

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH



No.O.A.350/01256/2014

Date of order : 11.2.16

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Hon'ble Ms. Jayati Chandra, Administrative Member

PHANI BHUSAN KUNDU

VS.

UNION OF INDIA & ORS.  
(M/O AGRICULTURE)

For the applicant : Mr. U. Chakraborty, counsel  
Ms. S. Bhattacharya, counsel

For the respondents : Mr. S. Bhattacharya, counsel  
Mr. B. Nandi, counsel(proxy)

ORDER

Per Ms. Jayati Chandra, A.M.

This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "a) An order directing the respondents, particularly nos.1 and 2 to revise the pension of the applicant on the basis of last drawn emolument, drawn as an Animal Husbandry Commissioner of India, Dept. of Animal Husbandry and Dairying under Ministry of Agriculture, New Delhi, Government of India who retired from that post as Central Government Employee on 30.09.92 under the order of President of India;
- b) An order directing the respondent nos.1 and 2 to fix the pension of the applicant on the Central scale of pay for the post of Animal Husbandry Commissioner of India, under Government of India at Rs.7300/-7600/- which the applicant was drawing at the time of his retirement from the post of Animal Husbandry Commissioner of India and subsequent revision thereof from time to time by the Pay Commission;
- c) An order directing the respondent and each one of them to allow the applicant to draw pension on the basis of his last pay drawn in the scale of 7300-7600/- subsequently revised under 6<sup>th</sup> Pay Commission in the scale of pay Rs.37,400-7000/- with grade pay Rs.12,500/- who retired as Animal Husbandry Commissioner of India under the Ministry of Agriculture, Government of India and to pay all arrears in respect of pension and other service benefits;
- d) An order quashing and/or setting aside the impugned letter dt.31.03.94 vide no.Pen X/P/511(G)/92-93 314733 issued by the respondent no.2 refusing to grant pension under C.C.S.(Pension) Rules and all relevant and/or concerned file notings thereof;
- e) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. The facts of the case as disclosed by the applicant are that the applicant joined as Director of Veterinary Services, Government of West Bengal in September, 1972 and was in continuous service under the Government of West Bengal till 20.06.1991. He was selected by Union Public Service Commission(UPSC) against an advertisement for filling up single vacancy

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of the post of Animal Husbandry Commissioner, Ministry of Agriculture, Government of India in the rank of Additional Secretary. He was appointed on the said post on transfer on deputation basis vide letter dated 26.06.1991 in the scale of pay of Rs.7,300-7,600 with non-practicing allowance @ Rs.800/- per month along with certain other allowances as per admissibility under the rules of the Government of India.(Annexure A-2). The applicant was released by the Government of West Bengal and he joined on his new post of Animal Husbandry Commissioner. He retired from the said post on reaching the age of superannuation w.e.f. 30.09.1992. The notification for retirement was issued by Government of India, Ministry of Agriculture vide notification dated 29.09.1992(Annexure A-5). He submitted his pension papers calculating pension on the basis of his last pay drawn and the same was forwarded to the Government of West Bengal who in turn forwarded the pension papers to Accountant General (West Bengal). The Office of the Accountant General, West Bengal treated the applicant as having been on foreign service and the quantum of pension fixed for him was based on the emoluments of the post he would have normally occupied, had he continued to be in the service of West Bengal Government. To such action of the Accountant General, West Bengal, the applicant's pension has been wrongly fixed as per charts as per Annexure A-3 which are given below:-

Scale of Pay of the Post of Director Veterinary Services(Govt. of West Bengal)

For the year 1997 5100-150-6300	16000-400-20000	5 <sup>th</sup> Pay Commission of 1997
For the year 2006 16000-400-20000	37400-60000	6 <sup>th</sup> Pay Commission of 2006

Central Scale of Pay for the Post of Animal Husbandry Commissioner of India.(Govt. of India)

For the year 1997 7300-106-7600	22400-525-24525	5 <sup>th</sup> Pay Commission of 1997
For the year 2006 22400-24500	37400-67000 Grade Pay 12500	6 <sup>th</sup> Pay Commission of 2006

The applicant had repeatedly corresponded with the Government of West Bengal by letter dated 31.03.1992(Annexure A-7), 17.07.1992(Annexure A-7) in all of which he had based his pension calculation on the basis of payment drawn against the post of Commissioner (Animal Husbandry).

