Central Administrative Tribunal, Principal Bench

O.A. No. 661/2004

New Delhi the 19 11 day of April, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.A. Singh, Member (A)

Dr. Naresh Kumar Gupta
S/o Shri Asa Ram Gupta
R/o G-62, Nivedita Kunj,
Sector-10, R.K. Puram,
New Delhi-110 022. ...Applicant

By Advocate: In person.

Versus

1. Union of India
Through its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi-110 001.

2. Union of India
Through its Secretary,
Ministry of Personnel, Public Grievances & Pensions,
Department of Pension and Pension Welfare,
Lok Nayak Bhavan, Khan Market,
New Delhi-110 003.

3. Principal and Medical Superintendent,
Lady Hardinge Medical College,
New Delhi-110 001.

4. Council of Scientific and Industrial Research
Through its Director General
Anusandhan Bhavan, Rafi Marg,
New Delhi-110003. ...Respondents

By Advocate: Shri V.S.R. Krishna, Counsel for respondent No.1.

Shri R.V. Sinha, Counsel for respondent Nos.2 and 3.
Shri Praveen Swaroop, Counsel for respondent No.4.

(8)

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

Short question that arises for adjudication in this OA is whether the tenure of the applicant as Pool Officer, in the Scientist Pool would be reckoned towards service for granting pensionary and other retiral benefits.

2. Facts are brief and simple. The applicant after acquiring MD Degree and completing tenure bound post of Senior Resident from 1980-1983 in the All India Institute of Medical Sciences, New Delhi, was appointed on 16.12.1983 as Pool Officer, in the Scientist Pool of CSIR, on a salary of Rs.700/- per month plus allowances as admissible to temporary Class-I Officer of the CSIR. The applicant was placed over at the All India Institute of Medical Sciences in the Department of Medicine. From Ist December, 1984 his pay was increased from Rs.700/- to Rs.900/-. On 16.12.1985 the applicant left the Scientist Pool and joined as Assistant Professor of Medicine under Ministry of Health and Family Welfare in a permanent capacity. Vide letter dated 10.9.1998 the respondent has rejected the prayer of the applicant stating that the period of service as Officer Scientist Pool from 11.10.1980 to 31.10.1983 cannot be counted for pension purposes. Another letter dated 14.9.1999 was received where it was stated that under the terms and conditions of appointment and guidelines of CSIR service under the Senior Research Associateship/Pool Officer were purely temporary and did not count toward pension or other service benefits under CSIR or under Central Government or State Government or Public Sector Undertaking. The respondents CSIR changed the pool scheme and redesignated it as Senior Research Associateship. The new scheme modified the terms and conditions of appointment especially in the clause relating to the

service regulation and pension benefits which would apply to the fresh appointees under the Pool Scheme after the new scale came into force. The applicant's representation for counting his service rendered as Pool Officer in the Scientist Pool of CSIR have not borne any fruit. Hence this OA.

3. The respondent No.4, CSIR, in its reply repudiated the claim of the applicant. It was stated that the applicant was appointed as Pool Officer vide order dated 10.11.1983 on the salary of Rs.700/- per month plus allowances as admissible to Class-I Officer of the CSIR. He joined AIIMS as Pool Officer on 16.12.1983 . On 16.12.1985 he left the Scientist Pool and joined the Ministry of Health and Family Welfare as Assistant Professor of Medicine in a permanent capacity with the explicit knowledge and permission of the CSIR. The request of the applicant for counting his service as Pool Officer was rejected vide letter dated 14.9.1999 as it was not permissible under the terms and conditions of appointment and the guidelines of the CSIR applicable to Senior Research Associateship/Pool Officership. It was further submitted that as per the Pension Rules, the qualifying service of a Government servant would commence from the date he had taken charge of the post on which he was first appointed, either substantively in an officiating capacity or temporary capacity, provided that officiating or temporary service was followed without interruption by the substantive appointment in the same or another service or post. Pool Officers Scheme was created vide Resolution of the Ministry of Home Affairs dated 14.10.1958 under the title "Scheme for constitution of Pool for temporary placement of well qualified Indian Scientists and Technologists returning from abroad". Para 7 of the Resolution specifies the condition of service which stated "The CSIR will frame regulations for regulating the conditions of service of the Pool Officers.

