CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.155/94

Tuesday, this the 18th day of April, 1995.

C O R A M

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR P SURYAPRAKASAM, JUDICIAL MEMBER

....

Dr NP Hrishi,
(Former Director, CTCRI, Thiruvananthapuram)
UP 4/684, Bapujinagar,
Thiruvananthapuram--695 011.

....Applicant

By Advocate Shri MR Rajendran Nair.

vs.

1. Government of India represented by the Secretary,
Department of Agriculture, Research & Education,
Krishi Bhawan, New Delhi--110 001.

2. The Indian Council of Agricultural Research,
represented by the Director General,
Krishi Bhawan, New Delhi--110 001.

....Respondents

R.1 by Shri Varghese P Thomas, Addl Central Govt Standing Counsel

R.2 by Advocate Shri P Jacob Varghese.

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, who is a former Director, Central Tuber Crops Research Institute, Trivandrum, has filed this application praying for a declaration that he is entitled to be paid pension and pensionary benefits by taking into account 23 years' service rendered by him and to direct respondents to draw and disburse the amount due to him with interest at the rate of 12% per annum. Applicant also prays for a declaration that Rule 26 of the Central Civil Services (Pension) Rules, 1972 and the corresponding earlier rules are ultra vires of Articles 14 and 21 of the Constitution and hence unenforceable.

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2. The facts of the case can be noticed from the order in OA 1021/91 which applicant had filed earlier before this Tribunal in respect of the first prayer mentioned above. The Tribunal noticed the relevant portion of the recommendation of the Ministry of Agriculture sent to the Department of Personnel as under:-

> "(i) He worked as Botanical Assistant at erstwhile Indian Central Tobacco Committee (which was then under the administrative control of the Department of Agriculture and now it is a part of ICAR) from 21.4.52 to 5.3.58. He resigned from that post for prosecuting higher studies abroad.
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> (ii) He remained abroad for prosecuting higher studies i.e. Ph D from 6.3.58 to 1.12.62.
>
> (iii) He worked as Scientist Pool Officer in CSIR from 2.12.62 to 23.10.64.
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> (iv) He joined as Cytogeneticist (Class I senior) at SBI, Coimbatore (an Institute of ICAR) w.e.f. 24.10.64 and after working at various Institutes under ICAR, finally resigned from ICAR service w.e.f. 23.11.81.
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> From the service particulars mentioned above, it may be seen that Dr Hrishi rendered a continuous service of about 6 years at the Indian Central Tobacco Committee and a service of about 17 years in ICAR. Therefore, he rendered a total service of about 23 years. However, as he left the service of Indian Central Tobacco Committee and also ICAR service after resigning from the posts, and there was a gap of about 6 years during which period he remained abroad for prosecuting higher studies and also worked as Pool Officer at CSIR, no pensionary benefits could be given to him because services rendered at two different

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spells was less than 20 years in each case.

As per Rule 28 of the CCS (Pension) Rules, an interruption between two spells of civil service rendered by a Government servant under Government shall be treated as automatically condoned and the pre-interruption service treated as qualifying service. However, this rule does not apply to interruption caused by resignation/dismissal or removal from service etc. In the case of Dr Hrishi, as the interruption is caused by resignation, the interruption between two spells of service cannot be treated as automatically condoned....

We may refer this case to the Department of Pension and Pensioners' Welfare under Rule 88 of the CCS (Pension) Rules to condone the interruption between two spells of services as mentioned above in respect of Dr Hrishi so that his resignation from ICAR service could be treated as a request for voluntary retirement from service, for grant of pension and other terminal benefits."

3. The Department of Personnel, however, rejected the recommendation on the grounds that resignation from Government service entails forfeiture of past service; that his resignation from Central Tobacco Committee on personal grounds for prosecuting higher studies abroad results in forfeiture of his service from 21.4.52 to 5.3.58; that his resignation from ICAR's service being purely on personal grounds as he found the working atmosphere not congenial and hostile, i.e. malafide hostile discrimination, coercive harassment preventing him from doing his legitimate job and chances to work abroad, would result in forfeiting his services from 24.10.64 to 23.11.81; that the rules do not provide for retrospective conversion of resignation into voluntary retirement; and that acceptance of the ICAR's proposal in contravention of the basic and fundamental provisions of the Pension Rules would be prone to wide repercussions and that such demands from other quarters cannot be resisted.

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4. The case of Dr Hrishi was reconsidered at the instance of the Deputy Prime Minister and was rejected stating that the Department:-

> "have not been agreeing to convert resignation of Government servants into voluntary retirement...Dr Hrishi had resigned from service nearly 9 years back."

