

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.238/99

Tuesday, this the 24th day of April, 2001.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Dr.Alexander Mathew,
Mount Pleasant,
Engineering College.P.O.
Trivandrum-16.

- Applicant

By Advocate Mr KL Narasimhan

Vs

1. Union of India represented by
Secretary,
Department of Space,
New Delhi.
2. Director,
Vikram Sarabhai Space Centre,
Trivandrum-22. - Respondents

By Advocate Mr CN Radhakrishnan

The application having been heard on 27.2.2001, the Tribunal
on 24.4.2001 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant who joined service as Medical Officer
under Space Science and Technology Centre, Trivandrum, an
autonomous body under the control of Indian Space Research
Organisation(ISRO for short) in the scale of pay of
Rs.700-1250 on 3.11.69, retired on 31.7.87, after rendering 17
years, 8 months and 28 days of service. When he retired, he
was working under the second respondent, namely, Director,

Vikram Sarabhai Space Centre(VSSC for short), Trivandrum which functioned under the Department of Space, Government of India. During his service, the applicant got his promotions as well as benefits of pay revision from time to time. When he retired from service, he was Medical Officer-SF. The applicant who had put in nearly 15 years services in India and England prior to his taking up the assignment with Space Science and Technology Centre, Trivandrum, claimed pensionary benefits in accordance with Rule 30 of the CCS(Pension) Rules, 1972. An undated representation, A-1 is said to have been submitted to the second respondent in this regard. Since there was no response, a reminder dated 12.12.97 was sent to the second respondent(A-2). The Assistant Administrative Officer functioning under the second respondent by letter dated 2.1.98(A-3), rejected the applicant's claim stating that the benefit of Rule 30 of CCS(Pension) Rules was not available in his case and that therefore, the addition of 5 years to the qualifying service of the applicant could not be considered. The reason adduced as per the impugned order A-3 for rejecting the applicant's request is that the provisions of Rule 30 were applicable to ISRO/Department of Space only in respect of employees who retired or were retiring on superannuation from 31.12.93 onwards. The applicant is aggrieved against A-3 order and has, accordingly, filed this application. The following reliefs are prayed for:

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- i) Declaration regarding applicant's entitlement to pensionary benefits under the amended Rule 30 of the

CCS(Pension) Rules;

ii) Quashing of A-3 order as arbitrary, illegal, improper and incorrect.

iii) Issue of direction to the respondents to give all pensionary benefits by adding 5 years' of service under the amended Rule 30 of CCS(Pension) Rules and recompute his pensionary and other consequential benefits accordingly.

2. We have heard the counsel for the applicant and the respondents.

3. According to Shri KL Narasimhan, learned counsel for the applicant, the impugned A-3 order, apparently based on O.M.No.2/10(2)/89-I dated 18.1.94(R-1), is unsustainable inasmuch as it is incongruous to the Government of India's decisions on the amended Rule 30 of the CCS(Pension) Rules, 1972. Counsel for the applicant states that Government of India's notification dated 19.3.88 on Rule 30 gives effect to the provision regarding addition of qualifying service of 5 years to the Government servants who retired from service after 31.3.60. Thus, the benefit was granted by the statutory rule to eligible Government servants who retired after 31.3.60. That being so, a subordinate rule making authority had no power to take away the substantive benefits and defeat the purpose of or reduce the benefit arising out of such statutory rule. When the Government of India's orders were to

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the effect that past cases could be reopened for the purpose of allowing the benefit under Rule 30, any other rule or circular or communication issued by a subordinate Department to the contrary cannot have the force of law. It is, therefore, strongly contended by the learned counsel for the applicant that R-1 does not and cannot repeal, supersede or annul Government of India's decision dated 28.10.87 and 1.2.88. It is also pointed out that the benefit of Rule 30 has been granted to one Dr. SC Gupta who joined the organisation earlier than the applicant and who, accordingly, was similarly placed.

4. Opposing the pleadings in the application and resisting the contentions put forward by the counsel for the applicant, Shri CN Radhakrishnan, the learned counsel for the respondents state that the impugned A-3 order is based on R-1 dated 8.1.94 which itself was issued in consonance with Rule 30. The provisions of Rule 30 are not applicable to the applicant, according to the learned counsel. Counsel invites our attention to the proviso to Rule 30 wherein it is stipulated that the Recruitment Rules of all the various departments should specifically provided for the benefit intended to be conferred in terms of Rule 30. At the time of commencement of the applicant's service as Medical Officer, the Space Science and Technology Centre was only an autonomous body to which CCS(Pension) Rules, 1972 were not applicable. No doubt, when he retired, he had comewithin the purview of the CCS(Pension) Rules. But as per the proviso to the amended

