

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 47/90
~~XXXXXX~~

189

DATE OF DECISION 30.4.91

M Mukundan

Applicant (s)

Mr P Kesavan Nair

Advocate for the Applicant (s)

Versus

Union of India rep. by the Respondent (s)
Secretary to Govt. of India
Ministry of Agriculture & Cooperation
Krishi Bhvan, New Delhi & others.

Mr NN Sugunapalan, SCGSC Advocate for the Respondent (s) 1, 3 & 4
Mr PV Madhavan Nambiar " for Respondent -2

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ↑

JUDGEMENT

Shri NV Krishnan, A.M

The applicant, who is an employee under Respondent-2 is aggrieved by the Annexure A1 letter dated 6.9.89 communicating 16- the 2nd respondent the decision of the 1st respondent that as advised by the Ministry of Finance, the 1st respondent is not obliged to pay pension and leave salary contribution in respect of the applicant's deputation from 1.11.76 to 9.9.83.

2 This application has been filed in the following circumstances.

2.1 The applicant was an employee of the 2nd respondent, Central Institute of Fisheries Technology (CIFT) under the Indian Council of Agricultural Research (ICAR), an autonomous organisation

under the Union of India. While so, he was selected by the Union Public Service Commission for appointment by direct recruitment for the post of Instructor in the Central Institute of Fisheries Nautical & Engineering Training (CIFNET) (Respondent-3), under the Ministry of Agriculture and Cooperation, Government of India as will be clear from the offer of appointment dated 23.12.70 at Annexure A2.

2.2 The second respondent, nevertheless, permitted the applicant to retain his lien in the parent Department on the execution of the declaration dated 7.1.71 and relieved him on 7.1.71 (Annexure A4). That declaration of the applicant (Annexure A3) acknowledged, among other things, his liability to pay leave salary and pension contribution.

2.3 However, for reasons best known to Respondents 1 & 3 only, they treated this appointment as one on deputation of the applicant from respondent-2 to respondent 1 & 3. This is made clear by the admission of the respondents, on the basis of which OP No.1668 of 1971, filed by the applicant and one Rajendran against the present respondents was disposed of by the judgment

dated 31.10.73. A copy of that judgment is produced before us and is placed on record. It states as follows:

" In view of the stand taken by the Government of India that the Ministry of Finance have agreed that leave salary and pension contribution in such circumstances is the responsibility of the Government of India, the petitioners' grievances are satisfied. Accordingly, no adjudication on the merits is called for in this petition".

2.4 Consequently, the Annexure R1 letter was addressed by Respondent-1 to Respondent-3 - then known as Central Institute of Fisheries Cooperatives, sanctioning leave salary and pension contribution to the ICAR in respect of the applicant for 3 years from 8.1.71.

Admittedly, Respondent-1 and Respondent-3 have paid such contributions till 31.10.1976 (Annexure R3).

2.5 In the circumstances, the Respondent 1 & 3 should have continued to pay such contribution till the applicant was reverted to his parent organization, vide Annexure R2 on 10.8.83. The applicant contends that for reasons of administrative exigencies, Respondent-1 continued to retain him under their employment and did not repatriate him. The applicant made a request on 25.11.81 to the 1st respondent, seeking reversion to his parent department i.e., the 2nd respondent, and sought relief before 1st January, 82

(Annexure A7). This matter was being pursued and ultimately the applicant was reverted to the 2nd respondent only by order dated 26.7.83 (Annexure A10). He joined the 2nd respondent on 10.8.83.

2.6 A formal order of deputation covering the period of deputation ending 9.8.83 was issued on 20th August 1986 by the 2nd respondent (Annexure A-11).

2.7 The 2nd respondent requested Respondent-1 to pay pension contribution for the period after 31.10.76 till 9.8.83 (Annexure A12), stating that the applicant's service under the Government of India upto 31.10.76 alone will count for pension, as the 2nd respondent has received pension contribution only upto that period from the 1st respondent. In other words, the applicant's services from 1.11.76 till 9.8.83 under the Government of India will not count for pension, unless pensionary contribution for this period is paid to the 2nd respondent by Respondent-1.

2.8 The applicant had also made a similar representation on 1.12.86 (Annexure A 13).

2.9 In this regard, a final reply has been sent by Respondent 1 to Respondent 2 on 6.9.89 at Annexure A1

the relevant extract from
which is reproduced below.

" Ministry of Finance is stated that since Shri Mukundan joined CIFNET as direct recruit no leave salary or pension contribution has to be paid to ICAR beyond the normal three years period. If the employee continues to retain the lien beyond 3 years for whatever reason, the contributions have to be made by himself".

