

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 56/2001

Dated this the 18th day of December, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

N.Manilal
S/o U.Neelakandan
Scientist/Engineer-SF
Aerospace Mechanisms Group
Vikram Sarabhai Space Centre
Valiamala P.O.
Nedumangar
Trivandrum.
Residing at VP 1/15, Dwaraka
AKG Nagar Road, Peroorkad P.O.
Trivandrum.

Applicant

[By advocate, Mr. M.R. Rajendran Nair]

Versus

1. Union of India represented by
The Secretary to the Govt. of India
Department of Space
New Delhi.
2. The secretary to Government of India
Ministry of Personnel, Public Grievances and Penions
New Delhi.
3. The Director,
Vikram Sarabhai Space Centre
Trivandrum.


Respondents

[By advocate Mr. C.N. Radhakrishnan]


O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

Applicant who is presently working as
Scientist/Engineer-SF under the 3rd respondent commenced service
under the Kerala Government (Department of Technical Education)
with effect from 8.12.67. While so, he applied for appointment
in Keltron, a Government of Kerala Undertaking, through proper
channel, and with prior permission of the then controlling



authority. On being offered an appointment in Keltron, the applicant tendered his technical resignation from the Directorate of Technical Education. He was relieved from the Directorate of Technical Education with effect from 28.2.78. His technical resignation was accepted with effect from 28.2.78 as per A-1 order dated 3.7.78. Thus the applicant had rendered 10 years, 2 months and 20 days' service under the Government of Kerala before joining the Public Sector Undertaking, Keltron (Kerala State Electronic Development Cooperation). Under Keltron he had worked for 3 years, 9 months and 16 days. He left Keltron to take up employment with Vikram Sarabhai Space Centre (VSSC). This was also with proper permission. A No Objection Certificate dated 4.3.1981 from keltron was submitted by the applicant at the time of interview. Right from 19.12.1981 the applicant has been working under the VSSC and his date of superannuation is 3.6.2007. His pensionable service under the VSSC comes to 25 years, 5 months and 14 days. For full pension, 33 years' service is required. Unless the State Government service rendered by the applicant is reckoned towards pension, he will get only the pension proportionate to 25 years, 5 months and 14 days' service. Realising this the applicant made an application in that regard to VSSC on 18.5.89. However, his request was ultimately turned down by the VSSC on the ground that there was an intervening non-pensionable service rendered by him in a Public Sector Undertaking, which caused interruption and which could not be condoned. A-2 is the true copy of the memorandum dated 2.11.93 by which his request was turned down. The applicant averred that in a similar case in OA 491/91, this Tribunal rejected the contention raised by the same respondent and directed counting of past service rendered by K.G.Shenoy, Head, PSD, VSSC, applicant



therein. In another case also in OA No.1749/98, this Tribunal negated the contention of the 2nd respondent. The applicant again submitted a representation dated 6.10.2000 (A-3) to the Comptroller, VSSC pointing out the similar cases and this representation was rejected by A-4 memo dated 8.12.2000. A-2 and A-4 are impugned and the applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- (i) To quash Annexures A2 and A4.
- (ii) To declare that the service rendered by the applicant under the Kerala Government from 8.12.67 to 28.2.78 is liable to be reckoned towards Central Government Pension and to direct the respondents to reckon the service rendered by the applicant under the Government of Kerala from 8.12.1967 to 28.2.1978 towards Central Government Pension and to calculate the pension of the applicant accordingly when he retires from service.
- (iii) Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- (iv) Grant the cost of this Original Application.

2. Respondents have filed reply statement taking the plea of limitation and averred that the request of the applicant for reckoning of his past service with the Education Department, Government of Kerala for the period from 8.12.1967 to 28.2.1978 was examined in the light of the instructions issued by the Department of Space in consultation with the Department of Personnel and Training, Government of India. Since there was an intervening non-pensionable service (the service rendered in Keltron) and not an "interruption" between his service in the Government of Kerala and in the Government of India, his request could not be acceded to. After resigning from Government of Kerala service, he had worked in Keltron, a Public Sector Undertaking for 3 years 9 months and 16 days, i.e. from 1.3.78

to 17.12.1981 and thereafter he joined VSSC. His application for employment in VSSC was not forwarded through proper channel. The conditions or circumstances under which a No Objection Certificate was issued are not known to the respondents. Keltron is not a party in this OA and therefore the OA is liable to be dismissed.

3. The respondents further averred that the applicant would not have 33 years of service to qualify himself for full pension at the time of his retirement. The benefit of the judgement in OA No.491/91 of this Tribunal cannot be extended to the applicant since applicant in that case was not a similarly placed employee. There is no provision to condone his services rendered in Keltron under Rule 27 of CCS (Pension) Rules, 1972 as service in Keltron cannot be treated as an interruption coming under the purview of Rule 27. He does not fulfil the condition prescribed under Rule 26 of CCS (Pension) Rules, 1972 as he was not a Government servant immediately preceding the date of his entry into service in VSSC. Moreover, the service in Keltron is not pensionable. Counting of previous service as qualifying service for the purpose of pension is subject to the provisions contained in CCS (Pension) Rules. The applicant does not fulfil these conditions. Rule 28 provides that an interruption in service between two spells of Civil Service rendered by a Government servant under Government shall be treated as automatically condoned and the pre-interruption service treated as qualifying service, unless specific indication contrary to this is made in the service book. It further says that these provisions shall not apply in the case of resignation, dismissal/removal etc. Interruption between two

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spells of Civil Service as mentioned in Rule 28 of CCS (Pension) Rules could not be stretched to mean long years of employment in a PSU after resignation from civil service. In view of the above pleadings, the OA is to be dismissed.

