

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. NO.386/2008

Dated this the 12<sup>th</sup> day of January, 2011

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Dr. R. Ansari  
Managing Director  
Malabar Botanical Garden Society  
Guruvayurappan College (P.O.)  
Kozhikode - 673 104. .... **Applicant**

(By Advocate Mr. Elvin Peter P.J)

Vs

- 1 Union of India  
Represented by the Secretary  
Ministry of Environment and Forests,  
New Delhi.
- 2 Botanical Survey of India  
Represented by its Director  
P-8, Brabourne Road,  
Kolkata - 700 001
- 3 The Pay & Accounts Officer  
Pay & Accounts Office  
Ministry of Environment & Forests  
234/4, AJC Bose Road,  
II MSO Building (17<sup>th</sup> Floor)  
Nizam Palace Complex,  
Kolkata - 700 020
- 4 The Controller of Accounts  
Ministry of Environment & Forests

Paryavaran Bhavan, CGO Complex,  
Lodhi Road, New Delhi - 110 003.

5      Government of Kerala  
          Represented by the Principal Secretary to  
          Government, Science & Technology Department  
          Government Secretariat  
          Thiruvananthapuram.        .....      Respondents

(By Advocate Mr. MVS Nampoothiry R1-4)

(By Advocate Mr. N.K. Thankachan R-5)

The Applications having been heard on 17<sup>th</sup> December, the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant challenges Annexure A-22 order of the 3<sup>rd</sup> respondent denying pensionary benefits for the service rendered in the Botanical Survey of India.

2      The applicant who was initially appointed as a Herbarium Assistant in the Botanical Survey of India, a Government of India undertaking w.e.f. 6.11.1973 (A-1), was promoted to the post of Scientific Assistant and Senior Scientific Assistant and continued in the BSI till 16.10.1996. While working in the BSI, he was appointed as Special Officer under Directorate of Museum and Zoos, Govt. of Kerala, Trivandrum on deputation for a period of two years (A-2). While so, the Govt. of Kerala converted the Botanical Garden into an autonomous Society (A-3) and appointed the applicant as the Managing Director (A4). The deputation of the applicant was extended upto 16.10.1996 (A-5) and his pay scale was fixed w.e.f. 17.10.1996 (A-6). While so, he

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sought admissible retirement benefits for the service with the BSI upto 16.10.1996 (A-8). Accordingly, he was granted the terminal leave encashment and GPF etc. (A-9) but his pensionary benefits were not released so far. He submitted several representations on 6.10.2004 (A10, A-11 to A-16). He approached the Tribunal through O.A. 590/2006 for redressal of his grievances, which was disposed of on 23.8.2006 with a direction to the respondents 1 and 3 to take a final decision in the matter within a period of three months. Pursuant to the above order, he was required to clarify certain points (A-20) which he gave (A-21). The applicant is aggrieved by Annexure A -22 order of the 3<sup>rd</sup> respondent to the effect that the pensionary benefits for the entire service including the service rendered in BSI is to be borne by the Govt. of Kerala on the grounds that, the Malabar Botanical Garden in which he is now working is an autonomous body/ public undertaking of the Govt. of Kerala, sanction was already given for leave encashment upto 16.10.1996 as part of retirement benefit, the stand now taken after a lapse of 5 years is illegal, arbitrary and unsustainable, as per the terms and conditions of deputation and appointment would govern his case, therefore he is entitled to pro rata pension in accordance with Govt. of India Rules. Relying on the judgments of the Apex Court, he filed this O.A to quash Annexure A-22 and for a direction to disburse all the pensionary benefits from 6.11.1973 to 16.10.1996.

