

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 314 of 2000

Thursday, this the 28th day of March, 2002

CORAM

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. K.M. Vijayan,
Son of late K. Narayanan Nair,
K.M. House, PO Elambachi,
Kasargod - 671 311;
Assistant Development Officer,
Rubber Board.Applicant

[By Advocate Smt. K.P. Santhi]

Versus

1. Union of India represented by the
Secretary, Ministry of Post & Telegraph,
Government of India, New Delhi.

2. The Chairman, Rubber Board,
P.B.No.1122, Sub Jail Road,
Kottayam - 686 002

3. Assistant Secretary(E), Rubber Board,
Post Box No.1122, Sub Jail Road, Kottayam-2

4. The Postmaster General,
Kerala Circle, Trivandrum.

5. The Superintendent of Post Offices,
Kannur Division, Kannur-1

6. The Head Postmaster,
Head Post Office, Kasargod.Respondents

[By Advocate Sri P.M.M.Najeeb Khan, ACGSC (R1,4,5&6)]
[By Advocate M/s Joseph & Kurian (R2&3)(not present)]

The application having been heard on 28-3-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant who is now working in the Rubber Board as
Assistant Development Officer has approached this Tribunal
seeking a direction to respondents 2 and 3 to reckon the
applicant's earlier service in the P&T Department for his



pensionary benefits accepting A1 and A4 and for a direction to respondents 4 to 6 to remit the pro-rata retirement benefits to the Rubber Board so as to enable him to get his pensionary benefits and for a declaration that he is entitled to get his services in the P&T Department reckoned for pensionary benefits.

2. The applicant has averred in the Original Application that he joined the service as Postal Assistant under the 4th respondent on 1-2-1975 and continued in that post till 5-12-1979. Thereafter, he tendered his resignation and joined the Rubber Board on 10-12-1979. He claimed that he had submitted his application to the Rubber Board through proper channel and his resignation was accepted by the P&T Department as per A1 letter dated 4-12-1979 of the 5th respondent. The applicant filed A2 representation dated 30-12-1994 to the 2nd respondent requesting him to reckon his services under the 2nd respondent also for pensionary benefits. On receipt of a reply from the 2nd respondent the applicant submitted representation dated 3-6-1996 to the 4th respondent requesting him to provide all the records relating to his service in the P&T Department. In reply to a communication received from the 4th respondent, the applicant submitted A3 reply dated 14-6-1996. He submitted a further representation to the 5th respondent on 4-1-1997. He received a certificate dated 15-7-1997 issued by the 4th respondent certifying that he had worked in the Postal Division from 1-2-1975 (A4). The applicant submitted A4 certificate to the 2nd respondent. He further pursued it with the Additional Secretary(E), Rubber Board, Kottayam by a reminder dated 16-12-1997. The 2nd respondent thereafter took up the matter with the 4th respondent requesting him to remit the pro-rata retirement benefits of the applicant. The applicant further submitted a representation dated 20-1-1999 to the 3rd



respondent. He also received A7 letter dated 15-1-1999 communicating the Superintendent of Post Offices's intimation that the records relating to the applicant as a Postal Assistant had been weeded out and no action could be taken on the same. The applicant filed a further representation (A8) dated 16-7-1999 to the 4th respondent stating that the 2nd respondent had not denied the fact that the applicant was entitled to get his service in the P&T Department reckoned for pensionary benefits and the applicant was entitled to get the services in the P&T Department reckoned for his pensionary benefits along with his services in the Rubber Board and relying on A6 letter dated 30-5-1995 of the Department of Pension & Pensioners Welfare, the applicant has filed this Original Application seeking the above reliefs.

