seeking the following relief(s):

"8.1 declare that the applicant is entitled to retirement pension as promised and provided in Annexure A-6.

8.2 direct the respondents to sanction and authorize the pension to the applicant retrospectively w.e.f. 23.1.1994.

8.3 direct the respondents to disburse the arrears of pension due to the applicant w.e.f. 23.1.1994 till the date of actual disbursement of the pension to the applicant with interest.

8.4 direct the respondents to allow medical facilities as admissible to retired employees of ICAR.

8.5 Award costs in favour of the applicant.

8.6 Any other relief as may be decided by this Hon'ble Tribunal under the facts and circumstances of the case."

2. The brief facts as narrated in the OA are that the applicant joined Indian Council of Agricultural Research (in short, ICAR) on 10.06.1973 as SRA at Central Inland Fisheries Research Institute (in short, CIFRI), Barrackpore. While working as such, the applicant, having completed 20 years of qualifying service in ICAR, served a notice on the respondents for voluntary retirement, vide Annexure A3, dated 22.10.1993. After thorough examination, the same was recommended and forwarded to the ICAR, Headquarter along with the prescribed checklist, vide Annexure A4. Accordingly, the competent authority vide Annexure A5, dated 21.12.1993, approved the request of the applicant for voluntary retirement from service w.e.f. 22.01.1994, and the applicant was relieved from service on 22.01.1994, vide Annexure A6, dated 03.01.1994.

3. The applicant, duly submitted all the necessary documents, immediately on his relief from service, and requested for granting the Pension and other benefits to be payable to him, but the respondents have neither released the said benefits nor communicated any decision rejecting his claim.

4. The applicant got an FRO assignment under the United Nations Development Programme Project, in Bangladesh and accordingly, worked as such from 30.04.1994 to 29.09.2005. Thereafter, the applicant was appointed as Director of CIFE on 30.09.2005. On his pursuation, the respondents, vide Annexure A9, dated 22.06.2007, addressed to the CAO, CIFE, stated that the applicant's qualifying service as on the date of his voluntary retirement was 17 years 8 months 25 days, which is less than the required qualifying service of 20 years.

5. After failing on his attempts to convince the respondents, the present OA has been filed.

6. The applicant has also filed MA No.1575/2015, seeking condonation of delay of about 430 days in filing the OA.

7. Heard both the learned counsel, appearing on their respective sides, and perused the pleadings on record.

8. On the merits of the case, the respondents while not denying the fact that at the time of recommending for voluntary retirement, in the

papers enclosed, it was stated that the applicant has completed more than 20 years of qualifying service, but submits that after the relief of the applicant, on his voluntary retirement, and on examination of his service record, it was found that two spells of unauthorized absence of the applicant which was regularized as Extra Ordinary Leave (EOL), which shall not be treated as qualifying service for annual increments and other pensionary benefits, resulted in his net qualifying service of 17 years 8 months and 25 days, and accordingly, the applicant having not completed the required minimum qualifying service of 20 years, is not entitled for granting of pensionary benefits and hence, there is no illegality in the action of the respondents.

9. The respondents further submitted that the OA is liable to be dismissed on the ground of abnormal delay in filing the present OA.

10. It was stated in the OA that the applicant absented from duty from 21.06.1973 to 15.08.1973 and again from 21.08.1973 to 13.05.1976 and the same was treated as loss of pay and that it will not count towards increment vide the orders of the respondents dated 27.04.1976, however, nowhere in the said order it was stated that the aforesaid period will not be counted as qualifying service for pension, and hence, the respondents now cannot treat the aforesaid period as not qualifying period for counting the qualifying service.

12. It is further submitted that a decision regarding treatment of the aforesaid period as qualifying service was also taken on 31.05.1979 and a note to this effect was also made and pasted in the Service Book

of the applicant. Therefore, having condoned his absence during the said period and having treated the same as qualifying service, the respondents now cannot deny the said period for counting as qualifying service.

13. On the other hand, the respondent vide their counter, categorically stated vide Annexures R1, dated 02.09.1981, the aforesaid leave period of the applicant was declared that the same will not count towards the grant of annual increment and other pensionary benefits and that the same was duly informed to the applicant also, vide Office Order dated 16.10.1981, and that the same was recorded in his Service Book. Hence, the contention of the applicant that the leave period was treated as qualifying service is not correct.

14. The applicant, in his rejoinder, submitted that he did not receive the Annexure R1 (Colly.) letter dated 02.09.1981, where-under the leave period was declared to be not counted for the purpose of pensionary benefits, in addition to the granting of annual increments.

15. Admittedly, the applicant was voluntarily retired from service w.e.f. 22.01.1994 and he preferred the present OA on 06.05.2015, i.e., after a lapse of more than 20 years. The cause of action for the OA arose when he voluntarily retired from service, i.e., on 22.01.1994, since the prayer in the OA is for granting the Pension, with arrears, w.e.f. 23.01.1994. Hence, the counting of the delay as 430 days in filing the OA is incorrect. The applicant having worked in Bangladesh on higher positions, and also in CIFE, after his voluntary retirement,

failed to give any valid reasons for not filing the OA for about a period of 20 years, after the cause of action arose.

16. In the circumstances and for the aforesaid reasons, the OA and the MA are dismissed. No costs.

(V. Ajay Kumar)
Member (J)

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