

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Second Floor,  
Commercial Complex,  
Indiranagar,  
Bangalore-560 038.

Dated:- 22 JUN 1994

APPLICATION NUMBER: 923 of 1993.

APPLICANTS:

RESPONDENTS:

Dr.H.V.Lakshminarayana v/s. Director General, CSIR, New Delhi & Other.  
T.

1. Sri.M.Raghavendra Achar, Advocate, No.1074 & 1075,  
Fourth Cross, Sreenivasanagar II Phase,  
Banashankari 1st Stage, Bangalore-560 050.
2. The Director, National Aeronautical Laboratory,  
Post Box No.1779, Kodihally, Bangalore-560 017.
3. Sri.M.Vasudeva Rao, Addl. Central Govt. Stng. Counsel,  
High Court Bldg, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by the  
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/  
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above  
mentioned application(s) on 14-06-1994.

*S. Shauhar*  
DEPUTY REGISTRAR  
for JUDICIAL BRANCHES.

gm\*

O/c  
Issued  
Gw

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

O.A. No.923/93

TUESDAY THIS THE FOURTEENTH DAY OF JUNE 1994

Shri A.N. Vujjanaradhya ... Member [J]

Shri T.V. Ramanan ... Member [A]

Dr. H.V. Lakshmi Narayana,  
S/o Moolemane Venkatachar,  
Aged about 53 years,  
Residing at No.1627, 5th B Cross,  
21st Main, Banashankari I Stage,  
Bangalore-50.

... Applicant

[By Advocate Shri M.. Achar]

v.

1. The Director General,  
Council of Scientific &  
Industrial Research,  
Anusandhan Bhavan,  
Rafi Ahmed Kidwayi Marg,  
New Delhi.

2. The Director,  
National Aeronautical  
Laboratory, Bangalore.

... Respondents

[By Advocate Shri M. Vasudeva Rao...  
Addl. Central Govt. Standing Counsel]

O R D E R

Shri A.N. Vujjanaradhya, Member [J]:

1. The applicant is aggrieved by the communications at Annexures A-9, A-12, A-15 and A-16 respectively dated 31.7.1992, 22.4.1993, 6.9.1993 and 7.10.1993 and he has filed this application under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated the case of the applicant is as



below: Having worked for about 17 years as Scientist E II in National Aeronautical Laboratory ['NAL' for short], Bangalore, the applicant sought Extra Ordinary Leave ['EOL' for short] which was granted by Respondent ['R' for short] No.1 on 6.12.1990 as per Annexure A-2 for the purpose of training commencing from 1.9.1990 at Ecole Polytechnique, Montreal, Canada and after the expiry of the said period, the applicant sought extension for one more year by his letter dated 6.8.1991 [Annexure A-3] and by another letter dated 12.1.1992 [Annexure A-4]. The leave sought was turned down and, therefore, he applied for voluntary retirement on 10.3.1992 [Annexure A-7]. On erroneous interpretation, the applicant was directed to tender resignation even though he was eligible for all pensionary benefits. The applicant addressed one more letter on 21.4.1992 [Annexure A-8] reiterating the contentions of the earlier letter dated 10.3.1992 and at the end of the letter as suggested by the Controller of Administration, NAL [Annexure R-7], he has put in his resignation. Thereafter by communication dated 31.7.1992 [Annexure A-9], the resignation of the applicant was accepted with effect from 27.9.1990 [A.N.]. Further representations made by the applicant for pensionary benefits were also turned down by annexures A-12 and A-15 as also A-16. Hence the applicant has made this application seeking the following reliefs:

- "i. Set aside the Office Order dated 31st July 1992 bearing No: 55/92-93[AII/11313] vide Annexure A9 and letter dated 22nd April 1993 [O.M.] No.AII/-

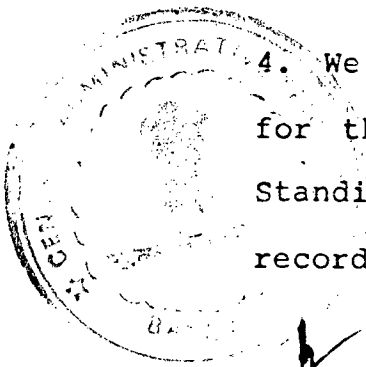
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11313 vide Annexure A12 Office Memorandum dated 6.9.93 vide Annexure A15 bearing No.14[25]/93-E.II and Office Memorandum dated October 7, 1993 vide Annexure A16 bearing No: AII/11313;

- ii. Issue direction to the respondents to pay pension and other pensionary benefits for which the applicant is entitled for under law after counting other services rendered by him;
- iii. Issue such other direction as deems fit in the circumstances of the case including the award of the cost of this application."