4. Applicant filed rejoinder contending that the matter being one of fixation of pension reckoning the State Government Service towards Central Government pension is one with a recurring nature and therefore despite the dates of the impugned orders, the case is well within the period of limitation. Further the applicant is still in service and his date of superannuation is in 2007. His pension papers will be processed only two years prior to that. The question of fixation of pension taken up by the applicant is well within the time limit. The non-pensionable service in Keltron will not affect the claim of the applicant as this is an area squarely covered by the decisions of this Tribunal in OA 479/91 and 1749/98. The respondents are supplementing fresh reasons for substantiating A4 order through the reply statement and are trying to reopen settled legal issues.

5. Respondents have filed an additional reply statement reiterating the contentions made in the reply statement. It was submitted that the provisions of Rule 26(2) of CCS (Pension) Rules 1972 were not satisfied in the case of Sh. Sehnoy and Sh. Balakrishna Pillai and the Government had agreed to implement the judgement in these cases purely as an exception in individual cases in order to comply with the orders of this Tribunal and it



was not intended to be a general relaxation of rules and hence that cannot be a ground for extension of such benefit at all times merely because the earlier order of this Tribunal was not challenged then.

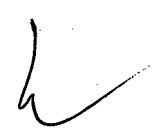
6. Heard Sh.M.R.Rajendran Nair, learned counsel of the applicant and Sh.C.N.Radhakrishnan, learned counsel of the respondents. The learned counsel for the parties took us through the factual and legal matters. Learned counsel of the applicant submitted that in any case as the orders of this Tribunal in OA No.491/91 and OA No.1749/98 have become final and are declaratory in nature, non-extension of the benefit of the orders in those OAs to a similarly situated person would amount to violation of Articles 14 & 16 of the Constitution of India. Respondents' counsel on the other hand submitted that those decisions had been rendered considering the particular circumstances and conditions of the individual applicant concerned and those decisions are not declaratory in nature nor binding on others and that no dictum has been laid down in those orders. The short question for consideration is whether the service rendered by the applicant under the Government of Kerala from 8.12.67 to 28.2.78 towards Central Government pension can be reckoned for the purpose of full pension. The reason for rejection of such a claim is based on limitation and against the CCS (Pension) Rules. The No Objection Certificate dated 4.3.81 produced by the applicant from Keltron at the time his interview at VSSC would show that Keltron service was in the knowledge of the respondent VSSC. However, the respondents did not make proper entries regarding the Keltron service on the service book of the applicant. Mere denial by the



respondents of such matter would not help the respondents in not reckoning the Keltron service for the purpose of pension. Therefore, we are of the view that Keltron service has to be counted for the pensionary benefits of the applicant.

7. It is well settled principle of law that the benefit flowing out of an order of a court should be extended to similarly situated persons if that order becomes final and declaratory in nature. In Ashwini Kumar case [1997 (2) SCC 1], the Hon'ble Supreme Court has gone to the extent of saying that non-extension of such benefits will amount to violation of Articles 14 & 16 of the Constitution. It is an admitted fact that a State Government servant can bargain for pensionary benefits in the Central Government service, subject to the rules provided therein. Rule 26 (2) of CCS (Pension) Rules, 1972 provides that "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". Interpreting the above rule, the contention of the respondent was that the applicant's resignation from the Directorate of Technical Education was not with a view to take up employment where service qualifies for pension. This aspect has been liberally dealt with in the order of this Tribunal in OA 491/91. In that order, this Tribunal observed thus:

"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:




"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."

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.

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 feature 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.



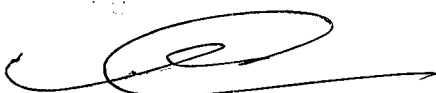
Having regard to the facts and circumstances of the case, we are of the view that the applicant has been singled out in denying the benefit of counting his earlier services in the Naval Stores Depot and Dandakaranya Development Authority and condoning the interruption of services for grant of pensionary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

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."

8. This was followed in OA 1749/98. It is very clear that in this case also, applicant had an intervening period of service in a non-pensionable concern, but the Tribunal negatived the contentions of the respondents. In other words, what we find is that the same contention had been raised in OA 491/91, which was rejected and Shenoy's case (OA 491/91) had become final and was also implemented. Therefore, we are of the view that there is no reason to deny the benefit to the applicant in this case. Therefore, we direct the respondents to grant appropriate relief of pensionary benefits (pensionary benefits alone) to the applicant reckoning the period rendered by the applicant in the Kerala Government service as also in Keltron and fix the Central Government pension of the applicant accordingly when he retires from service.

9. With the above observations, we allow the OA. We direct the parties to bear their own costs.

Dated the 18th December, 2002.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

Annexures referred to in the order:

- A-2 True copy of the memorandum dated 2.11.93 issued by the Administrative Officer II, VSSC.
- A-4 True copy of the memorandum dated 8.12.2000 issued by the Senior Administrative Officer (Est).
- A-1 True copy of the order dated 3.7.1978 issued by the Administrative Officer, Directorate of Technical Education to the applicant.
- A-3 True copy of the representation dated 6.10.2000 submitted by the applicant to the Comptroller, VSSC.