Until such regulations are framed, pool officers will be governed by the existing regulations which apply to the temporary Class-I Officers of the CSIR". The guidelines for Scientist Pool Scheme were made more clear in January, 1991 and it was stated in the guide-lines that the appointment of the Pool Officers was purely temporary and they were not entitled to any regular employment/absorption. They were also not entitled to contribute towards CPF/Pension Scheme or to the drawal of the LTC etc. The question of counting of service rendered in the Pool Scheme of CSIR was also referred to the Ministry of Finance and Ministry of Home Affairs. As per the advice of the Ministry of Finance in August, 1970 the pool was strictly meant for Scientists returning from abroad and to a lesser degree to highly qualified Indian Scientists with indigenous qualifications until they were in a position to obtain appointments in India, suitable to their qualifications. The Pool was meant primarily to avoid a situation whereby qualified Scientist would be thrown into unemployment. Therefore, it would be incorrect to hold that a tenure of a person in a Pool as equivalent in all respect to his formal employment in a cadre post whether in temporary or permanent capacity". The Ministry of Finance further clarified that the Pool Officer would be governed by the existing regulation which apply to temporary Class-I Officer of CSIR pending formulation of the rules and regulations but it did not mean that they would be given the same benefits as are admissible to Central Government employees. The Ministry of Home Affairs also clarified in 1971 that the intention behind Regulation 7 of the Pool Resolution was not to give pensionary benefits to the Pool Officers. The Pool seeks to provide temporary placement to the Scientists so that their services could be utilized till they were absorbed in regular cadre in different scientific organization. The Pool was meant to avoid a

situation where highly qualified scientist remained unemployed and the appointment to the pool was not equivalent to a formal appointment in the cadre or placement in a regular grade whether in temporary or permanent capacity. It was further clarified that it was not possible to extend the pensionary benefits to the Pool Officers absorbed in the CSIR. In order to remove any ambiguity as brought out from Regulation 7 of the Pool Resolution, guidelines for the Pool Officership were made more clear in January, 1991 and it was clarified specifically that the Pool Service was not pensionable,. It was, therefore, submitted that that the OA may be dismissed.

4. In the rejoinder the applicant has reiterated his own case and controverted the allegations of the respondents that the service rendered in the Scientist Pool was not countable towards pension and other pensionary benefits.

5. At the time of hearing the learned counsel for the applicant has submitted that this case is completely covered by the judgment of Bangalore Bench of this Tribunal in the case of **Dr. M.G. Anantha Padmanabha Setty Vs. Director, National Institute of Oceanography, Dona Paula, Goa and Another, (1990 14 ATC 314)**. It was a case of a Pool Officer who had joined National Institute of Oceanography and on retirement had sought counting of his service as Pool Officer towards his pension and other pensionary benefits. His prayer was rejected and the service rendered by him as Pool Officer in the Scientist Pool of CSIR from 23.1.1964 to 10.10.1967 was not counted for working out his retiral benefits like pension etc. The defence similar to the defence in the counter reply was raised by the respondents in that OA. The Tribunal examined the Scheme, para 7 of the Pool Resolution CCS (Pension) Rules which are applicable to the CSIR and all other

relevant pleas raised by the respondents. Objections of the respondents were rejected and the OA was allowed. It was held as under:-

> ".....We are of the view that the period spent by him in the scientists pool is 'qualifying service' and should also be counted for determining his retirement benefits. After all, if the object of government and CSIR in establishing the pool is to encourage scientists with high qualifications to stay on in the country and not to go out of India for better prospects of employment and in the process to check the brain drain, allowing a Pool Officer to count the period spent by him in the pool for calculating his retirement benefits would be in furtherance of this objective".
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> 8. In view of the above we direct the respondents to take into account the period spent by the applicant as a Pool Officer in the scientists pool and to determine his retirement benefits accordingly. Parties to bear their own costs".

6. The learned counsel for the respondents has not been able to distinguish the above order on facts or law. The applicant who was working as Pool Officer opted for Scientist Pool Scheme of the CSIR w.e.f. 15.12.1985. From 16.12.1985 he joined the Government Service as Assistant Professor of Medicine in the Ministry of Health and Family Welfare in permanent capacity. There is no break in service. As per Regulation 7 of the Scheme, the regulation for regulating the service conditions of the Pool Officers were to be framed by the CSIR and until such regulations were framed, the Pool Officers were to be governed by the existing regulations which applied to temporary Class-I Officers of the CSIR. The applicant worked as Pool Officer between 16.12.1983 and 16.12.1985 when this regulation was in force. CCS (Pension) Rules were applicable even to temporary Class-I officer of the CSIR. The Pool Officer had a fixed tenure of 3 years but the applicant had left the pool and joined without break the government service with the Ministry of Health and Family Welfare before his tenure as Pool Office came to an end. Subsequently, he was shifted to Lady Hardinge Medical College where he is presently

serving. The facts of the case of the applicant were in no way different form the fact of the case set up by the applicant in the case of Dr. M.G. Anantha Padmanabha Shetty (Supra) and which claim was allowed by the Tribunal. We are in respectful agreement with the law laid down in this case.