3. Opposing the application the respondents plead that the applicant was specifically granted only one years EOL and the extension of leave sought was not granted because of the essentialities of the service of the applicant in the laboratory and that, therefore, his application for voluntary retirement was also not considered as he did not report for duty and his resignation was ultimately accepted which had disentitled him from getting pensionary benefits because he had not put in the required 20 years of qualifying service in NAL and he had not opted in time for counting of his past service as qualifying service for the pensionary benefits. Relying on OM No.28-10/84 dated 29.8.1984 and Rule 48A of the CCS[Pension] Rules, ['Rules' for short] as also Rule 26 of the Rules, the respondents contend that the applicant is not entitled to any of the reliefs sought.


4. We have heard Shri M.R. Achar, learned counsel for the applicant and Shri M. Vasudeva Rao, learned Standing Counsel for the respondents and perused the records.



5. The facts are not in dispute. The applicant who was appointed as Scientist E.II in NAL had rendered about 17 years of service there when he got an offer of Research Associate position at Ecole Polytechnique, Canada, for a period of one year and, therefore, he had applied for EOL for one year which was granted. As could be seen from Annexure R-1 dated 11.7.1990 to which the applicant, H.V. Lakshminarayana is also a signatory stipulated-

"4. No recommendation of extension of EOL to Dr. H.V. Lakshminarayana beyond one year will be made. Dr. H.V. Lakshminarayana agreed that he will not ask for such extension of leave."

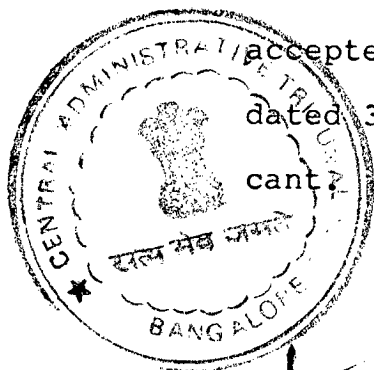
Inspite of making it clear to the applicant thus, he had sought extension of EOL for a further period of one year not only on the ground that he was required to undergo extended period of training but also on the ground his son L. Sashidhar was studying there and at that point of time he was at the middle of the academic year of high school and, therefore, he could not return to India disturbing his sons education by two years [Annexure A-4]. The respondents did not favourably consider the request of the applicant and on the other hand they had sent several communications requiring the applicant to return to India and resume duty at NAL as could be seen from Annexures R-4 and R-5. When the applicant felt that it was not possible to return, he had sought voluntary retirement by his letter dated 10.3.1992 [Annexure A-7].



For this letter R-2 sent a telegraphic message on 8.4.1992 found at Annexure R-7, the relevant portion of which reads thus:

"REPORT FOR DUTY IMMEDIATELY [.] ON JOINING DUTY, YOU ARE FREE TO MAKE APPLICATION FOR COUNTING OF PAST SERVICE TO BECOME ELIGIBLE FOR VOLUNTARY RETIREMENT SINCE YOUR SERVICE IN NAL IS LESS THAN TWENTY YEARS, FAILING WHICH YOU ARE REQUIRED TO SUBMIT RESIGNATION[.] REGRET TO NOTE THAT YOU HAVE ALREADY OVERSTAYED AND SIGNED A CONTRACT TO SERVE TWO YEARS WHICH IS CONTRARY TO RULES AND ATTRACTS DISCIPLINARY ACTION [.] PLEASE NOTE THAT YOUR OVERSTAYAL BEYOND 31ST JAN 1992 IS TREATED AS UNAUTHORISED [.]"

When the applicant was informed in clear and unequivocal terms that he should join duty and then make an application for counting his past service to become eligible for voluntary retirement as he had less than 20 years of service in NAL for being considered for voluntary retirement; that if he failed to do so he should submit his resignation and that overstay beyond the sanctioned period was treated as unauthorised so as to attract disciplinary action, the applicant had sent another letter dated 21.4.1992 [Annexure A-8] in which he had reiterated the earlier stand and also tendered resignation. The resignation was accepted by R-2 and communication as in Annexure A-9 dated 31.7.1992 which reads thus was sent to the applicant.



"The Director, National Aeronautical Labora-

tory, Bangalore, has been pleased to accept the resignation of Dr. H.V. Lakshminarayana, Gr.IV[4], Emp. No.1038, Structural Sciences Division with effect from 27.9.1990[AN] and has been relieved of his duties with effect from 27.9.1990 [AN].

Dr. Lakshminarayana has already produced the No Demand Certificate vide O.M. No.AII/11313 dated 6.12.1990 and no CSIR/NAL dues are outstanding against his name."

By subsequent communications at Annexures A-12, A-15 and A-16, the same thing was reiterated by the concerned authorities.

6. The main contention of the learned counsel for the applicant is that respondents were not justified in refusing to accept the request of the applicant for voluntary retirement and denying him the pensionary benefits and insisting upon the applicant to resign and accepting the same. It is also his contention that the difference between "voluntary retirement" and "resgnation" being not known to the applicant, he had alternatively tendered resignation and thus the action of the respondents is arbitrary and unjustified. He further contended that applicant's past service in Bangalore University ['BU' for short] by adding which total service comes to about 25 years was arbitrarily denied to him and, therefore, he has sought the reliefs as mentioned above.