3. The 3rd respondent filed reply statement submitting that the Rubber Board which is an autonomous statutory body constituted and governed by the Rubber Act, 1947 and the Rules made thereunder, was not an authority notified under the Administrative Tribunals Act and therefore the Rubber Board was not an authority coming within the jurisdiction of this Tribunal and as such no relief could be granted to the applicant against the Rubber Board in this Original Application. At the same time, without prejudice to the contention raised, they submitted that the applicant had applied for the post of Junior Field Officer in the Rubber Board, and the same had been forwarded by the 5th respondent to the Secretary of the Rubber Board under cover of his letter dated 31-8-1978, in which it had also been stated that the 5th respondent had no objection in entertaining the applicant's application. In support, they produced R3(a), the covering letter dated 31-8-1978. On being selected the applicant joined the Rubber Board on 10-12-1979. They also annexed R3(b), the



discharge certificate dated 4-12-1979 issued by the 5th respondent, in which it had been stated that the services of the applicant with the 5th respondent were terminated with effect from 6-12-1979. It was submitted by them that the service conditions of the employees of the Rubber Board were governed by the Rubber Board (Service) Rules, 1961 and under Rule 12 thereof, the conditions of service of the members of the service in respect of matters for which no provision was made in the said rules, would be the same as for the time being applicable to officers of the Government of India of corresponding category. Reckoning of past service of an employee in case of transfer of Central Government servants to Central Autonomous bodies and vice versa and of employees of Central Autonomous Body to another Central Autonomous Body was governed by Government of India, Department of Personnel & A.R, OM No.28-10/84-Pension Unit dated 29-8-1984 (R3(c)) and by virtue of Rule 12 above, the Rubber Board was also bound by the said Government order. It was submitted that by that Government order, the past services of the applicant under the 5th respondent for the period from 1-2-1975 to 6-12-1979 could be reckoned for the purpose of pension under the Rubber Board only if the 5th and 6th respondents verify the service details of the applicant and remit the pro-rata retirement benefits of the applicant to the Rubber Board for the period of his service with the 5th respondent. It was submitted that in spite of A5 request, the 5th respondent by R3(d) letter dated 28-12-1998 had taken a stand that since all connected records had been weeded out, no action could be taken in the matter at this belated stage. It was also submitted that the 4th respondent had issued R3(e) and R3(f) communications stating that the applicant was not entitled to the relief sought for as he had not tendered the technical resignation on immediate permanent absorption while resigning from the Department and as there was



no record to prove that he had applied for the post in the Rubber Board through proper channel, he was not eligible for the benefits under GID(1) below Rule 26 of the Pension Rules. It was submitted that the 2nd and 3rd respondents would reckon the applicant's past service with the 5th respondent for the purpose of pension, only if the 4th and 5th respondents pay the pro-rata retirement benefits of the applicant.

4. The 2nd respondent adopted the reply statement of the 3rd respondent.

5. Respondents 1, 4, 5 and 6 filed reply statement resisting the claim of the applicant. They admitted that the applicant had worked as Postal Assistant from 1-2-1975 to 5-12-1979 in Kannur Postal Division. According to them, the applicant tendered his resignation on 28-11-1979 and it was accepted with effect from 6-12-1979. The individual was not paid any terminal benefit as he had worked only for 4 years and 10 months and had resigned the post forfeiting his past service. The applicant had not obtained prior permission of his employer, i.e. Postal Department, for taking up the new post in the Rubber Board. He was not deputed or transferred to the Board, nor were the respondents 1, 4, 5 and 6 aware of his joining the new post. If he had applied for the post in the Rubber Board through proper channel and had taken up the post in the Rubber Board with the permission of his employer, the said fact would have been mentioned in A1 letter issued accepting the resignation of the applicant. They relied on R-1 office memorandum dated 31-1-1986 of the Government of India, according to which the resignation itself would have been accepted with effect from the date of his joining the Rubber Board only and the letter accepting the resignation would have been given all necessary details. They also produced an

