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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.2222/2003

New Delhi this the 18th July, 2005

**HON'BLE SHRI JUSTICE M.A.KHAN, VICE-CHAIRMAN (J)
HON'BLE SHRI S.A.SINGH, MEMBER (A)**

Shri Harsh Vardhan Agarwal,
S/o Late Shri Ram Kishore Agarwal,
R/o 550, Sahukara,
Bareilly (U.P.)
Presently posted at Malaria Research Centre,
Khirni Bagh, Shahjahanpur (U.P.).

... Applicant.

(By Advocate: Shri Rajinder Khatter)

Versus

1. The Director General,
Indian Council of Medical Research,
Post Box-4911,
Ansari Nagar, New Delhi-110 029.
2. The Executive Committee,
(Appellate Authority),
Indian Council of Medical Research,
Post Box-4911,
Ansari Nagar, New Delhi-110 029.

... Respondents.

(By Advocate: Shri V.K.Rao)

ORDER

By Shri S.A.Singh, Member (A)

The applicant was posted as Assistant Research Officer in RMRC, Port Blair and was placed under suspension on 18.11.1983 as disciplinary proceedings were contemplated against him. A memo. Dated 2.2.84 was issued by DG, ICMR containing the imputations of misconduct or misbehaviours and articles of charge, this was in continuation to the one issued by Officer in charge RMRC Port Blair dated 9.01.1984. The applicant furnished his reply vide his letter-dated



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24.1.1984 and this was forwarded to the Inquiry Officer. The applicant did not attend the hearings fixed by the Inquiry Officer and as such, the enquiry was held ex parte. The DG, ICMR imposed a penalty of demotion to the next lower grade of Research Assistant at RMRC Port Blair in the scale of Rs.1400-2300/-, with forfeiture of his right to subsistence allowance for the suspension period and the suspension period to be treated as dies-non. The applicant aggrieved by this order has prayed for it's quashing and sought consequential promotion and back wages as admissible under rules and quashing of appellate authority order dated 02.6.2003. Apart from other grounds the applicant has pleaded that he could not attended the enquiry due to paucity of funds and non payment of subsistence allowance and that the demotion order dated 11.11.86 is unsustainable as the applicant cannot be demoted below the post of initial appointment and pay scale. According to the applicant that while he was working as Research Assistant in the scale of Rs. 210-425/-, posts of Research Assistant in the grade of Rs.350-680/ were advertised by the respondents for their WHO/ICMR project. The applicant applied for the said post. After interview he was selected to the post of Research Assistant in the scale of Rs.350-680/- vide respondents letter dated 13.5.1971. The applicant joined the duties from 27.5.1971 in the said project. The 3rd Pay Commission revised the scale of Rs. 350-680/- to Rs.650 – 960/- w.e.f, revised 1.1.73. The applicant worked in the project till 30.6.1975.

2. The respondents have pleaded that letter dated 24.6.1975 (Annexure A-II) stipulates that if the applicant is not willing to proceed to Port Blair his services will stand terminated w.e.f. 30th June 1975

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and he will be entitled to terminal benefits in lieu of notice. As the applicant did not join, his services were terminated w.e.f. 1.7.1975 and he approached the Labour Court Delhi vide ID case No.3 of 1987. The Labour Court vide their orders in ID 102/1979 granted relief of reinstatement with continuity of services from 30.6.1975 and back wages from 1.6.1975 (however it is shown as 1.6.79 at page 3 of the OA). The respondents vide their letter 27.1.1982 Annexure A-3 appointed the applicant to the post of Assistant Research Officer at the Regional Medical Research Centre, Port Blair in the scale of Rs. 650-960/- and decided that the period from 30.6.1975 onwards be counted as continuous service in the Council. It is the averment of the applicant that he was appointed as Assistant Research Officer in the scale of Rs.650-960/- at RMRC Port Blair, and he cannot be demoted below this post as has been done by the respondents in the impugned order dated 11.11.1986. Respondents have contested the averments of the applicant stating that the Headquarter of the applicant during suspension period was fixed at Port Blair and his request contained in his application dated 21.11.1983 for shifting his headquarters to Delhi was turned down. He left headquarters without obtaining prior permission and in clear violation of orders. Despite issue of notices, he failed to attend the enquiry thus leaving the respondents with no option but to proceed ex parte.

3. With regard to pleading that he cannot be reduced below the post / grade of his initial appointment as Assistant Research Officer in RMRC Port Blair. The respondents have pleaded that as his appointment as Assistant Research Officer was in continuation of his

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earlier appointment in the council he could be demoted to the post of Research Assistant w.e.f. 01.11.1969. Hence, there was no infirmity in the order of demotion.

