

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.3251 of 2001

28th
New Delhi, this the 3rd day of May, 2002

HON'BLE MR.GOVINDAN S.TAMPI MEMBER(A)

Dr. A.K.Kapoor,
Senior Bio Chemist,
HOD, Department of Bio-Chemistry,
Kalawati Saran Children's Hospital,
New Delhi.Applicant.

(By Advocate: Shri R.Venkatramani, Sr.
Advocate with Shri S.M.Garg)

V E R S U S

1. Union of India,
through its Secretary,
Ministry of Health & Family Welfare,
(Dept. of Health)
Nirman Bhawan, New Delhi.
2. Director-General of Health Services
Nirman Bhawan, New Delhi.
3. Principal & Medical Superintendent
Kalawati Saran Children's Hospital
& Lady Hardinge Medical College and
Associated Hospital, Bangla Sahib Marg
New Delhi.

—RESPONDENTS

(By Advocate: Shri V.S.R.Krishna)

O R D E R

By Shri Govindan S.Tampi

Reliefs sought for by Dr. A. K. Kapoor,
applicant in this OA are as below :—

(a) call for the records of the case ;

(b) pass appropriate order quashing impugned
Order dated 1-11-2001 passed by the respondent No.3 ;

(c) pass an appropriate order or direction
directing Respondents to count the past service of the
applicant rendered by him from 1-8-1974 to 31-9-96 in
Lady Hardinge Medical College as Senior Research

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officer prior to his absorption in Kalawati Saran Children's Hospital towards all pensionary and retiral benefits as the Applicant is retiring on May 2002 ;

(10)

(d) pass an order directing the Respondents to exercise, if necessary, its power under Rule 88 of CCS (Pension) Rules, 1972 by relaxing the provisions of Rule 17 and allow the Applicant to deposit his contribution to CPF for the period of his service rendered prior to his permanent absorption, for the purposes of pensionary and other retiral benefits ;

(e) pass such further or other orders which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.

2. Heard Shri R. Venkataramni, Id. Sr. Advocate with Shri S.M.Garg, for the applicant and Shri V.S.R.Krishna, Id. counsel for the respondents.

3. The applicant, Dr. A.K.Kapoor was working as Sr. Research Officer (SRO) in the Deptt. of Micro-Biology at Lady Hardinge Medical College and Hospital (LHMCH), in the ICMR Center for "Laboratory Studies in Streptococcal Diseases", a project work since 1-8-1974. Following the decision of the Govt. on 8-6-1992, to terminate the project and dispense with the services of 18 personnel connected with the same, including the applicant, three OAs No. 1881, 1992 and 1909/1992 were filed in the Tribunal, which were disposed of on 4-12-1992 with the observations that all those who had worked in the project were the employees of the Lady Hardinge Medical College and

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benefits, more so as ICMR was not ready to bear the salary and pension contribution for the period rendered with them. The applicant indicates that on 30-3-98, Govt. of India had decided that all Central Health Service Officers (CHS) shall be entitled to the conditions of qualifying service in terms of Rule 30 of the CCS (Pension) Rules, 1972. Further on 6-7-99, Dr. Neelam Khandpur, a similarly placed individual who was also working in the same ICMR project in LHMCH and who was also a party in Tribunal's order dated 4-12-1992 and absorbed as Asstt.Bacteriologist - Chemist in the Deptt. of Microbiology, was permitted to have her previous service counted for the purposes of pensionary benefits. The only difference between the two was that Dr. Khandpur was absorbed in LHMCH while the applicant was absorbed in Kalawati Saran Children's Hospital, which was also associated with LHMCH. Like the applicant, Dr.Khandpur was also not contributing to CPF or GPF before absorption. Similarly, in the case of Mrs. Cicily Devasia, another employee of the same project and absorbed in LHMCH and Sucheta Kriplani Hospital, the respondents had given an assurance before the Tribunal that the past service would be counted for the purposes of pensionary benefits. In view of the above, on 1-11-1999, the applicant filed a further representation indicating that his having been declared as an employee of the LHMCH, he could not be treated under the Rules of ICMR. He also reiterated his willingness to contribute his share of CPF with simple interest @ 6 % for his pensionary benefits. It is also stressed indicated that the Ministry has the necessary powers to relax any or all of the

conditions, in terms of Rule 88 of the CCS (Pension) Rules, 1972. A few representations were filed on 1-11-1999, 7-12-1999 and 9-3-2000 without evoking any response leading to his filing OA No.2014/2001, which was disposed of on 10-9-2001 with the directions to the respondents to dispose of the applicant's representation of 9-3-2000. On 1-11-2001, by the impugned order, his representation has been rejected by the respondents holding that previous service rendered by him could not be considered for pensionary benefits, as he was an employee of ICMR on contract basis and that he did not subscribe to the CPF Scheme, applicable in the ICMR at the relevant time. This is clearly against the Tribunal's decision dated 4-12-1992, holding him to be an employee of the LHMC and his offer for depositing his share of CPF with 6 % interest. Hence this OA.

