

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.4517/2015

Order reserved on 20th May 2016

Order pronounced on 27th May, 2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

Dr. Magan Singh
Senior Scientist (Agronomy)
FR & MC, NDRI
Karnal, Haryana

(Mr. Pradeep Desodya, Advocate)

..Applicant

Versus

1. Union of India
Ministry of Agriculture
Through its Secretary
Krishi Bhawan, New Delhi-1
2. Director General ICAR
Krishi Bhawan, New Delhi-1
3. Director
ICAR – National Dairy Research Institute
Karnal, Haryana
4. The Secretary
Agricultural Scientist Recruitment Board (ASRB)
Krishi Anusandhan Bhavan-1
PUSA, New Delhi-12

..Respondents

(Mr. R K Sharma for Mr. Vijender Singh and Mr. B S Mor, Advocates)

O R D E R

Mr. P.K. Basu:

The applicant was working as Reader in Nagaland University in the pay scale of `12000-420-18300 (5th Central Pay Commission) and drawing basic pay of `12000/-. He applied for the post of Senior Scientist

(Agronomy) under Indian Council of Agricultural Research (ICAR), was selected and joined as Senior Scientist (Agronomy) w.e.f. 09.02.2007. ICAR order dated 27.03.2007 (Annexure A-5) indicates that applicant's scale of pay as Senior Scientist (Agronomy) was `12000-420-18300. On joining the ICAR since the accounts were not available at ICAR, where he was posted, his pay was provisionally fixed at `12000/-, which he was drawing in Nagaland University on the basis of the 'last pay certificate' (LPC). On 11.10.2007 (Annexure A-6 (colly.)), the applicant requested the ICAR to fix his basic pay at `13680/- based on LPC issued by the Nagaland University and vide order dated 09.07.2008, his pay was fixed at `13260 + 420 as personal pay w.e.f. 09.02.2007. Vide said office order of ICAR, the applicant was also allowed to draw two advance increments w.e.f. 09.02.2007.

2. On 28.07.2009 (Annexure A-8 (colly.)), the applicant requested the Finance & Accounts Officer, ICAR, Meghalaya to revise his scale w.e.f. 09.02.2007 on the basis of Due and Drawn Salary Statement from Nagaland University, and to give him the Pay Band of `37400-67000 + Research Grade Pay (RGP) of `9000/-, including two advance increments w.e.f. 09.02.2007, i.e., the date of joining at ICAR. Vide order dated 26.11.2009 (Annexure A-9), ICAR fixed his pay at `38,800 + 2870 + RGP 9000/- as on 09.02.2007, `43,190 + RGP 9000/- as on 01.07.2007, `44,760 + RGP 9000/- as on 01.07.2008 and `44,380 + RGP 9000/-.

3. However, subsequently, ICAR issued office order dated 20.09.2010 (Annexure A-10 (colly.)) posting him as Senior Scientist (Agronomy) at Basar Centre of ICAR RC for NEH Region, Barapani in the Pay Band 3 of

`15600-39100 (with a minimum pay of `22320/- + RGP `8000/-) w.e.f. 09.02.2007.

4. The applicant states that he was appointed by the ICAR as Senior Scientist (Agronomy) on the basis of the application that was forwarded through proper channel after acceptance of technical resignation by the Nagaland University. Thereafter, the applicant had made several representations for the purpose of counting of his past service, service gratuity, pensionary benefits, etc. It is, therefore, contended by him that after his appointment as Senior Scientist (Agronomy) is made, after due approval from the competent authority, it cannot be termed as fresh appointment and, therefore, RGP of `9000/- was applicable to him from 20.09.2010. It is stated that this would be clear from the order dated 29.10.2010 (Annexure A-10) issued by the ICAR, which is an order stating that the ICAR has approved clearance of probation and confirmation of the Scientists mentioned in the order in respective grades with effect from the dates shown against their names, based on the recommendations of the Departmental Promotion Committee (DPC). In this order, the applicant is at Sl. No.23 showing his date of joining as 09.02.2007 and date from which probation cleared as 08.02.2009.

5. It is stated that thereafter the applicant was transferred to National Dairy Research Institute (NDRI), Karnal and as per the LPC issued on 04.11.2011 (page 51 of the paper book), on his transfer to NDRI, Karnal, the RGP shown is `9000/-, which, he states, was drawn by him with the previous employer since 09.02.2007.

