

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA. No. 734 of 1998

New Delhi, this 31<sup>st</sup> day of May, 1999.

HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

Dr (Prof.) N.K. Jain  
S/o Shri Sumer Chand Jain  
(Retd. as Director Grade Scientist  
Council of Scientific and Industrial Research  
on placement as Consultant with  
Department of Biotechnology  
Ministry of Science and Technology  
Government of India  
New Delhi. .... Applicant

By Advocate: Shri R. Venkataramani, Senior  
counsel with Ms Shirin Khajuria

versus

1. Director General  
Council of Scientific and  
Industrial Research  
Anusandhan Bhawan  
2 Rafi Marg  
New Delhi 110001.
2. Jt. Secretary, Administration  
Council of Scientific and  
Industrial Research  
Anusandhan Bhawan  
2 Rafi Marg  
New Delhi 110001.
3. Deputy Secretary, Incharge Pension Cell  
Council of Scientific and  
Industrial Research  
Anusandhan Bhawan  
2 Rafi Marg  
New Delhi 110001. .... Respondents

By Advocate: Ms K. Iyer

O R D E R

HON'BLE SHRI K. MUTHUKUMAR, M(A)

The applicant is aggrieved that his request for  
counting of past service rendered in Tea Research Association  
(TRA for short) for the purpose of pensionary benefits in the

Council of Scientific and Industrial Research (CSIR for short) has been turned down by the respondents after due consultation with the Department of Pension and Pensioners' Welfare of the Union Government. At the time of filing of this application in March 1998, his representation had not been initially disposed of and, therefore, he has sought for a direction to the respondents to withdraw that reference to the Department of Pension and Pensioners' Welfare. However, as the reference has since been disposed of by that Department and has been referred to in the counter reply of the respondents, this direction sought for by the applicant has become infructuous.

2. From the service profile given by the applicant it is seen that the applicant had been working from August 1955 in various organisations like the Banaras Hindu University, Jute Agricultural Research Institute, Barrackpore, West Bengal, Govt. Agricultural College, Kanpur and in a private organisation. As per the averment of the applicant he joined Government of India on contract basis for an assignment under Government of Afghanistan with effect from 11.6.71 to 24.2.72 and immediately thereafter joined TRA and worked there for nearly twelve years from 25.2.1972 until 24.1.84 and after short break in service between 25.1.84 and 20.2.84, joined under the respondents as Founder Director of CSIR Complex, Palampur from 21.2.84 and, thereafter he was transferred as Consultate in the Director's grade with the Department of Biotechnology and he retired from the said Institute on 31.12.93.

3. When the matter came up for hearing, learned Senior Counsel for the applicant mainly argued on the prayer for grant of benefit of service of the applicant in the TRA w.e.f. 25.2.72 to 24.1.84 the purpose of qualifying service for pension and sought adjudication of this matter.

4. The main grounds taken by the applicant are as follows:-

- (i) The respondent No.1 being the appointing authority in this case, reference on the question of qualifying service, to the Department of Pension and Pensioners Welfare was erroneous and was intended to delay the decision on his representation.
- (ii) Despite the fact that the applicant had served previously in Government/Semi Government/Autonomous Bodies for another 26 years, the respondents calculated the period of qualifying service as only 10 years.
- (iii) The TRA being an Autonomous Body, he is entitled to the benefit of counting of past service in the said Autonomous Body also in terms of the extant rules on the subject and he relies on the provisions of CCS(Pension) Rules and relevant Appendix-12 to the said Rules.
- (iv) In terms of the aforesaid provisions, the TRA which is administratively controlled by the Government the CSIR, though it had its own governing body, and also was funded to the extent of 50% by the Government, can be treated as an Autonomous Body and, therefore, the applicant is entitled to counting of service under the TRA for the purpose of qualifying service for pensionary

benefits. The applicability criteria of substantial financial control and "substantially" owned and "controlled" by the Government means that funding is more than 50%. This definition came into existence only 1984 after the applicant had left TRA and, therefore, the application of these criteria and definition would be wholly erroneous. The relevant orders on this subject under CCS(Pension) Rules are beneficial provisions and, therefore, should be liberally construed, particularly in the case of Scientisits.

(v) The learned Senior counsel argued that the applicant was absorbed in the Autonomous Body with a view to increasing the mobility of scientific talent and, therefore, the applicant's service in TRA ought to be counted for the purpose of determining pensionary benefits. The learned Senior Counsel referred to the option exercised by the applicant for absorption in CSIR in 1984. He also referred to Rule 37 of CCS(Pension)Rules and emphasised that what is critical in deciding about a body being autonomous is that the Autonomous Body should be financed or controlled by the Government. He also referred to the Government of India O.M. dated 29.8.1984. He argued at length that the extent of control exercised by the Central Government on the Autonomous Body like TRA should also be considered. For this purpose, he referred to the Memorandum of Association of the TRA and pointed out that the entire Council of Management of the TRA is controlled by the CSIR. He referred to the provision of para-4 of the Memorandum of Association by which no member of the Council can be appointed to any salaried office of the Association, except with the approval of the CSIR. He also referred to para-6 of the aforesaid Memorandum to indicate that the winding up or

