

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 40/2000

WEDNESDAY, THIS THE 6th DAY OF MARCH, 2002.

C O R A M

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

C.S. Subramanian
S/o late T.V. Krishnan Iyer
residing at 1st Floor
37 SMV Koil Street
Tamil Nadu, Chennai-5.

Applicant

By Advocate Mr. Elvin Peter P.S.

Vs.

1. Union of India represented by
its Secretary
Ministry of Mines
New Delhi.
2. The Director General,
Geological Survey of India
27, Jawaharlal Nehru road
Calcutta-16
3. The Deputy Director General,
Geological Survey of India (Southern Region)
Bandlakuda Complex
Hyderabad-500 660
4. The Accounts Officer
Central Pension Accounting Office
Ministry of Finance
Government of India, Trikoot-II Complex
Bhikaji Cama Place,
New Delhi-110 066.

Respondents

By Advocate Mr. M. Rajendrakumar, ACGSC

The Application having been heard on 6.2.2002 the Tribunal
delivered the following on 6.3.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This Original Application is filed by the applicant a
retired Director (GEOL) Selection Grade, Geological Survey of
India (Operations) Kerala, Trivandrum, aggrieved by A-1 order
dated 8.2.99 issued by the first respondent rejecting his



claim to count the 'service' rendered by him as Geological Assistant in the State Geologist Department of the Industries and Commerce and Ground Water Cell of the Public Health Department of the Govt. of Tamil Nadu. He sought the following reliefs through this O.A.

(a) to call for the records leading to Annexure A-1 and quashing the same

(b) to issue a direction to the respondents to refix the pensionary benefits of the applicant counting the service rendered by him as Geological Assistant in the office of the State Geologist in the Department of Industries and Commerce, Govt. of Tamil Nadu from 17.6.1963 to 31.3.1965 and further to count the service rendered by him in the ground Water Cell of the Public Health Department, Govt. of Tamil Nadu from 1.4.65 to 8.6.65 as qualifying service for the purpose of computation of pension and to grant full pension to the applicant taking 33 years 11 months and 7 days as the total period of qualifying service.

(c) to issue a direction to disburse the arrears of pension to the applicant after refixation of his pensionary benefits counting the service rendered by him under the State of Tamil Nadu before his appointment under the 2nd respondent.

(d) to issue a direction to the respondents to disburse the arrears to the applicant after refixation of his pensionary benefits taking into account the service rendered by him under the State of Tamil Nadu before his appointment under the 2nd respondent with 18% interest.

(e) grant such other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case including cost.

2. As per the averments of the applicant in the Original Application he was first appointed as Geological Assistant in the office of the State Geologist Department of Industries and Commerce, Govt. of Tamil Nadu as per order NO. 4828/E2/63 dated 15.6.1963. and continued as Geological Assistant in the above Department till 31.3.1965. In support of the averment applicant produced A2 certificate dated 5.5.96 issued by the Commissioner, Geologist and



Mining, Madras. Thereafter, the applicant was appointed by transfer as Geological Assistant pursuant to a selection conducted by the Tamil Nadu Public Service Commission in the Ground Water Cell of the Public Health Department, Govt. of Tamil Nadu. By A3 order dated 31.3.65 he was relieved from State Geological Department of Industries and Commerce, Tamil Nadu State w.e.f. 31.3.65 to join the Ground Water Cell where by A-4 order dated 1.4.65 he was posted as Geological Assistant in the Ground Water Cell Sub Division No. 1. On the basis of the selection conducted by the UPSC he was appointed as Geologist (Junior) in the Geological Survey of India as per A-5 order dated 30.4.65. By A-6 order dated 9.6.65 he was relieved from the post of Geological Assistant to join the post of Geologist (Junior) in the Geological Survey of India. He continued in the Department of Geological Survey of India and retired from service on superannuation on 31.5.97 while holding the post of Director (GEO) Selection Grade, GSI (operations), Kerala, Trivandrum rendering 31 years 11 months and 17 days of service. He submitted a representation dated 7.1.1997 before the Administrative Officer, GSI Southern Regional Office, Hyderabad requesting to fix his pensionary benefits taking into account the service rendered by him under the State of Tamil Nadu. The representation submitted by the applicant was forwarded by the Administrative Officer to the 2nd respondent as per A-7 communication dated 30.1.97. Thereafter the third respondent as per letter dated 27.8.97 sought clarification from the applicant. The applicant by A-8 letter dated 11.9.97 sent clarification. Thereafter, 3rd respondent as per A-9 letter dated November, 1997 sought

