

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 491
~~O. A. No.~~

1991

DATE OF DECISION 4. 11. 92

K. G. Shenoi Applicant (s)

Mr. N. Govindan Nair Advocate for the Applicant (s)

Versus

Union of India represented by the
Secretary, Deptt. of Space, Respondent (s)
New B.E.L. Road, Bangalore-4 and others

Mr. K. Prabhakaran, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.S. Habeeb Mohamed, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

Mr. N. Dharmadan, Judicial Member

The applicant is a retired employee of the Vikram Sarabhai Space Centre, Thiruvananthapuram. He is aggrieved by the refusal of the respondents to count his past service for the purpose of pension on the basis of his request.

2. The essential facts for the disposal of the case are as follows. The applicant was initially appointed as a civil employee in the Naval Stores Department at Cochin under the Ministry of Defence. He worked there from 24.10.55 to 10.5.61. He was relieved from that post so as to enable him to join duty as Movement Officer in the Dandakaranya Project under the Ministry of Rehabilitation. He worked under the Dandakaranya Project from 11.5.61 to 5.9.65, as shown in Annexure A. Representations of the

applicant to the first respondent for taking into account his past service from 24.10.55 to 4.9.65 was rejected as per Annexure-B order dated 19.6.89 which was communicated to him as per Annexure-C order dated 20.11.89. Thereafter, he again submitted representation along with records in support of his contention that the past service rendered by him can also be reckoned for grant of pensionary benefits because identical relief was given to persons similarly situated like the applicant. Annexure-D is the representation. By order dated 25.1.89 the first respondent condoned the interruption of the limited period in the case of Shri G.G. Nair, Stores Officer working in VSSC. By another order Annexure-F dated 25.1.89 service of similarly situated employee in the Hirakud Dam Project was also included in his service after condoning the interruption. In the case of Shri Nadarajan, a retired Head, Purchase and Stores, VSSC same benefit was given by the first respondent. Applicant also cited the case of Shri Krishnankutty, another retired Head, Purchase and Stores. Hence, according to the applicant he is also eligible for similar treatment and condonation of interruption in service for short period. However, the request of the applicant was rejected as per Annexure-G memorandum which reads as follows:

"With reference to his application dated 31.10.90 addressed to Controller, VSSC regarding the counting of his past service for the purpose of pension in ISRO/DOS, Shri K.G. Shenoi, Head Purchase & Stores VSSC is hereby informed that the Department of Space vide their letter No. 6/6(2)/89-I (Vol.II) dated 29.1.91 regretted their inability to accede his request on the ground that he has not adduced any additional documents to change the decision of Deptt. of Space already communicated to Head PGA, LPSC, Trivandrum vide their letter No. 11/6(1)/89-I dated 19.6.89.

Therefore, his request for counting past services with :

- (a) Naval Stores Depot, Ministry of Defence Cochin from 24.10.55 to 6.5.61
- (b) Dandakaranya Development Authority, Ministry of Rehabilitation from 11.5.61 to 4.9.65 may please be treated as closed."

The letter dated 19.6.91 received from Deptt. of Space is produced as Annexure-B, Relevant portion of which reads as follows:

"The matter was referred to Ministry of Personnel Public Grievances and Pensions who rejected the proposal on the grounds that it is not possible to agree to the proposal as per the existing provisions under Rule 27 of the CCS(Pension)Rules, 1972, the transfer of a Government Servant on his own volition to a non-qualifying service will cause an interruption and entail forfeiture of his past service under the Central Govt. Therefore, as per the provisions of the CCS(Pension)Rules, 1972, the individual concerned of the Department of Space is not eligible for counting of his past service from 24.10.55 to 4.9.65."

3. According to learned counsel Shri N. Govindan Nair appearing on behalf of the applicant, the applicant has been singled out and denied the relief of condoning the interruption in service on account of his working in the Hindustan Organics Ltd. Bombay, a Government of India Undertaking. According to him, applicant's past service in that organisation can be treated as qualifying service for pensionary benefit.

