

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00069/2020

DATED THIS THE 03RD DAY OF MARCH, 2020

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

P. Govindarajulu,
S/o P. Lakshmaiah,
Aged 66 years,
R/at No. 6, Harinagar Cross,
Konanakunte, Bengaluru 560 062

....Applicant

(By Advocate M/s Subbarao & Co.)

Vs.

1. Union of India,
Rep. by its Secretary,
Ministry of Agriculture,
Krishni Bhavan,
New Delhi 110 001

2. Union of India,
Rep. by its Secretary,
Dept. of Public Grievances and Pension,
Shastri Bhavan,
New Delhi 110 001

3. Pasteur Institute of India,
Rep. by its Director,
(Under the Ministry of Health &
Family Welfare G.O.I)
Coonoor, Nilgiris,
Tamilnadu 643 103

4. Indian Veterinary Research Institute,
Bengaluru Centre,

Rep. by its Joint Director,
Hebbal, Bengaluru 560 024

5. Bharat Immunologicals and
Biologicals Corporation Ltd.,
Rep. by its Managing Director,
OPV Vaccine Complex, Balandshahar,
UP 203 001

6. Union of India
Represented by its Secretary
Ministry of Health and Family Welfare,
Govt of India, Nirman Bhavan,
C Wing, New Delhi 110 001

.....Respondents

(By Shri M.V. Rao, Counsel for Respondent No. 1, 2 & 6 and
Shri B.A. Chandrashekhar, Counsel for Respondent No. 4)

O R D E R (ORAL)
(HON'BLE DR. K.B. SURESH, MEMBER (J)

While working in the Pasture Institute, the applicant submitted his application through proper channel to a managerial post in Bharat Immunological and Biological Corporation Ltd. ("BIBCOL"), the 5th Respondent. He resigned with effect from 10.1.2003 as evidenced from Annexure-A3. He worked in BIBCOL 01.03.1990 to 10.01.2003. He was permanently absorbed in the BIBCOL as per Annexure-A3 dated 17.3.1993.

2. Applicant was a permanent employee of IVRI, and Pasteur Centre and he tendered a technical resignation to both organizations to take up employment and the same was done through proper channel.

3. IVRI and Pasteur Institutes are pensionable establishment under the Government of India and CCS (Pension) Rules 1972 are applicable to them.

4. Applicant had made a representation on 24.5.1993. By a communication dated 09.06.1993, produced at Annexure A-7, it was informed to the applicant that he was deemed to have retired from the service of Pasture Institute on taking up employment in BIBCOL. It was further informed by the Pasteur Institute that it did not receive any money from the IVRI except the service particulars of the Applicant. To count the previous service as qualifying service for payment of pension by the Pasture Institute, he was further informed that steps have been initiated with IVRI, Bangalore in this regard and action would be taken for counting his past service for the purpose of payment of pension as per the orders of Government of India on the said subject. This is evidenced from the communication dated 9.6.1993 produced at Annexure-A7.

5. The Pasture Institute further addressed a letter on 3.1.1996 to the IVRI, Bangalore informing that it did not receive any money towards the terminal benefits of the Applicant. It further indicated that on receipt of the money from IVRI, the Pasture Institute would take up the case of the applicant with the Ministry of Health and Family Welfare Annexure-A8 dated 3.1.1996.

6. Applicant made series of representations to everyone of the respondents as evidenced which have been produced in this Application. He received a reply from the Ministry of Personnel, Public Grievance and Pension (Respondent No. 2 herein) as per Annexure-A11 dated 29.11.1994. He was informed that his representation has been forwarded to the Joint Secretary, Ministry of Agriculture, Research and Training Division. Applicant

heard nothing thereafter. He continued to make representations to which he received replies from the Government of India , produced at Annexure-A13,A15, A17 andA19 respectively.