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3. The applicant has challenged such fixation of pension on the ground that he had been appointed in the service of the Government of India through the open market recruitment process advertised and conducted by the Union Public Service Commission. His selection and appointment was on the permanent post of Animal Husbandry Commissioner which is a Central Government post. He never was reverted back to his cadre prior to his retirement. However, the respondents have misconstrued the memorandum of Finance Department of Government of West Bengal dated 12.10.1979, 24.04.1990 and 25.04.1990.

4. The Respondent No.1 i.e. the Union of India has not filed any counter reply.

5. The Respondent No.2 i.e. the Accountant General, West Bengal has denied the averments made in the O.A. Their basic contention is that the claim of the applicant for revised pensionary benefits taking into account the last pay drawn in the post of Animal Husbandry Commissioner, Department of Animal Husbandry, Government of India is not tenable as he was neither absorbed nor appointed on substantive basis to the post of Animal Husbandry Commissioner. His lien lay with his parent department i.e. the State of West Bengal. His recruitment on the post of Animal Husbandry Commissioner was on transfer on deputation basis as is evident from the Memorandum No.12023/16/31-E.V dated 17.11.1990(Annexure A1). His appointment order also makes it clear that he was appointed on the same post "on transfer on deputation basis." He was never a Central Government employee but on the basis of his lien he continued to be an employee of the Government of West Bengal. Therefore, he is entitled to the pension against the post which he would have been otherwise occupied under the Government of West Bengal on the date of his retirement.

6. Through their counter Affidavit the Respondent No.3 i.e. the State Government has essentially echoed the view of the Respondent No.2. Vide memorandum dated 19.06.1991 of the Ministry of Agriculture, Department of Animal Husbandry and Dairing, Government of India (Annexure A-2), and stated that the applicant was given the offer of appointment on transfer on deputation basis. As such, there was no question of the applicant's absorption in the post of Animal Husbandry Commissioner in the Department of Animal Husbandry and Dairing, Government of India. The Government of India also sent his pension papers to Government of West Bengal treating him as a State Government employee.

7. The applicant has filed rejoinder to the reply through which he has stated more or less the same as have been stated in the O.A.

8. We have heard the Id. counsel for both sides and perused the materials placed on record.

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9. During the course of argument, the applicant has cited the judgment of Hon'ble Apex Court in the case of **Ashok Kumar Ratilal Patel Vs. Union of India & Another [(2012) 7 Supreme Court Cases-757]** wherein the difference between 'transfer on deputation' and 'appointment on deputation' has been clearly brought out. The relevant portion of the said judgment is extracted hereunder for ready reference:-

"13. Ordinarily transfers on deputation are made as against equivalent post from one cadre to another, one department to another, one organization to another, or one Government to another; in such case a deputationist has no legal right in the post. Such deputationist has no right to be absorbed in the post to which he is deputed. In such case, deputation does not result into recruitment, as no recruitment in its true import and significance takes place as the person continues to be a member of the parent service.

14. However, the aforesaid principle cannot be made applicable in the matter of appointment (recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organization or State within the meaning of Article 12 of the Constitution of India, the provisions of Article 14 and Article 16 are to be followed. No person can be discriminated nor is it open to the appointing authority to act arbitrarily or to pass any order in violation of Article 14 of the Constitution of India. A person who applies for appointment on deputation has an indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work.

15. The present case is not a case of transfer on deputation. It is a case of appointment on deputation for which advertisement was issued and after due selection, the offer of appointment was issued in favour of the appellant. In such circumstances, it was not open for the respondent to agree that the appellant has no right to claim deputation and the respondent cannot refuse to accept the joining of most eligible selected candidate except on ground of unsuitability or unsatisfactory performance."