7. The fact that the applicant was not entitled to any pensionary benefits because his service in NAL was less than 20 years cannot be disputed. Under Rule 48A of the Rules, a Govt. servant, at any time

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after completion of 20 years qualifying service, may by giving notice of not less than three months in writing to the appointing authority retire from service. As the applicant had not put in the service of 20 years in NAL, he was not entitled to apply for voluntary retirement under Rule 48A of the Rules. Because of this impediment only the office of R-2 had informed the applicant specifically by Annexure A-7 quoted supra that the applicant was free to make an application for counting the past service to become eligible for voluntary retirement since his service in NAL was less than 20 years and that failing to join duty, the applicant was to submit resignation. Because the applicant had offered to resign which was accepted by R-2, the disciplinary action for which the applicant was liable because of his overstay on EOL was not pursued. This action of R-2 cannot be faulted and it is in accordance with the statutory provisions governing the same.

8. The respondents have produced OM No.28-10/84-Pension Unit dated 29.8.1984 [Annexure R-6] and contended that because the applicant did not opt for counting the past service and because he did not join duty as directed after the expiry of EOL granted to him, he had rendered himself disentitled for the pensionary benefits on counting his past service. Para 5 of this OM which is relevant will have to be quoted to appreciate the contentions of the learned counsel for the respondents-





"5.[1] The employees of a Central autonomous body or Central Government, as the case may be, who have already been sanctioned or have received pro-rata retirement benefits or other terminal benefits for their past service will have the option either--

- [a] to retain such benefits and in that event their past service will not qualify for pension under the autonomous body or the Central Government, as the case may be; or
- [b] to have the past service counted as qualifying service for pension under the new organisation in which case the pro-rata retirement or other terminal benefits, if already received by them, will have to be deposited along with interest thereon from the the date of receipt of those benefits till the date of deposit with the autonomous body or the Central Government, as the case may be. The right to count previous service as qualifying service shall not revive until the whole amount has been refunded. In other cases where pro-rata retirement benefits have already been sanctioned but have not yet become payable, the concerned authorities shall cancel the sanction as soon as the individual concerned opts for counting of his previous service for pension and inform the individual in writing about accepting his option and cancellation of the sanction. The option shall be exercised within a period of one year from the date of issue of these orders. If no option is exercised by such employees within the prescribed time limit they will be deemed to have opted for retention of the benefits already received by them. The option once exercised shall be final.

[2] Where no terminal benefits for the previous service have been received, the previous service in such cases will be counted as qualifying service for pension only if the previous employer accepts pension liability for the service in accordance with the principles laid down in this Office Memorandum. In no case pension contribution/liability shall be accepted from the employee concerned."

For getting the benefit of past service, the applicant was required to exercise the option within one year as per clause [b] of para 5.1 of the OM and because

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he did not exercise such option and he did not even join duty, he was informed that no pensionary benefits could be sanctioned in his favour. The counting of past service and sanction of pension was further controlled by the acceptance of the previous employers liability for pension which formality could not be undergone because of the inaction of the applicant himself. In addition, under Rule 26 of the Rules, as resignation from service entails forfeiture of past service, the applicant was justifiably denied the pensionary benefits. The applicant became ineligible for pensionary benefits because of his own latches. Consequently he cannot be heard to turn around and contend that respondents had acted arbitrarily and in unjust manner. In Annexure A-9 which is the acceptance of resignation of the applicant, it was made clear to him that he had produced no demand certificate which further makes it clear that the applicant knowing very well that he was not entitled to any of the pensionary benefits had tendered resignation. Just because he has reiterated that his offer of voluntary retirement should be accepted, it cannot be said that resignation tendered by the applicant was not voluntary or the outcome of any undue influence of the respondents. However, it is not the plea of the applicant that any undue pressure or influence was brought upon him by the respondents to tender resignation. A Scientist who had worked for more than two



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decades not only in the BU but also in NAL cannot be expected to come forward with the version that he did not know the difference between voluntary retirement and resignation. This plea is only a lame excuse which cannot be accepted.

8. What is discussed above clearly demonstrates that the applicant had not exercised his prudence properly and thereby he became responsible for the consequences. The communications at Annexures A-12, A-15 and A-16 are mere reiterations of what is mentioned in Annexure A-9 with reasons why the representation of applicant could not be considered favourably. Those communications affirmed the stand and the action taken in Annexure A-9 accepting the tender of resignation by the applicant. Thus we find no reasons to interfere with any of these communications at Annexures A-9, A-12, A-15 and A-16. In other words, the application lacks merit and it has to fail. Accordingly we hereby dismiss the same with no order as to costs.



TRUE COPY

MEMBER [A]

MEMBER [J]

bsv

*S. S. Shrivastava*  
22/6  
SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

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*14/6/11*