7. He was informed that benefits shall be given to him only if he becomes a permanent employee of BIBCOL and he was assured that the matter would be taken up at the appropriate time. This fact is evidenced from the communication dated 11.11.1992 produced at Annexure-A20. Applicant received one more communication from the Pasture Institute as per Annexure A-22 dated 28.11.1992 and he was called upon to comply with certain formalities Applicant was called upon to produce the orders of permanent absorption in BIBCOL before action could be taken by the Pasture Institute, to settle his Pension, Gratuity, other terminal Benefits and leave encashment. Applicant produced the office order to the Deputy General Manager of the BIBCOL marking a copy of the same to the Director of Pasture Institute as could be evidenced from the communication dated 17.5.1993 produced at Annexure-A23. Applicant made series of representations thereafter. Pasture Institute also has issued a certificate as per Annexure-A25.

8. The Government of India, represented through the Respondent No. 6, addressed a letter to the Pasture Instituted on 15.5.1997 as per Annexure-A26, for counting the service of the applicant rendered in the Pasture Institute for pensionary benefits as per Annexure-A26. Applicant made series of representations thereafter which have been collectively produced

as Annexure-A27. No action has been taken by any one of the respondents.

9. The 4th Respondent has filed a reply and it did not deny the service rendered by the Applicant with it.

10. In so far as the 3rd Respondent is concerned, it did not file any objections despite service of notice.

11. Applicant has filed 3 official memorandums with a memo. They are (i) bearing No. 28/10/84 Pension Unit, Ministry of Home Affairs Department of Personnel and Administrative Reforms, New Delhi dated 28.8.1994 as Annexure A-31 .(ii) OM No. 28/10/84/PU-Vol.I dated 12.9.1985 Annexure A-32 and (iii) OM No. 4(12)85/P & PW, Annexure A-33 dated 3.3.1987.

12. Applicant has also stated that he is deemed to have retired from the Pasture Institute as stated by him at para 4.13 of the O.A. Applicant has put in a aggregate service of 13 years 4 months by taking his service in Respondent No. 3 and 4 which is more than 10 years which is the qualifying service prescribed for pensionary entitlement.

13. Applicant submits that the pension is a deferred salary and the right to salary and right to pension are held to be the right to life and livelihood as stated in Article 21 of the Constitution of India. It is also an estate and the same is protected under Art 300A. Since the resignation tendered on both the occasions was in public interest.

14. Pension to which the applicant is entitled cannot be forfeited just because he had resigned from BIBCOL having regard to Rule 26(2) and Rule 37.

15. He submits that Rule 37 of the Pension Rules allows payment of pension. The pension is held to be an estate and deprivation of the same without the procedure established by law would be in violation of Article 300A of the Constitution. If the rule is harsh, Rule 88 of Pension Rules could be pressed into service.

16. Applicant relies on the decision of the Hon'ble Apex Court rendered in the following cases

- (i) Bank of Baroda Vs. Cool, a decision reported in (2014) 2 SCC 715,
- (ii) Pension is a deferred salary as observed by the Hon'ble Apex Court in U.P. Raghavendra Acharya Vs. State of Karnataka (2006) 9 SCC 630. I
- (iii) If pension is a deferred salary, right to salary has been held to be a fundamental right in the case of Director General Coast Guard VS. Konovolo (2006) 4 SCC 620.
- (iv) In addition to that, in the judgment of the Apex Court in D.S. Nakara Vs UOI (1983) 1 SCC305 , it has been held that a person cannot be deprived of his pension. Having regard to what has been stated above, this Hon'ble Tribunal is required to decide the following issues.

17. The applicant has put in an aggregate service of more than 10 years (13 years and 4 Months) and qualifies himself to receive pension as required under the Central civil services. Pension. Rules 1972

18. There is an obligation on the part of the Respondent No. 4 , the first organisation in which he had worked to transfer Pro-rata pension and terminal benefits to the second organisation having regard to the technical resignation tendered by him to the first organization. It cannot wash of its hand by paying Rs.2275/- He had tendered technical resignation to take up employment in another pensionable establishment and the same is protected under Rule 26(2) of the Rules.