2.10 The applicant is aggrieved by the Annexure I letter dated 6.9.83, as it would mean that his services under the Government of India from 1.11.76 to 9.8.83 will not be given any consideration by Respondent-2, the parent employer, while granting him leave and pension. Hence, he has filed this application and prayed for a direction to quash the impugned A1 letter dated 6.9.89 and a direction to the Respondents 1,3 & 4 to pay the pension and leave salary contribution to Respondent 2 in respect of the period after 31.10.76.

3 The 2nd respondent, i.e; the parent employer under the ICAR, has no submissions to make excepting that unless the pensionary contribution is received, it will not be in a position to count the period from 1.11.76 to 9.8.83 for pensionary purposes.

4 Respondents, 1,3 and 4 (Department, for short) have submitted that the applicant is not entitled to any relief. It is contended that the applicant himself had informed the 2nd respondent vide Annexure R4 letter

dated 15.2.78 'through proper channel' that his lien may be terminated as he had no intention to revert back for service under the respondent. He also requested that his GP Fund may be transferred to CIFNET, the 3rd respondent. It is for this reason that the Government of India deputed him for three years for service under Respondent-4 by the Annexure R5 order dated 20.2.78. Further, when that deputation of 3 years ended and he was to be relieved, the applicant filed OP 1847/81 challenging his relief. The interim stay order granted by the High Court was vacated by the Annexure R6 judgment in CMP 6859/81 in that OP. This shows that the applicant was himself keen on continuing with the Respondent 1,3 & 4. It is these actions which delayed his reversion. Hence the Department is not liable to pay any contribution after 31.10.76.

5 We have heard the rival contentions and perused the records, including the original records of the case.

6 We are of the view that the matter has been complicated by the Government of India itself for, on a proper construction of Annexure II, which is the offer of appointment given to the applicant by the 1st respondent, it is clear that it was an offer of

appointment by direct recruitment and not by deputation.

In fact, at this time, there has been no correspondence between the Government of India and the 2nd respondent in this regard. Hence, for reasons best known to the Government of India, the engagement was admitted to be one on deputation before the High Court of Kerala in OP 1668 of 1971 and leave salary and pensionary contributions were paid upto September 1976 and October 1976 respectively. As indicated by Ann.A12, accordingly, the question is about the nature of the applicants appointment after 31.10.76.

7 The Department cannot contend that the applicant was retained thereafter by them ^{only} on his request on the basis of the Annexure R4 letter. This would have had some force if the Department took effective action to absorb the applicant. That was not done, even though hopes were held out to him that he would be so absorbed, which indicated the keenness of the Department also to retain the applicant. This is evidenced by the fact, which is clear from Annexure R 5, that the Department itself forwarded on 20.2.78 an application from the applicant for a post of a Deputy Director in the Integrated Fisheries Project, Cochin (i.e., fourth respondent) without even consulting the second respondent, the parent

and
employer/~~that xxx~~ application was accepted and he
was appointed for/^aterm of three years on deputation
with Respondent-4. Respondent-2 was/^{only}informed in the
Annexure R5 order, that the applicant was likely to
be confirmed in the post of Instructor in the 3rd
respondent's establishment and it was presumed that,
in the circumstances, Respondent-2 would have no
objection to the further deputation of the applicant
with Respondent-4. This clearly indicates that the
department equally needed the services of the applicant
and was keen on absorbing him. Had he been absorbed,
the present grievance would not have arisen. The
Department cannot, in the circumstances ~~deny~~ their obligation
to pay the contribution after 31.10.76 on the ground that
the applicant himself did not want reversion.

8 If the Department had any such case, they should
have informed the applicant, on time, that they were not
interested in retaining him after 31.10.76 and that in
case he still wanted to continue with the Department,
it would have no objection, provided that it is fully
understood that it would not be liable to pay any leave
salary/pension contribution to the Respondent-2 after
31.10.76. No such notice was issued to the applicant.
We are also of the view that no employee would like to

9 A perusal of the departmental records show that Respondent-1 had issued OM No.2-3/70-Reorganisation/Admn. dated 20.12.72 aimed at promoting mobility of research

staff between the ICAR and the Government of India. It was/

shall bear the leave salary and pension contribution

in respect of scientific personnel of the ICAR who come on deputation, but it was made clear that this liability will be limited for a period of three years, during which the person concerned should either get permanently absorbed in the post under the Government of India or revert to the ICAR . It is this circular which is relied upon in the impugned Annexure-I letter for the contention in the extract.

