

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH: BANGALORE

DATED THIS THE 21ST DAY OF OCTOBER 1986.

PRESENT:

Hon'ble Mr.Justice K.S.Puttaswamy. .. Vice-Chairman.
And
Hon'ble Mr.L.H.A.Rego. .. Member (AM).

APPLICATION NUMBER 936 OF 1986.

N.H.Satyaraja,
Major, Scientist-D, FCS Section,
Aeronautical Development Establishment,
Ministry of Defence,
Jeevan Bhimanagar,Bangalore-75. .. Applicant.

(By Sri S.Ranganatha Jois,Advocate)

v.

1. The Union of India,
Ministry of Defence,represented
by its Secretary, NEW DELHI.
2. The Director,
Aeronautical Development Establishment,
Bangalore-1.
3. The Director General,
Research and Development,
Ministry of Defence,
R&D Organisation, New Delhi.
4. The Scientific Adviser to the
Ministry of Defence,'H'Block,New Delhi-1.
5. The Director,
Vikram Sarabhai Space Centre,
Government of India,
Trivendrum-695022. .. Respondents.

(By Sri M.S.Padmarajaiah ,Standing Counsel for Respondents)

This application coming on for hearing this day, Vice-Chairman made the following:

O R D E R

In this transferred application received from the High Court

of

of Karnataka under Section 29 of the Administrative Tribunals Act of 1985 ('the Act') the applicant while challenging letter /order No.ADE/7957/NHSR/EST dated 10-8-1981 (Annexure-L) of the Director,Aeronautical Development Establishment,Bangalore (ADE) had sought for a direction to the respondents to treat him as eligible to continue to subscribe to the Contributory Provident Fund (CPF) while working in that office also.

2. An autonomous organisation or unit called "Vikram Sarabhai Space Centre" ('VSSC') had been established by Government of India for the advancement of space research in the country. The applicant who had joined service in VSSC in October,1971 as Scientist-'C' was contributing to the CPF.

3. In response to an advertisement issued by the Union Public Service Commission ('UPSC') for the post of a Senior Scientific Officer Grade-I in ADE(SSO), the applicant,who applied was selected and then duly appointed by Government to the said post. In pursuance of the same the applicant reported for duty at ADE on 17-8-1977 where he is working from that day securing two more promotions.

4. On his appointment at ADE, the applicant sought to ^{Subscribe to the} continue to CPF as he was doing in VSSC. But, the Director by his letter dated 10-8-1981 (Annexure-L) has rejected the same. Aggrieved by the same, the applicant approached the High Court of Karnataka on 17-8-1982 seeking for appropriate reliefs. On 7-10-1982, the High Court which had earlier issued rule nisi made an interim order on these terms:

"ORDERS ON THE INTERIM PRAYER MADE
BY THE PETITIONER.

Heard

Heard the counsel.

Whether the petitioner is entitled to contribute to the Compulsory Contributory Provident Fund or not has necessarily to be decided at the final hearing of the case. But, before that, if the contributions made by the petitioner are accepted deferring the question of matching contribution by the employer and the payment of interest thereto, neither the interest of the petitioner nor the interest of the Centre would in any way be affected. In this view, I issue ~~an~~ interim order directing the respondents to accept the compulsory contribution that may be made by the petitioner without making any matching contribution and interest thereto which will be decided at the final hearing of the case".

In terms of this order, the applicant has been making his contributions to the CPF.

5. The applicant has urged that under the Contributory Provident Fund Rules (India) 1962 ('the Rules') made by the President of India under the proviso to Article 309 of the Constitution, he had a right to continue to contribute to the CPF, even if the post held by him was a pensionable post.

6. In their statement of objections filed before the High Court, the respondents have urged that the applicant had been appointed at the ADE to a pensionable post and there was no transfer to that Department to entitle him to continue to contribute to the CPF under Rule 38 of the Rules.

7. Sri S.Ranganatha Jois, learned counsel for the applicant contends that his client had been transferred from VSSC to ADE and, was therefore entitled to continue to contribute to the CPF as before and the denial of the same by the Director was illegal.

8. Sri M.S.Padmarajaiah, learned Senior Central Government Standing Counsel appearing for the respondents contends that the applicant had been appointed for the first time to a pensionable post at ADE and there was no transfer, to which case only Rule 38 of the Rules applied.

9. The term 'transfer' occurring in Rule 38 of the Rules which has not been defined in the Rules or the General Clauses Act is not a term of Art also. We have to understand that term in the context in which it occurs. In Civil Services, appointment by transfer is one of the modes of appointment. The term transfer occurring in Rule 38 cannot be given a literal and a restricted meaning. The meaning to be attached to that term must achieve the object of the Rules. On these considerations themselves, we find no justification to reject the claim of the applicant.

10. On his selection by the UPSC, as SSO at ADE, Government having decided to appoint him to that post addressed a communication on 26-8-1977 (Annexure/B) to the Administrative Officer (Establishment) VSSC which reads thus:

" Sub: Appointment of Shri N.H.Satya Raja,
Engineer SDAS SSO I in ADE, Bangalore

An application dated 19-8-1977 from Shri N.H.Satya Raja of your organisation who has since joined this Establishment is forwarded herewith for perusal. Shri Satya Raja has been appointed as SSO I in this Establishment w.e.f.17-8-1977 on the recommendations of the UPSC. The Officer has now requested for counting his past service in your organisation for the purpose of fixation of pay in SSO-I, claiming for joining time/pay and TA/DA for journey from Trivandrum to Bangalore, for joining the new appointment, carry forward of leave entitlements etc.