19. There is an obligation cast on the part of the Respondent No. 3 , the second organization to demand the same from the 4th Respondent and on receipt of the pro-rata Pensionary dues the same is required to be paid immeadiatly to the Applicant as he had submitted the technical resignation to take up employment in a Government company , the 5th Respondent , the BIBCOL . As could be seen from Rule 37, and the OMs produced at Annexure A-31, A-32 and A-33 referred above, Applicant is entitled to the Pension for his 13 years and 4 months Service.

20. The second organization being a pensionable establishment , on completing a combined service of more than 10 years for taking up employment in a Government company the pension is required to be paid by the 3rd Respondent.

21. It is worth mentioning that if an an employee, after putting qualifying service of 10 years or above in one establishment or aggregate service of 10 years or above in more than one pensionable establishments to which pension Rules apply, tenders technical resignation and joins a third establishment he qualifies for receiving pension for his past service. On

completion of 10 years or more service either in one or more than one establishments , the right to receive pension gets crystallized and it becomes a vested right. On tendering technical resignation to take up another employment, the said right is neither lost nor could be forfeited by any body irrespective of the fact that he joins a non-pensionable establishment or a pensionable establishment. On tendering resignation to the third establishment or abandoning service with it , his earlier service rendered to thwe 1st and the 2nd Organisation doesn't get erased or wiped out. Pension is the succor during the evening of ones life. It is having regard to the above adequate protections have been made in Rule 26(2), Rule 37 and other provisions .

22. Rule 26 is quoted "**126. Forfeiture of service on resignation**

- (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.
- (2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.
- (3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

If there is break in service beyond the joining time, apart from Rule 26(3) , Rule 28 comes to the aid of the Employee which is as follows :

Rule 28.: Condonation of interruption in service: (a) In the absence of a specific indication to the contrary in the service book, an interruption between two spells of civil service rendered by a Government servant under Government including civil service rendered and paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

Apart from the above there is a power to relax under Rule 88 which is quoted below:

Rule 88. Power to relax

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, that Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner :

Provided that no such order shall be made except with the concurrence of the [Department of Pension & Pensioner's Welfare].

23. The following judgement are relied by the Applicant and relevant paragraphs in support of the propositions are as follows:

Right to pension and Application of Art 14 and 21 of the Constitution

D.S. Nakara v. Union of India, (1983) 1 SCC 305, at page 317 :

Para 13. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held

identical with the doctrine of classification. As was noticed in Maneka Gandhi case¹ in the earliest stages of evolution of the constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in E.P. Royappa v. State of T.N.⁴ it was held that the basic principle which informs both Article 14 and 16 is equality and inhibition against discrimination. This Court further observed as under: (SCC p. 38, para 85)

“From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.”

14. Justice Iyer has in his inimitable style dissected Article 14 in Maneka Gandhi case¹ as under at SCR p. 728: (SCC p. 342, para 94)

“That article has a pervasive processual potency and versatile quality, egalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of ‘executive excesses’ — if we may use current cliche — can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law: Be you ever so high, the law is above you.¹”

Affirming and explaining this view, the Constitution Bench in *Ajay Hasia v. Khalid MujibSehravardi*⁵ held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. After a review of large number of decisions bearing on the subject, in *Air India v. NergeshMeerza*⁶ the Court formulated propositions emerging from an analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are treated differently without any reasonable basis.

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

.....

27. Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are (i) as compensation to former members of the Armed Forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form

or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means of promoting general welfare (see Encyclopaedia Britannica, Vol. 17, p. 575). But these views have become otiose.

28. Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in *Douge v. Board of Education*¹¹ a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.

29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'etre* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

30. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane (see American Jurisprudence, 2d, 881).

