

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 195 of 2012

Friday, this the 8th day of March, 2013

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

G. Madhavan Nair, Aged 68 years,
S/o. Late Gopalan Nair, Former Chairman,
Indian Space Research Organization, Residing
at Manjari, Temple Road, Sasthamangalam,
Thiruvananthapuram – 695 010.

..... **Applicant**

(By Advocates – Mr. K.R.B. Kaimal, Sr.
Mr. P. Ramakrishnan)

V e r s u s

1. Union of India, represented by Secretary,
Department of Space, Antariksh Bhavan,
New BEL Road, Bangalore – 560 094.

2. The Director, Department of Space,
Antariksh Bhavan, New BEL Road,
Bangalore – 560 094.

3. Joint Secretary, Department of Space,
Antariksh Bhavan, New BEL Road,
Bangalore – 560 094.

4. The Under Secretary, Government of India,
Department of Space, Antariksh Bhavan,
New BEL Road, Bangalore – 560 094.

..... **Respondents**

(By Advocates – Mr. Mohan Parasaran, Solicitor General of India
Mr. T.P.M. Ibrahim Khan, Sr.
Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 25.02.2013, the Tribunal on
08.03.2013 delivered the following:



ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member-

The applicant retired as Chairman, Indian Space Research Organization (ISRO) on 31.10.2009. The Professor Vikram Sarabhai Distinguished Professorship was conferred on him on 11.11.2009 for four years on the terms and conditions at Annexure A6 dated 9.12.2009. The Professorship was terminated on 13.1.2012 before the tenure of four years expired. He was excluded from re-employment, committee roles or any other important role under the Government based on the reports of two committees which examined various aspects of an agreement made between M/s. Antrix Corporation & M/s. Devas Multimedia on 28.1.2005. In this Original Application the applicant challenges Annexure A1 i.e. Chapter 6 of the report dated 2.9.2011 of the High Level team, Annexure A2 dated 13.1.2012 excluding the applicant from re-employment etc. and direction to divest any current assignment of the applicant with the Government and Annexure A3 dated 13.1.2012 terminating the appointment of the applicant as Professor Vikram Sarabhai Distinguished Professorship and seeks the following reliefs:-

- “i) an order quashing/setting aside Annexures A-1, A-2 and A-3,
 - ii) an order directing the 1st respondent to reinstate the applicant as Vikram Sarabhai Distinguished Professor in the Department of Space/ISRO with continuity of service and all service benefits including the remuneration and to allow him to continue in service till expiry of the 4 year term of appointment, or alternatively, direct the respondent to adequately compensate the applicant for the losses sustained on account of Annexure A-2 and A-3 orders.
- and
- iii) such other order or direction as this Hon'ble Tribunal may consider fit and proper.”



2. The grounds raised by the applicant are that the impugned orders are violative of his fundamental rights under Articles 14, 16 & 21 of the Constitution of India and violative of the basic principles of natural justice and fair play. They have originated from the orders of an incompetent authority. There was no malafide or malice on his part in the report in respect of the agreement between M/s. Antrix Corporation & M/s. Devas Multimedia and he is not tainted in any way. Annexure A1 originated due to irrelevant consideration. No loss is caused to Government of India. The direction to exclude him from re-employment etc. is not authorized by CCS (Pension) Rules, 1972. No reasons are stated in Annexure A3 order to terminate the appointment of the applicant as Distinguished Professor.

3. Respondents contended that the conferment of Distinguished Professorship on the applicant was under a scheme of the respondent Organization namely "The Scheme of Distinguished Professors and Visiting Professors/Scientists/Engineers in recognition of outstanding, pioneering and life time contribution to the development of Space Science and Technology". The Professorship is not a civil post and does not belong to any civil service of the Government. During his engagement as Vikram Sarabhai Distinguished Professor he was not appointed to any public service or post and he was not a Central Government employee. Therefore, the Administrative Tribunals Act, 1985 is not applicable to him. Hence, the OA is not maintainable. There is no employer employee relationship in the instant case and no constitutional safeguards are available to the applicant under Article 311. There is no provision in law for the applicant who retired



on superannuation to raise a claim for continuance in the assignment given to him after his retirement. He was responsible for various acts of omission and commission on his part in entering into the agreement with M/s. Devas Multimedia as per the findings of the two reports based on which actions as per Annexures A1, A2 and A3 were taken. There was no denial of natural justice to the applicant as opportunities were provided to him to the extent considered necessary.