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Rule 30, the benefit of additional service can be given only if the Recruitment Rules regarding each department provided for granting of such benefit. As far as the applicant is concerned, the Rule came into being with effect from 31.12.93. Counsel would submit that while the general rule regarding availability of the benefit to the Government servants who retired after 31.12.60 is unassailable, the fact that in the ISRO, provision regarding the benefit of additional service in terms of Rule 30 was incorporated only with effect from 31.12.93 was also undeniable. Therefore, the beneficiaries are those who retired after 31.3.93, urges the counsel for the respondents. He would vehemently contend that R-1 Memorandum dated 18.1.94 is in perfect harmony with the Government of India's decision contained in R-2, laying down detailed procedure which has to be complied with before action could be taken to incorporate a provision regarding applicability of Rule 30 of the CCS(Pension) Rules in the relevant Recruitment Rules. Thus, the applicant has no case for claiming the benefit of Rule 30 which was made applicable to the employees of the ISRO who retired or were retiring after 31.12.93 only. It is also urged that the addition to qualifying service under Rule 30 would be admissible only to Scientific and Technical employees who are directly recruited at the level of Scientist/Engineer-SD. The applicant who did not have any Post Graduate or specialist qualification, was allowed the scale of Scientist/Engineer-SD only because of his long experience. With regard to the grant of benefit under Rule 30 to Dr SC Gupta, it is submitted that Dr Gupta, a distinguished

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Scientist who served the organisation, retired on 31.1.94 and that the grant of the benefit to him was in accordance with the rules framed in that regard in pursuance of the Government of India's decision referred to in R-2, the learned counsel contends. He would, therefore, submit that the applicant's claim for the benefit of Rule 30 of the CCS(Pension) Rules is unsustainable.

5. We have perused the records and considered the pleadings and further submissions made by the rival counsel. It would appear from the original records concerning the application for employment and other records that the applicant had applied for the post of Medical Officer, Thumba Project in response to an advertisement dated 12.3.69. However, it is admitted on all sides that he was appointed on 3.11.69 as Medical Officer in the grade of Rs.700-1250 with basic pay of Rs.1000/- per month. It is also not disputed that he had remarkably long experience to his credit before taking up his assignment with the Space Science and Technology Centre, Trivandrum. Admittedly, it was in recognition of his long experience that he was placed in a grade equivalent to Scientist/Engineer-SD. Though the ISRO was not a Government body and Government rules were not applicable to it when the applicant entered service, it did become a Government body on 1.4.75 while the applicant was in service. He retired from service on 31.7.1987 as Medical Officer-SF in the grade of Rs.4500-5700 with a basic pay of Rs.5700/- after completing total service of 17 years, 8 months and 28 days. The

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applicant claimed that he was entitled to additional 5 years service in terms of Rule 30 of the CCS(Pension) Rules, having regard to his experience and qualification, some time in the first week of 1997. Not doubt, it would appear that this was more than 10 years after his retirement. On 12.12.97, the applicant approached the Director, VSSC, Trivandrum with a reminder letter in which he reiterated his entitlement for 5 years extra service considering his 16 years' experience in India and abroad before joining the Space organisation in SD grade. The impugned order by which the applicant's claim is rejected rests on the ground that the provisions of Rule 30 were applicable to ISRO/DOS only in respect of employees retired/retiring on superannuation from 31.12.93 onwards, and that past cases were specifically excluded from the review for this purpose. The crux of the issue therefore, is whether or not the provisions of Rule 30 of CCS(Pension) Rules, 1972 are applicable to the applicant for the purpose of fixing his pensionary benefits by granting additional service of 5 years as provided under that rule. It is pertinent in this connection to refer to the provisions of Rule 30 of the CCS(Pension) Rules, 1972(as amended). The said rule reads as under:

"Rule 30. Addition to qualifying service in special circumstances.

(1) [A Government servant who retires from a service or post after the 31st March, 1960], shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years or a period of five years, whichever is less, if the

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service or post to which the Government servant is appointed is one-

(a) for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of more than twenty-five years of age are normally recruited:

Provided that this concession shall not be admissible to a Government servant unless his actual qualifying service at the time he quits Government service is not less than ten years:

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule.

[Provided also that this concession shall not be admissible to those who are eligible for counting their past service for superannuation pension unless they opt before the date of their retirement, which option once exercised shall be final, for the weightage of service under this sub-rule forgoing the counting of the past service.]

(2) A Government servant who is recruited at the age of thirty-five years or more, may, within a period of three months from the date of his appointment, elect to forgo his right to pension whereupon he shall be eligible to subscribe to a Contributory Provident Fund.

(3) The option referred to in sub-rule(2) once exercised, shall be final."

