

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 256 of 2001

Tuesday, this the 13th day of May, 2003.

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HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. M. Sivaramakrishnan,
S/o Viswanatha Pillai (late),
'Sreekrishna Bhavan' V.P.No.5/311,
Ashramam Road, Nettayam, Kachani Post,
Trivandrum - 695 013
(Instrumentalist (Tabala) (Retired),
All India Radio, Trichur).Applicant

[By Advocate Mr. M.R. Rajendran Nair]

Versus

1. Union of India, represented by the
Secretary to Government of India,
Ministry of Information and Broadcasting,
New Delhi.
2. The Director General,
All India Radio (Prasar Bharathi),
Akashwani Bhavan, New Delhi.
3. The Station Director, All India Radio, Trichur.
4. The Prasar Bharathi Corporation, represented
by Director General, Broadcasting Corporation
of India, New Delhi.
5. The Kerala State Road Transport Corporation,
represented by its Managing Director,
Trivandrum.Respondents

[By Advocate Mr. C.B. Sreekumar, ACGSC (R1 to R4)]
[By Advocate Mr. T. Ravikumar (R5)]

The application having been heard on 21-1-2003, the
Tribunal delivered the following on 13.5.2003

O R D E R

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

The applicant was a Tabala Artist who retired from All
India Radio, Trichur Station on 30-6-1995.

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2. Prior to the applicant's appointment in the All India Radio, he had served the Kerala State Road Transport Corporation (KSRTC for short) between July, 1962 and November, 1976, which included regular service from 1966. The applicant's claim for reckoning his past service with KSRTC for pension purposes was turned down twice vide Annexures A1 and A3 communications of the 3rd and 2nd respondents respectively. By Annexure A4 representation dated 28-8-2000, the applicant brought to the notice of respondents 1 and 2 that the 5th respondent's letter dated 10-9-1996 (Annexure A5) addressed to the 3rd respondent, as per which his service with KSRTC was held non-pensionable, had been modified as per Annexure A6 letter dated 2-4-1998, which stated that all KSRTC employees were made pensionable with effect from 1-4-1984 and that had the applicant continued in KSRTC, he would have become a pensionable employee by reckoning his entire regular service and 50% of the daily wage services for pension purposes. The applicant's case is that he had applied for the post in the All India Radio through proper channel and that his resignation from the KSRTC for taking up the appointment with All India Radio was accepted by the KSRTC. According to the applicant, as per Annexure A7 Government Order dated 31-3-1987, the Government of Kerala had decided that the service rendered by a Government employee on pensionable establishment, on subsequent absorption in Govt. of India/Autonomous Bodies, should be counted for pension purposes irrespective of whether the employee was temporary or permanent. The applicant maintains that he had satisfied all the conditions with regard to the eligibility for pension by reckoning his past service with KSRTC. He prays for the following main reliefs:-

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- "i. To quash Annexure A1 and A3.
- ii. Declare that the service rendered by the applicant in KSRTC is liable to be counted for pension in AIR.
- iii. Direct the respondents to refix the pensionary benefits of the applicant counting his service in KSRTC with all consequential benefits including arrears therein, and to grant him interest on the arrears at the rate of 12% per annum."

3. A counsel's statement followed by a reply statement was filed by the respondents. According to the respondents, employees of KSRTC became pensionable on a date subsequent to the date of resignation of the applicant from KSRTC. He had therefore been given the due service benefits, since at the time of his resignation KSRTC was not a pensionable establishment. His resignation was not a technical resignation. Hence, the provisions of Rules 14 and 26 of the CCS (Pension) Rules were not applicable, according to the respondents.

4. The applicant filed a rejoinder enclosing Annexures A8, A9 and A-10. Annexure A8 is filed in support of the applicant's stand that the application had been forwarded to All India Radio with the concurrence of KSRTC. His resignation for the purpose of accepting the post in All India Radio was envisaged. Annexure A9 would support the argument that since the applicant started his service under the Kerala Transport department which was a pensionable establishment and he later got absorbed in the newly formed KSRTC on the existing terms and conditions, he was a pensionable employee even as per KSR Part-3. Annexure A-10 is sought to support the applicant's plea that his resignation with the knowledge and approval of

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KSRTC under intimation to the All India Radio, could not be considered as voluntary resignation. It was only a technical resignation for the purpose of taking up the new job with the All India Radio.

