

Central Administrative Tribunal, Principal Bench

Original Application No.117 of 1999

New Delhi, this the 20th day of December, 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice Chairman (J)
Hon'ble Mr. R.K. Ahooja, Member (Admnv)

Dr. B.V. Reddi, S/o Late B. Veera Reddy,
Scientist E-1, Group-IV (3), National
Physical Laboratory, Dr. K.S. Krishnan
Marg, New Delhi-12

- Applicant

(By Advocate - Shri D. Rama Krishna Reddy)

Versus

1. National Physical Laboratory through its Director, Dr. K.K. Krishnan Marg, New Delhi-12.
2. Council of Scientific & Industrial Research (CSIR) through its Director General, Anusandhan Bhawan, Rafi Marg, New Delhi-110001.
3. The Minister of Science & Technology, Govt. of India, Technology Bhawan, New Delhi-110016, who is an ex-officio Vice President of CSIR.
4. The Ministry of Personnel, Public Grievances and Pensions, Govt. of India through the Secretary, North Block, New Delhi-110001.

- Respondents

(By Advocate Shri V.K. Rao)

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By R.K. Ahooja, Member (Admnv) -

The applicant was initially appointed as Senior Scientific Assistant in National Physical Laboratory (hereinafter referred to as 'NPL') on 24.12.1973. After being promoted as Scientist-C in NPL he went on deputation to an Andhra Pradesh Government undertaking by the name of Republic Forge Company Ltd. (RFC) Hyderabad for a period of three years with effect from 28.6.1982. On 30.11.1984 the RFC sought the consent of NPL to the absorption of the applicant with effect from 1.12.1984. Simultaneously the applicant requested the NPL to relieve him provided all the

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prorata pensionary benefits were paid to him for the period of his service rendered at NPL. Accordingly, the lien of the applicant in NPL was terminated with effect from 30.11.1984. As the NPL after consideration found that the applicant was not entitled to payment of prorata pensionary benefits of his services at NPL, the applicant requested the NPL for his repatriation which was agreed to by the NPL after obtaining the concurrence of its parent body the Council of Scientific and Industrial Research (CSIR). The applicant thereupon rejoined the NPL in his old grade of Scientist-C on 30.3.1987. The pension contribution was paid by RFC to NPL only for the period of applicant's service from 29.6.1982 to 30.11.1984 i.e. the date on which he was absorbed in RFC and his lien in NPL had been terminated. The dispute, therefore, arose regarding the treatment of period from 1.12.1984 to 29.3.1987. The NPL declared this period as dies non for all service benefits. The applicant states that he offered to pay the pension contribution from his own pocket but the NPL refused to receive the same and insisted that such payment should come from RFC Hyderabad which was no longer possible as the RFC in the meantime had been closed down permanently. The applicant made numerous representations to DG, CSIR and the Minister of Science & Technology seeking condonation of dies non period from 1.12.1984 to 29.3.1987 but to no avail. The decision of the NPL in regard to this period also led to issue of a show cause notice dated 4.3.1997 since the NPL found that the applicant had obtained assessment promotions under the Flexible Complementing Scheme taking into

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account the period from 1.12.1984 to 29.3.1987 as part of qualifying service. The applicant has now come before the Tribunal seeking a direction to the respondents to treat the period of service rendered by him at RFC Hyderabad from 1.12.1984 to 29.3.1987 for all service benefits including promotion by accepting the pension contribution liability of the said period from the applicant.

2. The respondents have taken a preliminary objection that the OA is highly belated and liable to be dismissed on the ground of limitation. They state that the applicant had been communicated as early as on 27.7.1993 that the CSIR had decided to treat the period of his service rendered with RFC from 1.12.1984 to 29.3.1987 as dies non for all purposes and as such the present application has been filed much beyond the period of limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985. On merits, they state that initially when the applicant had gone on deputation to RFC his lien had been retained with NPL. The applicant vide his letter dated 30.11.1984 wrote to NPL that he would like to be relieved from NPL immediately so that he could be permanently absorbed in RFC in public interest. This led to the termination of the lien of the applicant with the NPL from 30.11.1984. The NPL had informed the applicant vide their letter dated 5.6.1986 that retirement benefits could not be given to the applicant as his case was not covered under the Government of India circular dated 7.2.1986; on that basis the applicant was asked to intimate his option whether he wanted to rejoin NPL. Thus, the

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applicant resumed his duties in NPL with effect from 30.3.1987. The NPL requested the applicant to deposit a sum of Rs. 12,868/- towards the pension contribution for the period from 1.12.1984 to 29.3.1987 with a view to regularise the aforesaid period but the applicant instead made a request to NPL to waive off the pension contribution. On the other hand the RFC was also not ready to make any payment. They state that pending a decision on the regularisation of the period the applicant was promoted as Scientist E-1 with effect from 1.4.1988. After the case was examined by the CSIR it informed the NPL by letter dated 14.5.1992 that service rendered in a public sector undertaking is not counted towards qualifying service for pension and the applicant would be entitled to count his service with NPL subsequent to 30.3.1987 only as qualifying service. However, vide letter dated 27.7.1993 the CSIR accorded approval for counting of the past service prior to the applicant's absorption in RFC by treating the intervening period from 1.12.84 to 29.3.87 as 'dies non'.

