

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.18/97

Monday, this the 17th day of February, 1997.

C O R A M

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

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1. S Parameswaran Pillay, Head Accounts/
Internal Financial Advisor (Rtd),
Karthika, Plot No.19, Space Nagar,
Trivandrum.
2. R Ganesan, Scientist/Engineer,
SD Materials Processing Division,
Materials and Metallurgy Ground,
Vikram Sarabhai Space Centre,
Trivandrum--695 022.

....Applicants

By Advocates M/s KL Narasimhan.

vs

1. Union of India represented by
its Secretary, Department of Space,
Antariksha Bhavan, New BEL Road,
Bangalore--560 094.
2. The Director,
Vikram Sarabhai Space Centre,
Trivandrum.

....Respondents

By Advocate Shri CN Radhakrishnan.

The application having been heard on 11th February,
1997, the Tribunal delivered the following on 17th Feb.,
1997:

O R D E R

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

First applicant, who retired as Internal Financial Adviser from the Vikram Sarabhai Space Centre, had joined the organisation after serving in the Neyveli Lignite Corporation. He submits that at the time he joined the organisation, it was a grant-in-aid institution under the control of the Physical Research Laboratories, which was a registered society and the service was not pensionable. A number of employees from other

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public sector undertakings had also joined like applicants. The organisation was later on converted into a Government Department in 1975 and option was given to employees to choose pensionable service or otherwise. Applicant opted for pensionable service. His grievance is that the service he had rendered in Neyveli Lignite Corporation prior to his joining the Indian Space Research Organisation (ISRO) was not counted as qualifying service for pension.

2. Second applicant submits that he joined the Vikram Sarabhai Space Centre while he was in the Heavy Electricals (India) Limited (we presume he means Bharat Heavy Electricals Limited). His grievance is that the service he had rendered in the Heavy Electricals (India) Limited was not treated as qualifying service for pensionary benefits.

3. Applicants submit that by orders A-5, the Government of India had permitted counting of service for pension in respect of personnel of autonomous bodies coming over to the Central Government. The contention of applicants is that there is no reason to discriminate against employees of public sector undertakings, which are on par with autonomous bodies. An association of employees had approached the Tribunal in OA 668/90 praying for direction to count the past service rendered in different public sector undertakings as qualifying service for purpose of grant of pension. The Tribunal directed consideration of a representation and respondents passed A-7 order dated 28.1.93 rejecting the representation on the ground that the policy of the Government of India is not to count the service rendered in public sector undertakings for purposes of pension. Against that order, the association approached the Tribunal again in

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OA 371/91 and the Tribunal again directed consideration of their representation. The impugned orders A-1 and A-2 in respect of the two applicants before us have been passed by the respondents consequent to the representation made as directed by the Tribunal. Respondents have rejected the representations stating that there is no provision in the Central Civil Services (Pension) Rules, 1972 under which service rendered in public sector undertakings can be counted for extending pension and other retirement benefits. It is also stated that this is because there is no parity in the matter of pay structure between the Government and the public sector undertakings and between public sector undertakings. A-4 memorandum of Government of India, Ministry of Personnel, Public Grievances and Pension, has stated that since the Central Public Sector Undertakings do not have pension scheme similar to that of the Central Government, the past service in public sector undertakings cannot be counted as qualifying service for pension. In A-6 memorandum dated 10.2.86, the Government of India, Department of Space had stated that while Central Government autonomous bodies are non-profit organisations, public sector undertakings are primarily commercial organisations and, therefore, it is not possible to treat public sector undertakings on par with autonomous bodies for purpose of pension. Applicants submit that in the case of one Shri Madhavan Nair, who had come to the ISRO from the Indian Rare Earths Limited (IREL) the service in the IREL has been ordered to be counted as qualifying service for pension and other retirement benefits, subject to his refunding the gratuity and CPF contribution along with interest, received by him. Applicants contend that when respondents have granted the benefit to Shri Madhavan Nair, who was similarly placed, there is no reason to discriminate against the applicants. They pray that

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the impugned orders A-1 and A-2 be quashed, being discriminatory and violative of the rules of natural justice and equality and for a direction to respondents to count their service under the Neyveli Lignite Corporation/Heavy Electricals (India) Limited as qualifying service for purpose of fixing their pension on superannuation with consequential benefits.

4. The question whether service under public sector undertakings should count as qualifying service for pension in respect of an employee who moved over from a public sector undertaking to the Government of India, is a policy matter which is within the exclusive jurisdiction of the respondents. The reasons given by respondents to distinguish between Central Autonomous Bodies and Public Sector Undertakings cannot be said to be arbitrary or unreasonable and, therefore, the policy decision taken by Government of India not to count the service rendered in public sector undertakings for purposes of pensionary benefits in respect of employees who have come over from public sector undertakings to the Government of India cannot be interfered with by the Tribunal. The contention that the benefit has been given to one Shri Madhavan Nair cannot also be of assistance to applicants. The conditions under which the past service of Shri Madhavan Nair is ordered to be counted as qualifying service and the grounds on which orders A-9 were issued are not before us. That apart, it is well settled that an order passed in the case of another person similarly situated cannot be a ground for issuing a writ in favour of applicants. Authority for supporting this proposition can be found in Chandigarh Administration and another vs Jagjit Singh and another, AIR 1995 SC 705, where the Supreme Court has stated:

"Generally speaking, the mere fact that the respondent-authority has passed a particular

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order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order...Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor is his case...In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise...Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles."

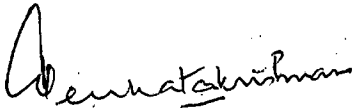
In this case, the impugned orders have been passed in

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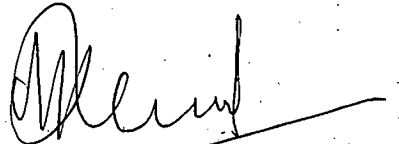
accordance with the policy laid down by the Government of India in this behalf. We do not find anything unreasonable or arbitrary in the policy adopted by the Government of India in this behalf. The basic order incorporating the policy has not also been challenged in this application. We do not see any reason to grant the reliefs prayed for by the applicants.

5. We accordingly dismiss the application in limine. No costs.

Dated the 17th February, 1997.



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



AV HARIDASAN
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A1: True copy of order No.2/10(2)/94 I dated 9.8.95 issued by Secretary, Space Department to the 1st applicant.
2. Annexure A2: True copy of order No.2/10(2)/94-I dt. 9.8.95 issued by Secretary, Space Department to the 2nd respondent.
3. Annexure A4: True copy of the memorandum P & PW(D) dt. 2.6.89 issued by Secretary to the Government of India.
4. Annexure A5: True copy of the memorandum No.28/10/84 dt. 29.8.84 issued by Government of India Pension Unit.
5. Annexure A6: True copy of the Officer's Memorandum No.2/10(2)/85-I dt. 10.2.1966 issued by Addl. Secretary, Space Department.
6. Annexure A7: True copy of the Office Memorandum No.2/12/(2)/90-I dated 28.1.1993 issued to first applicant by Under Secretary, Space Department, similarly placed.
7. Annexure A9: True copy of the Memorandum No.VSSC/GSS/PS/13342/581 dated 17.2.92 issued to Sri. Madhavan Nair by Administrative Officer-II, Space Department.

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