

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. No.110/98

Wednesday, this the 8th day of September, 1999

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Mrs P.K. Nair W/o N.K. Nair,  
C/o Finance Fabrica (India) Ltd.,  
Opp: Milma, Koonamathai,  
Edapally, Kochi - 682 024.

.. Applicant

By Advocate Mr Deepu Thankan.

Vs.

1. The Joint Director General of Foreign Trade,  
Ministry of Commerce,  
Central Government Office,  
New C.G.O. Building, South-east Wing,  
New Marine Lines, Churchgate,  
Mumbai - 400 020.
2. Union of India rep. by Secretary,  
Ministry of Commerce,  
Directorate General of Foreign Trade,  
Udyog Bhavan, New Delhi.
3. The Secretary,  
Bureau of Public Enterprises,  
Ministry of Industry,  
Public Enterprises Bhavan,  
C.G.O. Complex, Block No.14,  
Lodhi Road, New Delhi - 110 003.

..Respondents

By Advocate Mr Govindh K. Bharathan, Sr.CGSC.

The application having been heard on 8.9.99, the  
Tribunal on the same day delivered the following:

ORDER

The applicant seeks to direct the respondents to  
disburse the pension/retirement benefits due to her for  
the service rendered by her before absorption to the Public  
Sector Undertaking and also to direct the 3rd respondent  
to consider A5 representation submitted by her and pass  
appropriate orders forthwith.

2. The applicant joined as a Lower Division Clerk (Typist)  
in the Office of the Joint Chief Controller of Imports &  
Exports, Ministry of Commerce and Industry under the first  
respondent in the year 1951. While so, she applied for

the post of Upper Division Clerk through proper channel in the Fertilizer Corporation of India Ltd., Bombay, a Public Sector Undertaking. She worked under the Ministry of Commerce and Industry in the office of the Joint Chief Controller of Imports & Exports for a decade. In 1961, she was selected and appointed as Upper Division Clerk in the Fertilizer Corporation of India Ltd. which is later renamed as Rashtriya Chemicals and Fertilisers Ltd. A1 dated 23.5.61 is the order of appointment. First respondent relieved of her duties from the office of the 1st respondent as per A2 dated 31.5.61. In the year 1987, she retired from service. She was paid all the eligible benefits from the Rashtriya Chemicals & Fertilizer Ltd. For the period she worked in the office of the Joint Chief Controller of Imports & Exports under the 1st respondent, she has not been given the retiral benefits. Successive representations were made but nothing fruitful turned out so far.

3. Respondents resist the O.A. They contend that since the applicant has approached the Tribunal after lapse of 37 years, respondents are not liable for the claim. The applicant joined Rashtriya Chemicals and Fertilizers Ltd. against a fresh appointment. Such appointment was not in public interest. She evidently left to better her prospects. The applicant is not entitled to pensionary benefits.

4. From A2 dated 31.5.61, it is clearly seen that the applicant was relieved from the office of the Joint Chief Controller of Imports & Exports with effect from the afternoon of 31.5.61 to take up her appointment in the Fertilizer Corporation of India Ltd. at Bombay as Upper Division Clerk.

5. Respondents say that the norms governing retirement benefits payable to Government servants who have been transferred to Government Companies/Corporations are contained in R1A. Para (4)( i) of Appendix 12 of CCS Pension Rules says that resignation from government service with a view to secure employment in a Central Public Enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the Government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation.

6. Rule 37 of the CCS Pension Rules says that a Government servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to sub-rule (3) he shall be eligible to receive retirement benefits, if any, from such date as may be determined, in accordance with the orders of the Central Government applicable to him. So, there is nothing to show that the appointment should be in public interest as contended by the respondents. What is required is that resignation from government service for the purpose of securing employment in Central Public Enterprises should be with proper permission. That permission has been granted as evidenced from A2.

7. In R1A it is stated that government servants will be entitled to payment of pro-rata retirement benefits on absorption in Central Public Enterprises, provided the absorption in Central Public Enterprises, provided, the absorption in Central Public Sector Undertakings was in public interest.