5. At this stage, the applicant approached the Tribunal in OA 1021/91. The Tribunal noticed that applicant had a chequered career, that he was a very highly qualified person who had earned the appreciation of a renowned scientist, Dr MS Swaminathan, and that he had a number of publications to his credit and was a member of several scientific societies, that he had various accomplishments as enumerated in Annexure I and that his achievements had not been brought out in an appropriate manner by the Ministry of Agriculture while forwarding his case to the Department of Personnel for favourable consideration of his representation. The Tribunal stated:-

> "Had this been done we believe that the Deptt of Personnel would not have rejected this proposal in an outright manner."

Therefore, the Tribunal considered that the case was not viewed in a proper perspective and needed a review. The Tribunal also noticed that applicant had been victimised and that the circumstances under which he had resigned needed further probing. The Tribunal stated that the recommendations of the Ministry of Agriculture for granting applicant pensionary benefits gives credence to the view that there is something deep in this case than what appears and that had the resignation of the applicant been on his own volition, the Ministry would not have so easily recommended grant of pensionary benefits. The Tribunal also stated that the Department of Personnel seemed to

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have taken a decision under fear of receiving innumerable representations if this case was accepted and that unfounded fear should not cloud the decision making. On these considerations, the Tribunal stated that it had come to the conclusion that applicant has a case for a favourable consideration. The Tribunal directed respondents 1 and 2 to review the recommendations made by them earlier and include in their recommendations the facts and materials on the basis of the observations in the judgement and directed respondent 3 to review its earlier decision and rejection of the request and recommendation of the Ministry of Agriculture for granting pensionary and other terminal benefits of the applicant on the basis of the revised recommendations sent by respondents 1 and 2. Respondent 3 was also directed to consider the case without the apprehension or fear of receiving similar requests from other quarters.

6. Respondents in their reply have stated that in compliance with the order of the Tribunal, the matter was reconsidered in detail. Even though applicant was not entitled to get pensionary benefits in view of the voluntary resignation from service the Council made a request to the Department of Pension and Pensioners' Welfare to relax the requirement under Rule 28 of the Central Civil Services (Pension) Rules. The Department of Pension and Pensioners' Welfare was of the view that such a relaxation was not possible in this case. Relaxation can be granted only in cases where there is real hardship incurred due to unfavourable circumstances. In this particular case, on both occasions, applicant who is fully aware of the consequences had voluntarily tendered his resignation and reaped benefits therefrom. According to respondents, impugned order A1 was in accordance with rules passed after reconsideration of the case.

7. This is a matter in which the Tribunal had directed respondents to reconsider their decision and pass appropriate orders

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invoking Rule 88 of the CCS (Pension) Rules. Rule 88 reads:

> **"Power to relax**
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> Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, the Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:
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> Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms."

The Tribunal had come to the conclusion that this was a case in which a favourable consideration of applicant's request was called for. The Tribunal also recorded the reasons for having come to such a conclusion. Nevertheless, the Department of Personnel and Administrative Reforms did not agree to the relaxation of the relevant rule by exercising its power under Rule 88 of the CCS (Pension) Rules. As seen from the Rule, the Department has to satisfy itself that the provisions of CCS (Pension) Rules would cause undue hardship in a particular case before it can exercise the power to relax the Rules. The satisfaction required is the satisfaction of the Department of Government and the Tribunal would not be justified in substituting its satisfaction for that of the Department concerned. Apparently, it was the view of the Government that there was no undue hardship caused in this particular case which would require relaxation of the rules by exercise of the power to relax under Rule 88.

8. Learned counsel for applicant relied on the decision in The

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Comptroller and Auditor General of India, Gian Prakash, New Delhi and another vs. KS Jagannathan and another, AIR 1987 SC 537, to support his contention that the Tribunal can direct respondents to exercise their discretion in the manner which Tribunal considers correct and that when the Tribunal had concluded that this was a case where the request of the applicant should be favourably considered, the Tribunal would be justified in giving a direction to respondents to relax the rules in favour of applicant. The case cited relates to relaxation of standards in favour of Scheduled Castes/Tribes in departmental competitive examinations which has been set out in various office memoranda issued from time to time by the Government of India. A Division Bench of the High Court,

> "After looking into the said file and analysing the figures to be found therein, ...came to the conclusion that the authorities concerned had not applied their mind to the actual state of affairs which existed and that this had resulted in an arbitrary fixing of the relaxation which negatived the benefit that lawfully would have come to the Scheduled Castes and Scheduled Tribes candidates and that, therefore, the fixing of the relaxation was arbitrary and made in perverse fashion. The Division Bench further held that it could not straightway declare the Respondents as having passed Part II of the SAS Examination held in December, 1980 as it was for the concerned authorities to apply their mind, bearing in mind the criteria which the Division Bench had mentioned, and to consider the case of the Respondents by granting relaxation."