5. We have heard Shri M.R.Rajendran Nair, learned counsel for the applicant, and Shri C.B.Sreekumar, ACGSC appearing for the respondents 1 to 4.

6. It is contended by the learned counsel for the applicant that the applicant was holding a pensionable job under the Transport Department of Kerala when that Department was converted into a Corporation (KSRTC). His service conditions were protected on his absorption as a KSRTC employee. Further, the service rendered by him under the KSRTC was made pensionable as is clear from Annexure A6 letter from the Managing Director of KSRTC to the Station Director of All India Radio, Trichur. When the applicant applied for the post of Artist in All India Radio, his application was routed through proper channel. The erstwhile employer, viz. KSRTC, was fully aware of that fact. Annexure A8 memo dated 30-7-1976 would make it clear that KSRTC acknowledged the fact of forwarding the application on condition that the applicant should resign his job in the Corporation, in case he was selected to the post applied for. When the applicant got the job in All India Radio, he resigned the job under KSRTC and that was a technical requirement for enabling him to take up the new job, learned counsel would maintain. With regard to the discharge of the liability on account of pro-rata pension etc., the counsel would point out that by Govt. of India's orders quoted as Notes Nos.6 and 8 occurring under Rule 14 of

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the CCS (Pension) Rules, the liability to discharge the pro-rata pension was dispensed with. Learned counsel for the applicant would, therefore, plead that the entire prior service of the applicant ought to be considered for pension purposes.

7. Shri C.B.Sreekumar, learned ACGSC appearing for the respondents, has endeavoured to canvass for the proposition that the applicant who resigned from the previous job under the KSRTC in 1976 had no claim for any of the benefits granted to KSRTC employees. His resignation was not a technical resignation. When he made the application for the job in All India Radio, he was working in a non-pensionable establishment under the KSRTC. Hence, the benefit of the Government Order dated 31-3-1987 would not be applicable to him, learned counsel would state. Further, till 1991 the applicant's job with All India Radio was also not pensionable and that being the position, his past service as Staff Artist was allowed to be counted towards pension and pensionary benefits, but the past service with KSRTC from which he resigned could not be considered for the same benefit, learned counsel would urge.

8. We have gone through the pleadings and the supporting material on record and have carefully considered the arguments of the counsel on either side. We do not find that the impugned A1 and A3 orders are supported by any rule or orders in regard to the claim of the respondents. Rejecting the applicant's representation dated 30-9-1996, the 3rd respondent as per the impugned A1 order dated 14-2-1997 informed him as under:-

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"... The Directorate has examined the case and informed that your request is not covered under the Govt. of India's decision No.(6) below Rule 14 of C.C.S (Pension) Rules 1972. As such your past service cannot be counted for the purpose of pensionary benefits. .."

The applicant persisted in making representations and in response to the representation dated 3-7-2000 addressed to the Hon'ble Minister of Information and Broadcasting, with copy to the respondents, the 2nd respondent informed the applicant that counting of past service with the KSRTC could not be acceded to under the relevant rules and in the light of KSRTC's letter stating "that you were not a pensionable employee" (emphasis supplied).

9. We will presently examine the factual and legal validity of the impugned communications A1 and A3. The applicant was an employee of the Transport Department under the Government of Kerala. Clause 18 of the Kerala Government Notification dated 21-3-1965 (Annexure A9), whereby the KSRTC took over the management of the then existing Transport Undertakings of the Kerala Government Transport Department, deals with the treatment to be given to the non-permanent staff under the Government. Relevant extracts of Clause 18 are:-

"Non Permanent Staff:

18.(a) All persons employed by Government in the State Undertaking who have not been appointed substantively to any post in any Government Department, whether employed as acting, temporary, provisional or otherwise including contingent employees, who would have continued to be so employed by Government but for the transfer of the management of the State Undertaking to the Corporation, shall continue to be so employed by the Corporation in the same manner as Government would have done if the State Undertaking had continued under Government and subject to the availability of vacancies for such employment under the Corporation and on such employment they shall be deemed to have vacated their offices under Government and to have been offered and to have accepted employment under the Corporation:

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Provided that the conditions of service applicable immediately before the Corporation takes over the State Undertaking to the case of the person so appointed by the Corporation shall not be varied to his disadvantage except with the previous approval of Government."