7. An objection has been raised on behalf of the respondents that the present application is beyond the period prescribed in Section 21 of the Administrative Tribunals Act, 1985 (the Act). Sub-section (1) of Section 21 has provided as under:-

> " Limitation: (1) A Tribunal shall not admit an application , -
>
> (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
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> (b) in a case where an appeal or representation such as is mentioned in a clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

8. It will apt here to reproduce Section 20 of the Act which has been referred to in the above provision. It is as under:-

> "(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to the redressal of grievances, -
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> (2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances -
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> (a)if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months form the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-section (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial".

9. The limitation provided for filing an application by an aggrieved person for redressal of his grievance before the Tribunal is one year from the date on which the adverse order is passed by which he is aggrieved or within 1.1/2 years if a reply or appeal was filed but the same has not been decided within six months of its filing. It is alleged in the OA that the applicant has filed a number of representations to the respondents for counting his past service in the scientist pool towards his pension, but to no effect. In para 4.9 of the OA, the applicant had stated that he filed representation vide letter dated 29.10.1987, 22.7.98, 19.7.99, 3.3.2000, 10.4.2000, 4.12.2001, 10.6.2002 and 1.8.2003, copies of which were filed by him as Annexure A-5 collectively. In para 4.10 of the OA the applicant has alleged that the respondent No.1 – Union of India had rejected his representation dated 22.7.98 vide its letter dated 10.9.1998, copy of which was filed as Annexure A-6. In para 4.11 he has again referred to letter dated 14.9.1999 where the Head of HRDG of LHMC , his employer had turned down the request of the applicant and observed that under the terms and conditions of appointment and the guidelines of the CSIR, service under the Senior Research Associateship/Pool Officership was purely temporary and would not count towards pension and other pensionary benefits under the

CSIR, Central Government, or State Government or Public Sector Undertaking. He filed a copy as Annexure A-7. As per para 4.13 of the OA, the applicant pleaded that he made representation dated 3.3.2000 and 10.4.2000 which were sent to respondent No.1 – Union of India for re-examination of his representation in the light of the specific terms and conditions of appointment and the CCS (Pension) Rules, 1972 to count his previous service as for granting pensionary benefits. He has further alleged that respondent No.1 – Union of India sent a reply to respondent No.3 the Principal and Medical Superintendent of LHMC directing the later to count the applicant's service in the light of the advice tendered by the Department of Pension and P.W. under the purview of CCS (Pension) Rules,1972. He also filed copy thereof as Annexure A-9. In para 4.14 it was alleged that on the applicant's representation, respondent No.1 – Union of India through the Secretary, Ministry of Health and Family Welfare referred the matter to respondent No.2, Ministry of Personnel, Public Grievances and Pension, which recommended the case of the applicant to CSIR, respondent No.4 for giving its view and opinion in the matter. He filed the copy of the letter dated 22.3.2001, Annexure A-10. It was further alleged that three years had passed but no response was received from the respondent No.3, Principal and Medical Superintendent, LHMC. The applicant also sought personal hearing in the matter but was not given any valid reason for rejecting his claim for not accepting his request or for not deciding upon his representation. From the allegations made by the applicant it is clear that the last of the representation was made by the applicant on 10.4.2002. The present OA was field on 10.3.2004. In reply thereto the respondents raised objection to the maintainability of the OA on the ground that it was not filed within the time prescribed under Section 21 of the Act.

10. In the rejoinder, the applicant has not explained the reason for the delay in filing the OA. He has also not filed an application for condonation of delay. It annexure at page 6 of the rejoinder, the applicant, however, stated that the respondents have failed to give a reasonable reply to the innumerable representations made by the applicant between 1998 to 2004 through proper channel, therefore, the question of limitation did not arise.

11. In **S.S. Rathore Vs. State of Madhya Prades, (1989) 11 ATC 913,** the Hon'ble Supreme Court elucidating Section 20 and 21 of the Act, made the following observation:-

> "20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.
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> 21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub Section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The civil court's jurisdiction has been taken away by the Act and, therefore, as far as government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58".

12. The limitation provided in sub-section (1) of Section 21 of the Act shall start, as laid down in the cited judgment from:

(i) The date on which final order was passed;

(ii) where a statutory remedy is provided, from the date on which the appeal or representation as provided in law is decided and;

(iii) where statutory remedy of appeal and representation is availed of but the appeal or representation is not decided within six months from the date of preferring appeal or making of representation the date on which six months period expired.

(iv) Repeated unsuccessful representation and memorandum by the applicant, in accordance with law enunciated in the above cited judgment, would not extend the limitation prescribed under sub-section (1) of Section 21 of the A.T. Act.

