

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 207 of 2005

wednesday, this the 25th day of July, 2007

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

Capt. T.M. Thomas (Retd.),
Thayil House, K.P. 16/393,
Nalanchira P.O.,
Thiruvananthapuram : 695 015 ... Applicant.

(By Advocate Mr. TC Govindaswamy)

v e r s u s

1. Union of India represented by
The Secretary, Department of Space,
Government of India,
Anthareeksha Bhavan,
New B.E.L. Road, Bangalore : 560 094
2. The Secretary to Government of India,
Department of Administrative Reforms and
Public Grievances, Ministry of Personnel,
Public Grievances and Pensions,
Lok Nayak Bhavan, 3rd Floor,
Khan Market, New Delhi : 110 003
3. The Vikram Sarabai Space Centre,
Represented by its Director, VSSC,
ISRO Project, Thiruvananthapuram : 695 022 ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The issue: When, at the time the applicant, a released Emergency
commissioned officer joined the Vikram Sarabai Space Centre in 1973 the
said institution was not a government organization but became as such a

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Government Organization in 1975, and when the applicant's past military services were counted for pension purpose, whether the applicant is entitled to fixation of pay also, counting his military service under Rule 19 of the CCS (Pension) Rules?

2. The brief facts: (a) The applicant joined the Indian Army on 12.04.63 he was commissioned on 26.04.1964 as an Emergency Commissioned Officer. He was invalidated and was released on 28th January, 1971 after rendering 7 years and 9 months service.

(b) In pursuance to a Notification dated 24.07.1972 issued by Vikram Sarabhai Space Centre (VSSC, for short), the applicant has submitted his application to the post of Transport Officer and the 3rd respondent issued an offer of appointment by Annexure A/1 communication dated 6.11.73. The applicant was appointed as Transport Officer in the scale of pay of Rs. 400-950 with effect from 15.11.1973 vide Annexure A/2 and his basic pay was fixed at Rs. 520/-

(c) While the applicant was continuing in VSSC, the Government of India had issued Annexure A/3 order dated 6.1.75 requesting him to submit his Declaration of Election as to whether he was willing to accept service in reconstituted ISRO as a Government Organisation or not. Based on the Declaration of Election, the applicant was appointed in the VSSC by the President of India as Administration Officer (Transport) in the scale of pay of Rs. 700-40-900-EB-40-1100-50-1300 with effect from 1.4.1975 vide Annexure A/5. While fixing his pay on his initial appointment to the VSSC, three increments were added to the basic pay. But in the revised pay, his pay was fixed without adding the three increments which were already granted.

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(d) While the applicant was working as Transport Officer, he was appointed as Scientist/Engineer-SC in the scale of pay of Rs. 700-1300 with effect from 1.1.1978 vide Annexure A/6. The post is a pensionable post and hence the respondent has directed the applicant to submit his option within three months to continue to subscribe to the Contributory Provident Fund Scheme. Being a released Emergency Commissioned Officer, the applicant is entitled to get his military service counted for seniority and promotion as per the provisions contained in Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of vacancies) Rules, 1971 (for short, 1971 Rules).

(e) The Applicant filed a detailed representation seeking for the benefits of 1971 Rules and also the benefits of three advanced increments. But both these requests were rejected by the third respondent vide by order dated 9.5.1988. The applicant has challenged the above order by filing Original Application No. 3 of 1990 and the same was dismissed vide Annexure A/7 order dated 10.07.1991. A Special Leave Petition was filed against Annexure A/7 order. But the same was also dismissed by Hon'ble Supreme Court by order dated 23.03.1999.

(f) The applicant opted to tag the Military Service rendered by him with that of the civil post for the purpose of pension and other service benefits. Though it was initially rejected, the third respondent issued Annexure A/8 order dated 2.3.1990 granting his request treating the Military Service as qualifying service for the purpose of pension. Annexure A/9 is an order in pursuance of A/7 and A/8 orders.

