

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.82/2001

On Friday, this the 7th day of February, 2003

C O R A M

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

N. Viswanathan Pillai, S/o. R. Narayana Pillai (Late),
Former Scientist/Engineer-SF, Electrical, Civil
Engineering Division, Thumba, residing at 'Gayathri' TC
9/1872, K 149, Kochhar Road, Shasthamangalam P.O.,
Trivandrum - 695 010.

..Applicant

[By Advocate Mr. M.R. Rajendran Nair.]

v e r s u s

1. The Union of India represented by the Secretary to Government of India, Department of Space, New Delhi.
2. Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi.
3. The Director, Vikram Sarabhai Space Centre, Trivandrum.
4. The Chief Construction Engineer, Civil Engineering Division, Thumba, Thiruvananthapuram.
5. The Chief Engineer (HRM), Kerala State Electricity Board, Viduthy Bhavan, Pattom P.O., Trivandrum - 695004.

..Respondents

[By Advocate Mr. C.N. Radhakrishnan.]

[Application having been heard on 04.02.2003, this Tribunal on 07.02.2003 delivered the following:]

O R D E R

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

Applicant retired on superannuation from the Department of Space, a Central Government Department, on 28.02.97 with 31 years and 9 months service to his credit. Prior to his joining the Department of Space, he initially worked in Electricity Department of Travancore-Cochin State for the period of 1 year 4



months and two days from 28.11.1955 to 31.03.1957 and then in the Kerala State Electricity Board on its formation for the period of 8 years and 2 months from 01.04.1957 to 31.05.1965, i.e. in all a total period of 9 years and 6 months) and according to the applicant, if that service is reckoned for the purpose of pension, then he would be eligible for full pension. However, 4th respondent takes the stand that there is no evidence to support the claim of the applicant to have his past service under the KSEB reckoned towards pension and the same was communicated to the applicant vide Annexures A/11 dated 11.03.98 and A/16 dated 03.11.2000, which are impugned in the present O.A. Aggrieved by the said orders, the applicant has filed this O.A. seeking the relief as follows:

- "(i) To quash Annexures A11 and A16.
- (ii) To declare that the service rendered by the applicant under the KSEB from 28.11.1955 to 31.09.1965 is liable to be reckoned for the purpose of pension in VSSC and to direct the respondents 3 to 4 to reckon the service rendered by the applicant in KSEB towards pension under the Department of Space.
- (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. Applicant submitted Annexure A/1 to show his service experience in the Kerala State Electricity Board (KSEB, for short). While working as First Grade Overseer in Construction Division (Kalamassery) under Transmission Division, Alwaye, applicant applied for the post of Supervisor (Electrical) in Thumba Electrical Rocket Launching Station (TERLS, for short), now it is known as VSSC/ ISRO, through proper channel. He was called for interview and was successful in getting an offer of appointment for the post of Assistant Supervisor (Electrical). Consequently, after obtaining his technical resignation from the post of First Grade Overseer, the applicant was relieved from

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Construction Section, Kalamasserry, vide Annexure A/2 dated 31.05.1965 so as to enable him to join TERLS. Applicant thus joined the duty in TERLS on the very next day, i.e. on 01.06.1965. He submitted that while working in TERLS, his services under the KSEB were reckoned for giving him promotion to the grade of Rs. 350-680. For such promotion, six years service after acquisition of diploma is required. Applicant obtained diploma in the year 1963 vide certificate dated 7.6.1963 (Annexure A/3) issued by the Department of Technical Education, Government of Kerala. It is stated that while granting higher grade of Rs. 350-680, weightage was being given for the experience for the period between passing of the ITI and diploma. The applicant passed Higher Examination in Electric Light and Power at the Government Technical Examination as is evident from Annexure A/4 certificate dated 07.09.1954. He contended that he had seven years experience in KSEB in between Annexures A/4 and A/3, which was reckoned as one year after diploma by the Department of Space for the purpose of granting higher grade of Rs. 350-680 with effect from 1.11.1971. Considering the fact that the applicant joined the TERLS only on 1.6.1965, if his services in TERLS alone were reckoned for promotion to grade Rs. 350-680, applicant would have got minimum scale of pay, i.e. Rs. 350/- as on 01.04.1971. But applicant's pay was fixed at an higher grade in the pay scale of Rs. 350-680 as on 1.11.1971 by giving additional increments reckoning the service under the KSEB. Annexure A/5 dated 28.08.73 is the letter issued in this behalf. His pay again was revised to Rs. 425/- as on 1.11.1971 granting one more increment to him considering the weightage of experience under KSEB. They were thus very much aware of the past service rendered by the applicant under the KSEB and by their own conduct it was admitted that the applicant had not forfeited his past service under the KSEB by joining the TERLS after resignation from KSEB. To substantiate his contention, he