3 The respondents in the reply statement admitted that the applicant, a Senior Scientific Assistant in the BSI was on deputation with the Directorate of Museum & Zoos, Government of Kerala, Trivandrum w.e.f. 31.1.1991 for a period of two years which was not extended beyond 1.2.1995. They stated that as per the extant rules,

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the applicant is deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits if any from such date as may be determined in accordance with the rules. However, they stated that neither the applicant nor the Govt. of Kerala sought prior permission of the Central Government for appointment of the applicant as MD in the Malabar Botanical Garden Society and that the applicant had not submitted his technical resignation before joining the new post.

4 The applicant filed rejoinder to the reply statement stating that he sought permission of BSI vide his letter dated 17.10.96 and that the BSI neither refused his request nor asked for his resignation letter till date. He relied on Annexure A-9 order dated 28.4.2003 to show that the BSI had sanctioned the terminal leave encashment.

5 The applicant has amended the O.A incorporating additional facts and reliefs.

6 The 5<sup>th</sup> respondent had filed preliminary reply statement opposing the O.A.

7 I have heard learned counsel for the parties and perused the records produced before us.

8 The issue that comes up for consideration is regarding the disbursement of pro-rata pension to the applicant. Admittedly by Annexure A-2 office order dated 31.1.1991 he was relieved on deputation for a period of two years on lien from this Department.

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The applicant on continued deputation was appointed as Managing Director of the Malabar Botanical Garden Society on deputation. The continued deputation was approved by the BSI by Annexure A-5 dated 27.4.2001. Accordingly, the applicant had requested for pro rata pension by A-8 letter dated 16.3.2002. The BSI by its order at Annexure A-9 sanctioned the cash equivalent of leave accrued by him in his service in the BSI.

9 Having heard the learned counsel on both sides and after perusal of the documents produced before me it is evident that the GSI has approved the continued deputation and absorption of the applicant in the Malabar Botanical Garden Society w.e.f. 17.10.1996. Vide Annexure A-9 cash equivalent of leave salary for 202 days was granted. Such leave encashment upto a maximum of 240 days (revised to 300 days) is permitted only as a part of retiral benefits. Hence, as long as Annexure A-9 order is not withdrawn or cancelled, it is valid in the eye of law.

10 The applicant was initially appointed on deputation as Special Officer under the Directorate of Museum and Zoos, Govt. of Kerala, Trivandrum. While so, the Government converted the Botanical Garden into an autonomous Society. The deputation of the applicant was continued without any objection. Since the deputation was from Central Government service to State Government and that the applicant was deputed to Botanical Garden under Government of Kerala in 1991 and it was converted to an autonomous society under Government of Kerala only in 1996.

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11 Government of India, Dept. Of Personnel & A.R. OM NO. 28-10/84-Pension Unit, dated the 29<sup>th</sup> August, 1984 lays down the rule of transfer of Central Government servants to Central Autonomous Bodies and vice versa. According to the rules supra, the Government will discharge its pension liability by paying in lump sum, as a one time payment, the pro rata pension/service gratuity/terminal gratuity and retirement gratuity for the service up to the date of absorption in the Autonomous body/Government, as the case may be. Lump sum amount of the pro rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time. This was extended to transfer of personnel between Central Government/Autonomous bodies and State Governments/Autonomous bodies and vice versa by Government of India Department of Pension & Pen. Welfare OM NO. 28(10)/84-P&P.W/Vol.II dated the 7<sup>th</sup> February, 1986, 17<sup>th</sup> June, 1996, 30<sup>th</sup> October, 1986 and 20<sup>th</sup> March, 1987, etc. Hence, the applicant is eligible for retiral benefits for the service rendered in BSI, in accordance with the rules. Accordingly, I quash Annexure A-22 and direct the 3<sup>rd</sup> respondent to disburse retiral benefits of the applicant for his service rendered by him in the Botanical Survey of India from 6.11.1973 to 16.10.1996 in accordance with the rules with 8% interest from the 28<sup>th</sup> April 2003 till the same is disbursed. There shall be no order as to costs.

Dated 12<sup>th</sup> January, 2011

  
K. NOORJEHAN  
ADMINISTRATIVE MEMBER

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