

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.566/10

Thursday, this the 11th day of April, 2013

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

M.I Cheiyakoya
Area Marketing Manager
Indian Airlines Ltd.,
Agatti Island

...Applicant

(By Advocate Mr.P.K Ibrahim)

V e r s u s

1. Union Territory of Lakshadweep,
Kavaratti represented by the
Administrator
2. Department of Printing and Stationary
Union Territory of Lakshadweep
Kavaratti represented by its Secretary
3. The Accounts Officer
Principle Pay and Accounts Office
Kavaratti
4. Secretary to the Government of India
Ministry of Finance
Union of India
New Delhi

...Respondents

(By Advocate Mr.Mr.S Radhakrishanan for R 1-3 and Mr.Sunil Jacob Jose, SCGSC for R4)

This application having been heard on 04th April 2013 this Tribunal on 11.04.2013 delivered the following :-

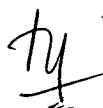
ORDER

HON'BLE MS.K NOORJEHAN, ADMINISTRATIVE MEMBER

1. The applicant has filed this Original Application seeking a declaration as to his entitlement for pension and pensionary benefits with interest from 25.07.2001.



2. The applicant while working as a Publication Officer was deputed by R1 to Indian Airlines Ltd (IAL for short) by Annexure A-1 order dated 26.06.1997. He was ordered by IAL to work in Agatti Air Port (Annexure A-2). His deputation was extended every year thereafter till 15.07.2001 (Annexure A-4). For further extension by one year after the expiry of deputation period of 4 years, R1 has taken up the matter with Secretary, Urban Development, New Delhi (Annexure A-6). Thereafter, the applicant submitted a request for VRS and the same was approved by R1 vide Annexure A-7. The applicant submitted Form 5 duly filled up for processing his pension papers as was demanded vide Annexure A-7. He gave all particulars of leave availed by him during his deputation period with details of GPF remittances, withdrawals etc vide Annexure A-8. Certain defects as pointed out in Annexure A-9 were also rectified by the applicant. However, the Pay and Accounts Officer opined that the applicant is not entitled for pension as per Rule 48A(6)(b) of C.C.S (Pension) Rules as he got permanent absorption in IAL. The applicant contends that he was allowed to proceed on VRS from 25.07.2001. Only thereafter, he was directly recruited by IAL and appointed as AGM (Commercial) and put on probation for one year. Since it is fresh recruitment, his case does not fall under absorption in IAL. The applicant submitted his Annexure A-10 representation pointing out the above mentioned facts. He also submitted many representations in vain. He has taken up the main contention that he has completed 23 years in the service of Lakshadweep Administration and he was on deputation to IAL for 4 years and hence he is eligible to get the qualifying service of 27 years for the purpose of pension. He contends that the inordinate delay in disbursing the pension prejudicially affects his interests. Hence the respondents are liable to pay the retiral benefits with interest to him.



3 The respondents in their reply statement conceded that the applicant was deputed to IAL with effect from 15.07.1997 and it was extended for 4 years on yearly basis. After the expiry of the 4th year of deputation, R1 took up the matter with the Secretary Urban Development to accord approval for extension of his tenure, as approval of Government of India is required for extension of deputation beyond the 3rd year. The applicant while on deputation sought permission to retire on VRS from service with effect from 25.07.2001 and his request was accepted by the Administration. The pension papers of the applicant were returned by R3, pay and accounts office stating that there is a ban on deputation to Public Sector Undertakings as per Ministry of Finance O.M dated 06.03.1985 and hence the deputation of the applicant has to be ratified by the Ministry of Finance for his pensionary benefits to be regulated under Rule 37 of CCS (Pension) Rules. Vide Annexure R1(a) DOPT has confirmed that Ministry of Finance has imposed a complete ban on deputation to PSU in accordance with O.M supra.