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placed Annexure A/6 letter dated 10.05.1976 issued by Vikram Sarabhai Space Centre (VSSC, for short) showing that entries relating to his past service under KSEB were made. In 1977, he made a representation for reckoning his past service under the Electricity Department, which was rejected by the third respondent vide order dated 14.03.1977 (Annexure A/7). He was relieved of his duties on superannuation on 28.02.1977 vide Order Annexure A/8. On coming to know that under the new rules, service rendered under the State Government will be reckoned for the purpose of pension in Central Government service, applicant submitted a representation dated 09.04.1997 (Annexure A/9) to the 4th respondent. Even before Annexure A/9 representation was considered, his pensionary benefits were calculated reckoning his services rendered in the Department of Space only, vide Annexure A/10. Thereafter, vide Annexure A/11 dated 11.03.1998, 4th respondent turned down the request of the applicant for reckoning the past service under KSEB. Then again, he made representations Annexures A/12, A/13 and A/14 to the 3rd respondent, 5th respondent and 4th respondent respectively. Vide order Annexure A/16 dated 03.11.2000, applicant's representations Annexures A/12 and A/14 were rejected by the 4th respondent. Being aggrieved, the applicant has filed this O.A.

2. The respondents 1 to 4 have filed a detailed reply statement contending that the rules on the subject does not permit them to grant the benefit as claimed by the applicant. The applicant joined as Assistant Supervisor in TERLS on 01.06.1965 when it was an autonomous body. He was not applied for the post of Supervisor (Electrical) through proper channel and the applicant has not produced any proof for the same. It is not possible for them to ascertain whether the applicant was a regular employee under KSEB and is entitled for pension benefits. Annexure A/2 order relieving the applicant cannot be taken as a



proper and authentic one as there is no mention that he was relieved of his duties from Construction Wing to take up an appointment in TERLS. It appears to be a personal one. It is stated that the claim of the applicant has been examined in terms of decision No. 6 [under Rule 14 of CCS (Pension) Rules] of the Government of India, which reads as follows:

"2. The Government servant claiming the benefit of combined service in terms of the above decision are likely to fall into one of the following categories :

(i) Those who having been retrenched from the service of Central/State Governments secured on their own, employment under State/Central Governments either with or without interruption between the date of retrenchment and date of new appointment;

(2) Those who while holding temporary post under Central/State Governments apply for posts under State/Central Governments through proper channel with proper permission of the Administrative authority concerned.

(3) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Governments direct without the permission of the administrative authority concerned and resign their previous posts to join the new appointments under State/Central Governments."

It is averred that the benefit may be allowed to the Government servants in categories (1) and (2) above. Where an employee in category (2) is required to tender resignation from the temporary post held by him, for satisfying a technical requirement, before joining the new appointment and a certificate to that effect may be issued by the authority accepting the resignation. Government servants in category (3) will obviously not be entitled to count their previous service for pension.