13. Hon'ble Supreme Court again considered the provision of Section 21 of the Act in **State of Karnataka & Ors. Vs. S.M. Kotrayya and others, 1996 SCC(L&S) 1488**. It was observed:

> "7. A reading of the said Section would indicate that sub-section (1) of Section 21 provides for limitation for redressal of the grievances in clauses (a)&(b) and specifies the period of one year. Sub-section (2) amplifies the limitation for one year in respect of grievances covered under clause (a)&(b) and an outer limit of six months in respect of grievances covered by sub-section (2) is provided. Sub-section (3) postulates that notwithstanding anything contained in sub-section (1) or sub-section (2), the applicants satisfy the Tribunal that they have sufficient cause for not making the applications within such period enumerated in sub-sections (1) and (2) from the date of application, the Tribunal has been given power to condone the delay, on satisfying itself that the applicants have satisfactorily explained the delay in filing the applications for redressal of their grievances. When sub-section (2) has given power (sic right) for making applications within one year of the grievances covered under clause (a) and (b) of sub-section (1) and within the outer limit of six months in respect of the grievances covered under sub-section (2), there is no need for the applicant to give any explanation to the delay having occurred during the period. They are entitled, as a matter of right, to invoke the jurisdiction of the court for redressal of their grievances. If the applications come to be filed beyond that period, then the need to give satisfactory explanation for the delay caused till date of filing of the application must be given and then the question of satisfaction of the Tribunal in that behalf would arise. Sub-section (3) starts with a non obstante clause which rubs out the effect of sub-section

(2) of Section 21 and the need thereby arises to give satisfactory explanation for the delay which occasioned after the expiry of the period prescribed in sub-sections (1) and (2) thereof.

9.....We hold that it is not necessary that the respondents should given an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered that they came to know of the relief granted by the Tribunal in August, 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under Sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay".

14. The Hon'ble Supreme Court in Hukam Raj Khinvsara Vs. U.O.I. & Others, AIR 1997 SC 2100 held as under :-

"9. Learned counsel for the appellant contends that the Tribunal would have condoned the delay in filing the application. It is not his case that he made an application for condonation of delay and the Tribunal had rejected the application without examining the grounds for the delay occasioned by him. Under these circumstances, we need not go into further question of refusal to condone the delay by the Tribunal.

10. The appeal is accordingly dismissed. No costs".

15. In **Ramesh Chand Sharma and Others Vs. Udham Singh Kamal and Others, 1999 (5) SLR 655** the Hon'ble Supreme Court again held:-

"7. On perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the OA filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985. The law in this behalf (-sic-) settled,

see Secretary to Government of India and Others Vs. Shivram Mahadu Gaikwad, 1995 Supp. (3) SCC 231: [1995 (6) SLR 812 (SC)]".

16. The applicant himself has filed copies of the letter of the Under Secretary to the Government of India dated 10.9.1998 (Annexure A-6) addressed to the Principal of LHMC and Smt. S.K. Hospital, copy of which was endorsed to the applicant which in clear terms conveyed the decision of the government rejecting the request of the applicant for counting the period of service as Pool Office in Scientist Pool from 11.10.1980 to 31.10.1983. He has also filed another letter of CSIR dated 14.9.1999 (Annexure A-7) address to Lady Hardinge Medical College where it was stated " Service under the Senior Research Associateship/Pool Officership is purely temporary and does not count for pension or other service benefits in CSIR or under Central Government, or State Government, or Public Sector Undertaking".

17. From the above documents it is clear that the CSIR and Central Government both had refused to count the service of the applicant as Pool Officer in Scientist Pool. The applicant, at least, in 1998/1999 had been clearly told that his request has been rejected. The cause of action for filing the OA as such accrued to the applicant in 1998 and 1999. The present OA which is filed on 10.4.2004 is under Section 21 of the Act. No application for condonation of delay is filed.

18. Accordingly, the Tribunal in the absence of application for condonation of delay explaining circumstances which prevented the applicant from filing the present OA in time cannot exercise its power vested by sub-section (3) of Section 21 of the Act and condone the delay. Even otherwise excepting that applicant was making repeated

unsuccessful representation to the authorities the applicant in pleadings and arguments has not been able to satisfy that there was sufficient cause for delay in filing the OA.

19. In view of the judgments of the Hon'ble Supreme Court in S.S. Rathore (Supra), Ramesh Chand Sharma (Supra), State of Karnataka (Supra) and Hukam Raj Khinvsara (Supra) this Tribunal is constrained to hold that the present OA is filed beyond the period of limitation prescribed within Section 21 of the A.T. Act and sufficient cause has not been shown by the applicant to condone the delay.

20. For the reasons stated above, we hold the OA is barred by time. It is dismissed as such.

(S.A. Singh)
Member (A)

(M.A. Khan)
Vice Chairman (J)

Rakesh