

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.190/94

Tuesday, this the 14th day of February, 1995

C O R A M

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR P SURYAPRAKASAM, JUDICIAL MEMBER

....

T Devidas, Coir Board Secretary (Retd),
Mamagalam Karothi, Elamkulam Road,
Cochin--682 017.

....Applicant

By Advocate Shri KMR Menon.

vs.

1. Union of India represented by Secretary,
Ministry of Personnel, Public Grievances & Pensions,
Department of Pensions and Pensioner's Welfare,
3rd Floor, Lok Nayak Bhawan,
Khan Market, New Delhi--110 003.
2. The Textile Commissioner,
New CGO Building, Bombay.
3. The Joint Chief Controller of Imports Exports
redesignated as Joint Director General of Imports Exports,
New CGO Building, Bombay.
4. Chairman, Coir Board, MG Road, Ernakulam.
5. Chairman, Cashew Export Promotion Council,
Chittoor Road, Ernakulam.
6. The Secretary to the Government of India,
Ministry of Commerce, New Delhi.

....Respondents

By Shri S Radhakrishnan, Addl Central Govt Standing Counsel.

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, who retired as Secretary of the Coir Board,
was earlier working in the Office of the Joint Chief Controller of
Imports and Exports, Bombay, from 1.4.1948. On 23rd October, 1963

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applicant wrote a letter P1 to the Joint Chief Controller of Imports and Exports, Bombay, stating that in view of his reversion as Upper Division Clerk due to certain administrative interpretation of rules and regulations from the post of Licensing Assistant, he tendered his resignation with a request to relieve him from his duties immediately granting him terminal leave. In the meanwhile, applicant had applied directly to the Cashew Export Promotion Council, Cochin, and had been selected as Investigator by letter dated 23.10.63 (P3). According to applicant, though he had resigned from service under the Joint Chief Controller of Imports and Exports, Bombay, it should be treated only as a technical resignation and he should be given the benefits of Rule 26(7) of the Central Civil Services (Pension) Rules, 1972 according to which a resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government. Rule 37(1) states that a government servant who was permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption. Applicant, therefore, prays that his service under the Joint Chief Controller of Imports and Exports, Bombay, may be counted as qualifying service for pensionary benefits.

2. According to respondents, applicant had resigned from service on personal grounds and therefore, his earlier service would stand forfeited under Rule 26 (1) which states:

"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."

Under Rule 26(2) 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. According to respondents, applicant did not obtain the proper permission to take up the appointment in the Cashew Export Promotion Council and therefore, Rule 26(2) would not apply and his services under the Joint Chief Controller of Imports and Exports, Bombay, stand forfeited under Rule 26(1).

3. It is seen that the denial of the benefit prayed for by the applicant is on the technical ground, that the applicant has not applied for the post in the Cashew Export Promotion Council with prior permission. However, as pointed out by the applicant both the office in which he was working and the Cashew Export Promotion Council to which he had applied were under the same Ministry of Commerce. Applicant claims that the officers in the office in which he was working were aware of his attempts to join the Cashew Export Promotion Council in view of the reversion he was facing. Applicant also states that though he had sent his resignation on 23.10.63 it had not been accepted till 1.11.63, the date of his joining in Cashew Export Promotion Council and technically his resignation would be effective only when it was accepted. According to applicant, he was still therefore, in service with the Joint Chief Controller of Imports and Exports on the date he joined the Cashew Export Promotion Council and the CEPC (P3) had imposed the condition while offering him the appointment order that he should surrender his lien in the Government service. Applicant also states

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that he had a large number of days of leave to his credit and the rules permit that the period between the date of his resignation namely 23.10.63 and 1.11.63, amounting to only seven days, be treated as leave to which he was eligible. Rule 26(3) states that

"Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him."

The benefit of this rule would be available to the applicant if he had taken proper permission from the Joint Chief Controller of Imports and Exports, Bombay, for joining the Cashew Export Promotion Council. As pointed out by the applicant, the respondent has not taken any action against the applicant which they would normally would have taken, had he left and gone to another office without permission. It is, therefore, to be considered that the Joint Chief Controller of Imports and Exports, Bombay, had no objection to the applicant leaving their department and joining the Cashew Export Promotion Council, though the statement of the applicant that the officers were aware of the applicant's joining the Council is not supported by any evidence. Learned counsel for applicant submits that the concerned officers are no more in service and it is not possible now to produce any evidence to support this contention.

4. It is evident that the denial of the benefit claimed by the applicant is on the sole ground that the applicant had not taken prior permission of the Joint Chief Controller of Imports and

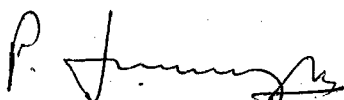
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Exports, Bombay, before joining the Cashew Export Promotion Council. Had such prior permission been obtained, the services of the applicant in the Office of the Joint Chief Controller of Imports and Exports, Bombay, would have qualified for pensionary benefits. Taking note of the fact that both the offices of the Joint Chief Controller of Imports and Exports, Bombay, and the Cashew Export Promotion Council are under the same Ministry and considering, as stated by the applicant, that the Cashew Export Promotion Council was being re-organised in 1963 and was in a hurry to make the appointment and had only imposed the pre-condition that the applicant should surrender his lien in the Government service, we consider this to be a fit case where the respondent should take a sympathetic view and treat the resignation of the applicant as a technical resignation not entailing forfeiture of service for purposes of determining pensionary benefits.

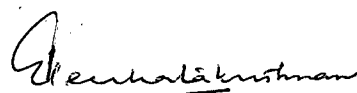
5. We permit the applicant to make a representation to the first respondent enclosing a copy of the original application, copies of the judgements cited and a copy of this order. Such a representation should be made within one month and if such a representation is made, the first respondent shall consider it and pass appropriate orders within four months of its receipt in the light of our observations above.

6. Application is disposed of accordingly. No costs.

Dated 14th February, 1995.



P SURYAPRAKASAM
JUDICIAL MEMBER



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

List of Annexures

1. Exhibit P1: dated 23.10.1963 True copy of the letter issued by the petitioner to the 3rd respondent
2. Exhibit P3: dated: 23.10.1963 True copy of the order issued by the 5th respondent to the petitioner