The applicant has further placed reliance on the **Writ Petition No.9262(W) of 2015**. In the case of Professor (Dr.) Chandra Sekhar Chakrabarti vs. State of West Bengal (unreported and unauthenticated by High Court of West Bengal).

10. We have considered the submissions made by the Id. counsel for both sides.

11. The controversy in this case arises from the anomaly that the applicant was treated as a State Government employee governed by the State Government pension rules and the applicant seeks pension as per the scale of pay admissible to a Central Government employee governed under CCS(Pension) Rules.

12. The Government of India, Ministry of Agriculture, Department of Animal Husbandry and Dairying vide their memorandum dated 17.11.1990(Annexure A1) issued a notification for recruitment to the post of Animal Husbandry Commissioner by transfer on deputation basis. Such posts were open to both the officers of Central Government, Union Territories and the officers of State Government possessing requisite qualifications. Vide order No.12023/15/89-EV dated 26.06.1991(Annexure A2) the applicant was appointed after due selection, to the post of Animal Husbandry Commissioner on transfer on deputation basis for a period upto 31.08.1992 or until further orders. The order being a short one is reproduced below:-

"On the recommendation of the Union Public Service Commission and with the approval of the Appointments Committee of the Cabinet, Dr. P.B. Kundu, Director, Veterinary Services, Government of West Bengal, is appointed as Animal Husbandry Commissioner in the scale of pay of Rs.7300-100-7600 in the Department of Animal Husbandry and dairying with effect from the forenoon of 24<sup>th</sup> June, 1991, on transfer on deputation basis for a period upto 31.8.1992 or until further orders, whichever is earlier.

This Departments' Office Order No.4 of 1991, relating to additional charge arrangements made for the post of Animal Husbandry Commissioner, therefore, stands rescinded."

By notification No.19011/284/92-E.V dated 29.09.1992 the applicant retired from Government service with effect from afternoon of 30.09.1992 on attaining the age of superannuation. This retirement notification was issued by the Government of India, Ministry of Agriculture.

13. A Government employee who is taken on deputation, no doubt continues to retain his lien in his parent department, but the conditions of his deputation are spelt out in his deputation/transfer on deputation order. The very word 'deputation' implies a beginning of a relationship and termination of the same relationship. There is also a provision of absorption of a deputationist by the borrowing department in some cases. In this particular case, the Respondent No.2 and 3 have drawn our attention to the conditionality of the employment that the same was made on "transfer on deputation basis", but they have completely ignored the second conditionality that such transfer on deputation was to cease on 31.08.1992. Had the applicant been returned to his parent department prior to his retirement, there would have been no case for interference. From the various papers submitted by the applicant, it is clear that he was filling up his pension papers preparatory to his retirement on 31.09.1992. It is another matter that he was at that point of time preparing his pension papers in terms of Central Government pay scale. Thus, there was no concealment of facts on the part of the applicant. The Union of India(Respondent No.1) did not either act as per terms of his appointment and send the applicant back to his parent employer, that is, Government of West Bengal on 31.08.1992 nor did the Government of West Bengal as the recipient of the pension papers (sent as early as 31.03.1992-Annexure A7) informed the applicant that the pension calculation should be in accordance with the West Bengal Government rules. In fact, by their own action, the Respondent No.1 allowed him to retire from the Central Government post. By their action they gave rise to the legitimate expectation that in keeping with the general rules the applicant will receive pension as per the last pay drawn. The question of who will pay (State & Central Government) was a mere technicality to him.

14. Such lapses intentional or otherwise on the part of the model employers i.e. the Central and the State Government cannot be allowed to recoil on the retired employee.

15. Thus on the basis of the discussions made above, we direct that the Respondent No.1 shall regularize the services of the applicant as having been notionally absorbed against the

post from which he retired and grant him pension as per the last pay drawn by him and issue revised pension papers accordingly. The difference of pension so fixed is to be paid as arrears to the applicant with interest @ 8% by the Respondent No.1. The order so passed be complied with within a period of six months from the date of receipt of this order.

16. The O.A. is accordingly disposed of. No cost.

(JAYATI CHANDRA)  
Administrative Member

(BIDISHA BANERJEE)  
Judicial Member

s.b