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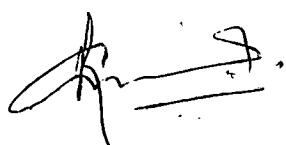
further clarification from the Commissioner of Geology & Mining, Madras and also from the Superintending Engineer, Ground Water Cell, Madras. Department of Geology and Mining sent A-10 reply dated 4.12.97. Second respondent forwarded by A-11 letter to the 1st respondent for counting the past service of the applicant but the approval of the 1st respondent never came. Third respondent again sent A-12 communication. The applicant executed A-13 Affidavit and the same was forwarded to the second respondent. Thereafter the ~~respondent~~ first/passed A1 order dated 8.2.99 rejecting the claim of the applicant to count the service rendered by him as Geological Assistant under the Government of Tamil Nadu as qualifying service for computation of pension. Against Annexure A1 order dated 8.2.99 applicant submitted A-14 representation on 9.6.99 before the 1st respondent. Alleging that the reliance placed by the respondents on the proviso a to Rule 14(3) of the CCS (Pension) Rules, 1972 as misconceived and relying on Govt. of India A-15 OM dated 30.6.76, A-16 OM dated 31.3.82, A-17 OM dated 9.10.86 and A-18 OM dated 25.10.87. Applicant claimed that he was entitled to count the service rendered by him under the State Govt. as qualifying service for the purpose of computation of his pensionary benefits and the applicant was entitled to get full pension. He submitted that A-1 was issued without reference to the above orders and was illegal. Relying on the judgment of the Hon'ble Supreme Court reported in 1994 (2) SCC 240 that any amount if illegally withheld from any person who was legally entitled to the said amount he submitted that the person who was deprived of the said amount was entitled to receive interest for the amount withheld.



3. Respondents filed reply statement resisting the claim of the applicant. It was submitted that the appeal of the applicant towards counting of his past service rendered in the Tamil Nadu Govt. for pensionary benefits was not considered as he applied for the post in GSI on his own volition. Relying on Rule 14(3) of CCS (Pension) Rules, 1972, and the Govt. of India DP&AR's R-1(a) OM letter dated 31.3.82 it was submitted that his State Govt. service could not be counted for pension purposes. According to them there was no rule or provision providing for counting of past service rendered in another department for pension purpose simply on the basis of declaration without any documentary statement of the evidence. There was no confirmation of the applicant that he had applied for Geologists' Examination conducted by the UPSC in 1964 through proper channel from the competent authority of his previous Department. According to them the O.A. was devoid of merit and liable to be dismissed.

4. Heard learned counsel for the parties. The learned counsel for the applicant specifically took us through A-15, A-16, A-17 and A-18 OM and submitted that the applicant is entitled to count the services rendered by him under the Govt. of Tamil Nadu for the purpose of pensionary benefits. The learned counsel for respondents took us through the reply and statement/resisted the claim of the applicant.

5. We find from the impugned A-1 letter dated 8.2.99 that the following had been stated for rejecting the claim of the applicant:

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(i) That in view of the proviso below Rule 14(3) of the CCS (Pension) Rules 1972, and as the applicant applied to GSI on his own volition, the said Rule was not applicable to the applicant's case

(ii) The applicant's affidavit without any documentary proof would not satisfy the provision of the rule that of the applicant having applied through proper channel.

(iii) The explanation submitted by the applicant for making representation belatedly was not tenable and

(iv) No certificate had been issued by the authority accepting the resignation as provided for in DOP&W letter dated 31.3.1982.