4. In the rejoinder filed by the applicant it was submitted that his appointment as Vikram Sarabhai Distinguished Professor was in the nature of re-employment, his conduct as civil servant has been commented upon by the impugned report without giving him adequate opportunity to prove his innocence and in effect imposed a penalty on him by curtailing his tenure as Distinguished Professor. The termination is directly linked to his conduct as Chairman, ISRO.

5. In the additional reply it was reinstated by the respondents that the applicant was not holding any post or service under the Government after his retirement. The engagement and continuance as Distinguished Professor which is a research fellowship is the prerogative of the Secretary of the Department of Space. The impugned orders do not impose any penalty as Rule 9 of CCS (Pension) Rules is not invoked.

6. We have heard the learned counsel appearing for the applicant Mr. K.R.B. Kaimal, Sr. along with Mr. P. Ramakrishnan and learned counsel for the respondents Mr. Mohan Parasaran, Solicitor General, Mr. T.P.M. Ibrahim



Khan, Sr. & Mr. Sunil Jacob Jose, SCGSC and perused the records carefully.

7. The respondents contended that this Original Application is not maintainable because the Administrative Tribunals Act, 1985 is not applicable to the applicant during his engagement as Vikram Sarabhai Distinguished Professor which is not a civil post or civil service under the Government and as such he was not a Central Government employee. The Distinguished Professorship is a Research Fellowship as per the scheme of Dr. Vikram Sarabhai Distinguished Professorship which is awarded in recognition of outstanding life time contribution to the development of space and technology, by the Secretary of Department of Space at his discretion. For the purpose of examining whether the Professorship falls within the ambit of Administrative Tribunals Act, 1985, the jurisdiction, powers and authority stipulated in Section 14 of the said Act are reproduced as under:-

“(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence service, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred in clause (c)] appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or



society] owned or controller by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment."

8. As per Section 14 all service matters concerning a member of any All India Service appointed to any civil service or civil post under the Union and pertaining to the service of such member or person in connection with the affairs of the Union fall under jurisdiction of this Tribunal. To illustrate, matters concerning recruitment, appointment, transfer, promotion, penalty, termination of service, retirement, pension, etc. are service matters. Any civil service or civil post will have rules relating to the matters mentioned above. It is not the case of the applicant that he was recruited as Distinguished Professor in accordance with recruitment rules. He was not under the control or supervision of a superior. There is no annual performance appraisal report of the Professor. He could not be transferred or suspended. The conduct rules did not apply to him. There was no employer- employee relationship between the applicant and the respondent organization during the engagement of the applicant as Distinguished Professor granted at the discretion of Secretary, Department of Space. The Professorship is a Research Fellowship not a civil post or civil service under the Union. The Professor is paid honorarium and not salary. The admissibility of HRA, CCA, travel entitlement, daily allowance, leave benefits and medical benefits as applicable to Group A officers of the tenure of four years does not make the



Professor an officer of Government of India. Similarity of certain service conditions ipso facto does not make the Professorship a civil post. The Vikram Sarabhai Distinguished Professorship was conferred on the applicant. A fellowship is conferred, not a civil post. Conferment of a fellowship cannot be construed as re-employment after retirement on a civil post or in a civil service, in connection with the affairs of the Union. There is absolutely no ground for comparing a research fellowship granted or curtailed at the discretion of a Secretary with a statutory post with recruitment rules like the post of Director, All India Institute of Medical Science. The research fellowship not being a civil post or civil service does not get the protection under Article 311 of the Constitution of India.

9. The conduct of the applicant while he was in service in respect of agreement made between M/s. Antrix Corporation & M/s. Devas Multimedia has attracted adverse notice, by the respondents. But they have not invoked Rule 9 of CCS (Pension) Rules. The curtailment of tenure of the fellowship has not affected his pension or gratuity. Therefore, the said curtailment or exclusion from re-employment etc. cannot be treated as penalty under CCS (CCA) Rules, 1965 or coming under CCS (Pension) Rules, 1972 and therefore, will not come within the ambit of Section 14 of the Administrative Tribunals Act, 1985.

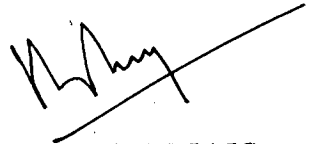
10. In the light of the above discussion, we arrive at the irresistible conclusion that the Research Fellowship of Dr. Vikram Sarabhai Distinguished Professorship, not being a civil post or civil service under the



Government of India, the instant OA is not maintainable under the Administrative Tribunals Act, 1985. Hence, without going into the merits of the case the Original Application is dismissed with no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

"SA"