3. The respondents stated that there is no evidence to show that the applicant's case falls within any one of the above categories and hence, his request for counting the past service rendered in KSEB cannot be acceded to. It is also stated that the contention of the applicant that he applied for the post of

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Supervisor (Electrical) through proper channel is not correct. According to them, the applicant did not resign from his job for taking up an assignment in TERLS and as such, his resignation cannot be taken as a "valid technical resignation" for the purpose of counting his past service for pension. A technical resignation should clearly indicate that an official was resigning his job to take up a new employment under Government. The applicant was given all eligible benefits considering his ability by virtue of his service under KSEB. It may be mentioned that his past service has been considered for initial appointment, fixation of pay at various levels, promotion etc. That itself is not a ground for counting previous service for pension benefits. For pensionary benefits, there are clear guidelines which the applicant is not fulfilling as per the records available. Hence, there is no justification or scope for a roving enquiry at this stage. They further submitted that applicant's experience under KSEB has been duly considered for promotion, fixation of pay under normalisation process which was done by ISRO to streamline the qualification and experience with the remuneration during 1971/1972, except for pensionary benefits. Applicant out of misconception, links these two areas whereas the rules are different for grant of pensionary benefits. Therefore, the respondents contended that the O.A. has no force and is to be dismissed.

4. Applicant filed a rejoinder contending that when his past services were already taken into account for grade promotion and was entered in the personal file, there is no reason why it cannot be reckoned for pensionary benefits.

5. The respondents have filed additional reply statement contending that there is no evidence available to show that his application to the post of Supervisor (Electrical) was routed



through proper channel. Respondents reiterated that considering his ability by virtue of his service under KSEB, he was given all eligible benefits including fixation of basic pay under normalisation process. Normalisation process was one-time affair which was done by ISRO to streamline the qualification/experience acquired with the remuneration during 1971/1972. The services rendered elsewhere prior to joining ISRO were also considered during the said process in 1971/1972. But it cannot be considered for the purpose of pensionary benefits under the existing orders/rules for grant of pension.

6. Applicant filed M.A. No. 29/2003 to bring on record Annexure MA-1 proceedings dated 03.04.1957. In this MA, KSEB was also made one of the parties. Despite receipt of notice, KSEB did not file any reply statement.

7. We have heard Shri M.R. Rajendran Nair and Sriraj, learned counsel for the applicant and Shri C.N. Radhakrishnan, learned counsel for the respondents.

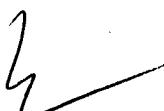
8. Learned counsel for the applicant submitted that the respondents had reckoned his past services for the purpose of grade promotion and that itself is a sufficient piece of evidence that his case falls under one of the two categories mentioned in the Government Order for reckoning the State Government Service for the Central Government pension. Learned counsel for the respondents, on the other hand, contended that this argument of the learned counsel for the applicant will not hold good for the reason that applicant's experience under KSEB has been considered for promotion, fixation of pay under normalisation process which was done by ISRO to streamline the qualification and experience



with the remuneration during 1971/1972 as a one time measure and that cannot be considered for the purpose of pensionary benefits under the existing orders/rules for the grant of pension.

9. We have given due consideration to the pleadings, material and evidence placed on record as also the arguments advanced by both the learned counsel.

10. It may be noted that the applicant had worked as Lineman in the Electricity Department of Travancore-Cochin State from 28.11.1955 to 31.03.1957, i.e. for a period of 1 year 4 months and 2 days. Thereafter, when KSEB is formed, with effect from 31.03.1957 A.N., the Government of Kerala by its proceedings dated 03.04.1957 (Annexure MA1), has directed that the staff then working in the Electricity Department will be transferred to the control of the KSEB with effect from 01.04.1957 subject to the safeguards and principles mentioned in the proceedings. Applicant was thus transferred to KSEB from the Electricity Department of Travancore-Cochin with effect from 01.04.1957. Vide Order No. EB.1-4670/57/PWD, the Government of Kerala affirmed that on the formation of Kerala Electricity Board with effect from 31.03.1957 A.N., the Chief Engineer, Electricity submitted proposals for transferring the staff working in the Electricity Department to the control of the Electricity Board with effect from 1.4.1957 F.N. as there is no necessity for the continuance of the Electricity Department and staff under Government after formation of the Board and the Government have pleased to direct that the staff now working in the Electricity Department will be transferred to the control of the KSEB with effect from 1.4.1957 (F.N.) subject to certain safeguards and principles, such as guaranteeing continued employment to all such personnel in the same manner as Government would have done in the Electricity Department, the Board should pay them their pension



