

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO.402/2004

Wednesday this the 25th day of October, 2006

CORAM:

HON'BLE SHRI N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE SHRI GEORGE PARACKEN, JUDICIAL MEMBER

C.S.Abraham,
Deputy Director (Dev.) at the
Directorate of Cocoa, Arecanut & Spices Development,
Calicut (Rtd.) under Ministry of Agriculture
(Department of Agriculture & Cooperation),
Government of India, now residing at
Chelsea, 1/4550,Bilathikulam,Calicut-673 006. ... Applicant.

By Advocate Mr.Premjit Nagendran

V/s.

- 1 The Union of India,
Ministry of Agriculture
Department of Agriculture & Cooperation,
Krishi Bhavan, New Delhi
represented by its Secretary.
- 2 The Director,
Directorate of Cocoa Arecanut &
Spices Development, Calicut-673 005. ... Respondents

By Advocate Mr.P.M.Saji

This application having been finally heard on 27th September, 2006, the
Tribunal on 25.10.2006 delivered the following:-

ORDER

HON'BLE SHRI .GEORGE PARACKEN, JUDICIAL MEMBER

This is the second round of litigation by the applicant seeking a
direction to the Respondents to grant him the benefit of 3 years added
service for determining pension as provided under Rule 30 of CCS
(Pension) Rules 1972. He has already retired from service on 28/2/1992.
The earlier OA-857/2001 filed by him was disposed of vide order dated
11/12/2003 (Annexure A-7) and all the relevant facts of the case have

already been stated therein and hence it is not necessary to repeat the same in detail in this order. However, the essential facts were that the applicant had put in 30 years of service from 12/2/1962 to 28/2/1992 in two different offices. (i) from 22/2/1962 to 14/2/1968 as Research Assistant (Pathology) in the erstwhile Indian Central Arecanaut Committee and (ii) from 15/2/1968 to 28/2/1992 in the Indian Council of Agricultural Research (ICAR for short). When the applicant was absorbed in the latter office, the service rendered by him in the former was counted for pensionary purposes. The claim of the applicant is that he was not only entitled to count service from 22/2/1962 to 28/2/1992 rendered in the Indian Central Arecanaut Committee for pensionary purpose but he is also entitled for three years added service under proviso to Rule 30(1) of CCS (Pension) Rules 1972 for determining his pensionary benefits.. The Respondents rejected his request in December 1994 on the grounds that (i) the post held by him in ICAR did not have Post-graduate degree as essential qualification. and (ii) there was no provision in the Service Rule for granting the benefit of added years.

2. The OA 857/2001 filed by him against the said rejection was disposed of by this Tribunal, after having gone into the issues extensively, vide order dated 11/12/2003 with the following observations/directions:-

"We have considered the pleadings and other material on record and also heard Shri Premjit Nagendran, learned counsel for the applicant and Shri John Nambeli, advocate representing Mrs.Chitra for respondents. According to the learned counsel for applicant, the applicant had already surrendered the Contributory Provident Fund with interest in relation to the period of his past service under ICAC and therefore, he was eligible to the benefit of service rendered as Scientific employee as provided under paragraph 20(1) of Appendix 12 of the CCS(Pension) Rules. Once the applicant had surrendered the Contributory Provident Fund with interest, his case would be squarely covered by Rule 30 of CCA (Pension) Rules and would not be hit by the 3rd proviso thereto according to the learned counsel for the applicant. With regard to the non-exercise of option, learned counsel would

submit that there is no question of any option being exercised by the applicant since the organisation under which the applicant started his career was absorbed by the Government and was brought under ICAR. Thus, there was no break in service nor a change in employment in the applicant's case. Rule 30, learned counsel would submit, is specially designed for conferring a special incentive on scientific employees. Learned counsel for the applicant has, however, stated in fairness that neither the representations of the applicant nor the impugned orders of the respondents would indicate that the actual legal position in the light of Rule 30 as well as para 20 of the Appendix 12 of the CCS (Pension) Rules was appreciated. He would therefore, plead that the applicant may be permitted to make a detailed representation on the basis of Rule 30 and the instructions contained in para 20 of Appendix 12 of CCS (Pension) Rules and the respondents be directed to consider the same and pass a speaking order. It is submitted by the learned counsel for the applicant that the O.A. can be disposed of in that manner.