4. Grounds raised in this OA are as below :-

(a) refusal to count the past service of the applicant prior to his absorption in Kalawati Saran Hospital was illegal and improper ;

(b) rules of ICMR cannot be made applicable to him to decide his past service in LHMC. Tribunal having specifically held that he was an employee of LHMC and the same was upheld by the Hon'ble Supreme Court, the respondents could not reopened the same ;

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(c) applicant has repeatedly indicated that all the persons including himself working in the project were not placed on the CPF or GPF Scheme and it was not their fault ;

(14)

(d) applicant had expressed his willingness to deposit his share of subscription with interest.

(e) Rule 88 of the CCS (Pension) Rules, 1972 permitted the Govt. to relax the Rules which would have done in his case ;

5. In the reply filed on behalf of the respondents, it is pointed out that the OA is totally misconceived and frivolous. Further, it is barred by limitation, as the applicant was attempting to get his services, from 1974 in ICMR project, regularised. Besides the application is barred both by res-judicata and constructive res-judicata, as the earlier OAs filed by the applicant have been decided and the respondents have taken necessary action as directed. It is further pointed out, that the applicant had filed representation as early as in 1996 and should, therefore, have come before the Tribunal at the earliest instead of waiting till 2001. The representation of the applicant had been considered and correctly rejected as he was not entitled for the benefits as prayed for. The instances of Neelam Khandpur and Cicily Devasia are different and it was for the applicant to prove that they are similar. The applicant is not at all entitled for counting his previous record for the purpose of pensionary benefits. The applicant has not adduced any valid

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ground for the reliefs prayed by him. His case does not come within the ambit of the Rule 17 of the COS (Pension) Rules, 1972 and admittedly as he had not contributed to CPF Scheme while in ICMR. Further his case for regularisation of the previous service was taken up in the Deptt. of Personnel, the nodal Ministry, who did not agree for the same. In view of the DOPT's OM dated 1-5-87 and the applicant's not having subscribed to CPF, Tribunal's decision on 4-12-1992 declaring him to be an employee of LHMC does not help him have his previous service included for the purpose of pension.

6. In the rejoinder, it is pointed out that the OA is not hit by limitation, as it has been filed, assailing the order dated 1-11-2001, issued by the respondents, under directions of the Tribunal, issued while disposing of the OA 2014/2001. The plea of res-judicata and constructive res-judicata also cannot be accepted. The earlier OA was limited to regularisation of the service of the applicant in LHMC and that does not come in the way of grant him benefit of past service as was permitted in the law and has been granted to both Neelam Khandpur and Cicily Devasia, persons similarly placed. The reply filed by the respondents was, therefore, clearly mischievous and cannot be endorsed.

7. During the oral submissions, Shri Venkatramani, I'd. sr. Advocate for the applicant, very strongly reiterated the points raised on behalf of the applicant. He invited my specific attention to the findings of the Tribunal dated 4-12-92 while

disposing of OA 1881, 1882, 1909/1992 to the effect that the applicants who worked in the project were employees of the LHMC and were not the employees of ICMR and in addition, referred to the applicant's letter dated 25-9-98 pointing out that while he was working as SRO in the Deptt. of Microbiology in the LHMC under ICMR project, he was not able to contribute to CPF or GPF as he was not at all aware of the said requirement, but he was ready to deposit his contribution from the date the Scheme was operated with the interest @ 6 % and that being the case, pensionary benefits should not have been denied. He also states that the impugned order dated 1-11-2001 invoking the Rule 17 at this very late stage was improper. He also referred to the decisions of the Hon'ble Supreme Court in R.Subramaniam Vs. Chief Personnel Officer, Central Railway [1996 (10) SCC 72] and UOI & Ors. Vs. D.R.R.Shastry [1997 (1) SCC 514]. The circumstances of the case were such that relaxation of the conditions in CCS (Pension) Rules, 1972, could have been rightly invoked and the applicants' request conceded.