R1A is only an Office Memorandum dated 3rd of January, 1995. As far as CCS Pension Rules are concerned, nowhere it is stated that only if the absorption in Central Public Sector Undertaking was in public interest, pro rata pension should be granted. R1A cannot supersede the CCS Pension Rules. By virtue of R1A, it cannot be read as an amendment to CCS Pension Rules. R1A cannot enlarge or abridge the scope of the CCS Pension Rules.

8. Respondents have stated that the applicant has not shown the actual basis for her claim for entitlement to pension. If that is so, the respondents could have very well passed an order stating that the applicant's claim has got no legal basis. Respondents have not done that. Respondents have stated in the reply statement that Rule 8 categorically states that pensionary benefits payable to Government servants should be decided by the Bureau of Public Enterprises. It seems to be apparently a mistake. Rule 8 of CCS Pension Rules deals with future conduct of the pensioner. In the reply statement it is stated that the applicant herself admits in A8 that she has lost her appointment order. There is no plea put forward by the respondents in the reply statement that the applicant was not working under the respondents. They cannot put forward such a claim in the light of A2. In the light of A2, it is too much on the part of the respondents to come forward with such a contention.

9. With regard to the ground raised that the O.A. is highly belated, it is well accepted principle that as far as the pension claim is concerned, there is recurring cause of action. That being so, it will not stand in the way of the applicant.

10. The applicant submitted A3 representation to the 1st respondent as early as in 1996. A4 is the reply to A3 stating that the applicant is to approach the Bureau of Public Enterprises i.e., the 3rd respondent. As per A5, the applicant approached the 3rd respondent in compliance with A4. A5 has not been so far disposed of. As per A6, the Ministry of Commerce (Grievance Cell) informed the applicant that further communication will follow as soon as a final decision is arrived at. As per A7, the applicant was informed that pensionary benefits to government servants who are appointed in the Central Public Sector Enterprises on immediate absorption basis shall be decided by the Administrative authority and she was directed to communicate to the Joint Director General of Foreign Trade, Mumbai. As per A9, in response to A8, she was informed that she should approach the Bureau of Public Enterprises. This is nothing short of driving the applicant from pillar to post. This is not what is expected from the government, a model employer. It is needless to say that granting pension is not a bounty or charity. It is regrettable that the authorities concerned instead of taking a reasonable approach and attitude in this matter has only chosen to cause harassment to the applicant, and ultimately when the applicant has approached this Tribunal, has filed a reply statement raising unsustainable contentions.

11. Accordingly, the 3rd respondent is directed to consider A5 representation in the light of the observation made in this order and pass appropriate orders within one



month from the date of the receipt of a copy of this order.

12. The Original Application is disposed of as above.

No costs.

Dated the 8th of September, 1999.



A.M. SIVADAS  
JUDICIAL MEMBER

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LIST OF ANNEXURES REFERRED TO IN THE ORDER

1. Annexure A1, True copy of appointment order No.Pers.TP/5(4)/3515 dated 23.5.61 of the Personnel Officer, Fertilizer Corporation of India Ltd. issued to the applicant.
2. Annexure A2, True copy of Memorandum No.A.6/255/61-Estt/785 dt. 31.5.61 of the Controller (Admn), Office of the 1st respondent issued to the applicant.
3. Annexure A3, True copy of representation submitted by the applicant before the 1st respondent on 25.11.96.
4. Annexure A4, True copy of Communication No.Est/Pen(Admn) 895 dated 15.1.97 of the 3rd respondent addressed to the applicant.
5. Annexure A5, True copy of representation submitted by the applicant before the 3rd respondent on 30.1.97.
6. Annexure A6, True copy of communication No.2(16)/97-Griv. dated 16.7.97 of the 2nd respondent addressed to the applicant.
7. Annexure A7, True copy of communication No.2/11/97-Per.II (A) /4406 dated 1.8.97 of the 2nd respondent issued to the 1st respondent with copy to the applicant.
8. Annexure A8, True copy of reminder submitted by the applicant before the 1st respondent on 14.11.97.
9. Annexure A9, True copy of Communication No.Estt/Pen/Admn/895-896-529 dt. 18. 12.97 of the 1st respondent issued to the applicant..