4. Respondents in the reply admitted the basic facts but contended that the claim of the applicant for inclusion of the service from 24.10.55 to 4.9.65 in the Naval Stores Depot and Dandakaranya Development Authority was examined by the Government and the position has been clarified in Annexures C & D. According to them when ISRO was converted into a Government Organisation w.e.f. 1.4.74, Annexure R-1 O.M. was issued setting out the guidelines for counting the past service rendered by the employees prior to their joining the ISRO as qualifying service for the purpose of pension. According to the same, service rendered in public sector undertaking and other agencies was not treated as qualifying service. However, the previous services rendered

by scientific employees in semi Govt. institutions financed by CESS. or Govt. grants during which period he subscribed to CPF may be treated as qualifying service for pension provided the contribution towards PF together with interest is made over to the Government. It is also stated that as a special case even service of employees in the semi Govt. institutions financed by CESS or Govt. grant, a non-scientific employee who have been appointed in ISRO, will also be treated as qualified service on the lines applicable to scientific employees from such Institutions. Since the applicant immediately before joining ISRO was working in a Govt. undertaking namely the Hindustran Organic Chemicals Ltd., which is not a pensionable establishment, he is not entitled to the reliefs of counting the period of his past service in Dandakaranya Project and Naval Stores Depot for pensionary benefits. They further submitted that from the records it was noticed that the applicant had not forwarded his application through proper channel to the Hindustran Organic Chemicals Ltd. Hence, the service under the HOCL cannot be counted as qualifying service for pension in civil post. If a Govt. servant resigns on his own volition to take up appointment in a public sector undertaking he forfeits his past service also. The contention of the applicant that the respondents have granted similar benefit of condonation of break in service on account of interruption to similarly situated persons, was denied and they have stated that those cases are distinguishable. Respondents further submitted that the application is liable to be rejected.

5. The applicant filed rejoinder denying all the statements contained in the reply filed by the respondents. Respondents filed additional reply and accordingly applicant filed additional rejoinder.

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6. The reasons given for denying the request of the applicant for counting his past service in computing pensionary benefits as shown in Annexure-C and G can not be supported in the light of the facts and circumstances available in this case. Annexure-C memorandum states that the applicant's past service in the Naval Stores Depot under Ministry of Defence and Dandakaranya Development Authority under Ministry of Rehabilitation cannot be counted for the purpose of pensionary benefits because he went on his own volition to a non-qualifying service from Govt. service. In the reply statement, the respondent's case is as follows:

"Immediately before joining ISRO, the applicant was working in a Government of India Undertaking namely Hindustan Organic Chemicals (HOCL, Kolaba, Maharashtra which is not a pensionable establishment. The applicant joined that Public Sector Undertaking duly resigning from the Government Service. From the records it is noticed that the applicant had not forwarded his application through proper channel to HOCL. This fact can be verified from item (f) of para 4 of Annexure-A attached to the Application. Likewise he had not forwarded his Application through proper channel for appointment in ISRO also. Since the applicant was not borne on the pensionable Establishment before his entry into the service of ISRO and as his application for appointment in ISRO was not forwarded through proper channel, he does not fulfil the essential conditions prescribed under Rule 26 of the CCS(Pension) Rules 1972 as his service for pension in civil posts. Further, when the applicant resigned from Government service on his own volition to take up appointment in a public sector undertaking, he forfeits his past service also. Therefore, there is no provision in the CCS(Pension) Rules to revive the past service in civil posts forfeited consequent to resignation."

7. The applicant has strongly denied the statements in his application and rejoinder. He submitted that he joined HOCL with the full knowledge and permission of the previous employer and it is a fit case for counting his past service for pensionary benefits. Annexure-A- letter, issued in connection with relief of applicant from ⁴xxx⁴ Dandakaranya Development Authority indicating his service shows that he was selected for appointment as Assistant Stores & Purchase Officer under the HOCL, Bombay, and he was relieved with full knowledge and permission of the employer.

Clause 5 of the letter reads as follows:

"His service Card was maintained by the Financial Advisor and Chief Accounts Officer, Dandakaranya Project, who is being requested to sent the same direct to you. However, his service in Dandakaranya Project was satisfactory and can be treated as qualifying service for pensionary benefits."

In the same letter the answer given to Clause 4(f) query is also extracted below:

" (f) Whether he has submitted resignation in order totake up with proper permission another appointment in the HOCL.

No. He was issued a 'no objection certificate for appearing in the interview for selection for appointment as Asst. Stores Purchase Officer under HOCL, Bombay and on his selection for appointment, he was relieved from this Project on 4.9.65 afternoon."

