

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00061/2018

Thursday, this the 26th day of September, 2019

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

Shri C.Muralidharan,
S/o P.Bhaskaran Nair,
Aged 57 years,
Chief Administrative Officer,
Central Marine Fisheries Research Institute,
Kochi,
residing at Flat No.2F,
Blue Lagoon Apartments,
Vaduthala, Kochi.

...Applicant

(By Advocate – Mr. R.Sreeraj)

v e r s u s

1. The Indian Council of Agricultural Research,
Krishi Bhavan,
Dr.Rajendra Prasad Road,
New Delhi – 110 001.
represented by its Secretary.
2. The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, Dr.Rajendra Prasad road,
New Delhi – 110 001.
3. The Director,
Central Marine Fisheries Research Institute,
Ernakulam North, Kochi – 18.
4. The Chief Financial & Accounts Officer,
Central Marine Fisheries Research Institute,
Ernakulam North, Kochi -18.
5. The Chief Executive,
National fisheries Development Board,
Hyderabad – 500 052.

...Respondents

(By Advocates Mr. P.Santhosh Kumar for R1-4 and Shri S.Manu for R-5)

This Original Application having been heard on 20th September 2019, the Tribunal on 26th September 2019 delivered the following :

ORDER

OA No.61/2018 is filed by Shri C.Muralidharan, an employee of Indian Council of Agricultural Research (ICAR for short). Having been on deputation to National Fisheries Development Board from 15.02.2010 to 31.03.2015, he seeks leave salary and joining time pay in the same Pay Band and Grade Pay at the level that he was drawing from NFDB.

2. The applicant had been working as Controller of Examinations in an organisation under ICAR, New Delhi and joined as Executive Director(F&A) on deputation in the Pay Band-4 of Rs.37400-6700 + Rs.8700 Grade Pay, initially for a period of three years in NFDB, Hyderabad under the Department of Animal Husbandry, Dairying and Fisheries, Government of India. His deputation tenure was extended until he was reverted to his parent department with effect from 31.03.2015. The applicant had applied for leave from 27.03.2015, for a period of two months. The applicant filed an OA No.302/2017 seeking sanction of leave applied by him from 06.04.2015 to 31.05.2015. However, NFDB sanctioned only 10 days of Commuted leave from 27.03.2015 to 05.04.2015 and the prayer in the OA was to get his balance leave regularised by the parent department.

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3. During the pendency of the above OA, the Respondent-3, the parent organisation as per the office order dated 18.08.2017, regularised his leave by granting him the following:

- 1) Commuted Leave for 31 days with effect from 06.04.2015 to 06.05.2015
- 2) Earned Leave for 35 days with effect from 07.05.2015 to 10.06.2015
- 3) Joining time for 4 days with effect from 11.06.2015 to 14.05.2016.

The OA was then disposed of as per order dated 22.08.2017, copy of which is available at Annexure A6.

4. Respondent-3 had taken recourse to FR 125 which states as follows:

“F.R. 125. A Government servant reverts from foreign service to Government service on the date on which he takes charge of his post in Government service:

Provided that if he takes leave on the conclusion of foreign service before joining his post, his reversion shall take effect from such date as the Central Government on whose establishment he is borne may decide.”

The payment for the above period was calculated and paid reckoning his basic pay as Rs.44,050/- while the applicant claims leave salary at the rate of Rs.51,910/-, the pay drawn by him from his foreign employer.

Respondent-3 objects to this, calling to their support FR 126 which states:

“F.R. 126. When a Government servant reverts from foreign service to Government service, his pay will cease to be paid by the foreign employer and his contributions will be discontinued, with effect from the date of reversion.

5. The applicant reiterates in the OA that he is eligible for leave salary calculated at the higher pay level he was enjoying under foreign

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employment. He filed a representation dated 04.10.2017 before the 3rd Respondent (Annexure A7) and the Assistant Administrative Officer, CMFRI (Respondent-3) issued office order dated 11.10.2017 (Annexure A8) granting his request. The applicant is aggrieved that despite the sanction at Annexure A8, the Audit Wing of the Institute is refusing to sanction the pay bill at the enhanced rate. The Audit continues its recalcitrant stand despite the competent authority's approval. A further representation made to the first respondent (Annexure A9) produced no response.

6. In the reply statement filed on behalf of Respondent-3, which is CMFRI, the claim of the applicant is denied. The leave granted by NFDB, the foreign employer in this case, was only upto 05.04.2015 although the applicant had requested for two months of leave from 27.03.2015. He was reverted back to the service of 3rd Respondent with effect from 31.03.2015. No leave was sanctioned further by the 5th Respondent. As already stated Respondent-3 calls to their assistance the provisions of FR 125 and 126, while insisting that the higher pay enjoyed by the applicant would have ceased from the date he left the services of the foreign employer and any sanction order issued subsequently will be based on the pay he was granted in his parent organisation. It is also averred that NFDB have chosen to ignore the claim of the applicant and Respondent-3 is in no position to grant him his wish.