6. Applicant has relied on A-15, A-16, A-17 and A-18 OMs to submit that A-1 was illegal and liable to be set aside. From the reply statement we find that the respondents even though have enclosed as Annexure R-1(a) copies of letter dated 31.3.1982 and OMs dated 30.6.1976 and 25.10.1996 which had been referred to in the O.A. by the applicant as Annexure A-16, A-15 and A-18 respectively, they had only relied on the letter dated 31.3.1982 to submit that the applicant was not entitled for counting his State Government service for pensionary purposes. In the reply statement there is no specific averment that OMs dated 30.6.1976 and 25.10.1996 would not be applicable to the applicant's case.

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The above three OMs read as under:

G.I. M.F.OM NO. F3(38)-WV(A)/74 dated 30.6.1976.

(7) Special provision in the case of those State Government servants appointed to Central Service Group-A:- According to the existing instructions, the benefit of counting the continuous temporary service under the State Government immediately preceding the service under the Central Government will not be allowed to those who secure jobs to the Centre on their own volition in response to advertisements or circulars including those by UPSC.

2. It has been observed in this connection that the position of All India Service officers under the relevant rules is different. If State Government employees are successful in the competitive examinations and are appointed to Indian Administrative Service/Indian Police Service/Indian Forest Service, they get the benefit of their past service for pension under Rule 8(2) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958. In case such an officer allotted to the cadre of a State different to the one in which temporary service has been rendered, such service counts subject to the concurrence of the concerned State Government. As against this, persons appointed to Central Service Group-A like IA and AS, IRS, etc., do not get the benefit of their past temporary service rendered in a State for pension. This position is discriminatory. It has been decided that the service rendered by temporary State Government servants who are appointed to Central Service Group-A as a result of competitive examination held by UPSC, will also count towards pension on the lines of the concessions admissible in the case of All India Service Officers as explained above.

3. The arrangements envisaged in Para 2 above will not apply to the employees belonging to the State Governments of West Bengal, Madhya Pradesh, Tamil Nadu, Tripura and Maharashtra as Governments of these States have not agreed to the arrangements mentioned in Para 2 above.

G.I. DP&AR letter No. 3(20)/Pen.(A) -/79 dated 31.3.82:

(6) Counting of temporary service under the State/Central Governments:- 1. The Government of India have been considering in consultation with the State Governments, the question of sharing on a reciprocal basis, the proportionate pensionary liability in respect of those temporary employment/State Governments prior to securing posts under the various State Governments/Central Government on their own volition in response to advertisements or circulars, including those by the



State/Union Public Service Commission and who are eventually confirmed in their new posts. It has since been decided in consultation with the State Governments that proportionate pensionary liability in respect of temporary service rendered under the Central Government and State Governments to the extent such service would have qualified for grant of pension under the rules of the respective Government, will be shared by the Government concerned, on a service share basis, so that the Governments servants are allowed the benefit of counting their qualifying service both under the Central Government and State Governments for grant of pension by the Government from where they eventually retire. The gratuity, if any, received by the Government employee for temporary service under the Central or State Governments will, however, have to be refunded by him to the Government concerned.

2. The Government servants claiming the benefit of combined service in terms of the above decision are likely to fall into one of the following categories:-

(1) Those who having been retrenched from the service of Central/State Governments secured on their own employment under State/Central Governments either with or without interruption between the date of retrenchment and date of new appointment.

(2) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Governments through proper channel with proper permission of the administrative authority concerned

(3) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Governments direct without the permission of the administrative authority concerned and resign their previous posts to join the new appointments under State/Central Governments.

The benefit may be allowed to the Government servants in Categories (1) and (2) above. Where an employee in Category (2) is required for administrative reasons, for satisfying a technical requirement to tender resignation from the temporary posts held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement, to join, with proper permission, the new posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his Service Book under proper attestation to enable him to get his



benefit at the time of retirement. Government servants in Category (3) will obviously, not be entitled to count their previous service for pension.

3. The above arrangement will not apply to the employees of the Governments of Jammu and Kashmir and Nagaland.

4. These orders come into force with effect from the date of issue and cases of all such Government servants retiring on this date and thereafter will be regulated accordingly.