4 Learned counsel for the respondents who relied on the pleadings in the reply statement, however, has agreed that the O.A. can be disposed of by permitting the applicant to make a detailed representation in the light of the rules and instructions on the matter and directing the respondents to consider and dispose of the same within a time frame.

5 We have examined the case records and have considered the submissions made by the learned counsel for the applicant and the respondents. The question is whether or not the applicant is entitled to the benefit of added service of 3 years for superannuation pension. In this regard it is necessary to quote Rule 30(1) of the CCS (Pension) Rules 1972. The relevant provisions read as under:-

30 Addition to qualifying service in special circumstances.

(1) A Government servant who retires from a service or post after the 31st March, 1960, shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years or a period of five years, whichever is less, if the service or post to which the Government servant is appointed is on--

- (a) for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential; and*
- (b) to which candidates of more than twenty-five years of age are normally recruited:*

Provided that this concession shall not be admissible to a Government servant unless his actual qualifying service at the time he quits Government service is not less than ten years.

Provided further that this concession shall be

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admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule.

Provided also that the concession shall not be admissible to those who are eligible for counting their past service for superannuation pension unless they opt before the date of their retirement which option once exercised shall be final for the weightage of service under this sub-rule forgoing the counting of the past service.

6 It cannot be denied that the applicant held a post for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields was essential. It cannot therefore be accepted that the applicant did not satisfy the conditions mentioned in Rule 30 (1)(a). With regard to the application of the 3rd proviso, which is relied on by the respondents, we notice that the fact that the applicant has surrendered the amount of Contributory Provident Fund along with interest relatable to his service under ICAC, cannot be disputed. Thus, according to us, the applicant should be considered to have had unbroken service with effect from 11/2/1962 till his date of retirement and that the applicant's claim for the benefit of added service as provided under Rule 30(1) of the CCS (Pension) Rules should have been considered in the light of the same.

7 As pointed out by the counsel for the applicant neither the representations preferred by the applicant requesting for the benefit of added service of three years for superannuation purpose nor the impugned orders appear to be based on a consideration of the provisions of Rule 30(1) particularly the third proviso thereto in the light of instructions contained in para 20 of Appendix 12 of CCS (Pension) Rules. We therefore, hold that the applicant's claim for added service deserves to be reconsidered. Having regard to the submissions made by counsel on both sides, we consider it appropriate to give the applicant a chance to make a proper representation to the respondents highlighting the legal and factual basis of his claim with particular reference to the arguments advanced by the learned counsel for the applicant so that the respondents on their part can consider the applicant's claim comprehensively in the light of the rules and instructions on the subject and take an appropriate decision.

8 On the facts and in the circumstances of the case, we dispose of this O.A. by permitting the applicant to make a detailed representation to the respondents within one month from today and directing the respondents to consider and dispose of the representation if so received within a period of three months from the date of receipt of such representation. A speaking order shall be passed with copy to the applicant within the time frame set above. O.A. is disposed of accordingly. No order as to costs."

3. Accordingly, the applicant made the Annexure A-8



representation dated 8/1/2006 taking various contentions in support of his claim. He has submitted that Rule 30 of the CCS (Pension) Rules came into force only on 1972 by which time he had already left the ICAR Service and joined Government Service and therefore, the claim for the benefit of added years of service that was available to his first appointment under the ICAR could neither be preferred nor got sanctioned by the ICAR while he was in that service. The Government of India having agreed for counting of the service rendered by him under the ICAR, it became mandatory for them to grant the the benefit of added years of service which was available to that service and credited to his new service under the Government of India. He has further submitted that if he had continued in the ICAR service beyond 1.4.1972, (the date of coming into force of Rule 30 of CCS (Pension) Rules his past service at the time of joining the Government of India service would have been the actual period of service rendered under the ICAR plus 3 years. However, the respondents have disposed of the representation without assigning any reason except repeating their earlier position that :

"It is not possible to accede to his request to give him weightage of 3 years of service since he had already got the benefit of counting of service rendered under ICAR from 22/2/1962 to 14/2/1968 and hence not eligible for the other benefit of weightage in view of the above mentioned rules."

