

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.185/2001

Thursday, this the 2nd day of January, 2003

C O R A M

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER  
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

R. Hariharan, S/o. H. Ramaswamy Iyer,  
Retired Head Account and Internal Financial Adviser,  
Vikram Sarabhai Space Centre,  
Thiruvananthapuram - 22,  
Residing at Ramnivas, 23/513, Chinnachalal Street,  
Thiruvananthapuram.

..Applicant

[By Advocate Mr. P.C. Haridas.]

Vs.

1. The Union of India represented by  
the Secretary to Government of India,  
Department of Pension & Pensioners Welfare,  
Ministry of Personnel, Public Grievances & Pensions,  
New Delhi
2. Secretary, Department of Space,  
Anthareeksha Bhawan, New B.E.L. Road,  
Bangalore : 560 054
3. The Director, Vikram Sarabhai Space Centre,  
I.S.R.O. Post, Thiruvananthapuram : 695 022
4. The Controller, Vikram Sarabhai Space Centre,  
I.S.R.O. Post, Thiruvananthapuram : 695 022
5. Secretary,  
Department of Personnel & Administrative Reforms.

..Respondents

[By Advocate Mr.C.N. Radhakrishnan.]

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

Aggrieved by Annexure A/12 order dated 10.08.2000 issued  
by the 4th respondent, the applicant has filed this O.A. under  
Section 19 of the Administrative Tribunals Act, 1985, seeking  
following reliefs:-

"(i) To declare that the applicant is entitled to have relaxation of rules under Rule 88 of CCS Pension Rules.

(ii) To direct the respondents to refix the pension of the applicant after counting his service in the Defence Accounts Department and ECIL, and to draw and disburse the arrears of pension from the date of retirement till date of payment with interest at the rate of 18% per annum.

(iii) Grant such other relief as may be prayed for and the Tribunal may deem fit to grant, and

(iv) Grant the cost of this Original Application."

2. The averment in the application is that the applicant commenced his service on 05.06.57 as Upper Division Clerk and as Cost Accountant in Defence Accounts Department. While so, he applied for the post of Cost Accountant in Electronics Corporation of India Limited (ECIL, for short), an Organisation of Government of India, Department of Atomic Energy Undertaking, and joined there after due selection. It is usual practice to resign and join the new assignment. This is a basic requirement mentioned in ECIL's offer also. Accordingly, he resigned on 31.03.1967 and joined ECIL on 25.09.67. While working at ECIL, he got another appointment in Vikram Sarabhai Space Centre (VSSC, for short), which was an Autonomous Body at the time of his appointment and hence, there was no pension Scheme and only Contributory Provident Fund Scheme was available. Thereafter, Indian Space Research Organisation (ISRO, for short) was reconstituted as a Government department in 1974 and the employees who opted for pension Scheme and who were holding a pensionable post elsewhere before joining ISRO were directed to submit their details in respect of past services for considering the same for retirement benefits. Accordingly, the applicant furnished his past service details. The 3rd respondent rejected the request of the applicant to count his services in the Defense Accounts Department and also the services rendered in the ECIL vide Annexure A/1 office memorandum dated 15.03.94. The



applicant resigned from the Defence Accounts Service on 31.03.1967 and his resignation was accepted with effect from 31.03.1967 vide Annexure A/2 order dated 18.04.67 issued by the Controller of Defence Accounts (Navy). It is submitted that after considering his qualification and experience, the ECIL offered the post of Cost Accountant vide order dated 11.08.1967 and thereafter, he was appointed to SSTC, presently VSSC, as per order dated 11.03.71. The applicant continued the position held at VSSC (an Autonomous Body) till 31.03.75. After the resignation from the Defence Accounts Department and before joining the ECIL, applicant had a contractual consultancy with English Indian Clays Ltd., a temporary one on professional ethics. Against the order rejecting the application of the applicant for counting the period of service in Defence Accounts Department and ECIL, he approached this Tribunal by filing O.A. 1551/91 and this Tribunal vide order dated 21.07.93 (Annexure A/3) directed the applicant to approach the competent authority for redressal of his grievance. Accordingly, the applicant submitted a representation to the 2nd respondent seeking relaxation of rules. The second respondent rejected his representation against which applicant filed O.A. 1391/94 before this Tribunal. This Tribunal vide order dated 12.10.94 (Annexure A/4) disposed of the O.A. with the observation that the applicant may submit an appeal to the Hon'ble President of India as the appellate authority against the impugned order. Accordingly, the applicant filed an appeal to the Hon'ble President of India in January, 1995. Later, on finding that no such appeal was traceable in the office, he sent another copy of appeal (Annexure A/5) in 1996, which was acknowledged on 26.03.94. Since there was inordinate delay in considering the appeal, the applicant again approached this Hon'ble Tribunal by filing OA No. 75/99 and the said OA was closed on the submission of the respondents that a decision had already been taken on the