7. Respondent-5, NFDB have also filed a reply statement. The

following facts are stated:

The applicant, originally an employee of ICAR had been on deputation to the services of Respondent-5 with effect from 15.02.2010. The period came to an end on 31.03.2015 when he stood repatriated to his parent organisation. He had applied for 10 days leave on medical grounds on 27.03.2015, which was not approved. The applicant submitted a revised leave application on 13.05.2015 for grant of Commuted leave for 42 days from 27.03.2015 to 07.05.2015 and Earned leave for 61 days from 08.05.2015 to 07.07.2015. The 5th Respondent by order dated 08.02.2016 sanctioned 10 days Commuted leave w.e.f. 27.03.2015 to 05.04.2015. Having left the service of Respondent-5, the applicant has no further connection or claim on the organisation.

8. Heard Shri R.Sreeraj, learned Counsel for the applicant and Shri P.Santhosh Kumar for Respondent-3 and Shri S.Manu for Respondent-5. The OA is filed attempting to take advantage of the higher pay that the officer had been getting in his foreign employment as compared to his parent organisation and getting eligible leave salary calculated on that basis. But a peculiar set of circumstances came about with the applicant proceeding on leave while with the foreign employer without sanction of any leave. By the time the leave was sanctioned and that too only for 10 days he had already left the services of NFDB, Respondent-5. He had approached this Tribunal by filing OA No.302/2017 and the same was closed as Respondent-3 had already issued order dated 18.08.2017 sanctioning benefits as mentioned already. Now the attempt is for

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obtaining the benefits taking into account the higher pay he was enjoying under NFDB. Shri Sreeraj took support of Rule 40 of Leave Rules which reads as follows:

“(1) Except as provided in sub-rule (7), a Government servant who proceeds on earned leave is entitled to leave salary equal to the pay drawn immediately before proceeding on earned leave.”

But it is necessary to apply the Rules to the specific circumstances of this case. This is a matter of an officer who had been on deputation and whose deputation had come to an end before grant of any type of leave. Besides the leave period relates to the time when he left the foreign employer and joined his parent organisation. Once the deputation is over, there is no connection which can be claimed with the foreign employer. It is not that the applicant had been made to suffer being refused all claims. In fact all eligible benefits had been granted to him on the basis of his eligible grade in the parent organisation. Having been repatriated to his parent organisation, he can have no claim whatsoever on the earlier pay drawn by him while he was on deputation.

9. The applicant trains his guns on the Audit Wing under Respondent-3 and states that the competent authority has approved his claim as at Annexure A8. He is aggrieved by the fact that the Audit and Finance Wing refused to act as per the sanction contained in Annexure A8. But it is to be understood that the role of Audit and Finance Controller in any organisation is to carefully examine each disbursement and see whether it

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is in accordance with relevant rules. The authority who issued Annexure A8 office order was an error in having granted benefits without approval of Audit and Accounts of his own organisation.

10. Facts being so, this Tribunal is of the view that all eligible benefits have already been disbursed to the applicant and he can have no further claims. Accordingly, OA is dismissed. No costs.

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00061/2018

- 1. Annexure A-1** - True copy of the Letter Admn. No.F2-24/90-Estt.I dated 17.2.2015 issued by the Under Secretary (Admn), ICAR.
- 2. Annexure A-2** - True copy of the Letter No.NFDB/Admn/49-CM/PF/2010/2001 dated 8.2.2016 issued by the Chief Executive, NFDB, Hyderabad.
- 3. Annexure A-3** - True copy of the Letter No.NFDB/Admn/49(cm)/PF/2010/2135 dated 22.2.2016 issued by the Consultant (Admn), NFDB, Hyderabad.
- 4. Annexure A-4** - True copy of the representation dated 7.7.2016 submitted by the applicant.
- 5. Annexure A-5** - True copy of the Letter No.2-1/2005-Per dated 22.9.2016 submitted by the Administrative Officer, CMFRI to the Under Secretary (Admn), ICAR, Krishi Bhavan.
- 6. Annexure A-6** - True copy of the final order dated 22.8.2017 in OA 302/2017 on the the file of this Hon'ble Tribunal.
- 7. Annexure A-7** - True copy of the representation dated 4.10.2017 submitted by the applicant to the 3rd respondent (along with the enclosure)
- 8. Annexure A-8** - True copy of the Officer Order PF.No.1373/Per. Dated 11.10.2017 issued by the Assistant Administrative Officer, CMFRI, Kochi.
- 9. Annexure A-9** - True copy of the representation dated 6.11.2017 submitted by the applicant to the 1st respondent.
- 10. Annexure R3(a)** - True copy of the Letter PF No.1373/Per. dated 21.02.2018.
- 11. Annexure R3(b)** - True copy of the Letter Admn./F.No.2-24/1990-Estt.I dated 04.04.2018.
- 12. Annexure R3(c)** - True copy of the Letter PF No.1373/Per.dated 18.04.2018.
- 13. Annexure R3(d)** - True copy of the Letter PF No.1373/Per dated 23.05.2018.
- 14. Annexure R3(e)** - True copy of the NFDB/Fin/2014-15/LS&PC/241/1268 dated 13.08.2018.

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15. Annexure R3(f) - True copy of the letter Admn./F.No.2-24/1990-Estt.I dated 23.08.2018.
