

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.456/2001.

Friday this the 24th day of January 2003.

CORAM:

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.J.Paulose,
Scientific Engineer (SF),
Employee Code: 34214.,
Liquid Propulsion System Centre,
ISRO, Viliamala,
Thiruvananthapuram, Pin: 695 547. Applicant

(By Advocate Shri Pirappancode V.Sreedharan Nair)

Vs.

1. Union of India, represented by its
Secretary, Department of Space,
New Delhi.
2. Secretary, Department of Pension &
Pensioners' Welfare,
Ministry of Personnel, Public Grievances &
Pension, New Delhi.
3. Chairman, Indian Space Research Organisation,
Bangalore.
4. Director,
Liquid Propulsion Centre,
I.S.R.O., Valiamala,
Thiruvananthapuram,
Pin: 695 547.
5. Deputy Chief Electrical Engineer,
South Eastern Railway Workshop;
Kharagpur, West Bengal. Respondents

(By Advocate Shri C.N.Radhakrishnan)

The application having been heard on 24.1.2003,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant is seeking to get A-13 order dated 26.3.01
of the 4th respondent quashed since by the said order, the
applicant's claim for reckoning his past service with Railways
for the purposes of pension has been turned down on the alleged

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ground that his resignation from the Railways was on personal grounds, and that therefore, it would entail forfeiture of his past service. The applicant seeks a declaration from this Tribunal to the effect that he is entitled to get the benefit of his past service with the South Eastern Railway between 14.8.64 and 14.6.71 reckoned for the purpose of pension and other retirement benefits.

2. The brief facts are as under:

The applicant who was a Chargeman under the South Eastern Railway, Kharagpur, West Bengal from 14.8.64 onwards, applied for the post of Technical Assistant under the Indian Space Research Organisation (ISRO for short), Trivandrum, in pursuance of the notification issued in 1970. The application was routed through proper channel on 8.1.71. The applicant attended the interview on 14.5.71. He was offered appointment as Technical Assistant as per A-2 communication dated 19.5.1971 with a direction to report for duty on 21.6.1971. He got relieved from the South Eastern Railway, Kharagpur on 14.6.71 and joined the new post under ISRO on 19.6.71. As per Service Certificate dated 15.6.71 issued by the South Eastern Railway, the reason for leaving the service is shown to be on personal grounds. On coming to know that one Shri P.R.Sadasiva, who retired as a Scientist from ISRO was granted pensionary benefits by reckoning his past service with Central Mechanical Engineering Research Institute wherefrom he had resigned on personal grounds, the applicant made several representations for getting his past service reckoned for the purpose of his pension. Eventually, the 4th respondent issued the impugned A-13 order rejecting the applicant's claim, treating

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his past service as forfeited on account of his having resigned on personal grounds.

3. We notice that the 5th respondent viz., Deputy Chief Electrical Engineer, South Eastern Railway Workshop, Kharagpur, West Bengal has not filed any reply statement to the O.A. The respondents 1 to 4 have filed a detailed reply statement and later an additional reply statement pursuant to the applicant's rejoinder. The main contentions in their reply statement opposing the O.A. are that the applicant had resigned from the services of the South Eastern Railway on personal grounds and that therefore, the conditions prescribed under Rule 26 are not fulfilled. It should have been a resignation which was specifically to take up another appointment. In this case, the applicant having resigned on personal grounds, he could not get the benefit, since resignation on personal grounds would entail forfeiture of service. The case of Shri Sadasiva relied on by the applicant was also attempted to be distinguished on the ground that Shri Sadasiva who resigned from the previous service on personal grounds, had applied to the post through proper channel, that he had attended the interview after obtaining approval (no objection) from the previous employer and that his previous employer had agreed to discharge the pensionary liability for the service rendered prior to his taking over the new assignment.

4. We have heard Shri Pirappancode V. Sreedharan Nair, learned counsel for the applicant and Shri C.N. Radhakrishnan, learned counsel appearing for the respondents. According to Shri

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Sreedharan Nair, the applicant is eligible for reckoning the past service rendered, in view of the Government of India's decisions noted under Rule 26 of the CCS(Pension) Rules (vide Swamy's Pension Compilation). The application to the ISRO was routed through proper channel, the previous employer was fully aware of the applicant's intention when he attended the interview ^{and} he had resigned to take up the new job only, which fact is evidenced by the applicant joining the new post within a short while of the resignation. The facts of the applicant's case ~~was~~ substantially similar to those of Shri Sadasiva, who also had resigned from the past service on personal grounds. The learned counsel would plead that resignation on personal grounds is the crucial event to be considered in the context of reckoning of past service for pensionary benefits in both these cases. Learned counsel would invite our attention to Annexure A-5 wherein, in the light of the judgement of the Tribunal in O.A.1032/93, the Government of India considered the facts and decided to treat the resignation letter submitted by Shri Sadasiva in Central Mechanical Engineering Research Institute as Technical Assistant and to count the past service rendered by him for pensionary purposes subject to verification of such service and subject to the condition that the pensionary liability for the period of past service was discharged by the previous employer. Learned counsel of the applicant would draw our attention to the decision No.(1) appearing under the said Rule 26 at page 58 of Swamy's Pension Compilation incorporating CCS(Pension) Rules and decision No.(9) at page 61 of the same compilation seeking to substantiate his argument that, though the reason for resignation was shown to be personal grounds, in substance it was purely a mere formality for severing his connection with and obtain relief from the past

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employer for the purpose of taking up the new job. Learned counsel also would cite Clause (iv) in Annexure A2 and state that it was only on account of this sub clause that the applicant had to put in resignation letter and the act of resignation should not be interpreted to any further extent so as to deny him the benefit of considering his past service for pension purposes.