appeal on 09.02.99. Annexure A/6 is the order in OA No. 75/99 and Annexure A/7 is the order rejecting the appeal of the applicant. Again, challenging the order Annexure A/7, the applicant filed OA No. 436/99 and this Tribunal dismissed the said OA on 30.06.99 vide Annexure A/8. In an identical case (OA No. 491/91), this Tribunal passed an order directing the respondents to count past service of the applicant therein in various establishments for the purpose of pensionary benefits. Annexure A/9 is the copy of the said judgement dated 04.11.92. The case of the applicant is squarely covered by the principles laid down in Annexure A/9 and the applicant therein is similarly situated with that of the present applicant. Aggrieved by order Annexure A/8, the applicant approached Hon'ble High Court of Kerala by filing OP No. 3065/2000, which has been disposed by judgement dated 13.03.2000, directing the respondents to consider the case of the applicant in the light of Ext.P13 in the O.P. Annexure A/10 is the copy of the said judgement of Hon'ble High Court of Kerala. This Tribunal had also followed Annexure A/9 judgement in some other cases and directed the respondents to extend the benefit conferred therein to the applicant in OA No. 1749/98. Annexure A/11 is the true copy of the order passed in OA No. 1749/98. Pursuant to Annexure A/10 judgement of Hon'ble High Court, the 4th respondent reconsidered the matter and rejected the representation of the applicant vide order dated 10.08.2000 (Annexure A/12). The stand taken by the respondents is that the period spent in the private Company cannot be condoned. The applicant submits that the same benefits given to the applicants in Annexures A/9 and A/11 be extended to him also as he is similarly situated with that of the applicants. Therefore, there is no rhyme or reason for denying benefit to the applicant by singling him out. The applicant again submitted a representation dated 31.08.2000 (Annexure A/13) against A/12 order.

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3. Respondents have filed a detailed reply statement contending that the applicant was initially working in Defence Accounts Department under the Ministry of Defence during the period 05.06.1957 to 31.03.1967. He voluntarily retired from Defence Accounts (Navy) with effect from 31.03.67 and thereafter, he served in M/s. English Indian Clays Limited, Trivandrum, which is a private concern, with effect from 01.06.67 to 19.09.67. Subsequently, he joined ECIL and served there from 25.09.67 to 11.11.71 and then joined VSSC, an autonomous organisation under the ISRO, on 17.11.71. He retired on superannuation from VSSC on 31.07.91.

4. After retirement, the applicant approached this Tribunal by filing O.A. No. 1551/91 and pleaded that the applicant is similarly situated, is out of misconception. Since the applicant was retired from Government Service and joined the private Company, M/s. English Indian Clays Ltd., his past services could have automatically been forfeited, whereas in the case of one Shri KG Shenoy in the successful OA No. 491/91, he resigned the service to take up employment in a Public Sector Undertaking (M/s. Hindustan Organics Limited), and not a private company. It is further submitted that the direction of Hon'ble High Court in OP No. 3065/2000 dated 13.03.2000 was complied with by issue of a speaking order. Aggrieved by the decisions of the department, the applicant again approached this Tribunal by filing the present O.A. for the same relief, and the O.A. is liable to be rejected on the principle of res-judicata.

5. The applicant filed a rejoinder contending that para 8.1 of the offer of appointment of ECIL stipulates production of release certificate and a service certificate from the present employer, which can be obtained only on resignation from the

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present employer. In an appeal to the President of India, no speaking order was received by the applicant and hence, he was forced to file O.A. 75/99 before this Tribunal. The respondents should have come to the same conclusion in this case also, i.e., to implement the orders contained in Shri K.G. Shenoy's case (supra) in the case of the applicant as well.

6. The respondents filed additional reply statement contending that there was no necessity to resign prior to the date of receipt of the offer of appointment as alleged in the rejoinder. The employment of the applicant in the private company makes the case different from the cases relied upon by him. There is no Government guidelines to condone the work done in a private Company. The averment that the work undertaken by him was purely a contractual assignment is not correct. No proof to that effect was also furnished to the department. The applicant is not entitled to any relief as prayed for.

7. We have heard learned counsel for the applicant, Shri P.C. Haridas and Shri C.N. Radhakrishnan, learned counsel for the respondents.

8. Learned counsel for the applicant submitted that he is qualified for pensionary benefits if a liberal and lenient interpretation of Rule 88 of the Central Civil Services (Pension) Rules, 1972 is taken. Rule 88 of the CCS (Pension) Rules, 1972, provides for relaxation of any Rule if it causes undue hardship in any particular case for just and equitable consideration of such cases. The provisions of the Rules providing forfeiture of past service in case of resignation is ultra vires to Articles 14 and 16 of the Constitution. Rule 88 is intended to be invoked in

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such contingencies to ameliorate the hardship caused due to the rigor of any other rules and refusal to invoke that rules in its true letter and spirit would be arbitrary and unreasonable.