6. It is further stated that his request for counting of past service was examined both in ICAR and Nagaland University, as would be clear from letter dated 17.01.2013 (page 53 of the paper book) addressed by the NDRI, Karnal to the Registrar, Nagaland University, which basically forwarded his application for counting of past service for taking necessary action. However, another office memorandum dated 23.07.2013 was issued by the NDRI, Karnal wherein it was mentioned that request of the applicant for counting of past service could not be acceded to after the matter was examined by the Nagaland University.

7. The applicant then raised the issue of two increments for the years 2012 and 2013 as per the LPC, but according to him there was no response.

8. The applicant further states that he had been issued a letter dated 11.11.2014 (Annexure A-15) for his interview for the consideration of promotion/upward movement from Senior Scientist to Principal Scientist under the Revised Career Advancement Scheme (effective from 01.01.2009) and he was asked to appear for the interview on 13.11.2014. However, according to the applicant, though he had appeared before the Interview Board, result was not declared.

9. The next sequence of event is a certificate issued by the Nagaland University dated 27.11.2014 (Annexure A-16 (colly.)), in which it is certified that the applicant has served under Nagaland University on regular basis as Lecturer with effect from July 1996 to July 2003 and as Reader with effect from July 2003 to February 2007 in the scale of pay of ` 12000-420-18300. Subsequently, after completion of three years as Reader, he was placed in the Pay Band 4 of ` 37400-67000 with RGP of ` 9000/- w.e.f. 01.07.2006.

This was followed by another office order of the same date issued by the Nagaland University indicating that he was in the Pay Band 4 with RGP of `9000/- per month on completion of three years and then came into effect from 01.07.2006 with the next date of increment as 01.07.2007.

10. The next development is the letter dated 22.04.2015 from NDRI, Karnal to the Pro-Vice-Chancellor, Nagaland University, pointing out certain discrepancies in the pay fixation of the applicant. In short, the discrepancy pointed out was that as per the rule the applicant had to complete three years before he could claim the RGP of `9000/- and as per the records, he completed three years only on 22.07.2006 and, therefore, he was entitled to RGP of `9000/- only from 22.07.2006 onwards and before that his RGP in the revised scale (6th Central Pay Commission) would be `8000/- in Pay Band 3, i.e., `15600-39100. Therefore, the NDRI, Karnal requested the Nagaland University to look into the matter afresh, as, according to NDRI, the pay fixation of the applicant was wrongly done in Pay Band 4 with RGP `9000/- w.e.f. 01.01.2006, whereas the correct position was that w.e.f. 01.01.2006 since he had not completed three years of service in that grade till then, the revised Pay Band and the RGP should have been Pay Band 3 of `15600-39100 with RGP of `8000/- and next increment as on 01.07.2006 and then fix him in Pay Band 4 of `37400-67000 with RGP of `9000/- w.e.f. 22.07.2006, i.e., the date on which he completed three years of service in the past grade as Reader.

11. The Nagaland University replied to this letter vide its letter dated 03.09.2015 and stated that they had worked out the revised Due and Drawn Statement from 01.06.2006 to 08.02.2007 and as per this Due and Drawn

Statement, an excess amount of `1,05,733/- has been paid to the applicant and requested NDRI, Karnal to refund the excess amount to Nagaland University at the earliest. On 04.12.2015, the ICAR issued an office order revising the pay fixation of the applicant as on 01.01.2006 based on the letter of Nagaland University dated 07.08.2015, indicating that on his joining as Senior Scientist in ICAR, the pay of the applicant should have been fixed in Pay Band 3 `15600-39100 with RGP of `8000/- w.e.f. 09.02.2007, and in consultation with the internal audit of NDRI, Karnal, the pay was revised w.e.f. 09.02.2007, whereas the pay already drawn was `38800+2870 (AIs) + `8000/- RGP + 800 as personal pay. This was revised to Pay Band 3 `37400+8000 RGP + 750 as personal pay and thereafter the pay has been fixed on various dates, and ultimately as on 01.07.2015 in place of `57160 + `9000/- RGP + 800 as personal pay, it was reduced to `49500 + `8000/- as RGP + 750 as personal pay and next date of increment was indicated as 01.07.2016.

