

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 10TH DAY OF FEBRUARY, 1987

Present: Hon'ble Mr. K.S. Puttaswamy, Vice-Chairman
Hon'ble Mr. L.H.A. Rego, Member (A).

APPLICATION NO. 737/86

Shri K. Abdul Subhan,
Ex. Junior Clerk,
Aeronautical Communication Station,
No.13/B, (Out house),
I cross, Khazi Street,
Basavanagudi,
Bangalore-4.

.... Applicant.

(Dr. M.S. Nagaraja, Advocate)

V.,

1. The Regional Director,
Civil Aviation Department,
Madras region,
Madras-27.
2. Officer-in-Charge,
Aeronautical Service Station,
Bangalore-17.
3. The Director General,
Civil Aviation,
R.K. Puram,
New Delhi - 66.
4. The Pay and Accounts Officer,
Civil Aviation,
Madras Airport,
Madras-27.

.... Respondents

(Shri M. Vasudeva Rao, (A.C.G.S.C.))


This application having come up for hearing
to-day, Justice K.S. Puttaswamy, Vice-Chairman
made the following.

O R D E R

In this application made under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought for a direction to the respondents to grant him pensionary benefits for the services he had rendered in the Department of Civil Aviation (DCA) from 5.11.1955 to 30.12.1967.

2. On 5.11.1955 the applicant joined service in the DCA as a junior clerk and continued to serve there till 30.12.1967. Sometime while working in the DCA the applicant applied for an appointment in the Hindustan Aeronautics Limited (HAL), a wholly owned Undertaking of the Central Government to which he was selected and appointed from 1.1.1968.

3. Before joining service in the HAL the applicant tendered technical resignation in the DCA and then only joined service in the HAL and thereafter moved the Respondents for pension for the service he had rendered in the DCA under the Central Civil Service (Pension) Rules, 1972 (Pension Rules). After protracted correspondence the Pay and Accounts Officer, DCA, Madras (PAO) on 25.1.1985 (Annexure-G) has rejected the same, and that order which is material reads thus :-



" An extract of letter No.M. PAO/CAD/Pension/397 dated the 25th January, 1935 from the Accounts Officer, Pay and Accounts Office, CAD, Madras addressed to this office is appended below:


Subject:- Pension case of Shri K.A. Subhan, Ex-Junior Clerk, A.C.S., Bangalore.

....

It is seen that the officer who was not confirmed under the Government of India resigned the service under the Government of India w.e. from 30.12.1967 F.N. to take the appointment under the HAL, Bangalore and the resignation was accepted in your office letter No. BG/E1/67/5344-46 dt. 29.12.67.

The concession of allowing of prorata retirement benefits on their absorption in public sector undertaking is extended only to the permanent Central Govt. servants on their permanent absorption under the public sector Undertaking. In the case under consideration, the Govt. servant was only officiating on the date of quitting the Govt. service (Viz, 30.12.1967) Hence he is not covered under the Government of India orders contained in Government of India, Ministry of Finance, O.M. NO. 26(18) EV(B)75 dated 8.4.1976 in-corporated in Appendix 7 of the part I of Swamy's compilation of F.R.S. and S.R.S.

The concession of allowing prorata retirement benefits even to a permanent Govt. Servant who has been appointed in an autonomous body financed wholly or substantially by Govt. on the basis of his own application has been extended provided the permanent absorption takes place after 8.11.1968 in the case under consideration the official resigned Govt. service prior to this date.



As such it is false that the officer is not entitled to any prorata retirement benefits.


The case may kindly be reexamined. If there are any specific orders of the Government of India for extending these benefits, reference there to may kindly be quoted and copies there of furnished for ready reference and admitting the claims.

The case is returned herewith. Its receipt may kindly be acknowledged. "

The applicant has challenged this order.


4. Among others, the applicant has urged that he had been appointed in the DCA substantively and the finding of the PAO to the contrary was not based on an examination of all the relevant material and circumstances touching on the same and is illegal. In their reply, the Respondents have reiterated the very grounds on which the PAO had rejected the claim of the applicant.

5. Dr. M.S. Nagaraja, learned counsel for the applicant contends that his client's plea that he had been appointed in the DCA on a substantive basis and was, therefore, entitled for pension, in the absence of primary evidence like his service register, had been illegally rejected without a proper and full examination of the available secondary evidence and was therefore unsustainable.



6. Shri M. Vasudeva Rao, learned counsel for the Respondents sought to support the order of PAO.

7. Unfortunately for the applicant and Government, the service register of the applicant which would have normally been the primary evidence to determine his status has been lost and is not traceable. But that cannot by itself be a ground to reject the plea of the applicant or to decide the question also one way or the other. In such a situation that issue or fact has necessarily to be decided on secondary evidence, like the seniority lists, orders of confirmations made from time to time and all other available evidence and records. Unfortunately, the PAO had rejected the claim of the applicant, solely on the ground that the primary evidence was not available and without even examining the secondary evidence. When the PAO had not kept before him and had decided the question on 'no evidence', we can neither uphold his decision nor decide the same finally. We have therefore no alternative but to direct the PAO to re-examine the question taking into consideration, all such evidence to be produced by the applicant and collecting all such secondary evidence available from his office, co-ordinate, sub-ordinate superior offices, within a reasonable time to be fixed for that purpose.



8. In the light of the above discussion we make the following orders and directions:-

- i) We quash the order dated 25.1.1985 of the PAO (Annexure-G) and direct him to restore the application made by the applicant to its original file.
- ii) We permit the applicant to produce all such evidence that is in his possession before the Respondents 3 and 4 within a period of three months from this day.
- iii) We direct the Respondents 3 and 4 to collect all such secondary evidence as is available from their own office and other offices and decide on the status of the applicant and his claim for pension under the Pension Rules 1972, with all such expedition as is possible in the circumstances of the case and in any event within one year from the date of receipt this order.

9. Application is disposed of in the above terms. But in the circumstances of the case we direct the parties to bear their own costs.


Vice-Chairman 10/2/1987


Member (A) 10.2.1987

bav/Mrv.