

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 521 OF 2007

Dated the 17th October, 2008

CORAM:-

HON'BLE Mr. GEORGE PARACKEN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)

M Achuthan,
S/o T Sankunny Nair,
Sindu Nivas, TC 49/138,
Opp.Tenjithukavu Temple,
Ayyanthole PO, Trissur (Retd),
Senior Director, ERTL(S),
Thiruvananthapuram.

.. Applicant

[By Advocate: Mr. MR Rajendran Nair and Mr Hariraj]

-Versus-

1. Union of India, represented by the
Secretary, Department of Information Technology,
Ministry of Communication & Information Technology,
Government of India, New Delhi.
2. The Director General, STQC Directorate,
PA (TA) Section, Electronics Nikethan,
6, CEO Complex, New Delhi 110 003.
3. The Director, Electronic Regional Testing Laboratory,
STQC Directorate, Diamond Hill, Vellayambalam,
Thiruvananthapuram-10.

...Respondents


[By Advocates: Mr TPM Ibrahim Khan, SCGSC)

This application having been heard on 18th September, 2008 the
Tribunal delivered the following -

ORDER

(Hon'ble Dr.KS Sugathan, AM)

The applicant retired from the post of Director of the Electronics Regional Test Laboratory (South), [ERTL(S)], Thiruvananthapuram on 31.12.1995. He was the Director of [ERTL(S)] between 31.7.1989 to 31.12.95. Prior to joining of the [ERTL(S)], the applicant was the Director of the Electronic Test and Development Centre, Trivandrum [ETDC] of the Kerala State Electronic Development Corporation of Government of Kerala. The Electronics Test and Development Centre [ETDC] was taken over by the Government of India in the year 1988. At the time of take over, a Memorandum of Understanding was signed between the Department of Industries, Government of Kerala and Department of Electronics (DOE) of Government of India on 5.3.1988. Under the provisions of the Memorandum of Understanding all the employees presently working in ETDC, who opt for transfer under the Department of Electronics (DOE) will be favourably considered for selection through two Screening Committees i.e. one for the Director and another for the remaining staff. The Screening Committee will take into consideration qualifications, experience of the members and will recommend appropriate grade/designation, scale of pay of the staff. As regards the benefit of service rendered under ETDC before the taking over by the DOE, Government of India, it was stipulated in the Memorandum of Understanding that such benefit will be will be regulated under the normal rules applicable to the State Government Employees transferred to the Central Government.




2] Applicant was the Director of ETDC at the time of taking over by the DOE, Government of India. As per provisions of Memorandum of Understanding and on being found suitable by the Screening Committee, the Govt. of India appointed the applicant in the Scientist/Engineer Grade by order dated 19th July, 1989 (Annexure-A3). With a view to joining the Government of India the applicant submitted a technical resignation which was accepted by the KSEDC w.e.f. 31.7.1989 (Annexure-A4). The ETDC was upgraded as ERTL(S) and the applicant continued as the Director of ERTL(S) till his retirement on superannuation on 31.12.1995. On retirement from the post of Director of ERTL(S) the applicant requested for grant of pension after counting his previous service in the ETDC. The Respondent No.1 vide letter dated 27.10.1997 (Annexure-A7) informed the Director of ERTL(S), Trivandrum under intimation to the applicant that it has been decided to count the period of service rendered by the applicant in KSEDC from 05.11.79 to 31.07.89 as qualifying service for pension and related benefits subject to the condition that the entire amount of relevant benefits received by the applicant are deposited back with interest @ 12%. The applicant was required to deposit a sum of Rs. 2,94,929/- on or before 31.10.97. The applicant requested for extension of time for making payment, which was allowed. However, the other issue represented by the applicant, viz., counting of his service rendered in other PSUs i.e. HAL and ET&T from 23.03.67 to 05.11.1979 for pensionary benefits was not accepted by the respondents as it was not admissible as per the



provisions contained in OM dated 29.8.'84 (Annexure-A8). Vide letter dated 30.11.'98 the applicant expressed his willingness to deposit the amount and sought time till March 1999 for arranging bank loan for making payment. He was further granted time till 31.5.99 for depositing the amount. However, the Department subsequently informed the applicant purportedly on the advice of the Department of Pension and Pensioners Welfare that his past service under the KSEDC/KELTRON cannot be counted as qualifying service for pension (Annexure-A14).