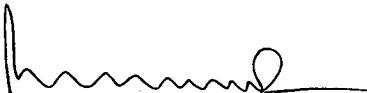
4. In our considered opinion, the respondents have not examined the request of the applicant in accordance with the rules, rather they have approached the case with a closed mind. The reason for rejection of his request is not proper. While disposing of his OA No.857/2001(supra), this Tribunal has already gone into the legal aspects of the case and analyzed and explained the relevant provisions of the rule. The respondents ought to have considered the representation of the applicant in the light of the aforesaid rules. Instead, the respondents disposed of the representation

of the Applicant with the aforesaid cryptic and non speaking order. As held by this Tribunal in OA No.857/2001 (supra) the question is whether or not the applicant is entitled to the benefit of added service of 3 years for superannuation Pension in terms of Rule 30(1) of the CCS(Pension) Rules 1972. It is undisputed that at the time of joining the erstwhile Indian Central Arecanaut Committee on 22/2/1962, the Applicant was 28 years and he fulfilled all the conditions for the grant of three years added service qualifying for superannuation pension. Had the Applicant been continued in the very same post or any other higher post in the same Department and superannuated, he would have rightly claimed the benefit of Rule 30(1) ibid on its introduction in the year 1972 and would have superannuated with additional three years qualifying service. The only reason for the respondents to deny the aforesaid facility to the applicant was that he had got another benefit of counting his past service from 22/2/1962 to 14/2/1968 rendered in ICAC for the purpose of pension. In our considered opinion, the respondents failed to understand the concepts of counting the past service and addition of service to qualifying service for superannuation pension, which are entirely different. According to Rule 3(q)(i) of the Pension Rules, "Qualifying Service" means "service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules." Chapter III of the Pension Rules exclusively deals with "Qualifying Service" wherein the various types of service which are counted with regular service for determining the length of qualifying service have been provided. For example, half the service paid from the contingencies, service rendered in Central Government, Autonomous Bodies before their take over by Central Government, temporary service under State/Central Government, Regular service rendered under State Government, Service on probation, Service

as apprentice, Service on contract, pre-retirement civil service in the case of re-employed Government servants, Military service rendered before civil service, war service rendered before civil employment are some of the post periods of service which are discussed in the Pension Rule for counting them for determining the total qualifying service for pension. In all these cases, the government servants actually render service before it is counted for the purpose of qualifying service. However Rules 29 and 30 provide for addition of certain number of years to the regular service which are not actually rendered by the Government servant for determining the total length of qualifying service. Rule 29 deals with addition to qualifying service when a government service is declared surplus and Rule 30 deals with addition to qualifying service in special circumstances. While counting of past service can be done only if the government servants have actually rendered it, the said period of service before the commencement of his regular service but in the case of addition to qualifying service, the period of service is only notional. The provisions relating to counting of past service and the provisions relating to adding certain number of years to the regular period of service are different and independent. For example, if a Government servant has rendered Military Service followed by service as apprentice and then served as probationer, all the three periods of service are countable for determining the total qualifying service. Similarly, addition to qualifying service under Rule 29 and 30 are also independent provisions. Both these provisions are also independent of the afore mentioned provisions for counting the past service periods. Therefore, the reason for denying the benefit of addition of 3 years under Rule 30 of the Pension Rules to the applicant on the ground that his past service rendered before the regular service under the Respondents has already been counted is absolutely illegal.

5. In the above facts and circumstances of the case, we allow the present OA and declare that the applicant is eligible for three years of added service to determine his pension on superannuation independent of the past service under ICAR from 22/2/1962 to 14/2/1968 already counted for the said purpose and direct the respondents to re-determine pension after adding three years added service to his qualifying service and issue the revised orders. The applicant is also entitled for arrears of pension on revision and the respondents shall grant the same and all other consequential retirement benefits arising out of such revision with 10% interest till the payment is made, in any case within a period of four months from the date of receipt of certified copy of this order. In the given facts and circumstances of the case, the applicant is also entitled for a cost of Rs.2000/- which shall also be paid to him within the aforesaid period.

Dated the 25th October, 2006.


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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