G.I.Dept. of Pen & Pen. welfare, OM No.28/10/95--{ -P&PW(B) dated 25.10.96

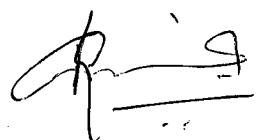
(8) Counting of service under State Governments-sharing of pension liability dispensed with:- The orders contained in this Department's letter No. 3(20)/Pen.(A)/79 dated 31.3.1982 (Decision (6) above) and Ministry of Finance OM No. 3(38)E.V(A)/74 dated 30.6.76 (Decision (7) above) lay down the procedure for counting of the service rendered by a Central Government employee in State Governments. This reciprocal arrangement, however, not applicable in the case of certain specified State Governments.

2. A doubt has been expressed in the above context about the applicability of the orders contained in Ministry of Finance OM NO. 14(5)/86-TA/1029, dated 9.10.1086(Decision (5) above) which dispenses with the sharing of pension and leave salary liability between Central and State Governments. The matter has been considered in consultation with the Ministry of Finance (Department of Expenditure), Controller-General of Accounts. It is clarified that according to the provisions of Part-A (Introductory) of Appendix-5 to Government Accounting Rules, 1990, the liability for pension including gratuity should be borne in full by the Central/State Governments to which the Government servant permanently belongs at the time of retirement. These provisions do not exempt any State Government from the applicability of the reciprocal arrangement which dispenses with sharing of pension liability. However, in the matter of processing proposals for counting of service rendered by an employee in the State Government the procedure laid down in OM dated 31.3.1982 (decision (6) above) and 30.6.1976(Decision (7) above) would continue to be followed.

3. Ministry of Defence, etc. are requested to clarify this position to all concerned authorities under their administrative control.



8. We find from the OM dated 30.6.1976 that till the issue of the above OM there was no provision for reckoning the continuous temporary service rendered under the State Govt. by those who were appointed to Central Service Group-A as a result of competitive examinations held by UPSC. We note that there is no stipulation in the OM that such appointments should have been secured by applying through proper channel and only in that case such reckoning will be done. This would indicate that such State Govt. servants even if they had applied directly on their own volition in response to advertisement by the UPSC their State Government service would be treated as qualifying service for pension benefits. Even though Tamil Nadu State did not participate in the above reciprocal arrangements, from OM dated 25.10.96, we see that Tamil Nadu State Government servants would also be covered by the OM dated 30.6.1997. When such is the case the reason given by the applicant for the belated representation in his A-8 letter dated 11.9.97 of the non-availability of any provisions for counting the services in the State Govt. for pensionary benefits appears to be factual. We also find that the applicant in his A-8 letter dated 11.9.97 had also stated that at the time of applying for the UPSC Examination in 1963, he was not in Government service. There is nothing in the pleadings to show as to whether this had been verified by the respondents or not. If the applicant was not employed at the time of applying for the First Geologist Examination, 1964, then the question of applying the provisions of R-1(a) letter dated 31.3.1982 to reject his case does not arise. In any case we find from A-5 dated 30.4.65 that the respondents were aware that the

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applicant was working under the State Geologist Department of Industries and Commerce, Govt. of Tamil Nadu, Madras. This letter would also indicate that even if the applicant had not applied through proper channel for appearing in the First Geologists' Examination in 1964, he would have intimated the respondents about his employment in the Department of Industries and Commerce, Govt. of Madras. Otherwise they would not have requested the State Geologist, Department of Industries & Commerce, Govt. of Madras to release the applicant. The endorsement in A-5 letter dated 30.4.1965 A2 certificate dated 15.5.96 and A-10 letter dated 4.12.97 issued by the Commissioner of Geology and Mining, Guindy Madras and Director of Geology and Mining respectively would also show that the applicant was a temporary employee in the State Geological Department of Industries and Commerce, Govt. of Madras from 17.6.63 to 31.3.65 when he was relieved to join duty in the office of the Superintending Engineer, Ground Water Cell, Madras-5. Thus we are of the view that there is sufficient evidence to show that the applicant before joining the GSI was working under the Govt. of Madras from 17.6.63. The applicant filed true copies of Certificate No. 6927/E2/96 dated 5.5.96 (A3), Order No. 80/GW dt. 1.4.65 issued by the Superintending Engineer (A4), Order No. 2198R/2222(CSS)/19 dated 30.4.65 issued by the 2nd respondent and Order No. 384/LGW/65 dt. 9.6.65 issued by the Superintending Engineer (A-6) along with the O.A. Respondents have not questioned the authenticity of any of these documents.