and provident fund Government guarantees such payments also to the staff in question and the Government transfer to the Board the pension contribution fund and provident fund accounts etc. etc. Learned counsel for the applicant submitted that in view of the aforesaid order, the applicant is entitled to get the benefit of entire service period rendered from 28.11.55 to 31.09.65 for the purpose of pension. But the respondents have wrongly denied pensionary benefits vide Annexure A/11 order dated 11.03.98, quoting the Government of India, DPAR letter No. 3(20)/PEN(A-79) dated 31.03.82 vide which it was decided that service in State Governments can be considered for pension purposes, provided such cases fall within one of the two categories mentioned below:

- "(1) Those who having been retrenched from the service of Central/State Governments, secured on their own, employment under State/Central Governments either with or without interruption between the date of retrenchment and date of new appointment.
- (2) Those who, while holding temporary posts under Central/State Governments apply for posts under State/Central Governments through proper channel with proper permission of the administrative authority concerned."

Further, Annexure A/11 order states that since there is no evidence to show that his case falls within one of the above two categories, it cannot be considered.

11. On going through these clauses mentioned above, it cannot be said that the applicant had not applied through proper channel and secured his own employment under the Central Government. The averment in the O.A. and the documents will show that there is no interruption to join the respondent's service and on going through Annexure A/6 dated 10.05.1976 issued by the VSSC, we further noticed an entry therein under the heading "previous employment history" giving service details as follows:



"KSEB, TRIVANDRUM Ist Gr. Overseer 28.11.55
30.5.1965 PUBLIC SECTOR 0219 125 225"

From the aforesaid remarks by the contesting respondents, it is clear that the applicant was treated to be working in the KSEB (a Public Sector Organisation as per respondents) from 28.11.55 to 30.05.65 and he joined ISRO with effect from 01.06.1965, the very next day of his relieving from KSEB. It is also evident from record that applicant's pay was fixed on higher scale. Admittedly, this benefit was granted taking into account the past service rendered by the applicant in KSEB. Therefore, it is not justified in taking a decision not to grant the past service rendered by the applicant in the State Government for the purpose of pensionary benefits. And for that reason alone, Annexure A/11 and Annexure A/16, which is issued in continuation of Annexure A/11, are faulted and to be quashed.

12. Our attention is drawn to clause (1) and (2) of Rule 26 of the Central Civil Services (Pension) Rules, 1972, where forfeiture of service is contemplated. The said clauses are reproduced below for better appreciation:

"26. Forfeiture of Service on resignation.

(1) Resignation from a service or a post, unless is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) 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."

Sub-rule (1) stipulates that in a normal situation where a resignation is tendered by a Government servant, there can be no escape from forfeiture of his past service. Whereas in sub-rule (2), the rigor has been relaxed. For attracting sub-rule (2), the conditions imposed therein have to be satisfied. The key



words in sub-rule (2) are "proper permission". The expression "permission" imports application of mind of the authority according the same. Therefore, in the said expression it is implied that the relevant authority shall focus his attention to three aspects, namely legality, propriety and the genuineness of the transaction. Permission may be express or implied and, therefore, applying sub-rule (2) of Rule 26 to the instant case, we have to examine whether the applicant tendered his resignation with either express or implied permission of the competent authority to take up an assignment in VSSC/ISRO. The fact that the applicant has joined the respondent's institution the very next day, i.e. on 1.6.1965, after relieving from KSEB, granting higher pay to the applicant taking into account his past service and experience in KSEB, recording these entries in black and white in Annexure A/6 by VSSC and admission on the part of the respondents that the past service of the applicant has been considered for fixation of pay etc. as a one time affair, but cannot be considered for the purpose of pensionary benefits, are the reasons which lead us to take a strong footing that the applicant has submitted his resignation to take up another employment with implied permission of the competent authority. Accordingly, we hold that the resignation of the applicant was with a view to accept an appointment in the respondent's department with proper permission within the meaning of sub-rule (2) of Rule 26 referred to above. This legal position was canvassed and accepted in a case reported in (1994) 28 ATC 46, R.R. Singh vs. Chief Controller of Defence Accounts (Pension), Allahabad and Another.