31. From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch.

(ii) Pension is not a bounty and is a deferred salary. ***U.P. Raghavendra Acharya v. State of Karnataka, (2006) 9 SCC 630, at page 639 :***

Para 25. : Pension, as is well known, is not a bounty. It is treated to be a deferred salary. It is akin to right of property. It is correlated and has a nexus with the salary payable to the employees as on the date of retirement.

(iii) In Bank of Baroda v. S.K. Kool, (2014) 2 SCC 715 a similar observation is made

The right having crystallised on leaving an establishment to join the last establishment entitles the Applicant to receive the pension for the service that he had rendered prior to the joining of the last establishment, whether it is pensionable or otherwise. This is because rule 26 (2) and rule 37 read with rule 3 (q) comes to his rescue. If he tenders resignation to the last establishment, the right which has crystallised till the date of joining the last establishment is protected and is required to be honoured.

and pension till the said date is required to be paid by the establishment which relieves him to join the last establishment.

24. Admittedly the applicant has served the fourth respondent and had put in five years of service . Thereafter he joined the third respondent where in he had put in eight years and four months service. In aggregate, the applicant has put in 13 years and four months of service. Both the establishments are pensionable establishments. On joining the fifth respondent, he has a right to receive pension from the third respondent. The third respondent is required to take steps to demand the pro rata contribution from the fourth respondent and add its share to it and thereafter pay the pension for the 13 years and 4 months service. After joining the fifth Respondent, Whether it is pensionable or not, on tendering resignation to the said respondent, the right to receive pension from the fourth respondent for the aggregate service Put in by the Applicant in the past doesn't get erased and cannot be forfeited. Pension rules are required to be interpreted liberally.

25. The Hon'ble apex court has held that pension is a deferred salary. Right to salary and right to pension are all protected and deprivation of the same amounts to deprivation of the right to livelihood. Article 21 , Art 14 and 300A of the Constitution comes to the rescue of the applicant. If there is any difficulty, it is required of the Govt. to apply Rule 88 as Pension is the only succour for a an Ex Employee in the evening of his life.

26. It may be observed that after putting qualifying service of 10 years or above in one establishment or aggregate service of 10 years or above in

more than one pensionable establishments to which pension Rules apply, a person qualifies for pension.

27. On tendering technical resignation to take up another employment, on completion of 10 years or more service either in one or more than one establishments , the right to receive pension gets crystallised and it is a vested right. If there after he joins a non-pensionable establishment or a pensionable establishment, on tendering resignation to the third establishment or abandoning service with it , his earlier service doesn't get erased.

28. The right which has crystallised till joined the last establishment entitles him to receive the pension for the service that he had rendered prior to the joining of the last establishment, whether it is pensionable or otherwise. This is because rule 26 (2) and rule 37 read with rule 3 (q) comes to his rescue.

29. If he tenders resignation to the last establishment, the right which has crystallised till the date of joining the last establishment is required to be honoured and pension till the said date is required to be paid by the establishment which relieves him to join the last establishment.

30. If there is any difficulty Rule 88 could be applied in aid of the pensioner.

31. Applicant was called upon to refund small amount that he received. There after he was advised to not act unless he receives further communication. He is ready to refund the same with Interest.

32. This matter has been covered by the DoPT OMs dated 29.08.1984, 12.09.1985 and 31.03.1987, which we quote:

"No.28/10/84-Pension Unit
Government of India/ Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
Department of Personnel and Administrative Reforms
(Karmik aur Prashasnik Sudhar Vibhag)

New Delhi, the 29th August 1984

OFFICE MEMORANDUM

Subject: Mobility of personnel between Central Government Departments and Autonomous Bodies – Counting of service for pension –

As per existing orders, service rendered outside Central Government does not count for pension in Central Government except in the case of scientific employees of autonomous bodies financed or controlled by the Government, who on permanent absorption under the Central Government are allowed to count their previous service for pension subject to certain conditions. In respect of personnel other than scientific employees, who are permanent in Central Government, in the event of their subsequent permanent absorption in public sector undertakings or any autonomous body, proportionate retirement benefits for the service rendered in Government till the date of permanent absorption are allowed as per rules in force at the time of absorption. No such benefit is allowed to temporary employees going over to autonomous body or undertaking.

