

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 167/2011

Tuesday, this the 27th day of September, 2011.

CORAM

**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER**

Geetha.K.H.
W/o Ananthakrishnan,
(Ex- Postal Assistant,
S/o Senior Superintendent of Post Offices,
Palakkad Division, Palakkad)
Residing at No.F2,
Abhirami Apartments,
Kalchetti Street, Kalpathi.P.O.
Palakkad-678 003. - Applicant


(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by
Secretary to Government of India,
Ministry of Communication,
Department of Posts,
New Delhi-110 001.
2. The Chief Postmaster General,
Kerala Circle,
Department of Posts,
Thiruvananthapuram-695 001.
3. The Senior Superintendent of Post Offices,
Palakkad Division,
Palakkad-678 001.
4. The Chief Engineer (HRM),
Kerala State Electricity Board,
Vidyuthi Bhavanam, Pattom,
Thiruvananthapuram-695 001. Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC for R.1 to 3)

(By Advocate Mr Pulikool Aboobacker for R.4)

 This application having been finally heard on 22.9.2011, the Tribunal on 27.09.2011 delivered the following:

ORDER**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

The applicant was initially appointed in the postal Department as Postal Assistant on 9.5.1992. He had applied through proper channel for appointment to the post of Assistant Engineer in the Kerala State Electricity Board (KSEB for short) and on his selection, he was offered the said post vide Memo dated 12.11.1998. Necessary No Objection Certificate was also issued by the Postal Department to the KSEB. As the rules provide for technical resignation, the applicant accordingly made an application dated 26.11.1998 addressed to the 3rd respondent and routed the same through proper channel. Annexure A-1 refers. This was accepted by the KSEB and the applicant joined the post of A.E in KSEB on 27.11.1998.

2. Provision exists for counting of past service for the purpose of pension etc subject to fulfilment of certain conditions. One of them relates to remittance of pro rata pension and other terminal benefits by the parent department to the KSEB. The request of the applicant for payment of pro rata pension liability was initially rejected by the 3rd respondent vide Annexure A-4 letter. However, on persuasion, his plea was accepted by the KSEB. Vide Annexure A-6, the KSEB addressed a communication to the Deputy Chief Engineer, Electrical Circle, Palakkad for certain details/despatch of service book with a view to enable the Board to work out pro rata pension and DCRG to be remitted by the Postal Department to the KSEB. Subsequent correspondence in this regard had taken place including repeated requests to the concerned authorities. Vide Annexure A-11 communication dated 12.11.2003, the applicant was informed that there is no provision in the rules of the department to remit any amount as requested

for.



3. Undaunted by the aforesaid adverse communication, the applicant ~~was~~ pursued the matter frequently and periodically and since there has been no favourable response from the Postal Department, the applicant has moved this O.A seeking the following reliefs:

- i) Declare that respondents 1 to 3 are bound to discharge their pension liability for the service rendered by the applicant under them between 9.5.1992 and 26.11.1998;
- ii) Direct the respondents 1 to 3 to remit the pro rata pension liability of the applicant for the service rendered by the applicant between 9.5.1992 and 26.11.1998 forthwith to the 4th respondent.

4. Respondents (Postal department) furnished their reply stating that Rule 37 of the Pension Rules does not apply to the facts of the case and the applicant is, therefore, not entitled to any such benefits as he prays for.

5. Counsel for the applicant argued that this is not the first case whereby absorption had taken place at the office of the KSEB. In a number of cases where request for remittance of pro rata stood refused, this Tribunal has interfered with a view to administer justice and pass suitable orders for remittance of the pro rata pension etc. Counsel for the applicant further submitted that there are precedent in this regard to support his case.

6. Counsel for the respondents on the other hand submitted that as no rule provided for remittance of pro rata pension, the department could not entertain the request of the applicant.




7. Arguments were heard and documents perused. Counsel for the applicant is right when he has submitted that this is not the first case where a central government servant shifts to a State Government Organization and seeks the parent organization to bear the pro rata pension liability. He has cited a few decisions of this Tribunal including the following two cases -

(a) OA No.. 617 of 2007 decided on 04-12-2008;

(b) OA No. 567 of 2009 order in which has been upheld by the High Court vide judgment dated 14-12-2010 in WP(C) 20632 of 2010(S).

8. A perusal of the pleadings goes to show that the respondents have refused to accede to the request of the applicant stating that "there is no provision in the rules of this Department to remit any amount as requested." Annexure A-11 refers. Again, in response to ground B, the respondents have stated that Rule 37 of the Pension Rules does not apply to the case of the applicant. It appears that the respondents have omitted to consider the general instruction issued by the Nodal Ministry i.e. the Department of Personnel which are compiled in the Pension Compilation incorporating CCS Pension Rules of Swamy's publications. Appendix 11 exclusively deals with Grant of pro rata retirement benefits to Government servants permanently transferred to Public Sector Undertakings, Autonomous Bodies, etc., including remittance of pro rata pension liability. One such OM is No. 28-10/84-Pension Unit, dated 29-08-1984. Para 3 (i) thereof inter alia reads as under:-

"Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an Autonomous Body, the service rendered by him under the Government shall be allowed to be counted towards pension under the Autonomous Body irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the Autonomous Body, he will get terminal benefits as are normally available to temporary employees under the Government. The



same procedure will apply in the case of employees of the Autonomous Bodies who are permanently absorbed under the Central Government.


