

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 3/90
TXAKXXX

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DATE OF DECISION 10-7-1991

TM Thomas

Applicant (s)

M/s GP Mohanachandran, Advocate for the Applicant (s)
KR Haridas & M Jayachandran
Versus
Controller, V.S.S.C., Respondent (s)
Trivandrum & another

Mr V Ajit Narayanan, ACGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

Shri NV Krishnan, A.M

The applicant is a Scientist/Engineer SG in the Vikram Sarabhai Space Centre (VSSC, for short). He joined the VSSC on 15.11.73 as a Transport Officer after an interview by a High Level Selection Committee in an open vacancy. His initial pay was fixed in the grade of Rs 400-950 at the stage of Rs 520 by giving three advance increments. With the introduction of the revised pay scales with effect from 1.1.73, the pay scale of the post was determined at Rs 700- 1300. His pay was fixed at Rs 780 with effect from the date he joined the VSSC i.e., 15.11.73 by the order dated 31.7.74 at Annexure A4. However, this pay fixation

was revised subsequently by an order dated 30.8.76.

and his pay was fixed at the stage of Rs 700 in the

revised pay scale with a personal pay of Rs 33. His

first grievance is that the fixation of pay in this

manner is wrong and that his pay should have been

fixed in the pay scale of Rs 700-1300 at the stage of

Rs 820, after giving him three advance increments which

he was given at the time of initial recruitment.

2. His second grievance relates to his being denied

the benefit of the military service rendered by him

for the purpose of fixing his seniority. Admittedly,

the applicant served in the Indian Army as an Emergency

Commissioned Officer from 26th April 1964 and was

released on 20th January 1971. It is his contention

that this service of about 7 years should have been taken

into account for fixing his seniority in the VSSC in

terms of Rule 6 of the Released Emergency Commissioned

Officers and Short Service Commissioned Officers

(Reservation of Vacancies) Rules, 1971, hereinafter

referred to as the 1971 Rules. The benefit in terms of

these Rules has been denied to him.

3. The representation made by him in regard to both

these grievances has been rejected by the letter dated

9th May, 1988 (Annexure A3). Being aggrieved by the rejection of his representation, he has filed this application with a prayer that the impugned Annexure A3 letter be quashed and that the respondents be directed to grant him the benefit of his previous military service for the purpose of his pay, seniority and promotion in the VSSC.

4 The respondents have filed a reply denying that any relief is due to the applicant. It is contended that the applicant's pay has been correctly fixed by the pay fixation statement dated 30.8.76 (Annexure R1) at the stage of Rs 700 in the revised pay scale of Rs 700-1300 with a personal pay of Rs 33. This is equal to the total emoluments drawn by him in the pre-revised pay scale of Rs 400-950 as on 15.11.73. The respondents also contend that the pay fixation is done in accordance with the instructions of Government of India/ Department of Space issued from time to time.

5 In regard to the applicant's claim for counting his military service for the purpose of seniority, the respondents contend that the VSSC is an institution where merit and efficiency are the only criteria for promotion and seniority has no place in their scheme.

Even if, for argument's sake, his past military service therefore, is taken into account, this will not, give him an edge in regard to promotion over others. It is, however, contended that the 1971 Rules cited by the applicant are not applicable to the employees of the Indian Space Research Organisation (ISRO, for short) of which the VSSC is a part, because they apply only to the employees of the Government of India. It is contended that the ISRO was an autonomous body prior to its governmentalisation on 1.4.75 and as the applicant had joined the VSSC in November 1973, when it was an autonomous organisation, the 1971 Rules will not apply to him.

6 We have heard the learned counsel of the parties, and also perused the records of the case.

7 On his appointment on 15.11.73 as Transport Officer in the VSSC in the pay scale of Rs 400-950 with three advance increments, the total emoluments of the applicant was Rs 733. In accordance with the revised pay rules 1973, which was applicable to the VSSC from 1.1.73, the revised pay scale of this post was Rs 700-1300. While fixing his pay in the revised pay scale by the Annexure A4 statement dated 31.7.74, a sum of Rs 26/-, being 5% of his basic pay, was added to his total emoluments, thus raising them

to Rs 759/- . As there was no stage of Rs 759, his pay was fixed at the stage of Rs 780 in the revised pay scale.

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 1.1.73 in the old scales of pay with advance increments. The applicant's case is squarely covered by the instructions contained in such a case, in this para. These instructions make it clear that, 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 ^u of this memorandum which explains how the pay should be fixed. It is specifically stated that 5% of basic pay ^{therein}

allowed earlier will not now be admissible. It is in accordance with these instructions that the applicant's pay as on 15.11.73 has been fixed by the Annexure R1 statement dated 30.8.76. We are satisfied that the fixation by the R-1 statement is fully in accordance with the Annexure R4 instructions.

9 The applicant has neither challenged the rules regarding the revised pay scales nor the O.M. dated 9th March, 1976 (Annexure R4) in accordance with which the Annexure R1 statement has been prepared. Therefore, he cannot challenge the pay fixation done by the Annexure R1. His prayer in this regard deserves to be rejected.

