

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. XXXXXX 7 of 1990.

DATE OF DECISION 24.12.1991

Dr. V. Balakrishnan Applicant (s)

Mr. N. N. Venkitachalam Advocate for the Applicant (s)

Versus

Director, Central Marine Fisheries Research Institute Respondent (s)
Cochin and 3 others

Mr. P. Jacob Varghese - for Advocate for the Respondent (s)
through proxy. R.1 to 3

CORAM:

The Hon'ble Mr. S. P. Mukerji - Vice Chairman

and

The Hon'ble Mr. A. V. 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

(Hon'ble Mr. S. P. Mukerji, Vice Chairman)

In this application original filed on 14.12.89 and later amended on 27.2.1990 the applicant a retired Scientist of the Central Marine Fisheries Research Institute (CMFRI) under the Indian Council of Agriculture Research (ICAR) has prayed that the applicant should be declared to be entitled to the benefits of Rule 27(2) and Rule 30 of the C.C.S. (Pension) Rules. He has also challenged the impugned communication dated 21.11.1989 at Annexure-A rejecting his representation for counting of additional qualifying service for pensionary benefits and has prayed that the second respondent be directed to dispose of his representation in accordance with law.

2. The brief facts of the case are as follows. According to the applicant as a Pre-degree student in Science he

in 1942 took part in the freedom struggle and was detained in jail. After release from the jail he continued his studies at Allahabad University from where he took Masters and B.Sc. Degrees in Zoology. Having been selected by the U.P.S.C he worked as Assistant Research Officer Class II from 26.5.58 in the Central Marine Fisheries Research Institute. He was promoted to Class I grade on 20.1.1971 and on 1.10.75 he was appointed as Scientist in the Agricultural Research Service. He was promoted as Scientist S-2 on 1.7.76 and as Scientist S-3 on 1.9.79 and retired on 30.6.1981 on attaining the age of 60 years. His grievance is two-fold. Firstly according to him he was denied the benefit of Government of India's O.M. dated 11.7.75 and O.M. dated 16.12.75 referred to as Government of India's Decision No.2 below Rule 27 of the CCS (Pension) Rules as indicated on page 45 of Swamy's ^{Pension} Compilation (7th Edition). In accordance ^{with} ~~to~~ these O.M.s those Government servants who were participated in the national movement and entered service before or after 31-12-1951 and qualified through the U.P.S.C. by availing of age relaxation would be entitled to add to their service qualifying for superannuation pension the actual period not exceeding $\frac{1}{4}$ th of the length of their service or the actual period by which their age at the time of recruitment exceeded 25 years for a period of 5 years whichever is the least. The second grievance of the applicant is that similar concession provided for the Scientists and Research Officers under Rule 30 of the CCS (Pension) Rules also has been denied and he was allowed the reduced pension of Rs.590/- and not the full pension to which he is entitled under the aforesaid provisions. His representations ^{was} ~~was~~ rejected on 27.5.88 at Annexure-B ^{and} ~~and~~ by the communication

dated 18.10.1982 at Annexure-C. His appeal through the 3rd respondent is still pending with the 2nd respondent. The applicant's plea is that though Rule 30 applies to those who were appointed after 31.3.1960 that Rule was amended as indicated in the impugned order at Annexure-A.6 dated 28.10.1987 extending the benefit of adding qualifying service to Scientific and Research personnel retiring after 31.3.1960. Hence rejection of representation is unjustifiable. He has also been denied adding 5 years of service or $\frac{1}{4}$ th of actual length of service as a political sufferer.