3] The applicant being aggrieved, filed a writ petition (WPC No. 1057/05) before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala issued an interim order and directed the Respondents to consider the grievances of the applicant with regard to the pension and to release the admitted amount of differential portion of gratuity to the tune of Rs. 50,730/- to save the petitioner from starvation. The respondents were also directed to consider the representation of the applicant. The applicant thereafter submitted a detailed representation dated 28.4.2006 (Annexure-A16) in which among other things he has also highlighted the contribution made by him for the development of ERTL. The aforesaid writ petition No.1057/05 as well as the Writ Appeal No.895/05 was dismissed by judgment dated 30.5.2006. The applicant filed a Review Petition (RP No.557/2006) before the Hon'ble High Court of Kerala against the aforesaid judgment in WPC 1057/05 and sought permission to withdraw the original writ petition. The Hon'ble High Court after hearing the parties allowed the prayer and set aside the aforesaid judgment so that the



applicant can pursue other remedies appropriately. The order of the Hon'ble High Court Kerala in RP 557/06 dated 5.8.06 is extracted below:

"Learned counsel appearing on behalf of the petitioner submits that although the petition is filed as review petition, what is required is a permission to withdraw the writ petition which had been filed as WP No.1057/2005. An interim order had been passed in the said writ petition against which an appeal had been filed, and at that time by consent of parties the writ appeal were heard and disposed of by judgment dated 31.5.06.

We may not be understood as standing in the way of a person to agitate just claims which he believes are basically available to him. As such we are constrained to allow this petition. Learned counsel appearing for the respondent also was heard. The judgment dated 30th May, 2006 will stand set aside. The petitioner's request for withdrawing the writ petition is allowed. He may have rights to pursue other remedies appropriately."


The present OA is filed after the aforesaid order of the Hon'ble High Court of Kerala seeking the following reliefs:

- "i) To declare that the service rendered by the applicant under Kerala State Electronic Development Corporation is to be treated as qualifying service for pensionary benefits under Central Civil Service (Pension) Rules, 1972.
- ii) To direct the respondents to draw and disburse pension and other retirement benefits immediately to the applicant with 18% interest from the date the benefits were due..
- iii) To such other reliefs as may be prayed for and the court may deem fit to grant."

4] The respondents have filed their reply. It is stated on behalf of the respondents that the Electronics Test & Development Centre (ETDC) Thiruvananthapuram was functioning under the control of Kerala State Electronics Development Corporation Ltd. (KELTRON). It was taken over by the erstwhile


Department of Electronics (now Department of Information Technology), Government of India. At the time of taking over, a Memorandum of Understanding (MoU) was signed between Department of Industries, Government of Kerala and Department of Electronics, Government of India as per Annexure R1. As per para 5 of the MoU, the benefit of service rendered under KSEDC (KELTRON) or other Public Sector Undertakings for the purpose of leave and pensionary benefits were to be regulated under the normal rules applicable to State Government employees transferred to the Central Government. A view was initially taken to count the service of the applicant at par with other absorbed employees. This view was taken before obtaining the advice of the Department of Pension & Pension Welfare. The applicant was accordingly asked to deposit a sum of Rs. 2,94,929/- on or before 31.10.97 with the Government. On the request of the applicant extension was granted upto 31.5.99. The applicant represented for considering the past service in other PSUs also. The matter was reconsidered in consultation with the Department of Pension & Pensioners Welfare. The Department of Pension & PW however advised that since the applicant had joined ERTL(S) as a direct recruit and not as an absorbed employee, he was not eligible for the benefits available to absorbed employees. (Annexure-R2). The applicant was informed accordingly (Annexure-R3).

5] We have heard Mr. M.R. Rajendran Nair, learned counsel for the applicant and Mr T.P.M. Ibrahim Khan,, SCGSC for the respondents. We have also perused the records.



6] The applicant has been agitating his claim for pensionary benefits after counting his service rendered in the KSEDC/KELTRON alongwith the service rendered by him under the Government of India. He served the Government of India organization between 1989 to 1995, which is less than the period of ten years required for grant of pensionary benefits. He becomes entitled for pension only if the previous service is counted. Initially the respondents accepted the request of the applicant for counting of past service in the KSEDC for the purpose of pension and directed him to deposit Rs.2,94,929/- with Government being the benefits received for the service in KSEDC. However, the applicant could not make this payment and cited financial difficulties. Though extension was given to the applicant for depositing the amount the applicant could not make the payment and the matter remained unsettled. However, in the year 2003 respondents reconsidered the matter and decided not to count the service of the applicant for pension. This was done on the advice of the Department of Pension & PW. The said decision was taken on the ground that the applicant was a direct recruit in ERTL and not an absorbed employee.