10 That leaves for consideration the question regarding seniority. The contention of the respondents that seniority is of no consequence to officials in the VSSC/ISRO is irrelevant because the applicant claims that under certain statutory rules he is entitled to have his seniority fixed after taking into account nearly 7 years of military service irrespective of whether this gives him any benefit or not. The simple issue is whether the applicant is entitled to the benefit of 1971 rules. A copy of the notification

dated 26th August 1971 of the Department of Personnel (Cabinet Secretariat) promulgating these Rules was produced for our perusal by the learned counsel for which is kept in the file. the applicant, L We notice that the 1971 Rules have come and ceased to be in force from 29.1.1974. into force from 29th January 1971 L They apply to all the Central Civil Service and Posts Class I and Class II with certain exceptions mentioned therein with which we are not concerned. Rule 4 requires that certain percentage of the vacancies in the services to which these rules apply will have to be reserved for being filled by Emergency Commissioned Officers of the Armed Forces of the Union who are commissioned after 1.11.62 but before 10.1.68 and who have been released or invalidated. Such Emergency Commissioned Officers will be appointed to these vacancies in accordance with the procedure laid down in Rule 5, after the vacancies are notified and after passing the examination etc. prescribed by the Central Government in consultation with the Union Public Service Commission. Rule 6 states that the seniority and the pay of those candidates who are appointed against the vacancies reserved for them under Rule 4 shall be determined on the assumption that they entered service or the post

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at the first opportunity they had after joining the training prior to their getting the Army Commission.

This is the provision on which the applicant relies for claiming the seniority as well as the benefit of pay fixation. In simple terms, Rule 6 requires that the employee should be deemed to have joined service, not ~~actually joined, but on the date on which he~~ on the date on which he ~~could~~ have joined at the earliest had he not joined the Army. The whole issue therefore hinges on the question whether the 1971 Rules are applicable to VSSC before it was governmentalised from 1.4.75.

11 Though the respondents were given sufficient opportunity to answer this question, an effective reply has not been given. The learned counsel for the respondents only drew our attention to the fact that in Annexure-2 representation, the applicant himself has admitted that VSSC was a non-government organisation. He also pointed out that the post script to the offer of appointment dated 6.11.73 (Annexure R2) stipulates that no further consideration will be given to any experience in the post other than what has already been given in that offer. Therefore, he contends that the applicant is not entitled to any relief. Apart from these submissions,

the respondents did not file any reply in time to the various points raised by the applicant in his two rejoinders, ^{1/} we are of the view that these submissions will be of no avail against the statutory provisions of the 1971 Rules, if they really apply to this case.

12 The learned counsel for the applicant on the other hand strongly contended that the ISRO and VSSC were never, at any time in the past, autonomous organisations and they were all along full-fledged government offices. He submitted that, at any rate, after 1.6.72, all these organisations should be considered as full-fledged government organisations because the Department of Cabinet Affairs of the Government of India has notified a resolution dated 1.6.72 (Annexure A-20) containing the decision of the Government of India to establish a Space Commission with full executive and financial powers, modelled on the line of the ^{1/} Atomic Energy Commission for formulating and implementing the ~~policy~~ ^{1/} Government's policy in all matters concerning Outer Space. The Secretary to the Government of India in the Department of Space was made the Ex-Officio Chairman of this Commission. The learned counsel also pointed out that

soon thereafter, amendments were made in the Government of India (Allocation of Business Rules) 1961 by the notification dated 18.7.72 (Annexure A15) in exercise of the powers under Article 77(3) of the Constitution, by which a new entry " 27-A Department of Space" was inserted in the First Schedule thereto. Certain other consequential amendments were also made in the Second Schedule thereto. The learned counsel cited this notification to substantiate his claim that the VSSC was always a Government organisation and at any rate, it was so after the issue of the Annexure A-15 notification.

13 We have carefully considered these two submissions.

The respondents have not adverted to these contentions.

No doubt, a Space Commission was decided to be created

by the Annexure A20 notification dated 1.6.72. However,

there is no indication in this notification that the

ISRO or the Physical Research Laboratory, Ahemadabad

of ISRO, which is admittedly the parent organisation l have been

converted into Government organisations. In fact,

Annexure A20 does not make any reference to these

offices. Therefore, Annexure A20 by itself cannot lead to

any conclusion that the VSSC became a government

organisation from 1.6.1972, if not earlier.

14 The Government of India (Allocation of Business) Rules 1961 (Annexure A15) cited by the applicant are made by the President under Article 77(3) of the Constitution⁴ for the more convenient transaction of the business of the Government of India and for the allocation among Ministries of the said business⁵.-

It is evident that the said Rules cannot be invoked to support a claim that a particular field organisation like the ISRO or the VSSC is a government organisation. The entries added in the Second Schedule of the Rules by the Annexure-15 amendment do not support this contention.

15 The learned counsel then relied on Performance Budget of the Department of Space (Annexure A14) for further proof. No doubt, there are references to the ISRO in Annexure-A14. Unfortunately, this extract relates perhaps to 1978, or a later year, by which date the ISRO had admittedly been converted into a government organisation. Hence, this exhibit does not help the applicant in any manner.