9. Learned counsel for the respondents on the other hand pleaded that as per Rule 26(2) of CCS (Pension) Rules, 1972, resignation, whether with or without intimation/permission results in forfeiture of past service, unless submitted to take up another appointment in Government where service qualifies. Instead of challenging the judgement of Hon'ble High Court in OP No. 3065/2000 before the Apex Court, the applicant again approached this Tribunal for the same relief and the O.A. is hit by the principles of resjudicata and is liable to be dismissed.

10. We have given due consideration to the arguments advanced by both the counsel and the documents and materials placed on record.

11. The grievance of the applicant is that the service rendered by him in Defence Accounts Department and ECIL prior to joining ISRO has not been taken into account for the purpose of pension and other retirement benefits. Earlier, the applicant filed O.A. No. 436/99 before this Tribunal, which was dismissed by an order dated 30.06.99 and thereafter, the applicant filed an OP No. 3065/2000 before Hon'ble High Court of Kerala against the aforesaid decision and the same was disposed of vide order dated 13.03.2000 directing the authorities concerned to consider the case of the applicant with that of one Shri K.G. Shenoi, the applicant in another case (OA No. 491/91). Accordingly, the case of the applicant was considered by the respondents vide Annexure R/1 dated 21.12.2000, wherein they have taken the view that the applicant had initially worked in the Defence Accounts Department and after resigning from that service, he had worked

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in a private company during the period from 01.06.67 to 19.09.67. Subsequently, he joined ECIL and then joined VSSC on 17.11.1971. In the case of Shri Shenoy, who had worked in two Government Organisations and one Public Sector Undertaking before joining ISRO. There is a fundamental difference between service in the Government or a Public Sector Undertaking and employment in a private company. The period spent in private employment can never be condoned on par with the service rendered in Government employment or Public Sector Undertaking for the purpose of pension and the past service rendered by the applicant in Government service prior to working in a private company was automatically forfeited after his resignation from the Government service. Whereas in the case of Shri Shenoy, he had resigned from Govt. service to take up employment in a Public Sector Undertaking and his Govt. services were counted for the purpose of pension as directed by this Tribunal. Applicant's request for counting his Government service rendered in the Defence Accounts Department and in ECIL for the purpose of pension has been rejected. This was reiterated in the impugned order Annexure A/12 dated 10.08.2000.

12. Admittedly, the applicant was working in the Defence Accounts Department from 05.06.57 to 31.03.67 and ECIL from 25.09.67 to 11.11.71. The interregnum period of employment in the alleged private concern, M/s. English Indian Clays Limited, from 01.06.67 to 19.09.67 is under dispute. Taking shelter to Rule 26 (1) of the Central Civil Services (Pension) Rules, 1972 (the Pension Rules, for short), the respondents contended that on resignation of an employee, the past service stands forfeited and, therefore, the spell of time rendered in the private company cannot be reckoned for the purpose of pension and other retirement benefits. For better elucidation, Rule 26(1) of the Pension Rules reads as follows:

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**"26. Forfeiture of service on resignation -**

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service."

13. Applicant contended that the resignation was with proper permission and was taken with bona fide intention to join The Government service, which will be treated as qualifying service for pension purpose. Learned counsel for the applicant submitted that unfortunately, the applicant was not able to join the Government service immediately and he was taken an assignment in a private company for a few months on casual/contractual basis. Since there is no document to prove that, he could not produce the same. Thereafter, he joined ECIL and worked there from 25.09.67 to 11.11.71 and then on 17.11.71 he joined VSSC, which is an Autonomous Organisation under the ISRO and from where he retired on superannuation on 31.07.91. The contention of the respondents that the services rendered in a Public Sector Undertaking will not be treated as qualifying service for the purpose of pensionary benefits under Rule 26(1) of the Pension Rules is not a correct proposition of law. But in the Shenoy's case, the service rendered in the Public Sector Undertaking has been taken into account as per direction of this Tribunal. Therefore, we are of the view that similar treatment should have been given to the applicant in counting the past service rendered in Public Sector Undertaking. Needless to say that the subsequent service in the Government should also be counted. Then what left out is a short period from 01.06.67 to 19.09.67 and whether this interregnum period is to be counted or not. The contention of the applicant that the said employment was purely on casual/contractual basis has some force. On hearing the counsels as well as on perusal of the materials placed on record, we have no reason to disbelieve the averment of the applicant to that effect especially when he had joined in a Public Sector

Undertaking immediately thereafter. Therefore, the period of hardly three months which he alleged to have been worked in a private firm, in our view, would not come in the way of granting pensionary benefits especially when Rule 26(2) of the Pension Rules denotes "A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. The respondents have no case that applicant's resignation has not been accepted by the earlier employer. Therefore, we are of the view that the applicant is eligible to get his total services counted by condoning the services rendered in a private company for a short spell of time on casual/contractual basis. Any employment on casual or on contractual basis will not give fixity of employment and, therefore, it cannot be said that such employment, that too for a short period, should come in the way of granting the benefit to the applicant.