extract of Rule 37 of the CCS (Pension) Rules, 1972 as it existed at the time of the applicant's resignation as R-2, according to which the grant of pro-rata retirement benefits to Central Government servants permanently transferred to autonomous bodies/public sector undertakings etc. was admissible only where the transfer was in the public interest and in all other cases the Government did not accept liability to pay any retirement benefits for the period of services rendered by the Government servant before his transfer. As the applicant had resigned his post, he forfeited his past service. The primary records of an employee pertaining to his service were the Service Book and Personal File. Preservation period of such records was only three years after termination of service. As such, the applicant's personal file was weeded out on expiry of the period of preservation. If the applicant had applied for the post in the Rubber Board through proper channel and he had resigned his post in the Postal Department with proper permission for taking up the post in the Rubber Board on immediate absorption basis, it was for him to take action well in time for getting the break from 6-12-1979 to 10-12-1979 condoned by the competent authority for counting his past service for pensionary benefits. As no such action was taken, the presumption was that he had not taken up the job in the Rubber Board on immediate absorption basis with prior permission and his resignation in the Department of Posts was not merely technical but one entailing forfeiture of past service under the normal rules. It was also submitted that the OM shown as A6 came into effect in 1984 only, whereas the applicant had quit the Postal Department well before that in 1979 and he was not entitled to the benefit of reckoning his service rendered in the Postal Department for pensionary benefits provided for in that OM. The Original Application was devoid of merit and liable to be dismissed.



6. We have heard the learned counsel for the applicant and the learned counsel for respondents 1, 4, 5 and 6.

7. Respondents 2 and 3 in their reply statement submitted that this Tribunal has no jurisdiction to give any direction to them as they are not an autonomous body notified under the Administrative Tribunals Act, 1985. We find this to be so. When we put this to the learned counsel for the applicant, learned counsel for the applicant submitted that she is not seeking any relief against the 2nd and 3rd respondents. But, the first relief itself is for a direction to the 2nd and 3rd respondents to accept A1 and A4 and to reckon the applicant's service in the P&T Department for his pensionary benefits. When this Tribunal has no jurisdiction to entertain this application against the 2nd and 3rd respondents, no such direction can be given to the 2nd and 3rd respondents.

8. Now the only issue that remain for adjudication by this Tribunal is regarding the claim of the applicant against respondents 1, 4, 5 and 6, i.e. the second relief onwards. The applicant is relying on the Government of India OM dated 29-8-1984 referred to in A6 dated 30-5-1995. Learned counsel for the applicant submitted that the said OM has been produced by the 3rd respondent as R3(c). We have carefully gone through R3(c). In R3(c), in the first paragraph, it is stated as follows:-

"As per existing orders, service rendered outside Central Government does not count for pension in Central Government except in the case of scientific employees of autonomous bodies financed or controlled by the Government who on permanent absorption under the Central Government are allowed to count their previous service for pension subject to certain conditions. In respect of personnel other than scientific employees, who are permanent in Central Government, in the event of their subsequent permanent absorption in public



sector undertakings or any autonomous body, proportionate retirement benefits for the service rendered in Government till the date of permanent absorption are allowed as per rules in force at the time of absorption. No such benefit is allowed to temporary employees going over to autonomous body or undertaking."

9. It is further stated in paragraph 6 of the said R3(C) as follows:-

"These orders will be applicable only where the transfer of the employee from one organisation to another was/is with the consent of the organisation under which he was serving earlier, including cases where the individual had secured employment directly on his own volition provided he had applied through proper channel/with proper permission of the administrative authority concerned."

10. According to respondents 1, 4, 5 and 6, the conditions specified in the said OM are not fulfilled as far as the applicant is concerned. In the reply statement filed by respondents 2 and 3 it had been stated that the applicant's application to the Rubber Board had been forwarded by the 5th respondent and they produced R3(a) in support of that averment. We find from R3(a) that the Superintendent of Post Offices, Cannanore Division had forwarded the application of the applicant, in which it had been stated that the said application had been forwarded for favour of disposal and the Superintendent of Post Offices had no objection in entertaining his application. In the OM referred to earlier [R3(c)], in the Note it had been defined as to what constitutes "proper permission". It reads as under:-

"NOTE.- Various Ministries/Departments of the Government of India may accept pension liability in all these cases where Central Government employees move to Central autonomous bodies with proper permission and discharge the same in the prescribed manner. For this purpose 'proper permission' means that Government servant applies for the post in autonomous body through 'proper channel' and he resigns with due intimation that he is doing so to take up assignment in autonomous body or the Government servant is relieved of his duties by the Government Department/Office to take up

assignment in an autonomous body. Pension liability may also be accepted in past cases provided the Government servant took up the assignment in autonomous body with proper permission. The Ministry of Defence, etc., may please issue specific directions to their Financial Advisers to advise the autonomous/statutory bodies under their administrative control to make the above provisions in their rules and regulations. In cases where any practice other than that mentioned above is presently being followed, the same may be revised in accordance with these decisions and they may also provide for acceptance of pension liability for the past service."