3. In the counter affidavit the respondents have conceded that the applicant has produced extracts of admission register at Annexure-C indicating his going to jail under Defence of India Rules. They have stated that in accordance with Rule 30 of the C.C.S (Pension) Rules as it stood on the date of his retirement in 1981 the benefit of Rule 30 was available to those who were appointed after 31.3.1960. Since the applicant entered service on 26.5.58 and that period has been treated as qualifying for pension, on his transfer to the I.C.A.R. he is not entitled to the benefit of Rule 30 and he was informed accordingly as at Annexure-C. As regards amendment of Rule 30 extending the benefit to those who retired after 31.3.1960 they have stated that the amendment is effective from the date of the issue of O.M. ie., 28.10.87 and hence the benefit could not be given to him as he had retired much earlier. As regards benefit of Rule 27 they have stated that the basic condition is whether the applicant appeared and qualified in the examination conducted by the U.P.S.C. on the basis of concession of relaxation of age and whether a suitable entry exists in the service and other record of the applicant. On a perusal of the service card/records it was found that no such evidence is available

and since the applicant does not appear to have produced any testimonial of his participation in the freedom struggle before the U.P.S.C. in 1958 for claiming age relaxation he does not satisfy the pre-condition of getting the benefit of additional qualifying service for participation in the freedom struggle. They have also argued that the intention of Rule 30 is to give the benefit of added years of service to directly recruited fresh entrants and not to those like the applicant where his entire spell of service with the Government has been counted prior to his induction to I.C.A.R. Further, the applicant cannot get double benefit both under Rule 27 and Rule 30. They have also argued that his detention in jail for 2 months under ^{the} Defence of India Rules is not sufficient proof that he took part in the national movement and thereby he was prevented from availaing himself of the normal opportunities for entry into Government service.

4. In the rejoinder dated 14.11.1990 the applicant has stated that he appeared for viva conducted by the U.P.S.C. and was appointed when he was 37 years of old by relaxation of age. He has also mentioned that in the certificate issued by Dr.V.A.Seyid Mohamed, High Commissioner of India referred to in the counter affidavit of the respondents, it was mentioned that the applicant had suffered by being debarred from college for 2 years. In his representation to the President of the I.C.A.R. at Annexure.A.1 he had mentioned that he had taken part in the Quit India Movement in 1942 and was detained in the Central Jail at Trichur from October to December, 1942 and was debarred from college for 2 years, that only

in 1944 after the release of Mahatmaji and other leaders he was permitted to resume his ^{studies} ~~status~~. He passed his B.Sc Degree Examination from the Madras University in April, 1945.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The Government of India's decision No. 2 below Rule 27 of the C.C.S (Pension) Rules ~~as~~ reproduced in Swamy's Compilation on Pension (7th Edition) reads as follows:

"(2) Additional qualifying service to persons who took part in the national movements:- Certain decisions were taken, vide G.I. MHA O.M.No.15/21/48-Estts. dated the 29th November, 1948 and O.M.No.6/1/5/NGS, dated the 14th February, 1951 (not printed) regarding the grant of certain concessions in the matter of entry into Government service to persons who took part in the national movements and were thereby prevented from availing themselves of the normal opportunities for entry into Government service. The question of giving further benefits to those Government servants who have suffered on account of their political activities before Independence, in so far as their qualifying service for pension is concerned, has been examined by Government. It has been decided that Government servants who had participated in the national movements and who entered Government service on or before the 31st December, 1951 by availing themselves of the concession of relaxation of age in terms of the O.Ms referred to will be allowed to add to their service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of their service or the actual period by which their age at the time of recruitment exceeded twenty-five years, or a period of five years, whichever is the least. (G.I.C.S. (Department of Personnel) O.M. No.25/16/73-Estt (B) dated the 11th July, 1975).

The orders will be applicable to all Government servants who entered service even after 31st December, 1951 provided they, on the basis of the concessions contained in the orders referred to, appeared and qualified in the examinations conducted by the Federal/Union Public Service Commission or other authorities under the Central Government.

(G.I.C.S. (Department of Personnel) O.M.No. 26/21/73-Estt. (B) dated the 16th December, 1975) "

