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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 337/97

FRIDAY, THIS THE 1ST DAY OF MAY, 1998.

C O R A M:

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

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

K. Raghavan
Retired Travelling Inspector of Accounts
Southern Railways
"Rajasuyam" Near Chalat Temple
Kannur. ..Applicant

By Advocate Mr. E.V. Nayanar

Vs.

1. The Financial Adviser and Chief Accounts Officer (Traffic Accounts), Southern Railway, Madras-3.
2. The Commissioner of Agriculture, Tamilnadu, Madras.
3. The Secretary, Agricultural Establishment Department Government of Kerala, Thiruvananthapuram.
4. The Director of Agriculture, Kerala, Thiruvananthapuram.
5. The Secretary, Ministry of Personnel, Public Grievances & Pension Department of Pension & Pensioners' Welfare, New Delhi. ..Respondents

By Advocate Mr. MHJ David J, ACGSC for R-5

By Advocate Mr. CT Ravikumar for R 3 & 4

By Advocate Mr. Thomas Mathew, Nellimoottil for R1

By Advocate Mr. Nandakumar for R2

The application having been heard on 23.4.98, the Tribunal delivered the following on 1.5.1998

O R D E R

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

The brief facts of this case, which are not disputed, are as follows.

2. The applicant had originally joined the ministerial service of the erstwhile Madras State on 10.11.1952

recruited through the Madras Public Service Commission. He resigned from the same service on being selected by the Railway Service Commission for appointment in the Accounts Department of the Southern Railway. His resignation was accepted with effect from 7.11.1954. His service in the Accounts Department of the Southern Railway commenced on 11.11.1954. His service there was confirmed w.e.f. 1.9.1959. He retired from that service as a Travelling Inspector of Accounts w.e.f. 31.10.96. Just before his retirement, he made a representation to the competent authority i.e. the Financial Adviser and Chief Accounts Officer (Traffic Accounts), Southern Railway, the first respondent that his past service in the Madras State should be counted for the purpose of pension and pensionary benefits in terms of the Government of India, Ministry of Home Affairs circular dated 31.3.1982 addressed to the Governments of all the States in India. That circular is found at R1.

3. The applicant has finally prayed for the following reliefs:.

"a) Issue an order or direction to the 3rd respondent Secretary, Agricultural Establishment Department, Govt. of Kerala to issue a service certificate to the Director of Agriculture, Tamilnadu certifying that the applicant has served in the Agricultural Department of the erstwhile Madras State in the Malabar area for the period from 10.11.1952 to 7.11.1954

b). Issue an order or direction to the Director of Agriculture Tamilnadu to issue the necessary certificates as required by the first respondent in his Annexure A-XIV letter

c) Issue an order or direction to the 1st respondent to grant the applicant full pension taking into

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account the service of the applicant in the Railways and also with the Madras Govt. from 10.11.52 to 7.11.1954.

d) Issue such other and further order or direction which this Hon'ble Tribunal may deem fit and proper to issue in the facts and circumstances of the case."

4. The applicant's representation was taken up and pursued by the 1st respondent over a long period of time. Both the Governments of Tamil Nadu and of Kerala were approached for the reason that the old Malabar region where the applicant had rendered his service under the erstwhile Madras State, became a part of the Kerala State in the event of States Re-organisation. Finally, the Govt. of Tamilnadu has said that since the applicant worked in an area which, though earlier was a part of the erstwhile Madras State, has come under the Kerala State and since the records pertaining to his service were not available any more with the Govt. of Tamilnadu, the Govt. of Kerala should be in a position to certify whether the applicant had indeed rendered service between 1952 and 1954 as claimed by him in the erstwhile Madras State. The Tamilnadu Govt. in their reply statement, filed as the respondent No.2, have also stated that in these circumstances they should be relieved of any obligation pertaining to the pensionary benefits claimed by the applicant.