In Clause 18(b), it is made clear that the service of such employees under the Government prior to such employment under the Corporation (KSTRC) along with their service under the Corporation would count for service benefits under the Corporation. Thus, the applicant who was a non-permanent employee of the Kerala Transport Department would get all the benefits as if he had continued under the Government. Contingent service rendered by a Government employee would be reckoned for purposes of pension as per Kerala Service Rules. Had the applicant continued in the service of KSRTC, he would have got the benefit of his service under the Government of Kerala and on retirement from KSRTC, he too would have received pension. Besides, it needs to be mentioned here that the applicant would have retired after the date on which the KSRTC was declared a pensionable establishment, i.e. 1-4-1984. In our view, Annexure A6 communication dated 2-4-1998 dispels any doubt regarding the applicant's eligibility and any interpretation to the contrary is untenable. Annexure A6 communication dated 2-4-1998 of the 5th respondent addressed to the 3rd respondent is reproduced hereunder:-

"In continuation to the letter of even No.dtd: 10-9-1996, I may inform that all Corporation Employees were made pensionable w.e.f.1-4-1984 and if Sri.M. Sivaramakrishnan continued in K.S.R.T.C., he will become a pensionable employee and his regular service in full will count for pension and 50% of the Daily Wage service will also count for pension. ..."

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10. We fail to understand why Annexure A6 communication was not acted upon by the 3rd respondent and the authority still higher to the 3rd respondent, if need be. The applicant retired on 30-6-1995. His pension and pensionary benefits ought to have been determined by reckoning his past service on the basis of the service details and the Government orders on the subject discussed above and in accordance with Rule 14 of the CCS (Pension) Rules. With regard to his resignation from the service of KSRTC, we notice that it was not a voluntary resignation motivated by any undisclosed personal reason. The applicant had applied for the post of Artist in All India Radio through proper channel. The application was accordingly forwarded, presumably with no objection, from the previous employer. The previous employer (KSRTC) was aware of his selection and appointment. That being the position, the applicant's resignation was merely to take up the new job under the Government of India organization. It was, therefore, a technical resignation only. This aspect is clearly borne out by Annexure A8 communication dated 30-7-1976 from the Mechanical Engineer (W), Central Works, Trivandrum, which stipulated that the applicant would have to resign his job in the Corporation, in case he was selected to the post applied for.

11. The requirement of surrender of pro-rata pension in regard to the past employment has been dispensed with and therefore, that cannot be a valid ground any longer for denial of the applicant's claim vide Government of India's Decisions dated 5th December, 1989 and 25th October, 1996 numbered as (5) and (8) respectively under Rule 14 of the CCS (Pension) Rules.

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12. In view of the facts detailed above, we hold that the applicant is bound to succeed.

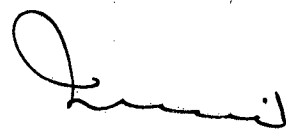
13. Accordingly, the impugned orders Annexure A1 and Annexure A3 are set aside. It is declared that the service rendered by the applicant in KSRTC is eligible to be counted for pension on his retirement from All India Radio (Prasar Bharati). Respondents are directed to refix the applicant's pensionary benefits counting his service in KSRTC with all consequential benefits including arrears. In view of Annexure A6 communication dated 2-4-1998, we hold that the applicant is entitled to interest on arrears of pension and other benefits. However, having regard to the facts of the case, we restrict such interest to be payable by the respondents at 6% per annum with effect from 1-8-1998 till the actual date of payment. Respondents are directed to pass consequential orders carrying out the above directions within a period of four months from the date of receipt of a copy of this order.

14. The Original Application is disposed of as above. No order as to costs.

Dated, the 13th May, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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