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dissolution of the Association and the distribution of income and property etc. among the members of the Association is to be determined by the members of the Association subject to the approval of the CSIR at or before the time of dissolution. He also pointed out that the TRA has certain nominated members representing the Government, CSIR, Tea Board and the Indian Tea Association. He asserted that all these point out that the TRA is an Autonomous Body and is under the control of the Government. Apart from that, the learned Senior Counsel argued that even in terms of CSIR Notification as early as July 1963 (Annexure A-4) it has been very clearly provided that 50% of the total expenditure will be reimbursed by the CSIR. He also stressed that the entire purpose of the O.M. of 29.8.1984 is to provide for mobility of persons between Central Government Departments and Autonomous Bodies by counting service for pension appropriately. He also pointed out that the scope of these benefits have been progressively liberalised by the Government, and therefore, the claim of the applicant has to be viewed in that context instead of interpreting the provision very rigidly. He also stressed that the applicant was a leading Scientist and had rendered long years of service in the TRA which has to be considered as an Autonomous Body from the fact that the CSIR has over-riding control on its functions and the Body was also substantially assisted by the CSIR. He pointed out that even the rules and regulations relating to the TRA can be amended with the approval of CSIR only. This, according to the learned Senior Council, would conclusively establish that the TRA cannot function like an independent private body and has all characteristics of an Autonomous Body under the CSIR. He also stressed the fact that the applicant was allowed the option to be

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governed by the Pension Rules.

5. The learned Senior Counsel for the applicant has also referred to the case of Dr. H.V.K. Udupa whose service at the Ahmedabad Textile Research Association (ATIRA for short) was agreed to be taken into account for fixation of pension and argued that if Dr. Udupa's service under the aforesaid Association could be taken into account, it would be unfair and discriminatory if the applicant's service under the TRA is not allowed to be counted for purpose of pension. He argued that respondents cannot afford to classify the case of the applicant differently from that of Dr. Udupa as this would amount to discriminatory classification. In this connection, he referred to the observations of the Apex Court made in para 13 in D.S. Nakara's case AIR 1983 SC 130.

6. The learned Senior Counsel for the applicant also referred to Rules and Regulations of CSIR which is a Society registered under the Societies Registration Act, 1860 and argued that the CSIR has the power to relax the requirements of any rule relating to the conditions of service and staff.

7. The respondents in their reply, have stated that since the Department of Pension and Pensioners Welfare is the final authority for interpreting the rules, the respondents had rightly referred the representation of the applicant for a decision to that Department and on the basis of their categorical reply, the applicant was informed that his services at TRA could not be counted as the same was not covered by rules. The respondents also have reiterated that the TRA does not fulfil the criteria

laid down by the Government of India rules and regulations on Autonomous Bodies. They have also averred that mere funding, participation or controlling the body by CSIR does not bestow on it the status of an Autonomous Body and in the case of TRA the funding by the Government of India was also not more than 50% In view of this, the TRA did not qualify to be considered an Autonomous Body in terms of O.M. of 1984 under which a body can be treated as an Autonomous Body if it fits into the definition of provisions of the OM, and if funding by Government of India is above 50%.

8. The learned counsel for the respondents argued fervently that in terms of the definition given by the O.M. dated 29.4.1984, it cannot be said that the TRA can be treated as a Central Autonomous Body. He referred to the TRA's own letter of 22.8.91 (Annexure R-4) wherein the Association has admitted that they had received much less than 50% of their total expenses from the Government of India.

9. In regard to Dr.Udupa's case, learned counsel submitted that ATIRA was classified by the respondents after the Association had submitted details of Grants to the respondents vide Annexure R-3 and they were receiving Grants directly from NR and SR Ministry. The matter was considered and the services of Dr. Udupa in the aforesaid Association was agreed to be taken into account for the purpose of fixation of pension. The learned counsel also asserted that the CSIR has absolutely no control over the TRA and even if the CSIR had some control, that does not imply that the TRA is an Autonomous Body as per the aforesaid O.M. dated 29.8.1984.

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10. I have heard the learned counsel for the parties and have perused the record.

11. On the directions of the Bench, the respondents have also filed an affidavit regarding financial support given by CSIR to the TRA and ATIRA. While it is stated by the respondents in the counter that ATIRA was receiving Grants from NR & SR Ministry during 1951 to 1993, the details of the CSIR's assistance to ATIRA from 1972 to 1978 is also given. The fact however remains that the case of Dr. Udupa was considered by the respondents and appropriate decision was taken to count his past service in the aforesaid Association for the purpose of pension.

12. It is an admitted position that the applicant joined as Coordinating Director, Palampur with effect from 21.2.1984. At the instance of the Bench, the applicant also filed an affidavit relating to his appointment as Coordinating Director, Palampur on 21.2.1984. From the papers filed, it appears that the applicant was directly appointed against the advertised post of Coordinating Director with effect from 21.4.1984.