5. Shri CN Radhakrishnan on the other hand has emphatically stated that A-1 and the pleadings in the O.A. itself would make it evident that the applicant had resigned for personal reasons. If it were taken up for the new job the applicant ought not to have fought shy of stating so in the resignation letter. Further the Government of India's decisions which the learned counsel for the applicant had placed reliance on should be read specifically with reference to the rule itself, according to the learned counsel. It is pointed out that as per Rule 26(2) the resignation would not entail forfeiture of past service, if it was submitted to take up, with proper permission, another appointment. Counsel would therefore submit that, only when the resignation was submitted for the purpose of taking up of another appointment, it can be said that the past service could be considered. The applicant's resignation was purely on personal grounds as would be clear from his own statement in the resignation proforma. The South Eastern Railway, the past employer in this case, also has emphatically stated that the applicant had resigned on personal grounds alone, learned counsel for the respondents would urge.

6. We have considered the pleadings on record and the

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contentions put forward by the learned counsel on either side. We find that the applicant had put in nearly seven years of service with the South Eastern Railway when he resigned and joined the post under ISRO, Trivandrum. The solitary defect we notice in the whole claim of the applicant is that the reason for resignation is shown to be personal grounds. Granting that this is a sad omission, we do not consider it serious enough to deny the applicant the right to reckon his valuable service rendered under the Railways for the purposes of pension. The application was routed through proper channel. The interview was attended at Trivandrum and presumably with the knowledge of the employer at Kharagpur. The appointment order was received in May 1971, the applicant put in his resignation and was relieved on 14.6.71 and he joined the post on 19th June 1971. These are matters of record. In our view, there is a proximate connection between the severance of his service relationship with South Eastern Railway and the commencement of his career with ISRO. The relevant Rule 26 (2) of CCS(Pension) Rules is quoted below.

"(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."

7. From the above, it would appear that the resignation ought to have been submitted to take up another appointment. It does not necessarily mean that, wherever such a condition is not fulfilled the past service should necessarily be forfeited. All that is stated in the Rule is that, a resignation shall not entail forfeiture of past service, if it has been submitted for taking up, with proper permission, another appointment. To our perception, since the application of the applicant has routed

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through proper channel and he attended the interview with the permission of the previous employer, it cannot be said that the grounds for resignation viz., personal grounds, should be given such a meaning to cause the forfeiture of the service. This view is substantiated by the Government of India's decisions given under Rule 26 of CCS(Pension) Rules, since those decisions would explain the ambit and scope of the Rule.

8 . Decision (1) coming under Rule 26 makes it clear that when the application has been forwarded unconditionally and the person concerned is offered the post applied for, he should be relieved of his duties to join the new post as a matter of course and the question of his resigning the post held by him in such circumstances, should not arise. Again, as per decision 9 under Rule 26, resignation is treated as a technical formality in cases where Government servants apply for posts in the same or other departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons. In such a case his past service otherwise admissible under Rules should be given for the purpose of fixation of pay etc., by treating the resignation as a mere 'technical formality'.

9. In our considered opinion, once the application was routed through proper channel without any objection^{or}/qualification from the employer (in this case the South Eastern Railway), when the offer of appointment is received, the person concerned should be relieved without having recourse to resignation at all. As mentioned earlier, application was forwarded by the South Eastern Railway apparently without any objection or

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qualification, the interview was attended by the applicant and the new post was offered to him. In such a case, resignation strictly was not even required. The case in point suggested by the applicant viz., Sadasiva's case bears substantial factual similarity to the case on hand, in as much as the reason given for resignation in that case also was personal grounds. Though the reason given is personal grounds, one has to see a host of other factual circumstances to judge whether the resignation was necessary at all or whether, if at all necessary, it was only technical so as to allow the benefit of past service to be reckoned for the pensionary benefits. In the case of Sadasiva, the authorities were fair enough to consider the facts and allow the benefit of reckoning of past service. The applicant also was similarly placed. The only distinction possible is that Sadasiva came from an autonomous body and therefore, the liability to share the pro-rata pension was cast on that organisation. This aspect, however, is no longer relevant in view of the Government of India's Decision No.8 given under Rule 14 of the CCS(Pension) Rules, considered in consultation with the Ministry of Finance, which states as under:

".....The matter has been considered in consultation with the Ministry of finance (Department of Expenditure), Controller-General of Accounts. It is clarified that according to the provisions of Part-A (Introductory of Appendix 5 to Government Accounting Rules, 1990, the liability for pension including gratuity should be borne in full by the Central/State Governments to which the Government servant permanently belongs at the time of retirement....."

We therefore, hold that what was good for Sadasiva was good, if not better, for the applicant, whose past service was under the Indian Railways.

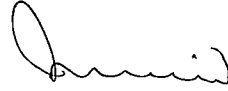
10. On the facts and in the circumstances of the case, we hold that A-13 is unsustainable and is liable to be quashed. Accordingly, A-13 is quashed. The applicant is entitled to get his past service with the South Eastern Railway, Kharagpur reckoned after proper verification of the service records in accordance with the rules for the purpose of pension and other retiral benefits.

11. O.A. is allowed. There is no order as to costs.

Dated the 24th January, 2003.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



T.N.T.NAYAR
ADMINISTRATIVE MEMBER

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