8. On the other hand Shri V.S.R.Krishna, 1d. counsel for the respondents defended their action and averred that in terms of Rule 17 of the CCS (Pension) Rules, 1972 a contract employee subsequently absorbed in Govt. service can get the benefit of pension, on fulfilment of the terms and conditions of the said Rule. The applicant could not fulfil the same as he was not subscribing to the CPF Scheme prevalent in ICMR. Therefore, inspite of the Tribunal's judgement dated 4-12-1992, declaring the applicant to be an

employee of LHMC, the question of granting pensionary benefits to him, taking in to consideration his service in the project also, did not arise. There was no reason at all why such a proper and correct decision taken by the respondents could be assailed, as is being attempted by the applicant, pleads Shri Krishna.

9. I have carefully considered the matter and examined the rival contentions. The applicant in this OA seeks counting/inclusion of his services from 1974 onwards, rendered in ICMR project in LHMC, before his absorption in Kalawati Saran Children's Hospital in 1996, for the grant of pensionary and other retiral benefits. Two preliminary objections have been raised by the respondents, neither of which is relevant. Firstly, the respondents plead that the OA is woefully barred by limitation in as much as the applicant was seeking to gain the benefits of his service from 1974 while the OA itself has been filed only in 2001. The applicant has correctly rebutted the same and has stated that the present OA has been filed, challenging the order of the respondents of 11-9-2001, rejecting his representation dated 9-3-2000, passed following the Tribunal decision in OA 2014/2001 directing the respondents to consider the same. The OA, therefore, cannot be considered as being hit by limitation. Secondly, the respondents feel that the application is hit both by res-judicata and constructive res-judicata. This also is not acceptable. The issue being raised in this OA is the counting of the service rendered by the applicant in ICMR project in LHMC for the purpose of grant of pensionary benefits to him.

The same has not been agitated or decided upon by the Tribunal in any other OA. OA 1881, 1882 and 1902/1922 decided on 4-12-1992 deal with the issue as to who infact was the employer of the those who were working in the ICMR project in LHMC like the applicant i.e. ICMR or LHMC. The subsequent OA of 2014/2001 was only to ensure that the applicant's representation, which was not being attended to, was disposed of fast. Neither of these could be considered as having decided or adjudicated the issue of counting his services for the purpose of pension, which specifically is the subject matter in this OA.

10. On the merits, I find that the applicant was originally engaged as SRO, on contract basis in the ICMR project of Advance Centre for Laboratory Studies in Streptococcal diseases, in LHMC since 1974. However, following the termination of the project in 1992, apprehending their removal from service, all the 18 persons working in the project, including the applicant approached this Tribunal in three OAs which were disposed of together on 4-12-1992 with specific findings that those "who had worked in the ICMR project at LHMC were not the employees of the ICMR and they were the employees of the LHMC. SLP 9924/93 filed against the above decision of the Tribunal, having been dismissed by the Hon'ble Supreme Court, the same has attained finality. The applicant's status as the employee of the LHMC from his date of joining the project i.e. 1-8-74 as SRO is thus established. However, his attempts to have his service in the project since 1-8-74 also included for the purpose of pension, which led to the filing of OA

2014/2001, disposed of with the directions that the representation dated 9-3-200 be examined and decided upon. The impugned order dated 1-11-2001, has been issued in this connection.

11. Relevant portion of the impugned order dated 1-11-2001 reads as below :-

"Under Rules 17 of CCS Pension Rules 1972 :-

1. A person who is initially engaged by the Govt. on contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption of duty, may opt either -

(a) to retain the Govt. contribution in the Contributory Provident Fund with interest thereof including any other compensation for that service ; or

(b) to agree to refund to the Govt. the monetary benefits referred to in clause (a) or to forgo the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable.

2. The option under sub-rule (1) shall be communicated to the Head of Office under intimation to the Accounts Officer within a period of three months from the date of issue of the order of permanent transfer to pensionable service, or if the Govt. servant is on leave on that day, within three months of his return from leave, whichever is later.

3. If no communication is received by the Head of Office within period referred to in sub-rule (2), the Govt. servant shall be deemed to have opted for the retention of the monetary benefits payable or paid to him on account of service rendered on contract.

Dr. Kapoor had not subscribed to the CPF Scheme prevalent in ICMR where he was appointed on contract basis

(ii) As per the GoI, Deptt. of Pension and Pensioners Welfare OM No.4/1/87-PIC-I dated 1st May 1987 all CPF beneficiaries who were in service on 1st January 1986 and who were still in service on the date of issue of this Order will be deemed to have come over to Pension Scheme subject to the condition that they have to exercise an option whether to continue under the CPF scheme or to opt for the Pension

scheme. The option will have to be exercised and conveyed to the concerned Head of Office by 30-9-1987 in the enclosed form if the employees wish to continue under the CPF scheme. In the instant case as clarified above Dr. Kapoor was not subscribing to the CPF scheme prevalent in ICMR therefore notwithstanding the fact that the Hon'ble CAT in their judgement/order dated 4-12-1992 declaring that Dr. Kapoor was an employee of LHMC, the question of extending the pensionary benefits to him does not arise.

