

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 6TH DAY OF APRIL, 1987 <sup>d</sup> 21-5-1987.

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

APPLICATION NO. 1028 OF 1986

Shri Stephen Thompson,  
S/o Shri Y. Thompson,  
Aged 49 years,  
280/7, M.K.N. Road,  
Alandur,  
Madras - 600 016.

... Applicant.

(Shri S. Vasantha Kumar, Advocate)

v.

1. The Chief Engineer,  
Civil Engineering Division,  
Department of Space (ISRO),  
Government of India,  
F-Block, 9th Floor,  
Cauvery Bhavan,  
K.G. Road,  
Bangalore-9.
2. The Additional Secretary,  
Department of Space (ISRO),  
Government of India,  
2nd Floor, Cauvery Bhavan,  
K.G. Road,  
Bangalore-9.

... Respondents.

(Shri ~~M.S. Padmarajiah~~ N. Basavaraju  
for respondents)

This application having come up for hearing to-day  
Vice-chairman made the following.

ORDER


This is a transferred application and is received  
from the High Court of Karnataka under Section 29 of  
the Administrative Tribunals Act, 1985 ('the Act').

2. On 10.11.1955 the applicant with the qualification of a Diploma in Engineering initially joined service as a Supervisor in the Public Works Department of Government of Tamil Nadu on a temporary basis. He was later selected to the same post by the Public Service Commission of the Tamil Nadu State and was appointed on a regular basis from 29.3.1961.

3. While working in the Tamil Nadu Government, the applicant applied to the post of a Supervisor in the Atomic Energy Establishment, Bombay (AEE) of Government of India, advertised by the Union Public Service Commission (UPSC) which selected him to that post. On the basis of that selection, the appointing authority on 17.3.1964 offered him an appointment in the AEE, which he accepted and joined service in the AEE on 22.5.1964 and was working there from that day.

4. When the applicant joined service in the AEE, he was allowed to retain his lien in Tamil Nadu Government for some time. But, some time thereafter, he voluntarily tendered resignation to that post he held in Tamil Nadu Government with effect from 1.5.1969 which was allowed by the Chief Engineer of that State on 16.9.1969.

5. On 1.3.1979, the applicant issued notice to the respondents under Rule 48A of the Central Civil Services (Pension) Rules 1972 (Rules) expressing to voluntarily retire from service with effect from 11.11.1979, which



regretfully was not attended to by them with promptness and despatch and was considerably delayed for various reasons, the narration of which is not very necessary for purposes of this case, which however was ultimately rejected by them as late as on 20.1.1982 (Annexure M) and again reiterated on 3.3.1982 (Annexure-0). On 18.12.1983, the applicant approached the High Court in Writ Petition No.21397 of 1983 for appropriate reliefs, which on transfer has been registered as Application No.1028/86.

6. In their statement of objections, the respondents have inter alia urged, that the applicant had not completed the requisite 20 years of qualifying service in the Central Government, to seek for retirement under Rule 48A of the Rules.


7. Shri S. Vasanthakumar, learned Counsel for the applicant, contends that the applicant, who had completed 20 years of qualifying service reckoning the services rendered <sup>by him</sup> in Government of Tamil Nadu and Government of India who had given the requisite notice under Rule 48A of the Rules had become entitled for retirement and annulling refusal of the respondents to the contrary, grant him the declaration and the consequential reliefs he had sought in his application.

8. Sri N. Basava Raju, learned Additional Central Government Standing Counsel, appearing for the respondents, contends that the service rendered by the applicant in the Government of Tamil Nadu viz., from 10.11.1955 to 16.5.1964,

namely, for a period of 8 years 6 months and 6 days did not qualify for service under Rule 48A of the Rules, and on that view, the refusal of the respondents to permit the applicant to retire was legal and valid.

9. From 10.11.1955 to 16.5.1964 on which day he was relieved from the Government of Tamil Nadu, the applicant had rendered service in the Public Works Department of Tamil Nadu Government. On joining service in the Central Government, the applicant tendered resignation to the post he held in Tamil Nadu Government which was ~~also~~ allowed by that Government from 1.5.1969. On the day the applicant gave notice for voluntary retirement under Rule 48A, he had not rendered 20 years of service in the Central Government. On these facts, that are admitted by both sides, we must now examine the rival contentions.

10. Rule 48A of the Rules, provides for retirement on completion of 20 years qualifying service. This rule enables a civil servant of the Union of India to seek ~~for~~ voluntary retirement if he had completed 20 years of qualifying service. If a civil servant had completed 20 years of service in the Central Government, <sup>fact that</sup> ~~then~~ he can claim for retirement under this Rule cannot at all be doubted. Even on principle also it is reasonable to hold that service of 20 years must be in the Central Government only. Whether this is altered in the Rules and the circulars relied on by the applicant is the next question.