12. Being aggrieved with the aforesaid order, the applicant preferred a representation dated 07.12.2015 (Annexure A-18 (colly.)) to the Chief Administrative Officer, NDRI, Karnal. His basic argument is that while reducing his pay, he was not given prior notice, nor has any reason been assigned in the order as to why his pay is being reduced and that too from a date, which is eight years back in time, i.e., 09.02.2007. He has also stated in his representation that due to re-fixation of his pay, his assessment/promotion for the post of Principal Scientist (Agronomy) is affected, as he completes three years in the same RGP of `9000/- from 22.07.2006 to 21.07.2009, whereas with the reduced pay, he does not complete three years in RGP of `9000/- and hence becomes ineligible to apply for the post

of Principal Scientist. It is stated that since the fixation of pay has not been due to any fault of his, he should not be made to suffer. However, the respondents did not take any action on his representation. Therefore, being aggrieved by the action of the respondents, this O.A. has been filed with the following prayer:-

“I. To set-aside the impugned order dated 04.12.2015 and release the salary / pay and other perks applicable to the Senior Scientist in the Pay Scale of Rs.388000+2870 (AIs) + 9000 (RGP) + 800 (PP) as existed before passing of the impugned order dated 04.12.2015 along with pending two increments as per applicants entitlement.”

13. The grounds, on which this O.A. has been filed, are as follows:
 - (i) The principles of natural justice has not been followed by the respondents, as no reason has been assigned in the order dated 04.12.2015, nor has the applicant been put to prior notice.
 - (ii) The pay of the applicant has been fixed from time to time by the respondents themselves, without there being any misrepresentation on the part of the applicant, and, therefore, recovery cannot be effected by the Department.
 - (iii) The application for appointment as Senior Scientist (Agronomy) was forwarded by the Nagaland University and was in consonance with the Rules and, therefore, the pay cannot be decreased without any statutory power.
 - (iv) His colleagues, who are also working as Senior Scientist (Agronomy), are drawing RGP of `9000/- and this is causing disparity in the pay of the applicant at the cost of his career and promotional avenues.

(v) The Hon'ble Supreme Court in **Indian Council of Agricultural Research v. A.N. Lahiri**, (1997) 10 SCC 691, in a case of Scientist working in ICAR, has held that the doctrine of 'equal pay for equal work' was squarely attracted in the case of the respondent therein, who was not the member of ARS, vis-à-vis, ARS.

(vi) The Apex Court in **Bhagwan Shukla v. Union of India & others**, (1994) 6 SCC 154, in which the appellant had not been put to notice and granted an opportunity to show cause against reduction of his basic pay, has held that "Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employee) concerned to notice giving him a hearing in the matter.."

(vii) The applicant has also placed reliance on the judgments of Hon'ble High Court of Delhi in **H.S. Dhiman v. NDMC**, 145 (2007) DLT 450, **Virender Singh Lather (Dr.) v. Secretary, Agriculture Scientists Recruitment Board, New Delhi & another**, 212 VI AD (Delhi) 660 and **Gulshan Sharma v. Union of India & others**, 2014 (144) DRJ 42 (DB).

(viii) The applicant was given call for interview on 13.11.2014, which shows that he was found eligible for the post of Principal Scientist but later on his result was not declared.

(ix) The principle of estoppel is invoked on the ground that the issue of revision of scale, which is settled between the Nagaland University and the ICAR since 09.02.2007, cannot be revised now.

14. The learned counsel for respondents referred to the short reply filed by the respondents on 16.03.2016 and specifically Annexure R-2, which refers to the endorsement dated 29.10.2015 regarding remitting the excess payment of `1,05,733/- to Nagaland University. In this Note to the Chief Administrative Officer, NDRI, Kernal, the applicant has stated that “you may deduct the amount in three (3) installments from my salary from December-2015 and same may kindly be send to the Nagaland University regarding excess payment please”.

15. Our attention is then drawn to Annexure R-5, which is an undertaking dated 27.03.2009, given by the applicant wherein the applicant has undertaken that “excess payment that may be found to have been made as result of incorrect fixation of pay or any excess payment detected in the light of discrepancies subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.”