4. The applicant has also contended that the demotion order of 11.11.1986 was vitiated on the ground that the enquiry under Rule 19(ii) of CCS/CCA is not permissible under the facts and circumstances of the case and no penalty of permanent nature can be imposed on an employee. The respondents agreed that referring to Rule 19(ii) of CCS CCA by the disciplinary authority is not correct, however, pointed out that once enquiry has been held according to ex parte rules mere mentioning of Rule 19(ii) of CCS/CCA could not affect the penalty imposed by the disciplinary authority. Further, the ratio in the case of **Ghandya Das Srivastava Vs State of Madhya Pradesh (AIR 1973 SC 1183)** would not be applicable because at the relevant period, the subsistence allowance was withheld because of violating the lawful order of the competent authority. Further, according to sub clause (vi) of Rule 11 of CCS (CCA) Rule there is no time period for reduction to a lower time scale, grade, post or service.

5. We have heard the counsels for the parties and documents placed on record. The basic facts are not contested that the applicant was appointed to the post of Assistant Research Officer in RMRC Port Blair, vide respondents letter 27.1.1982 and that the period from 30.6.1975 was counted as continuity in the service of the council. The applicant was suspended on 18.11.1983 and charge sheet issued. The applicant left the headquarters (specified during suspension) without permission. The applicant has placed on record number of letters

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wherein he has requested for permission to leave headquarters and fixing of headquarters at Delhi. He has however, not placed on record any order that his request has been agreed to. The respondents on the contrary have stated that his application dated 21.11.1983 was turned down by the officer in charge RMRC Port Blair vide his memorandum dated 23.11.1983. Clearly, therefore, the applicant had left the headquarters without permission. In view of this, the case of **Gandhya Das Srivastava Vs State of Madhya Pradesh (supra)** would not come to his rescue. In the said case, the place of enquiry was Jagdalpur and the Divisional Forest Officer, South Baster Division, directed him to remain at Jagdalpur during the period of suspension, whereas the applicant was residing in Rewa. The case of the applicant is distinguishable.

6. With regard to the contention that disciplinary authority could not punish him under rule 91(ii) of CCS (CCA), the respondents agreed that the mentioning of this rule was an error. They have, however mentioned that referring to rule would not vitiate the enquiry as the enquiry was held under the relevant rules. We agree with the respondents that when provision exist in the rules for holding the enquiry than reference to an incorrect rule in the order would not by itself vitiate the inquiry or order of the disciplinary authority.

7. The applicant pleads that he did not attend the enquiry for the reason that he was not paid subsistence allowance. We cannot agree with this argument, as the situation is applicant's own creation. He left the stipulated headquarters without permission. Having done so, non-



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payment of subsistence allowance cannot be a valid reason for not attending the enquiry.

7. Now, we come to the question of demotion to the grade of Research Assistant in RMRC Port Blair from the post of Assistant Research Officer. The short question is whether the appointment as Assistant Research Officer was a fresh appointment or continuation in the service of the council. The appointment order (Annexure A-3) reads as under:

“Having regard to his experience and his bio-data the Director General of the Council has decided that Shri H V Agarwal be appointed to a post of Assistant Research Officer at the Regional Medical Research Centre, Port Blair in the pay Scale of Rs.650-3—740-35-880-EB-4—960 plus usual allowances as admissible to the ICMR staff stationed at Port Blair.

It has further been decided that the period from 30.6.1975 onwards be counted as continuity in the service of the Council. He would, however, not be given any salary and allowances for the period from 30.6.1975 to 31.5.1979 as per judgement dated 26th October, 1981 of the Labour Court. Having regard to his past experience, Shri Agarwal will be entitled to draw a pay of Rs.960/- p.m. in the pay scale of Rs.650-960/- plus usual allowances and he should report for duty to the Officer-in-charge, Regional Medical Research Centre ICMR, Port Blair immediately. It has also been decided to grant transfer T.A. from the place of his present residence to Port Blair as per rules of the Council. He will be governed by the usual terms and conditions of service under the Council. (Emphasis supplied).

He should report for duty to the Officer-in-Charge, Regional Medical Research Centre, Port Blair, within one month from the date of issue of this letter and not later than 28th February, 1982.”

8. From the above reading of the order, it is clear that the appointment as Assistant Research Officer was a continuation of his

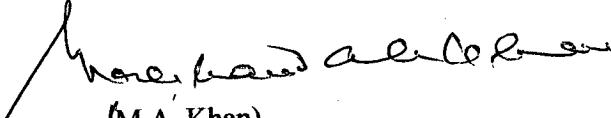


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service in the council. It is an admitted fact that he was initially appointed as Research Assistant in the Council. Therefore, there is no infirmity in the order-dated 11.11.1986 of the respondents.

9. In view of the foregoing the OA is without merit and is dismissed. No costs.


(S.A. Singh)
Member (A)


(M.A. Khan)
Vice Chairman (J)

Patwal/