2. In this connection your kind attention is invited to Article 418(b) of CSR Vol.I Choudri's compilation and Government of India decision thereunder. According to these provisions the officer is entitled to count his service in your Department under Government of India for the purpose of fixation of pay claiming his TA/DA joining time, pay etc. as he is required to be treated as transferred from one Department to another.

3. It is, therefore, requested that suitable amendments may please be issued to your office order No. VSSC /EST/CGD-26218 dated 12th August, 1977 issued at the time of relieving of Sri N.H.Satya Raja, so as to incorporate the above provisions. The last pay certificate may

may also be issued through your audit authorities to this establishment to enable us to fix his pay in the Grade of SSO-I. Since the Officer appears to hold lien on a permanent post of Engineer ~~this~~ Establishment SC in your organisation, it is felt that his move to this establishment is to be treated as on permanent move in the public interest which entitles him to joining time and pay as per Art.175 of CSR Vol.I. Necessary orders to the above effect may kindly be issued early to enable this office to claim his entitlements."

This communication establishes atleast three things and they are:

(I) the service rendered by the applicant at the VSSC was allowed to be counted or the same was treated as continuous to his service to be rendered at ADE (2) the applicant was started on the pay he was drawing at the VSSC though that happened to be higher than the minimum of the time scale of pay to which he was selected and appointed and (3) Government itself treated the case of the applicant as one of transfer from VSSC to ADE. On this very communication itself, the case of the applicant had to be upheld.

II. Under the Civil Service Rules regulating travelling allowance, the same is normally allowed to a transferred servant only and not to others. Every one of the facts and circumstances set out in the communication dated 26-8-1977 are only consistent with the claim of the applicant that in truth and reality he had been transferred to ADE and not appointed afresh.

12. But, Sri Padmarajaiah, contends that the terms set out in the communication dated 26-8-1977, should be confined to the benefits set out therein and not to determining his claim under the Rules.

13. We are of the view, that the status recognised by Government in its communication dated 26-8-1977, cannot be whittled down on any of the grounds urged by the respondents or on the grounds urged before us by Sri Padmarajaiah.

14. We

14. We are of the view that the ruling of the Supreme Court in S.P.GUPTA AND OTHERS v. PRESIDENT OF INDIA AND OTHERS (AIR 1982 SC 149) popularly called as Judges' Case, relied on by Sri Padmarajaiah does not really bear on the point and assist the respondents.

15. On the foregoing discussion we hold that the applicant had been transferred from VSSC to ADE and that became effective from the date he reported duty at the latter office.

16. Rule 38 of the Rules providing for continuation of contribution to the CPF reads thus:

38. Procedure on transfer to pensionable service.-

(1) If a subscriber is permanently transferred to pensionable service under the President, he shall, at his option be entitled -

- (a) to continue to subscribe to the Fund, in which he shall not be entitled to any pension; or
- (b) to earn pension in respect of such pensionable service, in which case, with effect from the date of his permanent transfer -
 - (i) he shall cease to subscribe to the Fund;
 - (ii) the amount of contributions by Government with interest thereon standing to his credit in the Fund shall be repaid to Government;
 - (iii) The amount of subscriptions together with interest thereon standing to his credit in the Fund shall be transferred to his credit in the General Provident Fund, to which thereafter he shall subscribe in accordance with the rules of that Fund, and
 - (iv) he shall thereupon be entitled to count towards pension service, rendered prior to the date of permanent transfer, to the extent permissible under the relevant Pension Rules.

(2) A subscriber shall communicate his option under sub-rule (1) by a letter to the Account Officer within three months of the date of the order transferring him permanently to pensionable service; and, if no communication is received in the office of the Account Officer within that period, the subscriber shall be deemed to have exercised his option in the manner referred to in clause (b) of that sub-rule"

Under

Under this rule, a person earlier contributing to the CPF, when later transferred or appointed to a pensionable post, has a right to continue to contribute to the CPF, however, forego the pensionary benefits to which he was otherwise entitled as a civil servant of the Union of India. The choice is for the civil servant to make. Why he makes that choice is not a matter for the authorities or for the Tribunals to decide. When a civil servant makes a choice, the authorities cannot sit in judgment over the same and deny the same on grounds of administrative inconvenience and others that were highlighted by Sri Padmarajaiah. The only thing that can and must be examined is that the person making the choice must expressly forego the benefit of pension to which he is otherwise entitled to, on his joining Government service and continuing in Government service.

17. We are of the view that in his letter dated 17-10-1977 (Annexure-C) he had expressly given up his claim for pension and therefore the respondents were bound to allow the applicant to contribute to the CPF and make their own contribution in terms of the Rules. But, to allay the apprehension of the respondents, the applicant has filed a specific memo to that effect to-day before this Tribunal.

18. We have earlier noticed that the High Court when it was exercising jurisdiction over service matters of employees of Central Government, by an interim order, had permitted the applicant to make his contributions to the CPF without deciding the controversy itself with which he has complied. As the applicant now succeeds, we must necessarily direct the respondents to make their contributions so far made and to be made hereafter in terms of the Rules.

19. In the light of our above discussion, we make the following

orders

orders and directions:

- a) We quash letter No.ADE/7957/NHSR/EST dated 10-8-1981 (Annexure-L) of the Director.
- b) We declare that the applicant had foregone his claim for pension and will not be entitled to any pension on his retirement from Government service.
- c) We direct the respondents to accept the option exercised by the applicant to continue to contribute to the CPF from the time he joined service at the ADE and onwards and make their own contributions in terms of the Rules.

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

K.S. Puttaswamy 21-10-86
(K.S.PUTTASWAMY)
VICE-CHAIRMAN
L.H.A. Rego 21-10-86
(L.H.A. REGO)
MEMBER(AM).

np/