The Government/Autonomous Body will discharge its pension liability by paying in lumpsum as a one time payment, the pro rata pension/service gratuity/terminal gratuity and retirement gratuity for the service up to the date of absorption in the Autonomous Body/Government, as the case may be. Lumpsum amount of the pro rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time."

The above was with reference to transfer from Central Government to Central Government Undertakings and vice versa. This provision was later on extended to transfer from Central Government to State Government/State Government undertakings and vice versa, vide Dept of Pen. & Pen. Welfare, OM No. 28(10)/84-P & P.W/Vol II dated 7th February, 1986, 17th June 1986, 30th October, 1986 and 20th March 1987 etc., and the same reads as under:-

"Transfer of Personnel between Central Government/Autonomous Bodies and State Governments/Autonomous Bodies and vice versa

[Government of India, Dept. of Pen. Welfare, O.M.No.28(10)/84-P.&P.W/Vol.II, dated the 7 February, 1986, 17th June, 1986 30th October, 1986 and 20th March, 1987, etc.]

In August, 1984, Central Government had issued orders that where a Central Government employee borne on pensionable establishment is allowed to be absorbed in a Central Autonomous Body having a pension scheme of its own, the service rendered by him under the Government shall be allowed to be counted towards pension under the Autonomous Body irrespective of whether the employee was temporary or permanent in Government, subject to certain conditions. The same procedure will apply in the case of employees of the Autonomous Bodies who are permanently absorbed under the Central government. Certain employees of the State Governments and State Autonomous Bodies who joined the Central Autonomous Bodies/Statutory Bodies, have also represented that their service under the State Government/State Autonomous Body may be allowed to be counted towards pension under certain Central Government servants and employees of the Central Autonomous Bodies/Statutory Bodies might have joined Autonomous Bodies/Statutory Bodies (excluding public undertakings) of the State Governments and may be desirous of getting the benefit of counting of service under Central Government/Autonomous Bodies towards pension in the organisations where they are presently working.



2. In the circumstances explained above, it was felt that reciprocal arrangements may be entered into with the various State Governments to the effect that where employees of the State Governments/State Autonomous Bodies/State Statutory bodies, have been absorbed in the Central Autonomous Bodies, they may be allowed the same benefits as have been extended to the Central Government servants and vice versa.

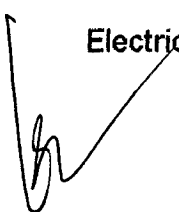
3. The question of extension of various benefits like counting of service, etc in the cases of (i) employees of the Central Government absorbed in State Autonomous Bodies, and (ii) employees of Central Autonomous Bodies absorbed in State Governments and State Autonomous Bodies, and vice versa, has been considered in consultation with the State Governments. After careful consideration, the President has now been pleased to decide that these cases may be decided in accordance with the principles as laid down in the Department of Personnel and Administrative Reforms, OM NO.28/10/84-Pension Unit, dated 29.8.1984 [vide Order 6(i) above]. The cases of Central Government servants appointed in State Governments and vice versa will continue to be decided as hitherto.

4. Similar orders regarding counting of service of the Central Government employees in the event of their absorption in the State Autonomous Bodies and employees of the Central Autonomous Bodies in the State Governments, and State Autonomous Bodies, as well as orders regarding acceptance of pension liability, etc, in respect of State Government and State Autonomous Bodies' employees absorbed in Central Autonomous Bodies and employees absorbed in Central Autonomous Bodies and employees of State Autonomous Bodies absorbed in Central Government will be issued by the respective State Governments.

5. These orders shall apply to employees of the State Governments and State Autonomous Bodies moving to Central Government, Central Government Auto Bodies.

6. These orders will apply to the employees of the Central Government moving to State Autonomous Bodies and employees of Central Autonomous Bodies to the State Governments and their Autonomous Bodies mentioned in Para 5 above and vice versa who are in service on the date of issue of these orders, irrespective of the date of their absorption."

9. In their decision in W.P. No. 20632 of 2010 referred to in Para 7(b) above, the High Court disposed of the writ petition by directing the Railways to either grant pension in terms of Rule 53 of the Railway Pension Rules for the services the first respondent rendered in Railways and communicate the same to the Electricity Board or to make contribution if that is the procedure for K.S.E.B., to



give pension to the first respondent reckoning his services in the Railways also.

10. In the instant case, by virtue of the OM of the Nodal Ministry, there should be no impediment for the respondents herein to make available the pro rata pension liability to the K.S.E.B.

11. In view of the above, the OA is **allowed**. It is declared that the respondents No.1 to 3 are to discharge their pension liability for the services rendered by the applicant under them for the period the applicant has rendered service with them (which according to the applicant is from 09-05-1992 to 26-11-1998). Accordingly, the respondents are directed to remit the pro-rata pension liability of the applicant to the K.S.E.B. after ascertaining the extent of amount to be remitted. The respondents shall liaise with the K.S.E.B. in this regard. K.S.E.B. is also directed to cooperate with the respondents by furnishing all information required in regard to such remittance by the respondents (postal department).

12. This order shall be complied with, within a period of six months from the date of communication of this order.

13. No cost.


K NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S. RAJAN
JUDICIAL MEMBER

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