(g) Ex-servicemen who are in receipt of compensation/invalid

pension re-employed in civil post and opted for combined service for pension under Rule 19 of the CCS (Pension) rules, 1972, are entitled to get their Military Service counted for fixation of pay in civil post. This issue was considered by the Government of India and decided to grant the benefit of fixation to those ex-servicemen who are in receipt of invalid pension also. Accordingly, an O.M. No. 3/13/89-P.II dated 22.1.1991 was issued by the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, New Delhi to all the departments for extending the benefit to the eligible Ex-servicemen vide circular dated 24.04.1991 (Annexure A/10). It is specifically stated that those who opted combined Military Service under Rule 19 of the CCS (Pension) Rules are entitled to get the fixation taking into account the Military Service rendered by them.

(h) The applicant has submitted Annexure A/11 written request to the third respondent to grant the benefit of O.M. dated 22.1.1991 (circulated vide circular dated 24.4.91). The request of the applicant was rejected by the third respondent on the ground that he was not appointed in Government service. It is also stated that ISRO was an Autonomous Body at the time of applicant's initial appointment, vide Annexure A/12. The applicant then submitted a detailed representation vide Annexure A/13 dated 25.5.2000 seeking to reconsider Annexure A/12. In the case case of the applicant, his entire service in the ISRO from 15.11.1973 (the date of re-employment) to 31.03.1999 (the date of superannuation) was taken as qualifying service for the purpose of pension and other retirement benefits. In the above circumstances, the applicant has preferred a detailed representation to the 2nd respondent for reconsidering the whole issue and to render justice, vide Annexure A/16 dated 3.11.2000. Once again the claim of the applicant was turned down vide Annexure A/17



order without examining various aspects raised by the applicant in his representations. Two years later, another communication was also issued vide Annexure A/18.

(i) The applicant sent a detailed representation to the Grievance Cell vide Annexure A/19 dated 18.9.2003 and another dated 14.05.2004 vide Annexure A/20. But this time also the very same reasoning was given by the department while rejecting the claim of the applicant vide Annexure A/21. Hence the applicant has challenged Annexures A/12, A/15, A/17, A/18 and A/21 orders issued by the respondents.

3. The reply of the respondents ~~as~~ as under:-

(a) The grievance of the applicant is to refix his initial pay in terms of the 1971 orders or in terms of Ministry of Finance O.M. No. 8(34)/E-III/57 dated 25.11.1958 and Department of Personnel and Training O.M. No. 3/13/89-P.II dated 22.1.1991 with effect from 15.11.1973 or from 1.4.1975. The applicant does not fulfil the primary condition of holding the 'civil post' for applying the said provisions with effect from 15.11.1973. This Tribunal as well as Hon'ble Supreme Court had already adjudicated this point.

4. The rejoinder of the applicant to the reply is as under:-

(a) Applicant has stated that the issue raised and decided in the earlier O.A has no relevance to the issue raised in the present case. Earlier, O.A. No. 3/1990 was filed for seniority and promotion which the applicant is entitled under Rule 6 of the 1971 Rules and not for fixation of pay under Rule 19 of the CCS (Pension) Rules, 1972, which was extended to the persons like the applicant as per Annexure A/10. The applicant will come under the purview of Annexure A/10 and Rule 19 of the CCS (Pension) Rule. The other contention that at the time of initial appointment the ISRO was an Autonomous Body and hence the



applicant is not entitled to get the benefit of the above rules is not sustainable in view of Annexure A/3. The respondents themselves have taken the service of the applicant with effect from 15.11.1973 for the purpose of applying Rule 19 of the CCS (Pension) Rules, 1972. But for the fixation of pay, the benefit of the same rule is not taken into account.

5. The respondents have filed additional reply contending that the main contention raised by the applicant in the rejoinder is that he is eligible to get pay fixation benefits as per Annexure A/10. In Annexure A/10, it is clearly stated as under:

“.... The pay of Government servants who are in receipt of compensation/invalid pension and re-employed in civil posts and who submit option for combined service for pension (under rule 18 of CCS (Pension) Rules, 1972), is refixed from the date of re-employment in terms of relevant provisions of Ministry of Finance O.M.No.8(34)/E.III/57 dated 25.11.58 of this Department O.M. dated 31.7.86, as the case may be, by assuming that they are not in receipt of any pension.”