5. The Govt. of Kerala as the respondent No.3 have, on the other hand, not denied the facts pertaining to the service rendered by the applicant, as claimed by him, prior to his joining the Southern Railway, but they have denied that the applicant is eligible for getting that

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service counted for the purpose of pension and pensionary benefits for the sole reason that in terms of the Govt. of Kerala order dated 19.6.87 at R3(B) read with their order dated 31.3.87 at R3(A) such benefits for a State Govt. servant on account of his subsequent employment in Govt. of India could accrue only to a State Govt. employee who got employed in the Govt. of India after 7.2.1986, i.e. the date from which the order of the Kerala Govt. at R3(B) became effective. That Govt. also have thus denied their liability in the matter.

6. In the light of the positions taken by the Govt. of Tamilnadu and the Govt. of Kerala described briefly above, the 1st respondent as the competent authority in the Southern Railway has denied in the reply statement the basic relief sought by the applicant, namely that he is eligible in the light of the specific provisions of the Govt. of India circular at R1 for getting his past service between 1952 and 1954 rendered under the former Madras State counted for the purpose of pension.

7. We have carefully gone through the pleadings in this case and heard the learned counsel appearing for the parties. The 2nd respondent chose to file a reply statement, but did not appear for the oral hearing.

8. The fact of the applicant having served the former Madras State in a ministerial capacity in the Directorate of Agriculture for the period between 10.11.1952 and 7.11.54 has not been denied. On the contrary, the Director of Agriculture, Govt. of Kerala, the 4th respondent, has in his letter dated 15.10.88 at AVII addressed to the Secretary, Agriculture of the same Govt. the 3rd respondent, has clearly stated that on verification that fact has been found to be correct. He

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has also confirmed in the same A-VII that the resignation tendered by the applicant from that service was accepted with effect from 7.11.54.

9. Therefore, we hold that the service claimed to have been rendered by the applicant under the former Madras Govt. is deemed to have been certified.

10. The other important issue that remains to be resolved is whether the contentions of the Govt. of Kerala that in terms of R3(B) such past service under the State Govt. that could count for pension can only be w.e.f. 7.2.86 i.e. only in respect of employees of the State Govt. who got employed in Govt. of India after resigning from the State Govt. on or after 7.2.86 and that therefore the applicant having resigned way back in 1954 from the service of the State Govt. is not eligible for the dispensation is tenable or not.

11. We have already referred to fact that the applicant's case is that he is eligible for getting his past service under the former Madras Govt. counted for the purpose of pension in terms of the Govt. of India circular dated 31.3.1982 at R1, which is evidently addressed to all the State Govts.

12. We will now examine the relevant parts of that communication in this context. That letter clearly states that the past service rendered even by a temporary employee under a State Govt. who had applied for a post under the Central Govt. through proper channel and resigned from the State Govt. to join the service under the Central Govt. would be counted for the purpose of pension, treating the periods of service under the State Govt. and the Central Govt. as the combined service. That communication at R1 also makes it clear that the said

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decision had been taken after consulting the State Govts., that it had been jointly decided that the grant of pension for such combined service would be shared between the two Govts. on a Service share basis and that the pension so calculated would be granted by the Govt. from where such an employee eventually would retire. None of the respondents, including the Govt. of Kerala, have stated in their reply statement or during the oral arguments that the provisions of R1 dated 31.3.82, which is admittedly the basic order in these matters, have been subsequently modified and are not applicable in the cases coming thereunder any more. That being the case, the next related question that arises for our consideration is: (a) whether R1 have only a prospective effect in the specific sense that only those who switch employment in the manner described therein after 31.3.82 come under its purview, or (b) whether it regulates all cases of such switchover of employment which had taken place in the past i.e. prior to 31.3.1982, but where the concerned employee was going to retire on or after 31.3.1982, i.e. the date of the order.

13. The answer to the above question becomes obvious when we notice that the operative part of the opening sentence of R1 states that it deals with "the question of sharing on a reciprocal basis, the proportionate pensionary liability in respect of those temporary employees who had rendered temporary service under the Central Govt./State Govt. prior to securing posts under the various State Govts./Central Govt. on their own volition in response to advertisements or circulars including those by the State/Union Public Service Commissions and who are eventually confirmed in their new posts."