It is further informed that the matter regarding regularisation of previous services rendered under ICMR project for pensionary benefits to you were taken up with the Deptt. of Pension & P.W., however, the same could not be agreed to."

It would thus be observed that the main reason for the rejection of the applicant's representation is that his not having been subscriber to ICMR's CPF scheme till his absorption in Kalawati Saran Children's Hospital, he could not have exercise the option to come over to the pension scheme. This, to my mind, is not correct. The applicant's service with ICMR project has to be treated as a prelude to his later service in LHMC, thereby permitting to have pensionary benefits while according to the applicants, his not having subscribed to CPF in his earlier post, Rule 17 of the CCS (Pension) Rules, 1972 cannot be invoked to help him. It is not disputed that the applicant had joined on contract ICMR's project "for laboratory studies in streptococcal diseases" on 1-8-74 in Lady Hardinge Medical College. As pointed out earlier, he had along with 17 others, who were also in the same project and who were apprehending termination of their service, had approached the Tribunal in OA 1881, 1882 and 1909/1992, which were disposed of with the clear findings that "who have worked in the ICMR project at the Lady Hardinge Medical College, were not the employees of the ICMR and they were the employees of the Lady Hardinge Medical College". The said decision

has been upheld by the Hon'ble Supreme Court by the dismissal of SLP filed against the above order. The applicant was formally absorbed in Kalawati Saran Children's Hospital, which is an attached hospital of LHMC. Therefore, the service rendered by him as SRD in the project from 1-8-74 and thereafter as Sr. Bio Chemist in Kalawati Saran Children's Hospital, would have to be taken as continuous whole. Naturally, therefore, the entire service should qualify for pensionary benefits. The only apparent objection is that during his attachment in the ICMR's project, he had not subscribed to the CPF, which was operative in ICMR at that relevant time. However, as he had been declared to be an employee not of ICMR, but of LHMC only, this should not present any insurmountable issue. It is in this context that the reference to Rule 17 of the CCS (Pension) rules becomes relevant.

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12. Perusal of the above Rule makes it clear that for availing himself of pensionary benefits, the applicant should have opted for the same, which he had failed to do. The applicant has averred that during his stay with ICMR project, he was not at all informed about the existence of CPF/GPF schemes to the project employees and, therefore, he could not have opted for it. He has indicated by his letter dated 25-9-98 that he was willing to pay his share in CPF with 6 % interest to enable him to avail himself of the pensionary benefits. In the circumstances of the case that the applicant had not exercised his option, purely on account of inadvertence and lack of knowledge about the presence and the relevance of the CPF Scheme and has expressed willingness to subscribe

his share with interest, his case, to my mind, would warrant exercise of powers of relaxation provided for under Rule 88 ibid, which reads as below :-

"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, the 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 :"

The circumstances of this case are such that the applicant was prevented from subscribing to the CPF scheme prevalent in ICMR as the same was not brought to his notice. Even otherwise, his having been declared as an employee of LHMC and not ICMR, the conditions of the Scheme were not strictly applicable to him. Still as he has indicated his willingness to contribute his share to the CPF along with the interest, to save his pensionary benefits, the same could be accepted and it would fall within the permissible relaxation. The above finding is duly fortified by the decisions of Hon'ble Supreme Court in the cases of R.Subramaniam Vs. Chief Personnel Officer, Central Railway (1996 (10) SCC 72) and UOI & Ors. Vs. D.R.R.Shastry (1997 (1) SCC 514). In Subramaniam's case, following are the observations of the Hon'ble Supreme Court :-

"2. In the result, this petition succeeds and is allowed. Rule is made absolute. The respondent is directed to accept the option of the petitioner and grant him benefit of Pension Scheme. The petitioner is further directed to deposit the entire amount which he received in lieu of Provident Fund System within three months from the date the

Government accepts the option of the petitioner. The option shall be accepted within two months from the date a copy of this order is produced.

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3. Parties shall bear their own costs".