Thus, the applicant is not eligible for the benefit envisaged in Annexure A/10 circular, as he was not re-employed in a civil post on 15.11.1973 when ISRO was an Autonomous Organisation.

6. Counsel for the applicant argued that the earlier case filed by the applicant was entirely on a different footing inasmuch as it was for invoking the provisions of Released Emergency Commissioned Officers (Reservation of Vacancies) Rules, 1971 and not under the provisions of CCS (Pension) Rules. According to the applicant, rejection of his claim preferred under the provisions of Rule 19 of the Pension Rules, on the ground that the post which the applicant, after his release from military



service, was not a civil post, is untenable as the provisions provide for not only civil post but also **civil service**. Again, by the orders issued by the respondent itself, his past services were approved to be counted as qualifying service for pension purposes vide Annexure A-8 order dated 02-03-1990 and on the applicant's surrendering the Gratuity amount received, his services have been counted, vide Annexure A-9 order dated 13-02-1992. Once, the provisions of Rule 19 have been invoked in the case of the applicant in respect of one particular item, undoubtedly, the applicant is entitled to the benefits in respect of other items as well.

7. Counsel for the respondents reiterated that the Apex Court having held that at the time of the applicant's joining the respondents' organization, the latter was not a Government Organization and hence the applicant is not entitled to the benefit. It was also argued that the applicant's claim in the earlier OA No. 3/90 was not only for invoking the provisions of Released Emergency Commissioned Officers (Reservation of Vacancies)Rules, 1971 but was also for fixation of pay and as such, the applicant's present OA is not maintainable.

8. Arguments were heard and documents perused. The original application No. 3/90 discussed twin claim of the applicant (a) fixation of pay and (b) seniority. The latter is on the basis of the aforesaid Released Emergency Commissioned Officers (Reservation of Vacancies) Rules, 1971, while the former was not under the said provisions. The claim of the applicant in regard to pay in that OA was that his pay scale being 700 - 1300 and he having served for 7 years, his pay should be fixed at Rs

820/- The Tribunal analyzed the claim and rejected the same vide para 8 of Annexure A7 judgment which reads as under:-

"8. However, this fixation of pay was subsequently revised in pursuance of the instructions dated 7th march, 1976 (Annexure R4). We have seen these instructions. Para 2.3 of these instructions deals with the employees appointed by recruitment on or after 1.1.1973 in the old scales of pay with advance increments. The applicant's case is squarely covered by the instructions contained in this para. These instructions make it clear that in such a case, the pay in the revised pay scale will be equal to the basic pay including the advance increments, Dearness Allowance, Dearness Pay, if any and the interim relief that was in force on 31.12.1972. It is directed that if there is no corresponding stage to the gross emoluments in the pay scale, the pay is to be fixed in the lower stage and the difference given as personal pay to be absorbed in future increments. It is also made clear that the earlier order dated 30th June, 1974 referred to therein, which permitted giving the benefit of 5% increase on the basic pay, stands cancelled. An illustration is also given at Annexure II of this Annexure R-4 memorandum which explains how the pay should be fixed. It is specifically stated therein that 5% of basic pay allowed earlier will not now be admissible. It is in accordance with these instructions that the applicant's pay as on 15.11.1973 has been fixed by the Annexure R-1 statement dated 30.8.1976. we are satisfied that the fixation by the R-1 statement is fully in accordance with the Annexure R4 instructions."

9. The applicant challenged the afore said Annexure A-7 order and the Apex Court in its order dated 23-03-1999 observed as under:-

" He had raised two grievances before the Central Administrative Tribunal; one relating to fixation of his pay after the Third Pay Commission Report and the other relating to the benefit available to Emergency Commissioned Officers under the Released Emergency Commissioned Officers (Reservation of Posts) Rules, 1971 (for short, the 1971 Rules). The Tribunal vide its impugned judgement dated 10.7.1991 rejected both the claims.