3. We have heard the counsel. It was pointed out on behalf of the applicant that after the communication of the letter dated 27.7.1993 the applicant had made a representation and the said representation was examined in NPL and was supported by them to CSIR. The matter was also examined at the level of the Vice President of CSIR and the DOPT. However, it was by OM dated 4.3.1997 (Annexure-A-48) the applicant was asked to show cause as to why the assessment promotion given to him as Scientist E-1 with effect from 1.4.1988 may not be

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withdrawn. The representation made by the applicant to the Vice President CSIR was replied to by OM dated 19.11.1998 (Annexure-A-54). Thus, the applicant had a cause of action by the issue of this OM on 19.11.1998.

4. We are also of the view that the OA is not barred by limitation. A reading of the OM dated 19.11.1998 shows that it was only by letter dated 27.6.1996 that the CSIR had informed the applicant that the period in question could not be regularised by the applicant depositing the leave salary/ pension contribution. The representation on this OM and the further representation made by the applicant to the Vice President of CSIR were again referred to the DOPT and taken up by the Vice President CSIR at the level of Minister of State with the Minister of State for Personnel but the latter department could not consent to this arrangement. This decision on the representation was available to the applicant only on 19.11.1998. In view of this, the applicant is not guilty of laches and the OA has been filed well within time.

5. In regard to the merits of the case also we find that the applicant is well placed. The whole issue hinges on the termination of the lien of the applicant with NPL with effect from 30.11.1984. The applicant was taken back in service with the NPL. The CSIR also decided that his past service prior to 30.11.1984 will be counted for his service benefits. FR 9(13) defines 'lien' as follows :-

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"Lien means the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed subsequently."

6. According to the respondents the lien of the applicant was terminated on his permanent absorption with RFC. Here we have to notice two facts. Firstly, the applicant in letter of same date to the NPL sought his release for permanent absorption on the condition that he would be granted all prorata pensionary benefits. It was found later that under the relevant instructions the applicant could not be granted this benefit. It was in the light of these instruction and this finding that the applicant was taken back in service of NPL. Thus, the relations of the applicant with the NPL were never severed. His request for release was conditional and it was also so recognised by the respondents who took him back in service. Secondly, the respondents could not have taken him back in service unless in terms of FR 9(13) he had a title to the post of Scientist-C in the NPL. The applicant was not re-recruited into the service in terms of the recruitment rules but was taken back on the assumption that he had a title to come back. Thus, by doing so, the respondents themselves had in effect adopted the stand that the applicant continued to retain his lien against the post in the NPL.

7. We also find that the applicant had cited a number of cases in which in similar circumstances the respondents had allowed the concerned officers to count the period with public sector undertakings towards their

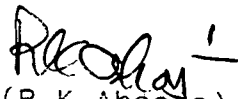
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service benefits. It was possibly for this reason that the respondents NPL and CSIR had continued to recommend the case to the DOPT and the matter was taken up at no less level than the Minister of HRD, the ex officio Vice President of CSIR with the Minister of State of DOPT.

8. In the aforesaid facts and circumstances we find the conclusion irresistible that the applicant was for all purposes was on deputation for the period from 1.12.84 to 29.3.87 with RFC and that he had continued in effect to hold the lien against his post in the NPL throughout this period. However, the aforesaid period can be counted towards pensionary benefits only if the requisite pensionary leave salary/ pension contribution are made to the NPL. At one time the NPL itself had asked the applicant to make this amount available since it was not forthcoming from the RFC. The applicant is ready to pay the amount now even with penal interest.

9. In the light of the aforesaid discussion, we allow this OA. The respondents are directed to consider the period from 1.12.1984 to 29.3.1987 towards service benefits to the applicant subject to the condition that within three months of the date of receipt of a copy of this order the applicant will deposit the contribution of Rs.12,868/- with 12% compound interest per annum to the NPL. On such payment the show cause notice dated 4.3.1997 regarding the cancellation of the promotion of the applicant as Scientist E-1 with effect from 1.4.88 will also stand cancelled. In the circumstances of the case the parties shall bear their own costs.


(R.K. Ahooja)
Member (Adminv)


(V. Rajagopala Reddy)
Vice Chairman (J)