

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

APPLICATION No. 1369/86(T)

(WP.NO.. 5302/84)

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

DATED: 12/6/87

APPLICANT

Vs

RESPONDENTS

V. Lakshmiipathy

TO

The Secretary, M/o. Commerce, N.Delhi.
& another.

1. Shri V. Lakshmiipathy,
1280, III Cross, Ashoknagar.
Banashankari II Stage,
Bangalore - 560 050.

2. Shri H. Subramanya Jois,
Advocate for Applicant,
36, Vagdevi Shankara Park,
Shankarapuram,
Bangalore-560 004.

3. The Secretary,
M/o. Commerce,
Udyog Bhavan, New Delhi. - 110011

4. The Chief Controller of Imports &
Exports,
Ministry of Commerce,
Udyog Bhavan,
New Delhi-110 011.

5. Shri M.S. Padmarajaiah,
Central Govt. Standing Counsel,
High Court, of Karnataka Buildings,
Bangalore-560001.

SUBJECT: SENDING COPIES OF ORDER PASSED BY THE
BENCH IN APPLICATION NO. 1369/86

....

Please find enclosed herewith the copy of the Order
passed by this Tribunal in the above said Application on
05-06-1987.

ENCL: As above.

FOR DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE FIFTH JUNE, 1987.

Present:

Hon'ble Mr Justice P.S. Puttaswamy Vice Chairman

Hon'ble Mr P. Srinivasan Member (A)

APPLICATION NO. 1369/86

Shri V. Lakshmipathy, major,
Retired Assistant Controller,
Controllerate of Imports & Exports,
Ministry of Commerce,
resident of No.1280, III Cross
Ashoknagar, Banashankari II Stage,
Bangalore - 50. .. Applicant

(Shri H. Subramanya Jois .. Advocate)

Vs.

1. The Union of India represented by
its Secretary, Ministry of Commerce,
New Delhi.
2. The Chief Controller of Imports &
Exports, Ministry of Commerce,
Government of India, New Delhi .. Respondents

(Shri Padmarajaiah .. Advocate)

This application came for hearing today.

Member (A) made the following:-

O R D E R

This application originated as Writ
Petition No.5302 of 1984 before the High Court
of Karnataka and was subsequently transferred to
this Tribunal under Section 29 of the Administrative
Tribunals Act, 1985.

2. In this application, the applicant
who was working as an Assistant Controller of
Imports and Exports is aggrieved with an order
dated 5-8-1982 passed by the Chief Controller of



P. S. Puttaswamy

Imports and Exports, respondent - 2, by which the period from 18-1-1959 to 3-8-1971 was treated as 'dies-non' for all purposes. The applicant sought voluntary retirement from Government service with effect from 19-5-1972. In computing his pension, the period from 18-1-1959 to 3-8-1971 was not taken into account as qualifying service and the grievance of the applicant is that this period should have been taken into account. Hence, this application.

3. Shri Ranganath Jois learned counsel for the applicant pointed out that the applicant having entered service in 1943 had worked in several capacities in Government till 9-1-1957. With effect from 10-1-1957 he was sent on deputation to the State Trading Corporation (STC) and from the State Trading Corporation he went to Engineering Exports Promotion Council (EEPC) with effect from 18-1-1959. He continued in EEPC till 3-8-1971. He was asked by the Chief Controller of Exports and Imports by his letters dated 3.8.1971 and 18.12.1971 to report back for duty as Assistant Controller of Imports and Exports, Madras. But the applicant who by now was residing in London did not report back to duty. Eventually the applicant was allowed to retire voluntarily from service with effect from 19-5-1972. Thus, the applicant had worked in the Government directly or on deputation for a period of nearly 30 years. But, credit was

P. S. K.3

not being given to him for a period of nearly 12 years when he was working with EEPC. The fact that the applicant was on deputation to EEPC, according to Sri Jois, was supported by letter dated 18-12-1971 (Annexure B1) in which the Deputy Chief Controller of Imports and Exports at New Delhi refers to the expiry of the applicant's deputation with EEPC with effect from 31-8-1971. In other subsequent letters also it was mentioned that the applicant had been on deputation with EEPC. When a person is on deputation from Government service to an organisation like EEPC he continues to hold his lien on a Government post and, therefore, the period spent by him on deputation should be accounted for calculating his pension.

4. Shri Padmarajaiah, learned counsel appearing for the respondents strongly refuted the contentions of the applicant. It was true that the applicant had held various posts in Government till 9-1-1957 and was sent on deputation to STC on 10-1-1957. But, while he was working in STC the applicant applied for a post in EEPC and was directly appointed to that post by the EEPC without the knowledge of the Government. The applicant joined EEPC on 18-1-1959 and continued to work there till 3-8-1971. For counting period spent on deputation as qualifying service, 2 conditions




P. S.4

were essential. Firstly, the official concerned should have gone on deputation with the consent of his department. Secondly, the borrowing organisation should make pensionary contribution for the period the Government official was on deputation with it. In this case, the applicant had taken appointment with EEPC without the knowledge, let alone the permission of the Government, and neither the EEPC nor the applicant had made any pensionary contribution ~~from which the~~ ~~from the~~ pension relatable to the period on deputation could be paid to the applicant. On the other hand while working with EEPC the applicant had the benefit of contributory provident fund, EEPC making matching contributions to those made by the applicant. Actually when the applicant left the service of EEPC a total sum of Rs 23,044/- was paid to him by EEPC as balance in the contributory provident fund out of which the contribution by EEPC amounted to Rs 7135.90 plus interest thereon. An employee can be given either pension or can be admitted to a contributory provident fund scheme; he cannot claim both at the same time. Thus, the applicant had no right to have the period spent by him with EEPC counted as qualifying service for determining his pension.

5. Having considered the rival contentions, we are of the view that this application should fail. Merely because the applicant was described as being

P. S.5

on deputation in some official correspondence it does not mean that he fulfilled all the conditions required to treat the period spent on foreign service as qualifying service for the purpose of pension. The respondents are asserting now that the applicant applied directly for the post in EEPC when he was on deputation with STC without the knowledge of the Government. He had therefore joined EEPC without the knowledge and permission of the Government. The more important requirement in this regard is that the borrowing organisation should make pensionary contribution if the period spent by a Government servant in that organisation is to count for pension. There is no dispute that the EEPC did not make any pensionary contribution for the benefit of the applicant. That by itself is fatal to the applicant's claim. In fact, the applicant having accepted appointment with EEPC without the consent of the Government and having stayed with EEPC for more than 12 years it was indeed considerate of the respondents to have allowed him to retain his position in the office of the Controller of Imports and Exports, a fact on which Shri Jois relied to support the applicant's claim. Normally, lien on a Government post is allowed to be retained only for a period of 5 years. But, here an extraordinary favour has been shown by allowing the applicant to report back to his parent


P. S. ...6

department after 12 years. We are therefore, convinced that the applicant having had the benefit of contributory provident fund during the 12 years or thereabout when he was working in EEPC and neither EEPC nor the applicant having made any pensionary contribution during this period, the applicant is not entitled to have this period counted as qualifying service for calculation of pension. Therefore, the office order dated 5-8-1982 at Annexure-C does not suffer from any legal infirmity and cannot be quashed as desired by the applicant.

In the result, the application is dismissed. Parties to bear their own costs.



Sd/-

VICE CHAIRMAN

4/6/87

Sd/-

MEMBER (A)

mr

- True copy -

Handwritten signature
11/6
BANGALORE