

9

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2138/90

Hon'ble Shri Justice S.C.Mathur, Chairman
Hon'ble Shri P.T.Thiruvengadam, Member(A)

New Delhi, this 19th day of May, 1995

Shri A.P.Gupta
s/o Shri S.C.Gupta
R/o House No.8E-16
Shalimar Bagh,
Delhi - 110 052.

... Applicant

(By G.D.Gupta, Advocate)

Versus

1. The Secretary
Indian Council of Agricultural Research
Krishi Bhavan
New Delhi.

2. The Chief Administrative Officer
Ministry of Defence
Dalhousie Road
New Delhi.

... Respondents

(By Shri R.S.Aggarwal, Advocate for Respondent No.1)
(By Shri S.Ramalingam for Respondent No.2)

O R D E R

Hon'ble Shri P.T.Thiruvengadam, Member(A)

The applicant was appointed as Senior Computer in Indian Council of Agricultural Research (ICAR) on 16.6.1960. He joined the Ministry of Defence as Technical Assistant on 29.1.1965. He resigned from ICAR w.e.f. 27.1.1965(AN). After working with the M/o Defence from 29.7.1965 he was ultimately retired from Government service w.e.f. 30.4.1990. His terminal benefits were computed taking into account only his service with the Ministry of Defence. This OA has been filed for a direction that the services rendered by the applicant in ICAR should also be taken into account and pension and gratuity should be recomputed, alongwith revised commutation.

/

d

2. The learned counsel for the applicant relied on the contents of the Office Memorandum dated 29.8.1984 on the subject of counting of service for pension in relation to personnel who move from an autonomous body to the Central Government. The relevant paras read are as under:

"Para 3: This matter has been considered carefully and the President has now been pleased to decide that the cases 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)
- (B) Autonomous body where the pension scheme is not operation
 - (i)
 - (ii) An employee of an autonomous body on permanent absorption under the Central Government will have the option either to receive CPF 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.

Para 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.

Para 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.

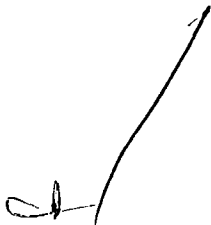
Para 7: These orders will be applicable to those who retire ... on or after the issue of these orders. "

3. It is not disputed that the above memorandum applies to the case of the applicant. The employee did not receive any terminal benefits from ICAR, having worked in

that organisation for less than five years. The dispute is only with regard to the requirements to be fulfilled under para 6 of the OM dated 29.8.1984. Respondent No.1 namely ICAR has brought out in their reply that necessary entry to the effect that the applicant resigned w.e.f. 27.1.1965(AM) has been made in his service book. However, the personal file of the applicant, if any, is not available now and therefore, the organisations is not in a position to confirm or deny that the applicant resigned from service under ICAR to take up the new assignment under the Ministry of Defence. Equally, ICAR is not in a position to confirm that the applicant had applied through their organisation and such application was forwarded to the Ministry of Defence.

4. The respondent No.2 namely, Ministry of Defence has taken the stand that respondent No.1 has not accepted the proportionate pension liability and hence the terminal benefits had to be based on the service in the Defence Ministry only.

5. The learned counsel for the applicant conceded that the applicant is not in a position to produce primary evidence with regard to his applying through proper channel and on the aspect of his resignation having been accepted by ICAR for the purpose of joining the Defence Ministry. It was mentioned that such records are not available at this stage. He however, relied on indirect evidence. To this effect, he referred to the letter of the Defence Ministry to ICAR (letter dated 20.6.88 Annexure P-4 to the



application). Para 3 of the letter brings out that the applicant had been selected in Defence Ministry through Employment Exchange and subsequent to his selection ICAR had confirmed on 29.1.65 about the medical fitness of the applicant. It was argued that the contents of the letter of 29.1.1965 written in the wake of acceptance of resignation on 27.1.1965 would bring out that the applicant had left ICAR in an authorised manner to join the Defence Ministry. Otherwise, at that stage, ICAR would not have confirmed about the medical fitness but would have protested about his exit. The bonafities of the applicant thus get established.

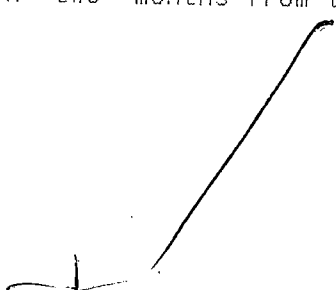
6. On the aspect of applying through proper channel, the contents of the letter dated 30.3.1964 from ICAR to Employment Exchange were referred to. In this letter, the ICAR authorities have advised the Employment Exchange that the applicant had since been granted quasi permanency and accordingly his name may not be recommended when requisitions are made by various organisations seeking candidates for employment. It is the stand of the applicant that as per practice his name was kept in the waiting list of Employment Exchange till the above advice was given by ICAR. Accordingly, when the defence ministry sought candidates from Employment Exchange, his name was forwarded by the Employment Exchange and hence the question of applying for the job through proper channel did not arise. There is force in this argument and we are persuaded to accept that the question of proper permission

1

of the administrative authority concerned at the time of applying for the job in Defence Ministry did not arise in the case of the applicant. We note that the Defence Ministry has admitted that the applicant was sponsored by the Employment Exchange.

7. Hence, we are left only with the first issue as to whether the movement of the applicant from ICAR to the Defence Ministry had taken place with the consent of the ICAR. No documentary evidence has been produced by either side to settle this issue one way or other. Normally, employment from an Autonomous Body to the Central Government (Ministry) is not opposed, unless there are very special circumstances. In this case, the applicant had hardly put in five years service and within two days of his resignation, the releasing organisation had confirmed about the applicant being medically fit. If they had any objection about his joining, some sort of protest would be expected at the time of certifying regarding medical fitness when the matter was still fresh, as on 29.1.1965. In the circumstances, we are inclined to extend the benefit in favour of the applicant and hold there was a deemed consent on the part of ICAR.

8. Accordingly, the OA is allowed and respondent No.1 is directed to accept the pensionary liability for the service rendered by the applicant in that organisation. Communication in this regard should be sent to respondent No.2 within two months from the date of the receipt of a



14

copy of this order. Thereafter, respondent No.2 shall take steps for recasting the pension (including commutation of pension) and gratuity and for making the payments, as due. This action should be completed within a period of three months from the date of the receipt of the communication from respondent No.1. No costs.

P. T. Thiruvengadam
(17/5/75)
(P.T. THIRUVENGADAM)
MEMBER(A)

S. C. Mathur
(S.C. MATHUR)
CHAIRMAN

/RAO/