13. Now we have to examine whether the applicant's past service rendered in KSEB from 28.11.55 to 31.05.65 can be reckoned for the purpose of granting pension. Admittedly, applicant was working in Electricity Department of



Travancore-Cochin State with effect from 28.11.55 to 31.03.57 (i.e. for a period of 1 year 4 months and 2 days) and on formation of KSEB on 31.03.1957 (A.N), his services were transferred to KSEB. To understand about qualifying service, it would be necessary to reproduce clause (2) of Rule 14 of Central Civil Services (Pension) Rules, 1972, as follows:

14. (2) For the purposes of sub-rule (1), the expression "Service" means service under the Government and paid by that Government from the consolidated fund of India or a local fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government".

Admittedly, from the above rule position, it is clear that the State Government Service rendered by the applicant is to be counted for pensionary benefits in the respondent's Organisation if he was a permanent servant under the Travancore-Cochin State. Even though he was absorbed in KSEB in 1957, it has to be taken that he was a Government servant of the Successor Kerala Government and his service conditions and retirement benefits were guaranteed by the Government by MA-1 proceedings. However, learned counsel for the respondents argued that the applicant has not averred that he was a permanent servant in Travancore-Cochin State Government or in KSEB. He further submitted that MA-1 proceedings is not an authentic copy and, therefore, he wanted to verify the same with reference to the factual aspect whether the applicant was a permanent servant under the Travancore-Cochin State Government and in KSEB.

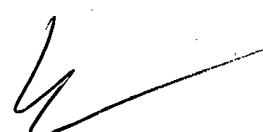
14. As regards his resignation, TERLS was a Society and at the relevant point of time, TERLS was not governed by the CCS (Pension) Rules, 1972. Therefore, we do not find any reason to

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accept the respondent's plea that applicant had resigned so they cannot count his service from 28.11.55 to 30.05.65 for pensionary benefits.

15. This O.A. was reserved for orders on 04.02.2003 when the learned counsel for the respondents submitted that the matter has been taken up with DOS and subsequently on 6.2.2003, they filed M.A. No. 122/2003 praying for acceptance of additional reply statement on record. We have perused the said additional reply statement which only reiterates the point that the "applicant cannot equate the services under Government Department with the services rendered in an autonomous body and claim pensionary and other retiral benefits". Since we have elaborately discussed this point and taken a view that the past service of the applicant is eligible to be counted for pension purpose, this M.A. has no force and only to be dismissed. However, we have taken note of all the contentions raised in the aforesaid additional statement while taking the decision.

16. For the reasons discussed above, we set aside orders Annexure A/11 dated 11.03.1998 and Annexure A/16 dated 03.11.2000 with an observation that taking Annexures A/1, A/5 and A/6 into consideration, the third respondent is directed to verify the factual aspect of the service of the applicant with Travancore-Cochin State Government and KSEB and as the State Government by MA-1 proceedings had already guaranteed pension etc., count the past service for pensionary benefits if the applicant fulfils the conditions stated therein and take appropriate decision forthwith. The fifth respondent shall furnish the required particulars of service of the applicant from the KSEB side to VSSC as and when requested without delay. The decision shall be taken and communicated to the applicant within three months from the date of receipt of a copy of this order.

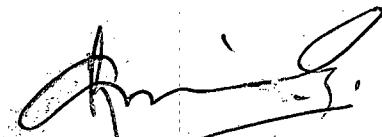


17. With the above observation, the Original Application is disposed of. No costs.

(Dated, 7th February, 2003)



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

CVR.