2. *A number of Central autonomous/statutory bodies have also introduced pension scheme for their employees on the lines of the pension scheme available to the Central Government employees. It has, therefore, been urged by such autonomous/statutory bodies that the service rendered by their employees under the Central Government or other autonomous bodies before joining the autonomous body may be allowed to be counted in combination with service in the autonomous body, for the purpose of pension, subject to certain conditions. Similar provisions for employees of autonomous body going over to Central Government have also been urged. In other words, the suggestion is that the benefit of pension based on combined service should be introduced.*

3. *This matter has been considered carefully and the President has now been pleased to decide that the case of Central Government employees going over to a Central autonomous body or vice-versa and employees of the Central autonomous body moving to another Central autonomous body may be regulated as per the following provisions:-*

(a) *In case of Autonomous Bodies where Pension Scheme is in operation.*

(i) *Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the services rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employee of the autonomous bodies who are permanently absorbed under the Central Government.*

The Government/autonomous body will discharge its pension liability by paying in lumpsum as a one-time payment, the pro-rata pension/service gratuity/terminal gratuity and DCRG for the service upto the date of absorption in the autonomous body/Government, as the case may be. Lumpsum amount of the pro-rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time.

(ii) *A Central Government employee with CPF benefits on permanent absorption in an autonomous body will have the option either to receive CPF benefits which have accrued to him from the Government and start his service afresh in that body or choose to count service rendered in Government as qualifying service for pension in the autonomous body by foregoing Government's share of CPF contributions with interest, which will be paid to the concerned autonomous body by the concerned Government Department. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulate period,*

employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final.

(b) Autonomous body where the Pension Scheme is not in operation.

(i) A permanent Central Government employee borne on pensionable establishment, on absorption under such autonomous body will be eligible for pro-rata retirement benefits in accordance with the provisions of the Ministry of Finance O.M. No.26(18)EV(B)/75 dated the 8th April, 1976, as amended from time to time. In case of quasi-permanent or temporary employees, the terminal gratuity as may be admissible under the rules would be actually payable to the individual on the date when pro-rata retirement benefits to permanent employees become payable. However, in the case of absorption of a Government employee with CPF benefits, in such an autonomous organisation, the amount of his subscriptions and the Governments' contribution, if any, together with interest thereon shall be transferred to his new Provident Fund account with the consent of that body.

(ii) An employee of an autonomous body on permanent absorption under the Central Government will have the option either to receive CPF benefits which have accrued to him from the autonomous body and start his service afresh in Government or choose to count service rendered in that body as qualifying service for pension in Government by foregoing employer's share of Contributory Provident Fund contributions with interest thereon, which will be paid to the concerned Government Department by the autonomous body. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulated period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final.

(c) Absorption of employees of one Central Autonomous body to another Central Autonomous body. The above procedure will be followed mutatis mutandis in respect of employees going from one autonomous body to another.

4. “Central autonomous body” means body which is financed wholly or substantially from cess or Central Government grants. “Substantially” means that more than 50% of the expenditure of an autonomous body is met through cess or Central Government grants. Autonomous body includes a Central statutory body or a Central University but does not include a public undertaking.

Only such service which qualifies for pension under the relevant rules of Government/Autonomous body shall be taken into account for this purpose.