14. In the order Annexure R/1 dated 21.12.2000 issued by the Government of India, Department of Space, it was stated that "in the case of Shri Shenoy, he had resigned from Government Service to take up employment in a Public Sector Undertaking. Keeping this in view and based on the orders of CAT, his Govt. service was counted for the purpose of pension, as a special case." So this was a relaxation granted to Shri Shenoy. The question comes before us why that benefit should not be extended to the applicant ignoring the fact that he worked in the alleged private company for a short spell of time, i.e. from 01.06.67 to 19.09.67 (3 months and 19 days), especially when he was engaged on casual/contractual basis. The effect of this employment with reference to regularisation and fixity is concerned, it is as good as that of no employment. Therefore, that period of employment is a matter to be ignored and this interregnum period

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should be condoned in the interest of justice. Therefore, we are of the view that the applicant is entitled to the relief of counting the past services rendered in the Defence Accounts Department and ECIL.

15. In a similar case in OA No. 491/91 - KG Shenoy's case (supra) and in another case (OA No. 1749/98), this Tribunal directed to condone the services rendered in a non-Governmental Organisation and the benefits have been granted to the applicants therein. These orders have become final and the respondents implemented the same. It is a well settled principle of law that the benefit flowing out of an order of a Court should be extended to similarly situated persons if that order becomes final. In Ashwini Kumar's case [1997 (2) SCC 1], Hon'ble Supreme Court has gone to the extent of saying that non-extension of such benefits will amount to violation of Articles 14 and 16 of the Constitution. Therefore, we are of the considered view that the service rendered by the applicant in the Defence Accounts Department and ECIL should be counted for the purpose of pensionary benefits and the interregnum period of employment in the alleged private concern from 01.06.67 to 19.09.67 is to be ignored.

16. In the result, the O.A. is allowed and we direct the respondents to refix the pension of the applicant after counting his services in the Defence Accounts Department and ECIL from 05.06.1957 onwards for pensionary benefits on notional basis. We make it clear that the applicant will not be entitled to any arrears or interest for the past period. However, he is entitled to draw revised pension flowing out of this order with effect from the date of filing of this O.A., i.e. 02.08.2000. This

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exercise for revising the pension shall be completed within a period of four months from the date of receipt of a copy of this order.

16. There will be no order as to costs.

(Dated, the 2nd January, 2003)



K.V. SACHIDANANDAN  
JUDICIAL MEMBER



G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER

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## APPENDIX

(In O.A. No. 185/2001)

### Applicant's Annexures:

- A/1 True copy of the office memorandum dated 15.03.94 of the 3rd respondent.
- A/2 True copy of the office order No. 7/79 dated 18.04.67 of the Controller of Defence Accounts.
- A/3 True copy of the judgement dated 21.07.93 in OA No. 1557/91 of this Hon'ble Court.
- A/4 True copy of the order in O.A. 1391/94 dated 12.10.94 of this Hon'ble Court.
- A/5 True copy of the appeal filed by the applicant before His Excellency the President of India.
- A/6 True copy of the order dated 25.02.99 in OA 75/99 of this Central Administrative Tribunal.
- A/7 True copy of order dated 09.02.99 of the first respondent rejecting the appeal.
- A/8 True copy of the order dated 30.06.99 in OA 436/99 of this Hon'ble Court.
- A/9 True copy of the judgement dated 04.11.92 in OA 491/91 of this Hon'ble Court.
- A/10 True copy of the judgement dated 13.03.2000 in O.P. 3065/2000 of the Hon'ble High Court of Kerala.
- A/11 True copy of the order dated 12.06.2000 in O.A. 1749/98 of this Court.
- A/12 True copy of the order No. VSSC/EST/E-PEN/PS/32002/4658 dated 10.08.2000 of the 4th respondent.
- A/13 True copy of the representation dated 31.08.2000 submitted before the 4th respondent.
- A/14 True copy of the letter No. ECIL/PD/I(28)/A /442 dated 11.08.67.

### Respondent's Annexure:

- R/1 True copy of H.O. letter No. 1/3(8)/2000-V dated 21.12.2000 issued by the Under Secretary, Department of Space.

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