6. The respondents have not denied the veracity of the testimonials given by a prominent Advocate and Dr. Seyid Mohamed, High Commissioner for India nor ^{have} _{they} challenged the entry made in the admission register regarding the applicant's detention under the Defence of India Rules. The applicant's representation to the President of the I.C.A.R. at Annexure A.I to his rejoinder dated 14.11.1990 gives the details of the applicant's participation in the Quit India Movement of 1942, his detention in jail for 2 months in 1942 and his being debarred from college for 2 years. We are satisfied that the applicant had participated in the freedom struggle and is entitled to the concessions available to such participants in the freedom movement. The only draw-back in the applicant's case is that he has not produced any valid documentary proof of his enjoying the age concession when he appeared before the U.P.S.C. in 1957. A photo-copy of his application to the U.P.S.C. has been produced by the applicant. This shows that his date of birth was 21.6.1921 ie., he was 36 years old when he submitted the application dated 7.2.57. In the attestation form dated 7.2.57 attached with the aforesaid application, he had clearly indicated that he was detained under the Defence of India Rules in 1942. Considering his age and the circumstances of his case it can be presumed that he was considered for selection in spite of his age being 36 years by the age concession available to persons of his category. The U.P.S.C. who were impleaded as Respondent No.4 did not come up with any evidence or averment to challenge the claim of the applicant in this regard. We are, therefore, of the view that the applicant

is entitled to the additional qualifying service in accordance with the Government of India's O.M.s of 11.7.75 and 16.12.75 as quoted earlier from the Swamy's Pension Compilation.

7. As regards the benefit of Rule 30 of the C.C.S (Pension) Rules, the same was denied to him in the impugned order dated 21.11.1989 as the following extracts therefrom will show:

"Rule No.30 of CCS (Pension) Rules 1972 cited by you has been amended giving the benefit of addition to qualifying service in respect of those retiring after 31-3-1960 in Govt. of India, Department of Personnel and Pension Welfare Notification No.28/51/86/P&PN dated 4-2-1988 and O.M. of even number dated 28-10-1987. However, the O.M. dated 28-10-87 states that the benefit admissible from the date of issue of the O.M. ie., 28-10-1987. Since you have retired from service on 30-6-81, it is regretted that the said benefit is not applicable in your case."

The above will show that the benefits of Rule 30 were made available to those who retired after 31-3-1960. Since the applicant retired in 1981 he will obviously be entitled to those benefits. These benefits, however, were denied to the applicant on the specious plea that the amended O.M. of 28.10.87 would have prospective effect ie., from 28.10.87 and since the applicant had retired on 30.6.81 ie., prior to 28.10.87 he cannot be covered by the amendment. Such a plea on the face of it seems to be illogical. Having said that the benefits of Rule 30 of additional qualifying service would be available "in respect of those retiring after 31.3.1960" it cannot lie in the mouth of the respondents that the benefits would be available only to those who retired after 28.10.1987 when the amendment was issued. If that was the intention, there was no significance in mentioning the crucial date 31.3.1960 in the same O.M. In the circumstances we are firmly of the view that the applicant having retired after

31.3.1960 cannot be denied the benefits of Rule 30 on the ground that he had retired before 28.10.1987.

8. In the conspectus of facts and circumstances, we allow the application, set aside the impugned order dated 21.11.1981 at Annexure.A. and direct that the applicant should be given the benefits of Government of India decision No.2 below Rule 27 of the CCS (Pension) Rules and the benefits of Rule 30 of those Rules. His qualifying service and the retiral benefits should be recalculated on this basis and arrears of pension and other retiral benefits paid to him within a period of four months from the date of communication of this judgment. There will be no order as to costs.



24/12/91

(A.V.HARIDASAN)
JUDICIAL MEMBER

(S.P.MUKERJI)
VICE CHAIRMAN

24.12.1991

Ks/1212.

21.7.92.

CCP 73/92 in
O.A.7/90

Mr. Ramakrishnan
None for the respondents.

None is present on behalf of the original respondents. Accordingly list for further directions on 28.7.92.

ND

SPM

21.7.92

28.7.92
(11)

Mr. Ramakrishnan
Mr. Jacob Varghese

Since one of us (Hon'ble PSHM) does not wish to associate with this case, list the case for further directions on 30.7.92 before the Bench, in which Hon'ble PSHM is not a Member.

(AVH)

(PSHM)

28.7.92

30.7.92

Mr. Ramakrishnan - for applicant.

Mr. Jacob Varghese - for respondents

The learned counsel for the original respondents seeks six weeks time for full compliance of our judgment dated 24.12.1991, in O.A.7/90. Accordingly list for further directions on the CCP on 11th September, 1992.