7] It is seen from the records that the applicant was screened by the Screening Committee in accordance with the terms and conditions of the Memorandum of Understanding signed between the Government of India and the Government of Kerala at the time of taking over of the ETDC by the Government of India. Other employees of the ETDC were also similarly screened and



were given the service benefits for the service rendered under ETDC. The applicant was the Director of ETDC at the time of taking over and he continued as Director in-charge till he was cleared by the Screening Committee for continuation as Director of the ERTL under the Government of India. In view of the above background the theory now propounded by the respondents that he was a direct appointee cannot be sustained. No records have been produced by the respondents to show that the post was thrown open to the public and that the applicant had applied for the post along with other candidates. The appointment letter dated 19.7.89 is addressed to the applicant as Director in-charge of ERTL(S), indicating that he continued as Director even after the take over pending the formalities of clearance by the Screening Committee. It is stated in the MoU that there will be two Screening Committees, one for the Director and another for the remaining Staff. Clause No.5 of the MoU is extracted below:

"5. With a view to have continuity in the operation and activities of the Centre all the Employees who are presently working in ETDC Trivandrum and who opt for transfer under DOE will be favourably considered for selection through two screening committees constituted by DOE with participation and concurrence of State Govt. There will be one screening committee for the Director and another for the remaining staff. The Screening Committee will take into consideration qualifications, experience, annual confidential reports of the members who opt for transfer under DEO, at the time of screening and selection. The staff members who are not joining DOE will be absorbed by Keltron."




The available record clearly indicates that the applicant was interviewed by the Selection Committee in pursuance to the clause (5) of the MoU. Therefore, the reason now by the respondents that he is a direct appointee cannot be sustained.

8] As regards the service benefits for the purpose of pension, gratuity etc. the latter part of the clause (5) of the MoU is relevant, which is extracted below:

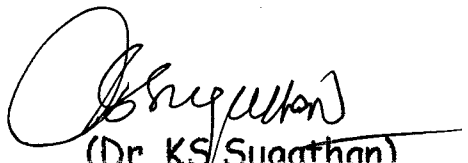
"..Regarding benefit of service rendered under KSEDC or other public sector undertakings for purposes of leave and pensionary benefits, the same will be regulated under the normal rules applicable to State Government Employees transferred to the Central Government. "


On the basis of the aforesaid clause of the MoU the respondents initially considered the service of the applicant in KSEDC as eligible for pension. The applicant was also directed to return the amount of employers' contribution, (which he received after retirement from the service in the Government of India). On account of the applicant's representation for counting the service rendered in other PSUs, i.e. Hindustan Aeronautics Ltd. (HAL) and ET&T prior to 5.11.1979 and his failure to refund the amount received by him as benefits for the period under KSEDC, the matter remained unsettled. However, as per our finding recorded in para 7 above, the revised decision of the respondent not to treat the period of service under KSEDC as qualifying service cannot be sustained. If the service rendered by other employees of ETDC has been treated as qualifying service for pension, the



applicant is also entitled to the same benefit. There is no valid ground to treat the applicant in a different manner.

9] For the reasons stated above, the OA is partly allowed. The respondents are directed to treat the service rendered by the applicant in KSEDC between 5.11.79 to 31.7.89 as qualifying service for pensionary benefits if such a benefit has been granted to other employees of the erstwhile ETDC, who opted for transfer under DOE at the time of taking over by Department of Electronics, Government of India, subject to other applicable terms and conditions. Necessary orders in this regard shall be issued and consequential benefits granted to the applicant within a period of three months from the date of receipt of a copy of this order. No costs.


(Dr. KS Sugathan)
Member (Administrative)


(George Parackal)
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Miscellaneous Application No. 169 of 2009 in
Miscellaneous Application No. 170 of 2009 in
Original Application No. 521 of 2007

Wednesday, this the -8th day of July, 2009

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member
Hon'ble Ms. K. Noorjehan, Administrative Member

1. Union of India, represented by the Secretary,
Department of Information Technology, Ministry of
Communications & Information Technology, Government
of India, New Delhi.
2. The Director General, STQC Directorate, Electronics Niketan,
6, CGO Complex, New Delhi 110 003.
3. The Director, Electronic Regional Testing Laboratory,
STQC Directorate, Akkulam, Sreekariyam P.O.,
Thiruvananthapuram-695017.

**Applicants in
both MAs**

(By Advocate – Mr. TPM Ibrahim Khan, SCGSC)

V e r s u s

M. Achuthan, S/o. T Sankunmy Nair, Sindu Nivas,
TC 49/138, Opp. Tenjithukavu Temple, Ayyanthole P.O.,
Trissur (Retired Senior Directorate, ERTL(S),
Thiruvananthapuram).