11. From the above, it would be seen that it is not only enough that a Government employee should apply through proper channel, but when he resigns he should intimate that he is resigning to take up the assignment in the autonomous body. In this particular case, what we find is that the Rubber Board had produced the documents which indicate that the applicant had applied through proper channel, but in the resignation acceptance letter A1 produced by the applicant there is no indication that the applicant had intimated the P&T Department that he was resigning to take up the job with the Rubber Board. The resignation letter would have been submitted by the applicant. He had not produced a copy of the same and A1 does not give any indication that he had resigned to take up the Rubber Board assignment. Further, whenever a Government servant is sent to another organisation including an autonomous body, even if he had secured the job on his own in the autonomous body, if it was with proper permission, his lien is kept in the Government department for a period of two years. In this case, there is no indication that the applicant's lien was kept in the P&T Department. It would appear that the applicant had resigned on his own to better his prospects and he had accepted that he would not be eligible for any pensionary benefits for all these years. He had not explained as to why he has taken up this issue with the P&T Department and the Rubber Board only in the year 1994. The P&T Department had expressed their inability on the ground that they do not

have any record to show under what circumstances the applicant had resigned from the P&T Department. According to them, the preservation period of the records of the applicant had already expired. We are unable to find fault with this submission of the P&T Department. It is only because of the applicant's own delay in approaching the Department that the Department is able to give an explanation like this.

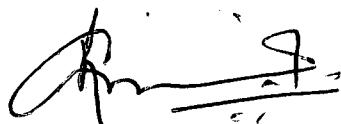
12. In the light of the above, we hold that the applicant is not entitled for any relief against the respondents 1, 4, 5 and 6.

13. Accordingly, we dismiss the Original Application without any order as to costs.

Thursday, this the 28th day of March, 2002



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures :

1. A-1: True copy of letter dated 4.12.1979 of the 5th respondent.
2. A-2: True copy of representation submitted by the applicant to the 2nd respondent dated 30.12.94.
3. A-3: True copy of reply submitted by the applicant to the 4th respondent dated 14.6.96.
4. A-4: True copy of certificate received by the applicant issued by the 4th respondent dated 15.7.97.
5. A-5: True copy of letter dated 15.1.98 of the 3rd respondent.
6. A-6: True copy of Office Memorandum dated 30.5.1995 of the Department of Pension and Pension Welfare.
7. A-7: True copy of the letter dated 15.1.99 sent by the 2nd respondent to the Applicant.
8. A-8: True copy of the representation submitted by the applicant to the 4th respondent dated 16.7.99.

Respondents' Annexures :

1. R-1: Copy of the O.M No.28016/5/85-Estt(c) dated 31.1.86 issued by Government of India, Department of Personnel & Training.
2. R-2: Copy of the extract of Rule 37 of the CCS(Pension) Rules, 1972.
3. R-3(a): True copies of the covering letter with application of the applicant.
4. R-3(b): True copy of the discharge certificate dated 4.12.99.
5. R-3(c): True copy of the Government order O.M.No.28-10/84-Pension Unit dated 29.8.1984.
6. R-3(d): True copy of the letter dated 28.12.98 issued by 5th respondent to the 3rd respondent.
7. R-3(e): True copy of the letter dated 25.5.2000 issued by 4th respondent to the 3rd respondent.
8. R-3(f): True copy of the letter dated 7.4.2000 issued by Post Master General, Calicut - 673 011 (Assistant Director (Staff), 4th respondent to the ACGSC.

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