11. Rule 48A of the Rules, reads thus:

" Retirement on completion of 20  
years' qualifying Service


(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under sub-rule(1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) Deleted.

(3A) (a) A Government servant referred to in sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;




(3A) (b) On receipt of a request under clause (a), the appointing authority subject to the provisions of sub-rule(2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement. "

Sub-rule(1) of Rule 48A, provides that Government servant who has completed 20 years of qualifying service may seek for voluntary retirement by giving 3 months' notice in writing, to the appointing authority. Sub-rule (2) and (3)





which only provide for the procedural requirement to be complied <sup>with</sup> by persons seeking ~~for~~ voluntary retirement and the power conferred on the authority, are not very material for our purpose. Sub-rule(4) declares that an option once exercised shall not be withdrawn by the Government Servant except with the specific approval of the appointing authority.


12. But, to decide what is qualifying service, we have to turn to Chapter III of the Rules, and in particular Rules 13 to 14 of the Rules, and they read thus:

13. Commencement of qualifying Service

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:


Provided further that

- (a) in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the
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17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and

- (b) in the case of a Government servant not covered by clause(a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.

14. Conditions subject to which service qualifies

- (1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.
  - (2) For the purposes of sub-rule (1), the expression "service" means service under the Government and paid by that Government from the Consolidated Fund of India or a Local Fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government.
  - (3) In the case of a Government servant belonging to a State Government, who is permanently
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transferred to a service or post to which these rules apply, the continuous service rendered under the State Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify:

Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed otherwise than by deputation to a service or post to which these rules apply.

Sub-rule (3) of Rule 14 provides that the service rendered by a Central Government servant in the State Government before his appointment on transfer, can be counted for purposes of qualifying service. The service rendered in a State Government before appointment on transfer, is tagged on to the service rendered in the Central Government. In such a situation, the service rendered in both the Governments is reckoned as qualifying service.

13. The proviso to sub-rule (3) in clear terms excludes the benefit of qualifying service when a person is appointed otherwise than by deputation to a service or post to which the rules apply. Even if we read this proviso as an exception to the general Rule, then also




the case of the applicant will not fall within its ambit and thus the applicant cannot involve <sup>in</sup> ~~the~~ proviso to sub-rule(3) of rule 14 of the Rules, to sustain his claim.

14. The service in the State Government which is excluded by Rule 14(3), cannot be included as service rendered in Government of India on the extended term 'State' defined in Article 12 of the Constitution, as urged by Shri Vasanth Kumar. The term 'State' for purpose of Article 12 of the Constitution and a State Government referred to in Rule 14 of the Rules, are not one and the same. We, therefore, find it difficult to uphold this contention of Shri Vasantha Kumar.

15. On facts found by us, the applicant cannot therefore invoke Rule 14 of the Rules.


16. We have carefully read the circular issued by the Department of Space on 11.8.1978 relied on by Shri Vasanthkumar. We are of the view that Circular does not lay down anything contrary to Rule 48A or other Rules. We are also of the view that this circular does not attempt to fill up any gap which is not provided by the Rules, as urged by Shri Vasanth Kumar. If that is so, then no reliance can be placed on this circular of the Department of Space.



17. Another circular issued by Government on 31.3.1982 (Annexure-X) in the Ministry of Home Affairs, Department of Personnel and Administrative Reforms, was also relied on by Shri Vasanth Kumar to contend that the service rendered in the Tamil Nadu Government should be reckoned for purposes of qualifying service under Rule 48A of the Rules.

18. The circular issued on 31.3.1982 is effective only from the date of its issue (vide Clause-4 of the order). On this very term itself, the circular is in-applicable to the case of the applicant. Even otherwise this circular is applicable only for grant of pension and not for the purpose of counting the service as qualifying service under the Central Government for voluntary retirement. In this view also, this circular has no relevance.

19. What emerges from our above discussion is that the applicant had not the necessary eligibility or had not completed the qualifying service of 20 years as on 11.11.1979 or as on 5.1.1983. When once we find that the applicant had not the necessary eligibility for retirement as on 11.11.1979 or on 5.1.1983, we have necessarily to uphold the case pleaded by the respondents for not permitting him to retire on those two dates and dismiss this application without examining all other questions. But, this does not prevent the applicant from making a fresh application for retirement when he has completed qualifying service under the Central Government.



20. In the light of our above discussion, we hold that this application is liable to be dismissed. We, therefore, dismiss this application with no order as to costs. But, this order should not be understood as this Tribunal dealing with the absence of the applicant or his right to make a fresh application for retirement as and when he has completed 20 years of qualifying service under the Central Government, both of which have necessarily to be examined and decided on their <sup>own</sup> merits.

*K. S. Prasad*  
Vice-chairman 1/5/87.

