

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.126/2001.

Wednesday this the 22nd day of January 2003.

CORAM:

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

Dr. U.K.Gopalan, S/o UK Kumaran,
Ex. Scientist, "Jalanidhi",
SRM Road, Cochin 682012.

Applicant

(By Advocate Shri Shafik M.A.)

Vs.

1. Union of India represented by the
Secretary, Department of
Science and Technology,
Council of Scientific and Industrial Research (CSIR),
New Delhi.110001.
2. The Director,
National Institute of Oceanography (NIO),
Dona Paula, Goa 403 004.
3. State of Gujarat, represented by
the Secretary, Department of Fisheries,
New Sachivalaya, Gandhi Nagar.
4. The Commissioner of Fisheries,
Government of Gujarat,
Old Sachivalaya, Block No.10/3,
Gandhinagar.

Respondents

(By Advocate Shri P.J Philip, ACGSC(R.1&2)
(By Advocate Shri A.Renjith, GP.,(R.3&4)

The application having been heard on 22.1.2003, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant who retired on 31.5.93 as Scientist in Grade
E.I from the National Institute of Oceanography(NIO for short),
under the Council of Scientific & Industrial Research. (CSIR for
short), Government of India, is aggrieved by A-1 letter dated
24.1.2000, whereby the 2nd respondent refused to reckon his past
services under the 3rd and 4th respondents viz., Directorate of

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Fisheries, Gujarat and the Government of Gujarat for the period from 23.1.61 to 26.5.64 on the ground that he had voluntarily resigned as Senior Research Assistant from the Department of Fisheries under the Government of Gujarat on 26.5.64. As per A-1, the 2nd respondent also communicated to the applicant that the discharge of pro rata pensionary liability was to be done only by the parent organisation in all cases and that such settlement could not be undertaken by the individual. The impugned A-1 order is based on A-2 communication from the 3rd respondent to the effect that the applicant had voluntarily resigned as Senior Scientist on 26.5.64 from the Department of Fisheries, Government of Gujarat and that therefore, he was not entitled to get pensionary benefits. The applicant's case is that he had applied for the post of Senior Technical Assistant under the Indian Ocean Expedition, since constituted as National Institute of Oceanography, through proper channel, that he was duly selected to the post, and that on selection he joined the post under the Government of India after submitting his resignation specifically for the purpose of joining that post. After allowing the applicant to go through the formalities of selection and after relieving the applicant in order to enable him to join the new post, none of the respondents could take a plea that the resignation was voluntary and deny the benefit of the past service with the Department of Fisheries, Government of Gujarat, according to the applicant.

The applicant prays for the following reliefs:

"(i) To call for the records relating to Annexure A-1 to A-9 and the files relating to the selection of the applicant to the Indian Ocean Expedition and to quash Annexures A1 and A2 as illegal, arbitrary and violative of the rules;

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(ii) To declare that the services of the applicant rendered under the IIIrd respondent from 8.2.1961 to 26.5.1964 is eligible and qualifying service for being counted for pension and direct the IIIrd respondent to pay pro-rata contribution towards the pension accrued for the said service immediately;

OR IN THE ALTERNATIVE

(iii) to permit the applicant to remit the pro-rata contribution towards pension due from the IIIrd respondent as has been allowed to other employees of the IInd respondent;

(iv) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case; and

(v) To grant the costs of this Original Application.'

2. Respondents 1 and 2 have filed a reply statement initially opposing the O.A. on the ground that the pro rata pension liability was not discharged by the Government of Gujarat as the applicant had voluntarily resigned and that the settlement of pro-rata pension could not be undertaken by the applicant in the individual capacity.

3. The respondents No.3 & 4 viz., the Department of Fisheries, Gandhinagar and the Government of Gujarat resisted the application stating that the applicant had been paid notice pay in furtherance to his resignation and that, in any case, there was no liability to share the pensionary liability in view of the Government Resolution No.NVT/1188/670/P dated 30.7.1990 of the Government of Gujarat, on the basis of the provisions contained in Rule 14 of CCS(Pension) Rules whereby such requirement was discontinued. The respondents 3 & 4 would maintain that the respondents 1 & 2 alone were liable to discharge pensionary liability of the applicant.


4. The applicant filed a rejoinder. Payment of notice pay is

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denied by the applicant. He received his pay upto the date of his relief. According to the applicant, his resignation was purely a technical resignation which was required as per the rules, since he was moving from a State Government Organisation to a Central Government Organisation.