5(1). The employees of a Central autonomous body or Central Government, as the case may be, who have already been sanctioned or have received pro-rata retirement benefits or other terminal benefits for their past service will have the option either:-

- (a) to retain such benefits and in that event their past service will not qualify for pension under the autonomous body or the Central Government, as the case may be : or*
- (b) to have the past service counted as qualifying service for pension under the new organisation in which case the pro-rata retirement or other terminal benefits, if already received by them, will have to be deposited alongwith interest thereon from the date of receipt of those benefits till the date of deposit with the autonomous body or the Central Government, as the case may be. The right to count previous service as qualifying service shall not revive until the whole amount has been refunded. In other cases, where pro-rata retirement benefits have already been sanctioned but have not yet become payable, the concerned authorities shall cancel the sanction as soon as the individual concerned opts for counting of his previous service for pension and inform the individual in writing about accepting his option and cancellation of the sanction. The option shall be exercised within a period of one year from the date of issue of those orders. If no option is exercised by such employees within the prescribed time limit, they will be deemed to have opted for retention of the benefit already received by them. The option once exercised shall be final.*

5(2). Where no terminal benefits for the previous service have been received, the previous service in such cases will be counted as qualifying service for pension only if the previous employer accepts pension liability for the service in accordance with the principles laid down in this Office Memorandum. In no case pension contribution/liability shall be accepted from the employee concerned.

6 These orders will be applicable only where the transfer of the employee from one organisation to another was/is with the consent of the organisation under which he was serving earlier, including cases

where the individual had secured employment directly on his own volition provided he had applied through proper channel/with proper permission of the administrative authority concerned.

7. *These orders will take effect from the date of issue and the revised policy as enunciated above will be applicable to those employees who retire from Government/autonomous body service on or after the date of issue of these orders.*

The provisions contained in the Ministry of Finance Office Memorandum No.26(18)EV(B)/75 dated the 8th April, 1976 and Office Memorandum No.25(1)EV/83, dated the 8th September 1983 or any other orders shall, in so far as it provides for any of the matters contained in this Office Memorandum, cease to operate.

8. *The Ministry of Education and Culture etc. are requested to advise the autonomous/statutory bodies under their administrative control, with specific directions to the Financial Advisers concerned, to ensure to make necessary provisions in their Rules and Regulations/ Articles of Association in accordance with the provisions contained in this Office Memorandum. In cases where any practice otherwise than enumerated above is presently being followed the same may be revised in accordance with the provisions of this Office Memorandum so that uniformity is maintained in such matters in all the organisations.*

9. *In so far as persons serving in the Indian Audit and Accounts Department are concerned these orders issue after consultation with the Comptroller and Auditor General of India.*

Sd/-
S.R. AHIR
Deputy Secretary to the Government of India”

**“No.28/10/84-PU-Volume-I
Government of India/Bharat Sarkar
Ministry of Personnel & Training, Admin. Reforms
And Public Grievances & Pensions
Department of Pension & Pensioners’ Welfare**

New Delhi, the 12th September 1985

OFFICE MEMORANDUM

Subject: Mobility of personnel between Central Government Departments and Autonomous Bodies – Counting of service for pension-

The undersigned is directed to say that in accordance with para-5(1)(b) of this Department's Office Memorandum of even number dated 29th August, 1984 an employee of the Central autonomous body or the Central Government who has already received pro-rata retirement benefits or other terminal benefits for his past service will have the option to have the past service counted as qualifying service for pension under the new organisation. In such a case the pro-rata retirement benefits or other terminal benefits, if already received by him will have to be deposited with interest thereon from the date of receipt of these benefits till the date of deposit with the autonomous body or the Central Government as the case may be.