16 On the contrary, the applicant himself has filed with his first rejoinder, a copy of a notice dated

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6.1.75 (Annexure A5) issued by the ISRO to all its employees. Para 1 of this notice reads as follows:

" I am directed to forward herewith a copy of the Memorandum regarding the conversion of the existing ISRO into a Government Organisation with effect from 1.4.1975. You are requested to go through the Memorandum and the Annexures attached thereto carefully and submit your Declaration of Election attached, as Annexure-II to the Memorandum duly completed in all respects so as to reach the undersigned on a date not later than 10.2.1975". *u (emphasis ours)*

This makes it clear that the ISRO existing in January, 75 was being converted into a government organisation *only* with effect from 1.4.75.

17 Alongwith this Annexure A5 notice a Memorandum of the ISRO was also enclosed. Paras 1 to 4 and 5.3 are reproduced below with emphasis added by us:

"In view of the increasing magnitude of its financial outlay on the projects of the Indian Space Research Organisation (ISRO) and of the national importance of these projects, the Government of India considers that it would be in the public interest to take over direct responsibility for the administration of the activities of ISRO without further delay. The Government of India is also satisfied that it would be in the long term interest of ISRO personnel, whose scales of pay and TA are already governed by Government rules, to take this step. The Government of India has accordingly decided to convert ISRO into a Government Organisation with effect from 1.4.75.

2 Officers and staff of the existing Indian Space Research Organisation willing to accept service in ISRO reconstituted as a Government organisation, i.e., those who are willing to serve as Government servants with effect from 1.4.1975 will be appointed to identical posts in the new organisation. They will have the option to retain the existing terms and conditions or to elect a new set of terms and conditions full details of which are set down in paragraph 5 below.

3.1 All service rendered without a break in ISRO by the employees whose services are accepted by Government as also continuous service if any rendered by them in Department of Space (DOS) Physical Research Laboratory(PRL) will count for all purposes such as service qualifying under the relevant rule for increments, consideration for promotion, confirmation, entitlement to leave, pension if applicable, and gratuity. Likewise cognisance will be taken of any act of omission or commission for which they may have been responsible during such service and Government reserves the right to proceed with the disciplinary action in respect of such acts under the disciplinary rules applicable to DOS.

3.2 Applications for recognition of service if any rendered by employees whose cases are not covered by para 3.1. above in other Central Government Departments prior to entering ISRO service will be considered on merits in the light of the circumstances of each case and subject to such conditions as may be laid down by DOS.

4 Those who are not willing to accept service in the Government of India will be required to resign from ISRO with effect from a date not later than 31.3.1975. The services of ISRO employees who neither submit their resignation nor an unqualified declaration of their willingness to accept Government service will likewise be terminated with effect from a date not later than 31.3.1975. ISRO reserves the right not to accept the resignation of any person against whom any disciplinary action is pending.

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5.3 To enable employees willing to serve as Government servants in the reconstituted ISRO to decide whether they should elect to retain their old terms or opt for the terms applicable to new entrants, comparative statements outlining in brief the benefits/concessions under the aforesaid terms are enclosed (Annexure-I). "

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These extracts leave no doubt that the ISRO was being converted into a government organisation with effect from 1.4.75 and that it was not a government organisation earlier.

18 Again, the applicant has filed Annexure-12 with his second rejoinder which is a circular of the VSSC dated 5.2.75 circulating the letter dated 4.2.75 of the Department of Space clarifying the doubts raised from various centers relating to the conversion of ISRO into a Government Department. This also makes it clear that the ISRO was converted into a Government Department only in 1975.

19 A question arises as to what was the status of the ISRO or VSSC before their conversion into a Government Organisation from 1.4.75. The respondents have not provided us with a clear-cut answer to this question which could have easily been done by them, for which they were given ample time. In fact, we are surprised that the respondents have not even referred to Annexures A5 and A12 in their reply. It should have been easy for them to produce records to show how Annexure A5 and A12 came to be issued. This lacuna is, however, immaterial because Annexures A5 and A12 lead to the inevitable conclusion that the conversion of ISRO into a Government Department was effected from 1.4.75 only and not from before. We are, therefore, satisfied that when the applicant joined the ISRO in 1973 it was not a

Government Department and he was thus not a government servant on that date.

20 In this view of the matter, the 1971 Rules which apply only to the Central Government Civil Service and posts thereunder do not apply to the applicant's appointment in the VSSC in 1973. Therefore, the applicant cannot claim any benefit of seniority or pay under these 1971 Rules.

21 For the aforesaid reasons we are of the view that the Annexure A3 letter rejecting the representation of the applicant in respect of both his grievances cannot be assailed on any reasonable ground. Therefore, this application has no merit and it is accordingly dismissed. There will be no order as to costs.

N Dharmadan
(N Dharmadan) 10.7.91.
Judicial Member

NV Krishnan
(NV Krishnan)
Administrative Member

10-7-1991

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