The applicant's claim for pensionary benefits as a Government servant is not in dispute. From the provisions of Rule 30 cited above, it would be fairly clear that the applicant was not appointed to a post for which Post Graduate Research or Specialist qualification in the relevant professional field was essential, but it is clear beyond doubt that he was given appointment on the assumption that for being appointed to the

post offered to him, specialist experience in Medical field was essential. His long and distinguished experience as a medical professional both in India and abroad certainly weighed with the authorities concerned when they offered him the post of Medical Officer in SD grade. This finding is borne out by the statement filed before us by the respondents on 14.12.2000: "It was because of his long experience, applicant was granted pay scale applicable to Scientist Engineer-SD", vide paragraph 6 of the statement.

6. When the applicant retired, there were no Recruitment Rules in respect of his service or post containing any specific provision to the effect that the service or post was one which carried the benefit of Rule 30. But according to us, a real and genuine remedy to this is not far to seek: By the time the applicant made a claim for refixation of his pensionary benefits in accordance with Rule 30 of the CCS(Pension) Rules, the Department of Space had already "decided that the provisions of Rule 30 of the CCS(Pension) Rules, 1972, as amended from time to time would be applicable, as far as weightage to the service is concerned, for the scientific/technical employees who are directly recruited at the level of Scientist/Engineer-SD (Rs.3000-4500 and above)" vide Annexure-R1 dated 18.1.94. Accordingly, various Centres and Units including ISRO were "requested to send the proposal well in advance to the department in the proforma enclosed as and when such benefit is to be given to the eligible employees." The various Units were further instructed not to

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grant such weightage without the prior approval of the Department of Space. In para 3 of the said R-1 communication, it was stated thus: "The above orders are applicable in respect of the employees retiring on superannuation from 31.12.93 onwards. Past cases shall not be reopened."

(Emphasis supplied)

7. The question to be considered now is the validity of the restrictive provisions contained in the Office Memorandum cited as R-1 in the light of Government of India's decision concerning the benefit of added years of service to be given to specially qualified or experienced personnel dealt with in Rule 30 of the CCS(Pension) Rules, 1972. The Third Pay Commission recommended continued conferment of the benefit of added service under Rule 30 of Scientific Medical, Technological and other professional services and posts and asked the Government to identify the Departments/organisations where benefit of Rule 30 could be allowed and incorporate suitable provisions in the Recruitment Rules for purposes of facilitating conferment of such benefit as a matter of rule. The Government of India accepted the Pay Commissions recommendations and, accordingly, directed the various Ministries/Departments to follow the procedure specifically spelt out in that regard. The Government of India further directed the various Departments/Ministries that while framing the Recruitment Rules in future, the question of applicability or non-availability of the provisions of Rule 30 of the

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CCS(Pension) Rules to the service or post(s) for which recruitment rules are required to be issued should also be decided in accordance with the procedure laid down. As far as the ISRO is concerned, as mentioned above, it was decided to make the provisions of Rule 30 applicable with effect from 31.12.93. That is to say, provisions of Rule 30 and the benefit of added service were made available to the personnel of ISRO who retired after 31.12.93. However, with regard to the conferment of benefit under Rule 30 on all eligible employees who retired after 31.3.60, the Government of India, Department of P&PW's OM No.28/51/86-P&PW dated 28.10.87, and further clarifications thereon, reproduced at page 66 of the 14th Edition of Swamy's Pension Compilation of 1997 is relevant. In our opinion, it is necessary to reproduce the entire text in order that there might not be any omission of any important information.

GOVERNMENT OF INDIA DECISIONS

(1) Benefit admissible to all those who retire after 31.3.1960 -

1. Rule 30 of the CCS(Pension) Rules, 1972, as it stands, provides for addition to qualifying service in the case of a Government servant appointed to a service or post after 31st March, 1960. Normally the claims for pensionary benefits are regulated by the provisions of rules as in force at the time when a Government servant retires or is retired, etc. The Government has been considering the removal of this incongruity. The President has now been pleased to decide that that the benefit of added years of service under Rule 30 of the CCS(Pension) Rules, 1972, will be admissible to all those who retire from service or post after 31st March, 1960 and who are otherwise eligible under Rule 30. The provision of Rule 30(1) of the CCS(Pension) Rules, 1972, may be deemed to



have been modified accordingly. Necessary amendment to the rule will be issued in due course (since amended).

2. These orders take effect from the date of issue.

[G.I. Dept. of P. & P.W., O.M. No. 28/51/86-P.P & P.W., dated the 28th October, 1987.]

(2) Past cases to be reopened at the request of the pensioners and the arrears paid from 19.3.1988 - Will the Department of Pension and Pensioners' Welfare kindly refer to their OM No. 28/51/86-P. & P.W., dated 28.10.1987 [Decision (i) above], regarding added years of service under Rule 30 of the CCS (Pension) Rules, 1972 - amendment to?