5. The respondents 1 & 2 have filed an additional reply statement also.

6. We have heard Shri Shafik, learned counsel for the applicant, Shri P.J.Philip, ACGSC for R.1 & 2 and also Shri A Renjith, GP for R.3 & 4. Shri Shafik emphatically stated that the applicant had severed his connection with the Department of Fisheries, Government of Gujarat by tendering resignation only in pursuance of his selection to the post of Senior Technical Assistant under the CSIR, Government of India with the administrative approval of the parent department. The applicant's resignation could not be treated as resignation simpliciter. He would argue that the applicant did not voluntarily resign. It was done only to enable him to take up the new job. It was not as though the applicant had submitted an application without the knowledge of the higher authorities in the Fisheries Department, Government of Gujarat. He would invite our attention to A-4 that shows that the applicant had sent the application through proper channel. The fact of selection was also not communicated to him directly, but to the Fisheries Department, Government of Gujarat as per A-5. The applicant was relieved from the post under the Department of Fisheries, Government of Gujarat w.e.f.26.5.64 as per A-6 dated 7.5.1964.



Availing the minimum joining time to enable him to reach Delhi to take up the new assignment, the applicant joined the new post on 3.6.1964, as disclosed by A-7, learned counsel for the applicant would state. He would further point out that the question of discharge of the pro rata pensionary liability is not a relevant matter in this case, since the whole requirement was discontinued as is clear from the decision No.8 coming under Rule 14 of the CCS(Pension) Rules.

7. Shri P.J.Philip, strongly relying on the reply statement, states that since the Government of Gujarat has emphatically stated that the applicant had voluntarily resigned from the State service, such service could not be counted for the purpose of pension. On his part, Shri Renjith, Govt. Pleader, appearing for R.3 & 4 would invite our attention to paragraph 8 of the relevant reply statement and would state that, the application was not routed through proper channel and that the applicant had resigned voluntarily from service. That being so, such resignation would not entail reckoning of past service for pensionary benefits while taking up the new job. In any case, the discharge of pro-rata pensionary liability on the part of the State Government is strongly denied by the learned Government Pleader.

8. We have considered the facts with reference to the pleadings on record and contentions put forward by the counsel on either side. We find that the applicant, while serving as Senior Research Assistant under the Government of Gujarat, had applied

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for selection for the post of Senior Technical Assistant under the CSIR, Government of India and that application was routed through proper channel, which is evidenced by A-4. The relevant portion^{of} which is re-produced as under:

"Below application from Shri U.K.Gopalan, Sr.Research Assistant of Fisheries Directorate, Ahmedabad for the post of Sr. Technical Assistant under Indian Ocean Expedition.

GF/G/App/3842
Directorate of Fisheries
Ahmedabad: 5-5-64

Forwarded with compliments to:

The Director, Indian Ocean Expedition, B-7, Hauz Khas Enclave, New Delhi for necessary action.

Sd/-
for Director of Fisheries
Ahmedabad."

The applicant was duly selected and the fact of selection was not communicated to him personally. On the otherhand, the communication was sent to his Departmental Head viz., the Director of Fisheries, Government of Gujarat as is clear from A-5. We see from A-5 that the Director of Indian Ocean Expedition (2nd respondent) had specifically requested the Director of Fisheries, Government of Gujarat, Ahmedabad to relieve Shri U.K.Gopalan (the applicant in this case) of his duties and ask him to report at the IOE office at New Delhi forthwith. It is understood that the Government of Gujarat (2nd and 3rd respondents in this case) were fully aware of the fact that the applicant was duly selected for the post and he was relieved for taking up the new job. We are satisfied that, there was a proper application of mind and exercise of approval on either side, when the official was selected and appointed to the post of Senior Technical Assistant under the respondents 1 & 2.

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But the applicant could not have joined the new post without severing his connection with his earlier department and for that purpose he had to tender his resignation, and such resignation cannot be considered as voluntary resignation. We therefore, hold that the resignation in his case was a technical resignation dictated by circumstances rather than volition of the applicant. The question of discharging of pro-rata pensionary liability is a matter which has lost its relevance in view of the various instructions under Rule 14 particularly of the Government of India's decision No.8 appended to Rule 14 of the C.C.S.(Pension) rules.

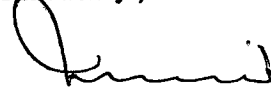
9. In view of the facts discussed above, the impugned A1 and A2 orders are set aside. It is declared that the services rendered by the applicant under the 3rd respondent from 8.2.1961 to 26.5.64 is eligible and qualifying service for purposes of calculating his pension. The 2nd respondent is directed to re-fix the applicant's pension and issue consequential orders in this regard within a period of three months from the date of receipt of a copy of this order.

10. No order as to costs.

Dated the 22nd January, 2003.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



T.N.T.NAYAR
ADMINISTRATIVE MEMBER