10 We have considered this submission. Neither
the absorption of the applicant under the Department
nor his reversion to the parent employer (Respondent-2)
is in the hands of the applicant. It is for the
Department and Respondent-2 to settle this matter.

The applicant cannot ^{be} put to any loss on this account,

except in a case, where, despite the wishes of his parent employer and the conditional sufferance of the foreign employer, he remains on deputation on his own volition, undertaking to pay the leave salary and pension contribution. In the present case this situation did not obtain after 31.10.76 until a long time thereafter and therefore, we are of the view that the Department is bound to pay to Respondent-2 the leave salary and pension contribution for the period subsequent to 31.10.76.

11 The question is whether such contribution has to be made till the applicant actually reverted to the parent organisation i.e. till 9.9.83.

12 In this connection, we notice from the Department's reply affidavit that on the expiry of his second deputation with the fourth respondent ^{vide} the Annexure R5 order dated 20.2.78, he was relieved and he was sought to be reverted. Against such reversion, the applicant filed OP 1847/81 in the High Court of Kerala as stated in the Department's reply seeking a stay of the orders relieving him from the post he held under Respondent-4 and an interim stay was granted by the High Court pending consideration of CMP 6859/81 in that OP.

That CMP was disposed of by the order dated 24.4.81

(Annexure R6). It is pertinent to reproduce some extracts from that order as follows:

" It is stated in the counter affidavit that petitioner was appointed as the Deputy Director of the Integrated Fisheries Project on deputation for a period of three years from 17.2.78. The period of deputation to expired (sic) on 16.2.81. The petitioner himself as per Ext.89 (sic) requested the Government that his period of deputation may be extended. However, as per Ext.R10 order the Government declined to extent the period of deputation. Ext.P4 order dated 13.2.81 is the order by the 3rd respondent - the Director of his parent department giving him a posting in the parent department after the expiry of the period of deputation and Ext.P5 dated 16.2.81 is the order by the 2nd respondent relieving the petitioner from the post which he was holding on deputation with effect from 17.2.1978. Exts.P4 and P5, it is submitted, are purely consequential on the expiry of the period of deputation of the petitioner as the Deputy Director of Integrated Fisheries Project. On the expiry of the period he was given a posting in his parent department as per Ext.P4 order. It is also stated in paragraph 7 of the counter affidavit that the petitioner was already relieved on the afternoon of 16.2.81."

(emphasis ours)

13 It is thus clear that on this occasion, the second ~~and~~ respondent i.e., the parent employer issued an order on 13.2.81 giving him a posting under him and the applicant was relieved for this purpose on 16.2.81. We are, therefore, satisfied that if the applicant continued with the Government of India after his relief on 16.2.81, it was not either due to the fact that he was not r everted to his parent department or that the foreign employer was keen to continue him on deputation. It is quite clear from the observations

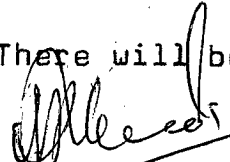
of the High Court that an order of posting was given to him by the Respondent-2. Despite this, the applicant persisted in continuing with the Government of India.


Necessarily, such continuance has to be at the risk of the applicant himself and for the period he worked with the Government of India on and after 16.2.81, the Department is not liable in any way to pay the pension and leave salary contribution to Respondent-2.

14 In the circumstances, we are of the view that the applicant has established only a part of his claim. We are satisfied that after having treated the applicant for 6 years as having been on deputation, the Department i.e., Respondents 1,3 and 4 cannot turn round and say that the period after 31.10.76 cannot be treated under deputation. The surrounding circumstances indicate that the Department itself was keen to retain the applicant and hence it has to accept the liability of his deputation. We are also satisfied that this liability to pay leave salary and pension contribution to Respondent-2 came to an end on 16.2.81 when, after relief by the 1st respondent, the applicant failed to comply with an order of posting given to him by Respondent 2, his parent employer.

15 For the aforesaid reasons, we quash the impugned Annexure I letter and dispose of this application with a direction to Respondents 1 to remit to Respondent-2, within a period of two months from the date of receipt of this judgment, the leave salary and pension contribution in respect of the applicant's deputation till 15.2.81 in terms of the demand made by Respondent-2 in the Annexure-12 letter dated 26.11.86. We clarify that for the period subsequent to 16.2.81, the corresponding liability is that of the applicant himself and ^{that the applicant} ~~the~~ and Respondent-2 are at liberty to settle this matter among themselves.

16 There will be no order as to costs.


(AV Haridasan)
Judicial Member


(NV Krishnan)
Administrative Member