(underlined by us).

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13. It is thus evident that R1 regulates the cases of those employees who had by 31.3.82 undergone such a switchover of employment. Therefore, the specific contention of the Kerala State Govt. as the third respondent in the O.A. that such an order on pensionary benefits should be interpreted as regulating only the cases of those employees who undergo the switchover of employment on or after the date of issue of the order, in our opinion, is not tenable. We, therefore, conclude that the dispensation under these Pension-sharing orders including the one at R3(B) applies to the case of the applicant who had switched employment already i.e. prior to the date of the issue of order, but would retire thereafter.

14. The applicant has also specifically averred that the other contentions stipulated under R1 have been complied with by him. The documentary evidence in this behalf produced by him at this point of time, i.e. long after the switchover, may not be foolproof. But the important aspect of the case on this score is that these specific averments have not been denied by any of the respondents.

15. In the event, we allow the O.A. holding that the applicant is clearly eligible for getting his past service rendered from 10.11.1952 to 7.11.54 under the erstwhile Govt. of Madras counted for the purpose of pension and we direct that the 1st respondent as the competent authority in the Govt. department (here the Southern Railway) from where the applicant finally retired should grant the applicant the pension taking into account this past service rendered by the applicant, within a period of three months from the date of receipt of a copy of this order.

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16. We have deliberately refrained from adjudicating which of the two State Govts. i.e. the Govt. of Tamil Nadu or the Govt. of Kerala is the successor Govt. for the purpose of sharing proportionately with the Govt. of India, i.e. the Southern Railway here, the pensionary liability on a service share basis arising from our order above. It is primarily for the reason that the matter has not been raised as a specific issue before us. However, we have noted the provisions of Section 86 read with those of the fifth schedule of the States Reorganisation Act, 1956. They are quoted below::

"86: Pensions The liability of the existing States in respect of pensions shall pass to, or be apportioned between, the successor States in accordance with the provisions contained in the Fifth Schedule."

Fifth-Schedule

Apportionment of liability in respect of pension

1. Subject to the adjustments mentioned in paragraph 3, the successor State or each of the successor States shall, in respect of Pensions granted before the appointed day by an existing State, pay the pensions drawn in its treasurres.

2. Subject to the said adjustments, the liability in respect of pensions of officers serving in connection with the affairs of an existing State who retire or proceed on leave preparatory to retirement before the appointed day, but whose claims for pensions are outstanding immediately before that day shall be the liability of the successor State or, if

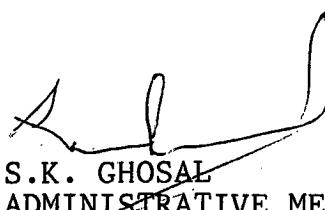
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there be two or more successor States, of such one of the as the Central Govt. may order specify...."

17. We therefore direct that the 1st respondent acting in conjunction with the 5th respondent, i.e. the Secretary, Ministry of Personnel, Public Grievances and Pension, Govt. of India, should take up that matter appropriately with the concerned State Govt. in the light of the above provisions of the States Reorganisation Act, 1956. Only on that account the enhanced benefits accruing to the applicant from our order in this case should not be delayed.

18. There shall be no order as to costs.

Dated the 1st May, 1998.


S.K. GHOSAL
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES

1. Annexure- A VII: Letter No.SA(1) 38501/87 dt. 15.10.88 of the Director of Agriculture Kerala to the Secretary to the Govt. of Kerala, Agri.(Estt.A) Dept.
2. Annexure A XIV: Letter No.P500/Admn./TIA/KR/86 dt. 5.4.93 of the 1st respondent to the Director of Agriculture, Tamilnadu
3. Annexure R-I: Ministry of Home Affairs letter No. 37(20)/Pen(A)/79 dated 31.3.82.
4. Annexure R3-A: G.O. (P) No.369/87/Fin. dt. 31.3.87 by the Govt. of Kerala.
5. Annexure R3-B: G.O. (P) 533/87/Fin. dt. 19.6.87 by the Govt. of Kerala.