The relevant observations of the Hon'ble Supreme Court in D.R.R.Shastry's case are as below :-

"Mr. Mahajan appearing for the appellant contended that the respondent having not exercised his option to opt for the pension scheme within the time specified in the Board's letter dated 23.07.1974 the Tribunal erred in the law granting him the relief in question. The learned counsel, however, was not in a position to indicate any special reason why similar opportunity had been given to another railway employee which has been noticed by the Tribunal while granting the relief to the respondent Mr. Mahajan, however, contended that in view of the Constitution Bench's decision of this Court in Krishna Kumar case the impugned direction of the Tribunal cannot be sustained. When this case was listed before this Court on 06.05.1995, it was brought to the notice of the Court that the Govt. itself has granted a similar benefit to one K.V. Kasthuri by an order dated 19.09.1994, even though he had retired in the year 1973. The Court, therefore, called upon the Union Govt. to place the necessary material which enabled the Government to grant the relief to Shri Kasthuri and how his case stands on a different footing than the case of the respondent. But no further affidavit was filed by the Union of India nor was any material placed to indicate any distinguishing feature for granting the relief to Shri K.V. Kasthuri and refusing the same to the respondent. Be that as it may when the matter was again argued on 20.08.1996, it was contended on behalf of the appellant that the respondent having resigned from the Railways and having been absorbed by the Heavy Engineering Corporation would be entitled to the benefit available to him under the Heavy Engineering Corporation and the counsel for the appellant also contended that the Heavy Engineering Corporation has already determined the pension of the respondent by taking into account the entire period of service from 1952. In view of the aforesaid submissions of the learned counsel appearing for the appellant the Court had called upon the railway administration to

indicate whether the period of service rendered by the respondent from 1950 till 22.07.1972 under the Railways was taken into account by the Heavy Engineering Corporation and whether the proportionality of the period of service from 1950 to 31.07.1972 and from 01.08.1972 till the retirement are separated to compute the pension and if so computed whether the respondent would stand to gain any higher pension than is being actually drawn. But unfortunately no further affidavit or material was placed by the appellant. On the other hand the respondent has filed an affidavit stating therein that he has not received any pension on his retirement from the Heavy Engineering Corporation as the Corporation itself and no pensionable scheme. In the aforesaid premises and in the absence of any explanation from the appellant to indicate any special feature for granting similar relief as late as in the year 1994 to Shri K.V. Kasthuri, we see no justification for our interference with the impugned direction of the Tribunal. The respondent had served for about 22 years and he should not be deprived of the pensionary benefit when the Government itself had forward with the Liberalised Pension Scheme and gave option to the persons already retired to come over to the pension scheme. But his pension is to be calculated as on 31.07.1972 in accordance with the Railway Board's letter dated 23.07.1974 and in compliance with all the necessary formalities by the respondent in accordance with the said circular. Subject to the aforesaid observations this appeal is dismissed but in the circumstances there will be no order as to costs."

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The above decisions would squarely cover the circumstances of the case and would have to be adopted in favour of the applicant.

13. I also observe that in yet another case of the Hon'ble Supreme Court in V.K.Ramamurthy Vs. UOI & Anr. (1996 (10) SCC 73), the Hon'ble Apex Court has not permitted the exercise of option, which was attempted at a very late stage i.e. " Long (24 years) after retirement. This decision would not harm the interests of the instant applicant who has come

up with a request before retirement for permitting the exercise of option, along with undertaking for depositing his share for CPF for the earlier period along with the interest. The applicant would have to be granted the benefit of including his service for purposes of pension, by permitting him to exercise the option in terms of Rule 17 of the CCS (Pension) Rules, 1972 in terms of relaxation as provided for under Rule 88 ibid. Denying this would be totally against the decision of the Tribunal dated 4-12-1992, issued while disposing of OAs 1881, 1882 and 1909/92, holding the applicant to be an employee of LHMC, which has been duly upheld by the Hon'ble Apex Court. This alone would be legal just and fair.

(23)

14. In the above view of the matter, OA succeeds and is accordingly allowed. Impugned order No.KSCH/Admin/4428 dated 1-11-2001 passed by the respondent No.3 is quashed and set aside. Respondents are directed to treat the service rendered by the applicant as SRO in ICMR project in LHMC on Studies in Streptococcal diseases, before he came over to Kalawati Saran Children's Hospital also as qualifying service for the purpose of pension. To facilitate the above, respondents shall also permit the exercise of option by the applicant under Rule 17 of the CCS (Pension) Rules, 1972, in terms of relaxation as permitted under Rule 88 ibid. This shall exercise shall be completed within two months from the date of receipt of a copy of this order, as the applicant is due to retire on superannuation at the end of this month - May 2002. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)