*[Signature]*  
Member (A) 1-5-1987

kms/Mrv.

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCHAPPLICATION No. 1028/86(T)

(WP.NO. 21397/83 )

COMMERCIAL COMPLEX, (BDA)  
INDIRANAGAR,  
BANGALORE-560 038.

DATED: 25 MAY 1987

APPLICANT

Vs

RESPONDENTSShri Stephen Thompson  
TO

The Chief Engineer, ISRO, B'lore &amp; another

1. Shri Stephen Thompson  
280/7, M.K.N. Road  
Alandur  
Madras - 600 016
2. Shri S. Vasantha Kumar  
Advocate  
9/1, R.V. Shetty Layout  
Seshadripuram  
Bangalore - 560 020

3. The Chief Engineer  
Civil Engineering Division  
Department of Space (ISRO)  
Govt. of India  
F-Block, 9th Floor  
Cauvery Bhavan  
K.G. Road  
Bangalore - 560 009
4. The Additional Secretary  
Department of Space (ISRO)  
Govt. of India  
2nd Floor, Cauvery Bhavan  
K.G. Road  
Bangalore - 560 009
5. Shri N. Basavaraju  
Additional Central Govt. Stng Counsel  
High Court Buildings  
Bangalore - 560 001

SUBJECT: SENDING COPIES OF ORDER PASSED BY THE  
BENCH IN APPLICATION NO. 1028/86(T)

....

Please find enclosed herewith the copy of the Order  
passed by this Tribunal in the above said Application on  
6-4-87 & 1-5-87.

ENCL: As above.DEPUTY REGISTRAR  
(JUDICIAL)

UR  
Please  
min  
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25/5/87

for  
26/5/87

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26/5/87



D.N. 4851/87 /Sec.IVA

SUPREME COURT OF INDIA  
NEW DELHI

Dated 12th December, 1988

From:

The Additional Registrar,  
Supreme Court of India.

To,

The Registrar,  
Central Administrative Tribunal  
Commercial Complex, (B.D.A.)  
Indira Nagar, Bangalore Bench  
Bangalore- 560 038.



PETITIONS FOR SPECIAL LEAVE TO APPEAL (CIVIL) NOS. 12563 OF 1987.  
(Petitions under Article 136 of the Constitution of India for  
Special Leave to Appeal to the Supreme Court from the  
Judgment and Order dated the 6-4-87 & 1-5-87 of the  
High Court of  
Karnataka/Central Administrative Tribunal, Bangalore  
in application No. 1028 of 1986.)

Stephen Thompson.

.. Petitioner (S)

Versus.

Division 95A D  
Chief Engineer, Civil Engineering  
Division & Anr

.. Respondent (S)

Sir,

I am to inform you that the Petitions above-mentioned for  
Special Leave to Appeal to this Court was/were filed on behalf  
of the Petitioner above-named from the Judgment and Order of the  
High Court

Karnataka/Central Administrative Tribunal Bangalore

noted above and that the same was/were dismissed/disposed of  
by this Court on the 5th day of December, 1988.

A certified copy of this Court's Proceedings dated 15-12-88 is enclosed  
herewith for your information and necessary action.

Yours faithfully,

for Addl. Registrar.



SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition (s) For Special Leave To Appeal (Civil/Criminal) No. (s)

158220  
12563 of 1987

(From the judgment and order dated 6.4.87

Central Administrative  
of the High Court of Tribunal,  
Bangalore

in Appln. No. 1028/86.

Stephen Thompson

Divgn., ISAD

Chief Engg., Civil Engineer VERSUS Amr.  
(With appln. for directions)

...PETITIONER (S)

...RESPONDENT (S)

Date : 5.12.88 : This/These petition(s) was/were called on for bearing today

CORAM :

Hon'ble the Chief Justice

Hon'ble Mr. Justice Ranganath Misra

Hon'ble Mr. Justice M.N. Venkatachaliah

Certified to be true copy

*Darshu*

Assistant Registrar (Jrdl.)

.....13.12.1988

Supreme Court of India

For the Petitioners : Mrs. Kawaljit Kochar, Mr. JD. Jain, Advs.

(Not present)

For the Respondents : Mr. B. Datta, ASG.

Mr. AK. Srivastava, Mrs. Sushma Suri, Advs.

UPON hearing counsel the Court made the following  
ORDER

We have heard learned counsel for the parties and find that by the date when the petitioner opted for retirement he had no qualified service of 20 years. Learned Addl. Solicitor General tells us that the petitioner has subsequently been compulsorily retired as a disciplinary measure in 1982. Reading the rules we are not satisfied that the petitioner is entitled to tag with his service of the State Government to the services of Central Government. Accordingly this Special Leave Petition is dismissed.

*V. Pragam*  
(VK. Nigam)  
Court Master