2. *The rate of interest to be paid on the amount to be refunded has been engaging the attention of the Government of India. It has been decided in consultation with the Ministry of Finance (Department of Expenditure) that the rate of interest in such cases would be simple interest of 6% per annum.*

3. *Further, the entire recovery may be made in the monthly installments not exceeding thirty-six in number, the first installment beginning from the month following the month in which person concerned exercised option, provided that the entire recovery in installments does not go beyond the actual date of retirement. The right to count the previous service as qualifying service shall not revive until the whole amount has been refunded.*

4. *The entire amount including interest may be credited to the normal head to which contributions are credited.*

5. *Further, in accordance with para-3(a) of the Office Memorandum No.28/10/84-Pension Unit dated 29th August, 1984 the Government/autonomous body will discharge its pension liability by paying in lumpsum as one-time payment, the pro-rata pension/service gratuity/terminal gratuity and the DCRG for the service upto the date of absorption in the autonomous body/Government, as the case may be. The lumpsum amount of the pro-rata pension will be determined with reference to the commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time. Various Ministries/Departments of the Government of India may accept pension liability in all these cases*

where Central Government employees move to Central autonomous bodies with proper permission and discharge the same in the prescribed manner,. For this purpose 'proper permission' means that Government servant applied for the post in autonomous body through 'proper channel' and he resigns with due intimation that he is doing so to take up assignment in autonomous body or the Government servant is relieved of his duties by the Government Departments, Office to take up assignment in an autonomous body. Pension liability may also be accepted in past service provided the Government servant took up the assignment in autonomous body with proper permission. The Ministry of Defence etc. may please issue specific directions to their Financial Advisers to advise the autonomous /statutory bodies under their administrative control to make the above provisions in their rules and regulations. In cases where any practice other than mentioned above is presently being followed, the same may be revised in accordance with these decisions and that they may also provide for acceptance of pension liability for the past service.

6. In so far as persons serving in the Indian Audit and Accounts Department are concerned these orders issue after consultation with the Comptroller and Auditor General of India.

Sd/-
 (Hazara Singh)
 Deputy Secretary to the Government of India"

"No.4(12)/85-P&PW
 Government of India
 Ministry of Personnel, P.G. & Pensions
 (Department of Pension and Pensioners' Welfare)

New Delhi, dated, the 31st March 1987

OFFICE MEMORANDUM

Subject: **Parity in the matter of payment of pro-rata retirement benefits to the Government servants permanently absorbed in the Central Public Sector Undertakings and Central Autonomous Bodies.**

The undersigned is directed to say that at present the terms and conditions of permanent absorption of Central Government employees in the Central Autonomous Bodies are regulated by the instructions contained in the Ministry of Finance (Department of

Expenditure) O.M. No.26(18)-EV(B)/75 dated the 8th April, 1976, as amended from time to time . The terms and condition of those Government servants who are absorbed in the Central Public Undertakings are regulated by the instructions issued vide Department of Personnel and Training O.M.No.28016/5/85-Estt.(C) dated the 31st January, 1986. Since there were certain disparities in the terms and conditions of absorption in the two organisations, the question of bringing about parity has been under the consideration of Government. The President is now pleased to decide as follows: -

- (i) *The terms and conditions of absorption of Central Government employees in the Central Autonomous Bodies will be, as applicable to those permanently absorbed in the public sector undertakings. In both the cases the instructions laid down in the Department of Personnel and Training O.M. No.28016/5/85-Estt.(C) dated the 31st January, 1986, referred to above, will apply;*
- (ii) *Those absorbed in the autonomous bodies having pension scheme shall have an option to receive pro-rata retirement benefits or continue to have the benefit of combined service under the Government and in the autonomous body subject to the conditions laid down in the Department of Personnel and AR's OM No.28/10/84-PU dated the 29th August, 1984 and 12th September, 1985. Such option should be exercised within six months from the date of permanent absorption. In case no option is exercised within stipulated period, he will be eligible for pension based on combined service.*
- (iii) *Encashment of earned leave shall be admissible upto the maximum limit of 240 days. Half pay leave will stand forfeited.*
- (iv) *In respect of officers who are already on deputation to autonomous bodies, the existing terms and conditions of their deputation will operate and no extension of deputation beyond the period specified in their deputation orders should be allowed. In case a Government employee does not return to his parent Department during or after the sanctioned deputation period, he will be deemed to have been permanently absorbed in the autonomous body on the date of expiry of deputation period.*