The answer given in Annexure-A to query 4(f) also shows that the employer was aware of the selection and appointment of the applicant as Asst. Stores & Purchase Officer in the HOCL and no objection certificate was issued to him. Under these circumstances we see no reason to deny the benefits of inclusion of the period of service. This can be counted in his total service for giving pensionary benefits after condoning the break in service for the ~~xxxxx~~^M period when he worked in the HOCL. Hence, we are not inclined to accept the contention of the respondents and statements in Annexure-C that the applicant's service in the Naval Stores Depot, Cochin and Dandakaranya Development Authority is not liable to be included in the total service because "he went on his own volition to a non-qualifying service from Govt. service." Simply because of the answer to a query in Annexure-A is stated in the negative, we cannot come to the conclusion that there was no proper permission by the employer for taking up the new employment. The further explanatory portions if understood in the proper perspective, there is no difficulty to come to the conclusion that the applicant

joined in another service with the knowledge and implied permission of the employer. Having regard to the facts and circumstances of the case, the applicant cannot be denied the benefit of pensionable service rendered by him in the Naval Stores Depot, Cochin and Dandakaranya

Development Authority, Koraput for the reasons stated in Annexure-C.

7. The further reason given in Annexure-G read with Annexure-B, that Rule 27 of CCS (Pension) Rules 1972 is applicable and that the transfer of the Government servant on his own volition to a non-qualifying service will cause interruption and entail forfeiture of his past service under Central Government, is also not sustainable particularly in the light of O.M. No. F-3(6)-EV(A)/71 dated 4.12.71 and dated 20.5.72. The relevant portion is extracted below:

"(3) Procedure to be followed when benefit of past service is allowed:

Under Rule 26(2) of CCS (Pension) Rules 1972, resignation of an appointment to take up with proper permission, another appointment whether permanent or temporary, service in which counts in full or in part, is not resignation from public service. A question has been raised whether in such cases a separate sanction should be issued indicating that resignation has been accepted under the above provisions, in order to enable the Accounts Officer to regulate the consequential benefits in the matter of pay fixation, carry forward of leave, pension, etc. The matter has been considered in consultation with the Comptroller and Auditor General and it has been decided that in cases of the above type the order accepting the resignation should clearly indicate that the employee is resigning to join another appointment with proper permission and that the benefits under Rule 26(2) will be admissible to him. The contents of the above order should also be noted in the service books of the individuals concerned under proper attestation. The issue of any separate sanction has not been considered necessary."

8. In the light of the aforesaid circular, the applicant's contention that his service in the Naval Stores Depot, Cochin and Dandakaranya Development Authority, Koraput is eligible to be counted in his total service for giving pensionary benefits and condoning the interruption of

service is to be accepted.

9. The applicant has also brought to our notice specific cases covered by Annexure E & F and other cases of retired employees like M/s. Nadarajan, Krishnankutty. Even though these cases are sought to be distinguished by the respondents in the reply statement giving details thereof, after careful perusal of the averments and the comparison thereof, we are not able to find out any distinguishing features so as to reject the contention of the applicant that there is discriminatory treatment so far as the applicant's case is concerned. In fact the applicant has asserted in the rejoinder that the interruption of services of M/s. G.G. Nair and Nadarajan were condoned and they are precedents to be followed in the case of the applicant for grant of pensionary benefits for they were granted condonation in identical circumstances. We accept this contention.

10. Having regard to the facts and circumstances of the case, we are of the view that the applicant has been singled out in denying the benefit of counting his earlier services in the Naval Stores Depot and Dandakaranya Development Authority and condoning the interruption of service for grant of pensionary benefits while similarly situated others were granted the benefit under more or less identical circumstances.

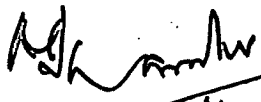
11. In the result, we are of the view that the reasons given by the respondents for denying the request of the applicant for counting his past service in other establishments for the purpose of pension benefits is not sustainable. Accordingly, we quash Annexure-G and direct the respondents to treat the service of the applicant in the Naval Stores Depot, Cochin and Dandakaranya Development Authority, Koraput as qualifying service condoning the interruption in service due to employment in the HOCL, a Govt. of India Undertaking for the purpose of pension.

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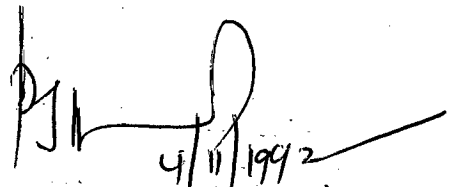
The applicant's pensionary benefits shall be fixed after reckoning his past service from 24.10.55 to 4.1.1965 also and disbursed ^{the sum is} to him within a period of 4 months from the date of receipt of a copy of this judgment.

12. The application is allowed.

13. There will be no order as to costs.


4. 11. 92

(N. Dharmadan)
Judicial Member


4/11/1992

(P. S. Habeeb Mohamed)
Administrative Member

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