If there is no compliance till that date, we direct that Shri G.C.Srinivasan, Secretary, ICAR should appear in person before us on that date to show cause why action under the Contempt of Courts Act be not initiated against him.

(AV Haridasan)
J.M.

(SP Mukerji)
V.C.

30.7.92

Order issued
on 31.7.92

Ref Order dt-30/7.

Considering the nature
of order passed on 30/7/92
in this case may be listed
before the Bench available
on 11/8/92 than it is
admonished by notice along with

ND

over DB case

~~For appa~~
For orders please

We may post
post it on 11.9.92

Pres
S. O(JT)
7.9.92

For approval
please - DR
30/7/92

DR

Mr. M. Ramachandran for applicant

Mr. P. Jacob Varghese for resps.

Learned counsel for the resps. submitted that he has filed an application for reviewing the earlier order passed by the Tribunal on 30.7.92. This Tribunal, on 30.7.92 granted six weeks time for full compliance of the judgment before this date ^{and} ~~in case~~ there is failure to comply with the direction the Officer should appear in person before this Bench. Now the respondents have neither complied with the direction nor did the officer appear before this Tribunal today. Hence, post the M.P. filed by the respondents along with the CCP for further orders before the same Bench which passed the earlier order dated 30.7.92, on 23.9.92.

ND
(ND)

11/9/92

23.9.92 Mr. Ramakrishnan - for applicant.
Mr. Jacob Varghese

We have heard the learned counsel for both the parties. We are not at all impressed by the reasons given by the ^{alleged} Contemner in M.P.1343/92 for non-compliance of the order of this Tribunal in O.A.7/90 as also his failure to appear before this Tribunal on 11.9.92 ^{when} as he had not complied with the aforesaid order. The original

contd...

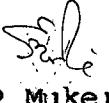
conted.....

applicant is 71 years old and time is running out for him. If the order of this Tribunal has to have any meaning for him the same has to be complied with forthwith. The fact that an SLP has been filed in the Hon'ble Supreme Court (which has not yet been admitted) and notice on admission and condonation of delay has been issued, is no ground for non-compliance of the aforesaid order. No order of stay also has been obtained by the respondents.

In the above circumstances giving one more chance to the Contemner we direct him to make full and final payment of the amount due to the applicant in accordance with the aforesaid judgment on or before 2nd November, 1992 or appear before us in person to explain why proceedings under the Contempt of Courts Act be not initiated against him for non-compliance of the order of this Tribunal dated 24.12.91 in O.A.7/90.

M.P. 1343/92 for the reasons stated above is dismissed. Name of the Contemner should be corrected as Shri G.C. Srivastava instead of Srinivasan.


(AV Haridasan)
J.M.


(SP Mukerji)
V.C.

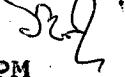
23.9.92

2.11.92 Mr. Ramakrishnan

(27) Mr. KARajan rep. Jacob Varghese

The learned counsel for both the parties agreed that in compliance of our order dated 23.9.92 full payment of arrears of pension has been made to the petitioner but the P.P.O. has not yet been issued. The learned counsel for the respondents stated that the same will be issued within a period of one month from today. List for further directions on 4.12.92.

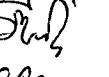

AVH 2.11.92


SPM

Mr. M.R. Rajeshwari
Mr. P. Jacob Varghese.

At the request of the learned Counsel for the Petitioner, list for further directions on 11-1-93.


AVH


SPM


4/11/92

11-1-93 (21) Party counsel for petitioner
None for respondents

At the request on behalf
of the learned counsel for him
petitioner, list for further directions
on 13.1.93

✓
R.M.

(AVH)

Sikhi
(SPM)

11-1-93

13-1-93 (28) Mr Ramakrishnan
None for respondents

The learned counsel for the petitioner
states that the judgement of this Tribunal
referred to in the CP(C) has been complied with
and he does not wish to press the CP(C) any
further. Accordingly, the CP(C) is closed as
not pressed and the notice discharged.

✓
R.M.

(AV Haridasan)
J.M.

Sikhi
(SP Mukerji)
V.C.

13-1-1993

✓
FD
PA
14/1
MBOD
order issued
20/1/93