

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Date of decision: 28-10-1993

CORAM

HON'BLE MR. N. DHARMADAN, JUDICIAL MEMBER
AND

HON'BLE MR. S. KASIPANDIAN, ADMINISTRATIVE MEMBER

ORIGINAL APPLICATION NO.282/93

K.K.Nair .. Applicant

Mr. N.Govindan Nair .. Counsel for applicant

Versus

1. Union of India, represented
by Secretary, Department of
Space, Bangalore.

2. The Director, Vikram Sarabhai
Space Centre, Thiruvananthapuram.

3. Head P GA, Vikram Sarabhai Space
Centre, Thiruvananthapuram. Respondents

Mr. George CP Tharakan, SGGSC Counsel for
respondents

O R D E R

Mr. S.Kasipandian, AM

The applicant joined Indian Space Research Organisation (ISRO) on 1.3.69 and retired from service on 31.10.90. He had worked for 5 years, 8 months from July 1954 to February 1960 in Banaras Hindu University. Thereafter, from 1.3.60 to 9.8.62 for 2 years 8 months, he continued his studies after resigning from his service in the B.H.U. From 10.8.62 to 30.7.64 he worked in the National Council for Co-operative Training, which is a Central Government service. From 31.7.64 to 9.7.68 he worked in the Ministry of Defence. From 10.7.68 to 22.12.68 he worked in the Surplus Cell under the control of the Home Ministry. From 23.12.68 to 27.2.69 he worked in the Ministry of External Affairs, Govt. of India. From 1.3.69 to 31.10.90 his services were utilised

52

by the ISRO. For the purpose of calculating his pensionary benefits these services rendered by him from 10.8.62 to 31.10.90 have been taken into account, excluding the earlier period. The applicant claims that BHU is a Central University and it is a semi-government institution. According to the circular of the 2nd respondent, VSSC/P GA/GMS-45(23) dated 22.11.75 the services under the University have to be counted as qualifying service. He has produced Annexure-A7 in support of his claim. According to Annexure-A7, "if the employee has already drawn the Contributory Provident Fund benefits for service rendered in the semi government Institution he should refund in lumpsum or in monthly instalments not exceeding 12 in number the Institution's share of contribution together with interest thereon from the date of withdrawal to the date of final payment. The title to counting of past service will not accrue until the amount refundable and interest thereon have been refunded in full." The applicant is prepared to comply with this condition. The applicant made a representation to the 1st respondent in this regard. His request was turned down first in Ann.A2 and finally in Ann.A6. The applicant had quoted in support of his claim several precedent cases like the cases of Shri N.Natarajan, former Head, Purchase and Stores, VSSC, Shri G.G.Nair, Stores Officer, 1-LPSC, Shri K.G.Shenoy (whose case was covered by OA 491/91 CAT/Ernakulam) and some more cases. The applicant has pointed out that the benefit of condonation of interruption in service granted to Shri G.G.Nair, Shri K.G.Shenoi etc. has been unjustly denied to him and his request has been rejected without proper examination. It is also pointed out that the final order in Annexure-A6 rejecting his claim is too cryptic and laconic and it is not a speaking order.

82

2. The learned counsel for the respondents admitted that the order in Annexure-A6 was too cryptic. However, he put forward that the applicant's case was examined in depth by the department and the precedent cases quoted by him were also compared before his claim was rejected. As mentioned in his reply statement, the learned counsel reiterated "the respondents have no dispute over the institutional status of BHU". The main difficulty in granting the request of the applicant to count his services in BHU as qualifying service was that he had resigned his service in BHU for his own reasons and he had not applied for his subsequent assignment through the earlier employer. Moreover, according to Rule 28 of the CCS (Pension) Rules:-

"28 (a) In the absence of a specific indication to the contrary in the service book, an interruption between two spells of civil service rendered by a government servant under government including civil service rendered and paid out of Defence Service, Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.

(c) The period of interruption referred to in clause (a) shall not count as qualifying service."

According to learned counsel for respondents the applicant's case is covered by Rule 28(b) and as he has resigned from service he is not eligible for the benefit of his earlier service in BHU.

3. The issues that arise for consideration in this case are, *by interpreting the rules*
is whether the rules are interpreted in the light of the
precedent cases dealt with herein, ~~or~~

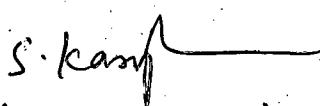
(i) whether the service in BHU can be treated as qualifying service, subject to the condition of repayment of CPF contribution by the applicant as required by the rules;

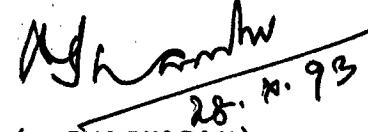
- (ii) whether the permission of the BHU should have been obtained by the applicant for applying for subsequent assignment;
- (iii) whether the applicant's service in BHU could be considered as satisfactory to make him eligible for counting his service as qualifying service; and
- (iv) whether there is adequate justification for condoning the interruption in service between the service in the BHU and his subsequent service in other assignments ^{or for him} after completing his studies.

4. The applicant could not obviously apply for permission from the BHU authorities before joining the National Council for Cooperative Training on 10.8.62 because at the time of application he was not under the employment of BHU. The provision in Rule 28(b) of the CCS (Pension) Rules mainly refers to those cases where an employee was dismissed from service or removed from service or participated in a strike or resigned from service and the construction of Rule 28(b) makes it clear that the resignation for this purpose could carry a connotation of non-satisfactory service in the earlier assignment. If the applicant had resigned either because the BHU authorities were dissatisfied with his service or he was dissatisfied with the employment in BHU, his resignation could be brought within the ambit of Rule 28(b) of the CCS (Pension) Rules. In the present case, while he was continuing in service in BHU, he was prepared to complete his higher studies and since his pursuit of higher studies could not be carried on by continuing in the BHU Service, he had to resign the service rather involuntarily. This cannot be held against him and he be penalised by making him lose his entire service in BHU just because he had to pursue his studies and for want of study leave he had to resign his service before taking up further assignments. Hence, such interruptions in service for justifiable reasons ^{may} not fall within the ambit of CCS (Pension) Rules. There have been instances where such interruptions have been treated by the Government departments as 'dies non'. This is done in the case of Shri G.G.Nair also for the period from 25.12.69 to 25.11.70.

5. There is nothing on record to show that the service of the applicant in BHU was in any way unsatisfactory. The applicant's resigning from BHU service for continuing his studies can hardly be termed as "unwarranted". The denial of request of the applicant in Annexure-A2, confirmed by the final order in Annexure-A6, does not show any detailed reasoning for distinguishing the applicant's case from other cases with adequate justification. We therefore quash the orders in Annexure-A2 to the extent of denying the benefit of qualifying service in BHU as confirmed by the subsequent order in Annexure-A6. The first respondent is directed to re-examine the issue thoroughly in the light of the observations made above and pass final orders as per law within a period of three months from the date of receipt of a copy of this judgement. No order as to costs.

Dated, the 28th October 1993.


(S KASIPANDIAN)
ADMINISTRATIVE MEMBER


28. 10. 93
(N DHARMADAN)
JUDICIAL MEMBER

List of Annexures

Annexure-A2 : Copy of VSSC/EST/E-PEN/90/22728/9111 dated 16.10.90. issued by Head, P&GA.

Annexure-A6 : Copy of letter No. 5/7/(1)/84-I dated 27.12.92 issued by the Department of Space.

Annexure-A7 : True copy of circular No.VSSC/PGA/GMS-45(23) dated 2.12.1975.