2. *All existing instructions on the subject will stand amended/superseded to the extent indicated in the preceding paragraphs. Formal amendments in the statutory rules, where considered necessary, will be carried out in due course.*
3. *All cases of grant of pensionary benefits etc., to Government servants who are appointed in the Central Autonomous Bodies on immediate absorption basis shall be decided by the Administrative Ministries/Cadre Controlling Authorities/Authorities competent to accept resignation of a Government servant in accordance with provisions of this O.M. If any question arises regarding the interpretation of these instructions or requiring relaxation or if there is any doubt, the question should be referred to the Department of Pension and Pensioners' Welfare.*
4. *These orders will, however, not be applicable in the cases of those Government servants whose Departments have been converted into a Central Autonomous Body or a Central Public Sector Undertaking. Their cases are covered by different set of orders on the subject.*
5. *For the purpose of these orders, a Central Autonomous Body is generally a non-profit making organisation, which is financed wholly or substantially from cess or Central Government grants. "Substantially" means that more than 50% of the expenditure of the autonomous body is met through cess or Central Government grants. As autonomous body may be a society registered under the Societies Registration Act, 1860 or a statutory body or a Central university having its own governing council whose memorandum of association/bye-laws etc., contain provision for complying with Government directives for carrying out its business in achieving the objectives for which the organisation is established.*
6. *The Ministry of Home Affairs etc., may please bring these orders to the notice of all concerned including the autonomous bodies under their administrative control.*
7. *These orders will take effect from the date of issue.*
8. *In so far as persons serving in the Indian Audit and Accounts Departments are concerned, these orders issue with the concurrence of the Comptroller and Auditor General of India.*

Sd/-
(HAZARA SINGH)
Under Secretary to the Government of India"

2. As the matter has already been settled by the Government itself, the issue involved is that there cannot be a way in which services rendered by an employee to the Government shall be extinct and wasted unless voluntarily he resigns his post. There are two kinds of resignation. One is the actual resignation and the second is the technical resignation which he has to do in compliance with the rules themselves to join another Government department or public undertaking. In the DoPT circular stated and quoted above, it is clearly stated that in such cases there is no question of any forfeiture of service as provided in the rules because this is a separate genre of resignation. Therefore in this case also the technical resignation will not act as a hindrance to the applicant's past service to be counted. Therefore, under the rules, the Pasteur Institute will collect the pension contribution from the other authorities. Apparently the 4th respondent remitted the contribution to the 3rd respondent but the 3rd respondent says that they have already paid to the Pasteur Institute their contribution. But then since the 3rd respondent is the last employer, the pension liability and responsibility is on the last employer. It appears that thereafter the applicant had joined a non-pensionable department, therefore, this service cannot be counted in any manner to calculate his pension. Therefore, the 3rd respondent has responsibility of disbursing the pension and other DCRG benefits to the applicant as the case may be after getting correct contribution from the other respondents.

3. In the meanwhile, whatever amount applicant has received should be paid back to the 3rd respondent with interest at the GPF interest rate but each of the respondents have a duty to pay the correct contribution and the 3rd respondent as the last employer have a right to insist on the correct payment by the other departments.

4. At this point of time, the 4th respondent demands that if the 3rd respondent feels that they have not given correct amount, they have to give a memo of calculation. This is a right ground taken by them. They will, without any doubt, do it. In the circumstances of the case, all the delay is now condoned.

5. At this point of time, it is to be noted that the 3rd respondent, in spite of repeated notices, had remained absent. But then since we have to decide the matter on merits going by the extant legal position as evinced by the DoPT circulars in this regard, whether or not 3rd respondent is here or not is of no relevance.

6. The OA is allowed as above. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/