16. Thereafter, the learned counsel for respondents referred to ICAR’s letter dated 06.03.2009 (Annexure R-3), which is regarding revision of pay of Scientists following revision of pay scales of Central Government employees on recommendations of the 6th Central Pay Commission, and more specifically to Annexure attached with it, which indicates revised pay of Scientists w.e.f. 01.01.2006, in which it is indicated in column 2 that incumbents with less than three years of service on 01.01.2006 will be granted Pay Band of `15600-39100 + RGP of `8000/- and on completion of three years of service in the grade of Scientist (Selection Grade) (pre-revised scale of `12000-420-18300) be placed in Pay Band of `37400-67000 + RGP of `9000/-.

17. Based on the aforesaid documents, the learned counsel for respondents, therefore, states that as regards the excess payment arising out of shifting of RGP of `9000/- while in Nagaland University from 01.01.2006 to 22.07.2006, there is no dispute in view of the Note dated 02.12.2015 (Annexure R-2) and the applicant has to repay the money to Nagaland University.

18. As regards what should be his Pay Band and RGP on joining as Senior Scientist (Agronomy) with ICAR on 09.02.2007, it is stated that the ICAR, vide its letter dated 06.03.2009, makes it abundantly clear that those, who had not completed three years of service as on 01.01.2006, will be placed in the Pay Band 3 `15600-39100 with + RGP `8000/-. Admittedly, the applicant completed three years of service only on 22.07.2006 and, therefore, the Pay Band applicable will be Pay Band 3 with RGP `8000/- as on 09.02.2007. Therefore, the respondents have correctly fixed his scale of pay as on 09.02.2007 in Pay Band 3 with RGP `8000/-.

19. Moreover, the undertaking given by the applicant dated 27.03.2009 (Annexure R-5) also makes it clear that he had agreed that any excess payment that may be found to have been made as result of incorrect fixation of pay or any excess payment detected in the light of discrepancies subsequently will be refunded by the applicant to the Government and, therefore, now he cannot take the plea that this excess payment cannot be recovered from him. In fact, the amount of extra payment appearing in the office note dated 04.04.2016 placed before us is based on a final corrected Due and Drawn Statement in respect of the applicant for the period from 09.02.2007 onwards amounting to `13,46,265/- (Thirteen Lac Forty Six Thousand Two Hundred Sixty Five only).

20. Heard the learned counsel for the parties and perused the pleadings and judgments cited by both the sides.

21. Clearly there is no dispute regarding the period of 01.01.2006 to 22.07.2006, which was the period spent in Nagaland University and during which an excess amount has been paid and which needs to be recovered from the applicant, and, therefore, we hold that the applicant has to repay the amount of ` 1,05,733/- to the Nagaland University.

22. As regards the period from 09.02.2007 onwards, it is clear that the applicant had not completed three years in the RGP `8000/- as on 01.01.2006. Therefore, his pay as on 01.01.2006 has been rightly corrected and re-fixed in Pay Band 3 `15600-39100 with RGP `8000/- according to the pay fixation Rules of 6th Central Pay Commission and there has been no error in re-fixing his pay. Since at that time full records were not available with the ICAR from Nagaland University, an undertaking was given by the applicant on 27.03.2009 that any excess payment that may be found to have been made as result of incorrect fixation of pay or any excess payment detected in the light of discrepancies subsequently will be refunded by him to the Government either by adjustment against future payments due to him or otherwise. Therefore, the applicant joined the post of Senior Scientist (Agronomy) fully aware that his fixation is tentative subject to full details being available from Nagaland University and only thereafter his pay will be finally fixed and, therefore, he gave an undertaking to that effect regarding refund of excess amount that might arise due to wrong re-fixation of pay. Accordingly, in our view, the respondents have committed no mistake in seeking refund of excess amount in accordance with the written agreement between the applicant and the ICAR. However, in our

opinion, while the fixation of pay in Pay Band 2 + RGP `8000/- as on 01.01.2006 and 09.02.2007 was rightly done as per Rules, the respondents have committed error in fixing the applicant's pay from 09.02.2010 onwards for reasons we shall discuss presently.