The Supreme Court, referring to the contentions of the appellants that the Division Bench of the High Court could not issue a writ of mandamus to direct a public authority to exercise its discretion in a particular manner, stated:-

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"There is a basic fallacy underlying this submission--both with respect to the order of the Division Bench and the purpose and scope of the writ of mandamus. The High Court had not issued a writ of mandamus...What the Division Bench did was to issue directions to the Appellants in the exercise of its jurisdiction under Article 226 of the Constitution...Even had the Division Bench issued a writ of mandamus giving the directions which it did, if circumstances of the case justified such directions, the High Court would have been entitled in law to do so for even the courts in England could have issued a writ of mandamus giving such directions....There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

(Emphasis added)

9. In the present case, the Tribunal directed the public authority to review its earlier decision of rejection of the request of applicant taking note of the observations of the Tribunal. This has been done by the respondents. The decision of the respondents cannot be said to be unreasonable or perverse or that it is based on irrelevant considerations which would call for interference by the Tribunal by issuing a direction substituting the satisfaction of the Tribunal for the satisfaction of the Department of the Government required under Rule 88 of the CCS (Pension) Rules. The various notings which have been extracted in the order of the Tribunal in OA 1021/91 indicate that the decision of the Department of Government had earlier been taken with due consideration of the various aspects of the matter. The Tribunal in its order stated:-

> "Though we may not venture to say that there is no application of mind in this case at the highest level...."

The Tribunal came to one conclusion based on the facts of the case and felt that the case of the applicant deserved favourable consideration, while the respondents came to the conclusion that this was not a fit case where the Rules have to be relaxed. Respondents have reconsidered the matter and have come to the same conclusion as seen in the impugned order A1 dated 25.11.1993. Under these circumstances, we do not think that this is a fit case where the Tribunal can direct respondents to exercise their discretion in a manner which would be favourable to applicant.

10. Applicant has raised a new ground in this OA which was not raised in OA 1021/91. He states that Rule 26 of the CCS (Pension) Rules, 1972 under which he forfeited his past service by virtue of his resignation, is arbitrary, unreasonable and unjust. According to

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applicant, the vested right to receive pension which is deferred wage, was being taken away by forfeiting past service. Since pension was his livelihood as a pensioner, denial of the livelihood would amount to violation of Articles 14 and 21 of the Constitution. Applicant states that he cannot be denied livelihood except in accordance with reasonable procedure established by law and Rule 26 which provides for forfeiture of entire past service on resignation, is unreasonable and violative of Articles 14 and 15 of the Constitution. Applicant argues that Rule 5(1) of the CCS (Pension) Rules indicates that pension can be regulated even in respect of a person who is allowed to resign from service. Rule 5(1) states:-

> "5. Regulation of claims of pension or family pension
>
> (1) Any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be."
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> (Emphasis added)

Applicant, therefore, argues that since Rule 5(1) allows a claim to pension to be regulated even in a case where a Government servant is allowed to resign from service, Rule 26, which prohibits such cases from becoming eligible for pension should be considered violative of his entitlement to pension.

11. A reference to Rule 26 shows that though resignation from service is stated to entail forfeiture of past service, the same rule also provides for various cases where resignation would not entail forfeiture of past service. Therefore, there is no basic contradiction between Rule 26 and Rule 5(1) of the CCS (Pension) Rules, 1972.

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The right to receive pension is governed by various policy decisions of the Government made from time to time and various periods of qualifying service have been prescribed for eligibility to pension at various rates. Government is well within its rights to prescribe various conditions under which pension is granted and it would not be violative of any of the fundamental rights if certain persons had been found ineligible for the grant of pension as a result of the application of the statutory Rules. The Tribunal, of course, can interfere if conditions prescribed for grant of pension are unreasonable or perverse. The condition that a person who voluntarily resigned from service forfeits past service for reckoning eligibility to pension cannot be considered unreasonable or perverse. A Government servant resigns voluntarily fully knowing the consequences of such resignation and there would not be any denial or violation of his fundamental rights, if the rule prescribes that resignation tendered by him results in forfeiture of his past service and as a consequence affects his eligibility for pension and other terminal benefits. In our view, the challenge to Rule 26 of the Central Civil Services (Pension) Rules, 1972 is misconceived.

12. In the light of the foregoing discussion, we find that the application is without merit. It is accordingly dismissed. Under the circumstances, there is no order as to costs.

Dated the 18 th April, 1995.

P SURYAPRAKASAM
JUDICIAL MEMBER

PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

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