4. Arguments were heard and records perused.

5 The Union Territory of Lakshadweep has only one Air Port at Agatti. The administration as well as the residents of all Islands can utilise only the flight services operated by Indian Airlines, Limited in 1997 from Agatti Air Port. It is quite possible that no one from main land Kerala or elsewhere from IAL was willing to take up the assignment at Agatti Air Port and it was under such circumstances that the Administrator exercised his competence to lend the services of the applicant on terms and conditions attendant to Foreign Service. Extension was given every year for the first three years on an yearly basis. For the fourth year extension in 2001 the Administrator had addressed Ministry of Urban Development for necessary approval. It might be due to delay in getting approval, that the applicant was permitted to proceed on VRS with effect from 25-07-2001 vide Annexure A-7. The applicant's pension

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papers were processed and sent to R-3, the Pay and Accounts Officer Kavarathi. In the first instance R-3 raised the contention that Rule 48(A) of CCS (Pension) Rules for voluntary retirement on completion of 20 years of qualifying service is not applicable to government servant as per Rule 48(A)6(b) of CCS Pension Rules for being absorbed permanently in an autonomous body or public sector undertaking to which the government servant is on deputation at the time of seeking VRS. The applicant argues that he was on deputation till 14.07.2001. Only on personal reasons he requested for VRS which was approved w.e.f 25.07.2001. It is not the case of R-1 that the applicant ever requested for absorption nor was any such case processed at the end of R1 or IAL. Later on as, submitted by R-1, in the reply statement, the OM dated 06-03-85 of the Ministry of Finance clamping a ban on deputation to public sector undertakings, was brought to his notice, by R-3 there by processing the pension case of the applicant was put on hold awaiting ratification of deputation by Min. Of Finance. Hence Min. Of Finance was impleaded by the applicant. The learned Senior Counsel for R-4 stated that he did not receive any instructions from Min. Of Finance. Therefore, it is to be concluded that Min. Of Finance has no statement to make regarding ratification of the deputation period, as is being insisted upon by R-3. It was observed by the Tribunal on 16-12-11 that such regularisation of deputation is to be done by the nodal Ministry viz. Min. of Home Affairs.

6 It is not in dispute that R-3 has issued orders regarding deputation of the applicant on foreign service to IAL. It is quite possible that the ban on deputation to Public Sector Undertakings was not brought to his notice. A copy of the deputation order was endorsed to R-3. The applicant was sanctioned GPF advance by his parent department and he was granted enhanced DA applicable to Central Government servants by IAL as is evidenced by Annexure A-5. The VRS granted was unconditional and not for the purpose of absorption in IAL. That there was no provision for deputation etc, even if it were so, is of least consequences to the applicant as the situation that has been obtained has been courted by the Administration and not by


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the applicant.

7. In the facts and circumstances of the case there is not even an iota of doubt that the applicant has earned his pension by virtue of 23 years of service with Union Territory of Lakshadweep. Since he took VRS in 2001, it was incumbent upon R-1, to get the period of deputation of the applicant regularised, so as to enable him to get pension for 27 years of service. In compliance of the order of this Tribunal provisional pension was granted to the applicant in July 2011. It was not clarified whether the qualifying service for pension includes his deputation period. Till 14.07.2001, he was on deputation. His request for VRS was readily agreed to by R-1. He got recruited directly by IAL and hence got a fresh appointment as Assistant Manager (Commercial) with IAL with a probation period of one year. His appointment order by IAL was called for by the Tribunal when he filed OA 68/09. In the light of the rule on deputation on foreign service the question of denial of pension and other retiral benefits does not arise. It is for R-1, to get ex-post facto approval to regularise the period of deputation if it is warranted as per the rules/regulations on the subject.

8 In view of the foregoing, in our considered opinion, the applicant is, entitled to pension and retiral benefits counting his service in UTL including deputation period to IAL, as his lien was maintained in the parent Department of UT administration. The respondents are therefore directed to ensure that Pension and all other retiral benefits are released expeditiously but at any rate not later than 4 months from the date of receipt of a copy of this order.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


DR K.B.S RAJAN
JUDICIAL MEMBER