While giving our concurrence in the applicability of the abovementioned order contained in the draft Notification to the persons working in the IA & AD, we had suggested that the procedure for reopening of past cases be spelt out for facilitating its implementation and also to spell out the date from which arrears would be payable. But, the final OM, dated 28.10.1987, issued by the Department does not clarify these points. The Department of Pension and Pensioners' Welfare is, therefore, requested to issue necessary orders spelling out the procedure, etc., to be followed in the above matter for smooth implementation of the Government orders.

[C. & A.G., New Delhi, U.O. No. 101-Audit. I/103-86, dated the 1st February, 1988.]

Comptroller and Auditor-General of India may please refer to their UO No. 101-Audit. I/103-86, dated 1.2.1988, on the above subject. As is the prevalent practice, the cases would be reopened on the request of the pensioners concerned. As regards the arrears, the same will be admissible from the date of publication of the said amendment in the Gazette (i.e., 19.3.1988).

[G.I., Dept. of P. & P.W., U.O. No. 28/52/86-P. & P.W., dated the 7/15th March, 1988, received under C & A.G., New Delhi, Lr. No. 395-Audit. I/103-86/II-88(53), dated the 5th May, 1988.]

8. As mentioned in para 7 above, we have to examine the validity of the restrictive conditions/provisions contained in the decision communicated by the Department of Space vide OM dated 18.1.94(R-1) in the light of the Government of India's

O.M. quoted above. It is obvious that the Government of India's O.M. is intended to grant the benefit admissible under Rule 30 to all the eligible employees who retired after 31.3.60. The need to reopen past cases at the request of the pensioners and the date from which they would be eligible to draw the arrears were also considered extensively by the Government. In fact, it is clear from the Government of India's decision cited above that the Comptroller and Auditor General also had occasion to be seized of the matter and that finally it was decided that it would be perfectly legitimate that eligible cases were reopened on the request of the pensioners concerned and that the resultant arrears would be admissible from the date of publication of the amended provision of Rule 30 of the CCS(Pension) Rules, i.e., 19.3.88. In our considered opinion, viewed against this, the Department of Space's communication dated 18.1.94 and the argument based thereon to the effect that the benefit of added service of 5 years in terms of Rule 30 could be allowed only in respect of Scientific/Technical employees retired on superannuation from 31.12.93 and not to the applicant who retired prior to that date, would appear to be unsound and hence unsustainable. A subordinate department cannot take away the effect of a beneficial decision consciously taken by the Government of India. It is unambiguously spelt out that all eligible people who retired after 31.12.60 should be given the benefit of Rule 30 of the CCS (Pension) Rules. Past cases are permitted to be reopened on the basis of the request of the pensioners concerned. It cannot be denied that the DOS has incorporated

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suitable personnel service regulations with regard to the applicability of Rule 30 of the CCS(Pension) Rules. It cannot lay down a date different from the date which the Government of India has accepted in general as the date on which the arrears can be paid in respect of eligible past cases reopened on the basis of request made by individual pensioners. In other words, the OM(R-1) which spells out that weightage in terms of CCS (Pension) Rules would be applicable in respect of the employees retiring on superannuation on 31.12.93 onwards and that past cases should not be reopened is totally repugnant to the beneficial decision of the Government of India, in relation to the specific category of Government employees.

8. We therefore, hold that the impugned order A-3 arising out of R-1 OM which is inconsistent with the Government of India's decision cited supra, itself suffers from inherent infirmity and hence it is liable to be quashed.

9. In view of the above, we order the following reliefs to the applicant:

- i) We declare that the applicant is entitled to pensionary benefits in terms of Rule 30 of the CCS(Pension) Rules, 1972, as amended.



ii) Impugned communication A-3 is quashed in so far as it is inconsistent with the Government of India, Dept. of P. & P.W. O.M.No.28/51/86-P. & P.W. dated 28.10.1987 and further clarifications thereon.

iii) Respondents are directed to give all pensionary benefits by allowing 5 years addition to the applicant's qualifying service under the Rule 30 of the CCS(Pension) Rules as amended from time to time and grant all consequential benefits flowing therefrom in accordance with the rules and regulations and the decisions taken by the Government of India in this regard. The above exercise shall be completed within a period of three months from the date of receipt of copy of this order.

10. The O.A. is disposed of as above. The parties shall bear their respective costs.

Dated, the 24th of April, 2001.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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List of Annexures referred to in the order:

A1: True copy of representation submitted before the
end respondent by the applicant.

A2: True copy of reminder representation dated 12.12.97
submitted before the 2nd respondent.

A3: True copy of letter dated 2.1.1998.

R-1: (True copy of Office Memorandum No.2/10 (2)/89-I
dated 18.1.1994.)

R-2: (True copy of G.I.M.F. O.M.No.F 2(11)-E V (A)/73 dated
the 16th April 1975 and O.M. No.F 3(1)-E V (A)/77 dated
the 21st February, 1977).