13. From the papers placed before me it is fairly clear that TRA is also one of the constituent laboratories/units overseen by the CSIR. The sharable expenditure of the TRA is shared by way of grants by the Government as well as cess calculated and routed through the Tea Board another Autonomous Bodies. The CSIR, itself though an Autonomous Body, has a pension scheme for its employees and has adopted all the Central Government rules and regulations including the rules and orders governing the absorption of employees. The applicability of

various orders and instructions relating to the transfer of Central Government servants to Central Autonomous Bodies and vice-a-versa and of the employees of the Central Autonomous Bodies to another Central Autonomous Body as contained in Government of India, Department of Personnel and A.R. OM dated 29.8.94 as modified from time to time, to the case of the applicant, is not in dispute. The fact that the applicant is a Scientist or employed in the field of science research is not in dispute. Even in respect of employees of Autonomous Bodies transferred or absorbed in Central Government, the Government had been progressively liberal in the matter of reckoning the past service of such employees for granting pensionary benefits under the Government. In fact, the Government has given beneficial consideration in respect of scientific employees. As provided in para 20 of the Appendix 12 of the CCS (Pension) Rules, Swamy's Pension Compilation, in the case of scientific employee in the semi-government institution which is financed wholly or mainly from cess or Central Government grants, who had subscribed to a Contributory provident Fund Scheme in such an institution may, on permanent appointment, without any interruption to a pensionable service or post under the Government of India count his previous service in that institution during which he subscribed to that Fund as service qualifying for pension provided that the contribution together with interest thereon paid by the institution is made over to the Government. Government had made these provisions with a view to increasing mobility of scientists all round. It has been specifically provided in para 21 of the same Appendix that the concessions contained in para 20 should be made available to scientific employees of the Government going over to Central Autonomous Bodies like CSIR. Subsequently by the

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OM dated 2.8.84, the benefits were extended to cover cases of Central Government employees going over to Central Autonomous Bodies or vice-a-versa. In other words, the benefits under these regulations are applicable to scientific employees who are absorbed on transfer from Central Autonomous Bodies to the Central Government. Much stress has been laid by the respondents on the definition of 'Central Autonomous Body' to establish that TRA cannot be considered as a Central Autonomous Body as it has not been financed wholly or substantially from cess or Central Government grants, i.e., to say that only less than 50% of the expenditure has been met by the CSIR and not more than 50% as is required under the definition for being considered as a substantially financed body.

14. From the data furnished by the respondents both for TRA and ATIRA, the sharable expenditure of CSIR/Tea Board (from cess) has been 50% of the sharable expenditure. But in the case of ATIRA it is seen that the CSIR has not financed more than 50% of sharable expenditure of the organisation. Inspite of that, the matter was considered in the case of Dr. Udupa by the respondents and he was allowed the past service in ATIRA. I am of the considered view that the TRA also should qualify to be considered as Central Autonomous Body on the same analogy as ATIRA. Besides, in the case of scientific employees, as the whole scheme is intended to encourage mobility of scientists from Autonomous Bodies to the Government or another Central Autonomous Body, there is no rigid percentage limit fixed in terms of para 20/21 aforesaid in regard to the financing of these Autonomous Bodies with regard to the Scientists personnel. In any case, these orders were issued only in 1984 much after joining of the

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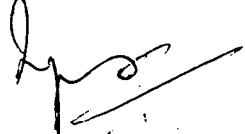
applicant on 21.2.1984 under the CSIR. In the case of Dr. Udupa the respondents have admitted to the grant of benefit of counting of past service. It is pointed out by the applicant in para 4.10 and Annexure-8 that the respondents have admitted Udupa's case and condoned the break in service also while extending the benefit of previous service for counting towards pension. Denying similar benefit to the applicant will be clearly discriminatory.

15. In the light of the above, I am of the considered view that the case of the applicant for counting his past service in TRA deserves to be considered after condoning the break of 2.1/2 months by the competent authority as at that time applicant was somewhere in North East and might have taken some time to get relieved from that post to join the CSIR on 21.2.84. As regards, prayer for counting of service in other organisations prior to 29.2.84 including the Private Sector Company, this is not clearly permissible under the Rules. As for counting of service under the State Government of Uttar Pradesh between 17.8.64 to 28.9.68, this is also not permissible as there was no reciprocal arrangement between Government of U.P. and the Central Government at that time for extension of benefits like counting of service under the State and accepting pensionary benefits for State employees absorbed in Central Autonomous Bodies/Central Government. In terms of OM dated 7.2.86 as amended from time to time, such arrangement became applicable to employees seeking absorption on or after 7.2.86 and not before that date. In view of these, these prayers cannot be allowed and are rejected.

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16. In the conspectus of the above discussion, this partly allowed and application is disposed of with the direction to the respondents to extend the benefit of counting the past service in TRA with suitable condonation of break in service of 2.1/2 months as has been allowed by the respondents in the case of Dr. Udupa while counting his past service, for purposes of determining the qualifying service of the applicant for pension purposes.

No order as to costs.



(K. MUTHUKUMAR)  
MEMBER (A)

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