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9. The next reason given in the impugned order A1 for rejecting his request for counting his service under the State Government of Tamil Nadu for pensionary benefits was that in terms of the Department of Personnel and Administrative Reforms Letter No. 3(20)/Pen(A)/79 dated 31st March, 1982 (A-16/R-1(a)) a certificate was required to be recorded by the authority accepting the resignation. This condition is impossible to be satisfied as the letter itself is dated 31.3.82 and in this case the applicant resigned his service from the Govt. of Tamil Nadu on 9.6.65. The events had taken place as per the rules and orders existing at the relevant time. The requirement of recording a certificate, etc. contained in the OM dated 31.3.82 would only be applicable to the cases which would occur after the date of issue of the OM. In any case in our view the applicant's case is to be examined on the basis of OM dated 30.6.1976 and OM dated 25.10.96. Therefore this reason is without any basis.

10. We find from A-11 and A-12 that the second respondent had satisfied himself about the claim of the applicant and had recommended the case. But A-1 had been issued by the first respondent without considering the relevant points as brought out in the foregoing paragraphs.

11. In view of the foregoing we are unable to sustain Annexure A-1 letter dated 8.2.99 and therefore we set aside and quash the same. We direct the first respondent to consider afresh the case of the applicant for reckoning the services rendered by him as Geological Assistant in the

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Department of Industries and Commerce, Govt. of Tamil Nadu and the Ground water Cell of PWD, Govt. of Tamil Nadu from 17.6.63 to 8.6.65 in the light of the instructions of the Govt. of India keeping in view what is stated by us in the foregoing paragraphs. Further, the consequential retiral benefits if any to which the applicant would become entitled to on such consideration including arrears thereof from the date of his retirement shall be disbursed to the applicant by the respondents within a period of four months from the date of receipt of a copy of this order.

12. We allow the Original Application as above with no order as to costs.

Dated the 6th March, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of Order No.14/1/97-M.II (SJ) dt.8-2-1999 issued by the 1st respondent.
2. A-2: True copy of Certificate No.6927/E2/96 dt.5.5.1996 issued by the Commissioner of Geology & Mining.
3. A-3: True copy of Order No.1094/65/SG4 dt.31.3.1965 issued by the Superintending Engineer.
4. A-4: True copy of order No.80/GW dt.1-4-1965 issued by the Superintending Engineer.
5. A-5: True copy of order No.2198R/2222 (CSS)/19 dt.30th April, 1965 issued by the 2nd respondent.
6. A-6: True copy of order No.384/GW/65 dt.9-6-1965 issued by the Superintending Engineer.
7. A-7: True copy of Communication NO.146 R/A19011/40/CSS/78/19 dt.30-1-1997 issued by the Administrative Officer.
8. A-8: True copy of letter dt.11th September 1997 sent by the applicant.
9. A-9: True copy of communication dt. November 1997 issued by the 3rd respondent.
10. A-10: True copy of communication dt.4.12.1997 sent by the Director of Geology & Mining.
11. A-11: True copy of letter dt.June, 1997 sent by the 2nd respondent to the 1st respondent.
12. A-12: True copy of communication dt. December 1998 sent by the 3rd respondent to the 1st respondent.
13. A-13: True copy of Affidavit sworn to by the applicant.
14. A-14: True copy of representation dt.9th June, 1999 submitted by the applicant before the 1st respondent.
15. A-15: True copy of order O.M.NO.F.3(38)-E.V(A)/74 dt.30th June, 1976 issued by the Govt. of India.(relevant portion)
16. A-16: True copy of order No.3 (20)/Pen. (A)/79. dt.31st March, 1982 issued by the Govt. of India.
17. A-17: True copy of order O.M.No.14(5)/86/TA/1029 dt.9th October, 1986 issued by the Govt. of India.
18. A-18: True copy of order O.M.No.28/10/95-P. & P.W.(B) dt.25th October, 1996 issued by the Govt. of India.

Respondents' Annexure:

1. R-1(a): True copy of the clarification of Rule 14 of qualifying service by Govt. of India DP&AR letter No.3(20) PEN.A/79 dated 31.3.1982.

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