23. The applicant has not been able to establish that on what basis he states that his pay as on 09.02.2007 should be fixed in Pay Band 4 with RGP `9000/- by the ICAR. His only plea is that he was drawing that scale with RGP `9000/- in Nagaland University as on 01.01.2006 (later corrected to 22.07.2006), and that the applicant applied through proper channel, etc. In our view, these arguments are extraneous. What we have to see is whether the pay was fixed in accordance with the Rules or not. His appointment letter dated 22.07.2003 states that he was appointed in the scale of `12000-420-18300 to the post of Senior Scientist on 09.02.2007. However, when the recommendations of 6th Central Pay Commission came in, though the Notification came sometime in August, 2008, the pay scales were to be revised w.e.f. 01.01.2006 and the pay fixation dispensation stated the Senior Scientists will remain in Pay Band 3 with RGP `8000/- as on 01.01.2006, if they have not completed three years of service in the previous RGP **as on 01.01.2006** and will only get Pay Band 4 if they have completed three years of service. Admittedly, the applicant had not completed three years of service as on 01.01.2006. So the only revised scale, he is entitled to as on 01.01.2006 and 09.02.2007, is Pay Band 3 with RGP `8000/- and not Pay Band 4 with RGP `9000/-. However, the exact wording of the relevant provisions in Annexure to the letter of ICAR dated 06.03.2009 is as follows:-

“Revised pay of scientists w.e.f. 1.1.06

Designation	Revised Pay	Revised Designation
Scientist ----- (iii) Scientist (Sel. Grade) 12000-18300	<p>-----</p> <p>Revised pay of incumbents in position</p> <p>Incumbents with 3 years service in the scale of Rs.12000-18300 on 1.1.06. Pay Band – Rs.37400-67000 + RGP of Rs.9000</p> <p>Incumbents with less than 3 years service on 1.1.06 Pay Band – Rs.15600-39100 + RGP of Rs.8000</p> <p>On completion of 3 years of service in the grade of Scientist (Sel. Grade) to be placed in Pay Band – Rs.37400-67000 + RGP of Rs.9000.</p> <p>Note – In view of the considerable raise in effective pay between the two Pay Bands there shall be no additional increments on movement from the Pay Band of Rs.15600-39100 to the Pay Band of Rs.37400-67000.</p>	<p>-----</p> <p>Scientist</p>

Plain reading of this makes it clear that if on 01.01.2006 the incumbent has three years of service in pay scale of `12000-420-18000 (Scientist, Selection Grade), then his revised Pay Band / Grade Pay would be Pay Band 4 + RGP `9000/-, if service is less than three years on 01.01.2006, then gets Pay Band 3 + RGP `8000/-. But the next provision is that after three years of service in Selection Grade, he has to be placed in Pay Band 4 + RGP `9000/-. Here is where the respondents have committed an error. It is true that the request for counting of past service of the applicant has been

rejected, that also is not challenged. So, the respondents are right in treating the applicant as a fresh appointee as Senior Scientist (Agronomy) in ICAR w.e.f. 09.02.2007 in the pay scale of `12000-420-18000. As explained above, the respondents have rightly fixed his pay in Pay Band 3 + RGP `8000/- as on 01.01.2006 and 09.02.2007. But on completion of three years in that grade on 09.02.2010, as per the provisions pointed out above, he should have been placed in Pay Band 4 + RGP `9000/-. This the respondents did not do and continued him in Pay Grade / Grade Pay, i.e., Pay Band 3 + RGP `8000/- till 01.07.2015. This is an error, which needs rectification.

24. We, therefore, set aside the order dated 04.12.2015 and direct the respondents to re-fix the pay of the applicant in the appropriate Pay Band / Grade Pay as explained by us above. In case after this exercise it is found that still some excess amount has been paid to the applicant for the period 09.02.2007 onwards, then the respondents may recover that amount. We also make it clear that the amount of `1,05,733/-, paid in excess to the applicant during his service in Nagaland University, has to be refunded by the applicant to the Nagaland University. We fix a time frame of 90 (ninety) days for compliance of our above directions.

25. With the aforesaid directions, the O.A. is disposed of. No costs.

(Raj Vir Sharma)
Member (J)

/sunil/

(P.K. Basu)
Member (A)