In the appeal before us, the only question agitated is that the Vikram Sarabhai Space Centre was a Government Department and therefore, the benefit

available under the 1971 Rules should have been made available to the appellant. "

10. The above goes to show that the applicant chose to challenge only his second grievance before the Apex Court and submitted to the order of the Tribunal in so far as his first grievance i.e., pay fixation is concerned. It must be noted that the applicant did not refer to the Annexure A-10 order before the Apex Court, which he could have since the decision of the Apex Court was only in 1999. It is the same grievance, he is now, through this OA, attempting to ventilate. This is clearly not permissible he having omitted to refer to the same before the Apex Court when the applicant was claiming pay fixation.

11. The applicant relies upon the provisions of Rule 19 of the CCS (Pension) Rules, 1972, which reads as under:-

"Rule 19. Counting of military service rendered before civil employment:

(1) A Government servant who is re-employed in a civil service or post before attaining the age of superannuation and who, before such re-employment, had rendered military service after attaining the age of eighteen years, may, on his confirmation in a civil service or post, opt either -

(a) to continue to draw the military pension or retain gratuity received on discharge from military service, in which case his former military service shall not count as qualifying service; or

(b) to cease to draw his pension and refund -

(i) the pension already drawn, and

(ii) the value received for commutation of a part of military pension and

(iii) the amount of retirement gratuity including



service gratuity, if any, and count previous military service as qualifying service, in which case the service so allowed to count shall be restricted to a service within or outside the employee's unit or department in India or elsewhere which is paid from the Consolidated Fund of India or for which pensionary contribution has been received by the Government:

Provided that -

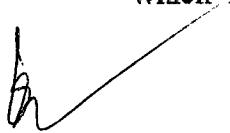
- (i) the pension drawn prior to the date of re-employment shall not be required to be refunded.
- (ii) the element of pension which was ignored for fixation of his pay including the element of pension which was not taken into account for fixation of pay on re-employment shall be refunded by him,
- (iii) the element of pension equivalent of gratuity including the element of commuted part of pension, if any, which was taken into account for fixation of pay shall be set off against the amount of retirement gratuity and the commuted value of pension and the balance, if any, shall be refunded by him.

EXPLANATION:- In this clause, the expression 'which was taken into account' means the amount of pension including the pension equivalent of gratuity by which the pay of the Government servant was reduced on initial re-employment, and the expression 'which was not taken into account' shall be construed accordingly.

(2) (a). The authority issuing the order of substantive appointment to a civil service or post as is referred to in sub-rule (1) shall along with such order require in writing the Government servant to exercise the option under that sub rule within three months of date of issue of such order, if he is on leave on that date, within three months of his return from leave, whichever is later and also bring to his notice the provisions of clause (b).

(b) If no option is exercised within the period referred to in clause (a), the Government shall be deemed to have opted for clause (a) of sub rule (1).

(3)(a). A Government servant, who opts for clause (b) of sub rule (1) shall be required to refund the pension, bonus or gratuity received in respect of his earlier military service, in monthly installments not exceeding thirty six in number, the first installment beginning from the month following the month in which he exercised the option.

 (b) The right to count previous service as qualifying

service shall not revive until the whole amount has been refunded.

(4) In the case of a Government servant, who, having elected to refund the pension, bonus or gratuity, dies before the entire amount is refunded, the unrefunded amount of pension or gratuity shall be adjusted against the death gratuity which may become payable to his family.

(5) When an order is passed under this rule allowing previous military service to count as part of the service qualifying for civil pension, the order shall be deemed to include the military and civil services."

12. The above rule provides for counting of past service and not of any pay. Pay fixation is not governed by Pension Rules. As such, when the applicant's request for counting of past services was agreed to in 1990-91, the same was only limited to counting of past service for pension purposes. Nothing less; nothing else! As such, the applicant cannot derive any benefit in respect of his pay through the Pension Rules he relies upon.

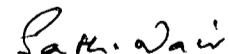
13. The applicant in ground 'L' tries to justify that the applicant was holding a civil post at the time of his initial appointment. This ground has to be summarily rejected as the said issue has been decided by the Apex Court in its order at Annexure R-1.

14. In view of the above, the OA fails and is dismissed. No costs.

(Dated, the 25th July, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

cvr.