**Respondent
in both MAs**

(By Advocate – Mr. M.R. Hariraj)

These applications having been heard on 16.6.2009, the Tribunal on

8-7-09 delivered the following:

O R D E R

By Hon'ble Dr. K.B.S. Rajan, Judicial Member -

This Tribunal has passed the following order on 17th October 2008 in
OA No. 521/07:

"For the reasons stated above, the OA is partly allowed. The

respondents are directed to treat the services rendered by the applicant in KSEDC between 5-11-79 to 31-7-89 as qualifying service for pensionary benefits if such a benefit has been granted to other employees of the erstwhile ETDC, who opted for transfer under DOE at the time of taking over by the Department of Electronics, Government of India, subject to other applicable terms and conditions. Necessary orders in this regard shall be issued and consequential benefits granted to the applicant within a period of three months from the date of receipt of a copy of this order. No cost."

2. Respondents could not keep the time scheduled calendared as above but have come up with a misc. application for extension by three months along with an application for condonation of delay. Earlier, the respondents have filed M.A. No. 432 of 2009 annexing an office order dated 22nd April 2009 for accepting the same. No order on this was passed and the case was advanced from 29th June 2009 to 16th June 2009. On that day, when the case was heard, the senior counsel stated that in view of the stipulation in the order that the benefit of past service would be applicable if such a benefit has been granted to other employees, the respondents have ascertained the same and it is seen that the case of the applicant is different from others, as the appointment of the applicant was against an open advertisement, after following due process of direct recruitment and he had also drawn the terminal benefits from his previous employer. As such the services rendered by the applicant from 5-11-79 to 31-07-89 under ETDC do not qualify for pension benefits in this department.

3. Counsel for the applicant to the OA vehemently argued that the above decision amounts to sitting on appeal over the judgment already pronounced by the Tribunal wherein, the finding in an unequivocal term has been to the following effect:-

It is seen from the records that the applicant was screened by the Screening Committee in accordance with the terms and conditions of the Memorandum of Understanding signed between the Government of India and the Government of Kerala at the time of taking over of the ETDC by the Government of India. Other employees of the ETDC were also similarly screened and were given the service benefits for the service rendered under ETDC. The applicant was the Director of ETDC at the time of taking over and he continued as Director in-charge till he was cleared by the Screening Committee for continuation as Director of the ERTL under the Government of India. In view of the above background the theory now pro pounded by the respondents that he was not a direct appointee cannot be sustained. No records have been produced by the respondents to show that the post was thrown open to the public and that the applicant had applied for the post alongwith other candidates. The appointment letter dated 19-07-1989 is addressed to the applicant as Director in charge of ERTL(S), indicating that he continued as Director even after the take over pending the formalities of clearance by the Screening Committee. It is stated in the MoU that there will be two Screening Committees, one for the Director and another for the remaining Staff. Clause No. 5 of the MoU is extracted below:-

"5. With a view to have continuity in the

operation and activities of the Centre all the Employees who are presently working in ETDC Trivandram and who opt for transfer under DOE will be favourably considered for selection through two screening committees constituted by DOE with participation and concurrence of State Govt. There will be one screening committee for the Director and another for the remaining staff. The Screening Committee will take into consideration qualifications, experience, annual confidential reports of the members who opt for transfer under DEO, at the time of screening and selection. The staff members who are not joining DOE will be absorbed by Keltron."

The available record clearly indicates that the applicant was interviewed by the Selection Committee in pursuance to this clause (5) of the MoU. Therefore, the reason now by the respondent that he is a direct appointee cannot be sustained.

4. The above being the unambiguous finding rendered by this Tribunal, the laborious exercise conducted by the respondent No.2, to arrive at the conclusion that the appointment of the applicant was one of direct recruitment, vide order No. 5(55)/89-PA(TA)(Vol II) dated 22nd April 2009, Annexure MA1 to MA No. 432 of 2009 is totally unwarranted. To hold so, is beyond the power of the respondents, as such a power to sit in appeal over the judgment of this Tribunal is available only with the Higher judicial authorities and not the administrative ministry. All that the respondents are expected to do is to ascertain from the record is whether such a benefit has been granted to other employees of the erstwhile ETDC, who opted for transfer under DOE at the time of taking over by the

Department of Electronics, Government of India, subject to other applicable terms and conditions. It is a different matter in case they are aggrieved by the order of this Tribunal, in which event, their remedy lies elsewhere. Let, therefore, the department, now, restraining themselves in trying to sit in appeal over the judgment of this tribunal, conduct only that exercise that is expected of them and act as per the directions of this Tribunal. Completion report shall be filed within a period of six weeks from hence. List the case on 26th August 2009. If the completion report is not filed by then, a responsible officer from the Department of Information and Technology, STQC Directorate, New Delhi shall be personally present here in the court to justify the reason for not filing the compliance report.

5. Copy of this order be made available to the parties and one copy of the same shall be directly sent by the Registry to the Director General Department of Information Technology, STQC Directorate, 6 CGO Complex, New Delhi 110 003, by registered post, Acknowledgment due.


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(K.B.S. RAJAN)
JUDICIAL MEMBER

"SA"