

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

D.A.No. 240/90
T.A.No.

Dt. of Decision: 24-11-92

Mr. K. Rama Rao

Petitioner

Mr. T. Suryanarayana

Advocate for
the Petitioner
(s)

Versus

Plant Protection Adviser to Govt of India Respondent.
Haryana

Mr. E. Madan Mohan Rao

Advocate for
the Respondent
(s)

CCRAM:

THE HON'BLE MR. T. Chandrasekhara Reddy, Member, LdL

THE HON'BLE MR.

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporters ~~or not?~~ Yes
3. Whether their Lordships wish to see the fair copy of the Judgment? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No
5. Remarks of Vice-Chairman on Columns 1, 2, 4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench.) No

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T. S. R.
HTCR

M.C.J.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

(54)

ORIGINAL APPLICATION NO.240/90

DATE OF JUDGEMENT: 24/11 NOVEMBER, 1992

BETWEEN

K. Rama Rao

.. Applicant

and

1. Plant Protection Advisor to
Govt. of India
Dte of Plant Protection
Quarantine and Storage
NHIV, Fardibabad, Haryana

2. Project Director
Central Plant Protection Training
Institute, Directorate of Plant
Protection, Quarantine and Storage
Rajendranagar

3. The Indian Council of Agricultural Research
Krishi Bhavan, New Delhi-1. rep by
the Secretary

4. The Project Director,
Directorate of Rice Research (ICAR)
Rajendranagar,
HYDERABAD-30.

.. Respondents

Counsel for the Applicant

:: Mr. Y. Suryanarayana

Counsel for Respondents 1 & 2

:: Mr. N.R. Devraj, Addl. CGSC

Counsel for the Respondents 3 & 4

:: Mr. E. Madan Mohan Rao

CORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

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(55)

JUDGEMENT OF THE SINGLE MEMBER BENCH DELIVERED BY HON'BLE
SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This is an application filed under Section 19 of the
Administrative Tribunals Act the 1st and 2nd respondents to
transfer all his pro-rata pensionary benefits, gratuity, leave
salary to the Indian Council of Agricultural Research (I.C.A.R.)
New Delhi and pass such other order or orders as may deemed
fit and proper in the circumstances of the case.

The facts so far necessary to adjudicate this OA may
in brief, be stated as follows:

The applicant herein was selected by the Union Public
Services Commission, as Agricultural Engineer and was subse-
quently appointed in the Directorate of Plant Protection,
Quarantine and Storage, Department of Agriculture, Ministry
of the Agriculture in the year 1964. The applicant was ~~employed~~
placed on probation for a period of two years. The applicant
had been corresponding with respondents 1 & 2 right from
the year 1967 onwards by making ~~mis~~ representations to declare
his probation. But the probationary period of the applicant
was not declared by the respondents 1 & 2 for reasons ~~some~~ or ~~the~~
other.

While so, the applicant was selected and appointed as
Agricultural Engineer, in Indian Council of Agricultural
Research as per proceedings dated 23.6.75. Pursuant to the
selection in ICAR, the applicant was relieved of his duties
by the Director, Plant Protection Quarantine and Storage,
Faridabad and the applicant joined in the All India Co-ordinated
Rice Improvement Project, Hyderabad on 11.7.75. AN. From
then onwards, the applicant is continuously working in the
All India Co-ordinated Rice Improvement Project, Hyderabad.

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Probation of the applicant was also declared in the present organisation which is under ICAR. The grievance of the applicant is that inspite of repeated representations to the 1st and 2nd respondents to transfer the pro-rata pensionary benefits, gratuity, leave salary, to the 3rd and 4th respondents under whom the applicant is working at present, the 1st and 2nd respondents had failed to do so and hence, the present OA is filed for the reliefs as already indicated above.

We have heard Shri N.R. Devaraj, Standing Counsel for Respondents 1 & 2 and Shri E. Madan Mohan for R3 & R4. Counter is filed by the respondents opposing this OA. Central/Autonomous/Statutory bodies had introduced pension schemes for its employees on the lines of pension scheme available to the Central Govt. employees. Therefore such autonomous/statutory bodies also started urging that the services rendered by the employees under the Central Govt. or other autonomous/statutory bodies may be allowed to be counted ~~xxxxxx~~ before joining any autonomous body, in combination with services in the concerned bodies for the purpose of pension, subject to certain conditions. There was also a demand for making similar provisions for employees of autonomous bodies going over to the Central Govt. In otherwords, the demand was, that the benefit of pension, based on the combined services should be introduced. After a careful consideration of all relevant matters, the Central Govt. passed an order bearing No. OM No. 28/10/84-Pension Unit dated 29.8.84. That part of the Govt. order which is relevant for purposes of this case is set out in paragraph 3(A) (i) thereof and it is as follows:

"No. 28/10/84-Pension Unit
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
Department of Personnel and Administrative Reforms
(Karmik Aur Prashasnik Sudhar Vibag)

.....

New Delhi, the 29th August, 1984

OFFICE MEMORANDUM

Sub: Mobility of Personnel between Central Govt
Departments and Autonomous Bodies-counting of
service for pension

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3. This matter has been considered carefully and the President has now been ~~fully~~ pleased to decide that the cases of Central Government employees going over to a Central autonomous body or vice versa and employees of the Central ~~xxx~~ autonomous body moving to another Central autonomous body may be regulated as per the following provisions:

(a) In the case of Autonomous bodies where pension scheme is in operation

(i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employees of the autonomous bodies who are permanently absorbed under the Central Government.

The Government/autonomous body will discharge its pension liability by paying in lump sum as a one-time payment, the pro-rata pension/service gratuity/terminal gratuity and DCRG for the service upto the date of absorption in the autonomous body/Government, as the case may be, lump sum amount of the pro-rata pension will be determined with reference to commutation table laid down in CCS(Commutation of Pension)Rules,1981 as amended from time to time."

The fact that the applicant has become permanent in the ICAR as his services were confirmed is not in dispute in

~~in the OA. Hence, the OM cited supra, is applicable on all fours to the facts of this case. As sub-para 3(a)(i) states that the~~
Government or autonomous body will discharge its pension

liability by paying in lump sum as a one-time payment.....

~~the learned counsel appearing for the applicant~~
conceded that he is restricting his relief only to count his past services under the Central Government for the purposes of paying pension by the ICAR who are the respondents 3 & 4 herein and that, he is not pressing ~~for~~ the other reliefs that are prayed for in this OA. As the applicant is not claiming any relief as against respondents 1 & 2 and as the applicant's only prayer is for a direction to Respondents 3 & 4 to count his past services in Central Government under respondents 1 & 2, for the purpose of pensionary benefits, In view of the OM

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ducted above, we are of the opinion that the applicant is entitled to count his past services under the Central Government for the purpose of pensionary benefits to the applicant that are payable by Respondents 3 & 4 on retirement of the applicant. Hence, the OA is liable to be allowed accordingly.

The fact that the applicant had applied through proper channel and had been relieved by respondents 1 & 2 as and when he was selected and appointed in the ICAR as Agricultural Engineer is not disputed in this OA

Mr NR Devraj, Counsel for the respondents raised the following contentions and maintained that this OA is liable to be dismissed.

- i) The applicant was only temporary employee under R1 & R2 (in Central Govt.) that the said period of service in central Govt. cannot be taken into consideration.
- ii) The applicant had left the organisation of R1 & R2 as early as in 1975 and as the said OM had come into force w.e.f. from the year 1984 that the applicant is not entitled to ~~be~~ the benefit of the said OM.
- iii) ~~is~~ the applicant ~~was~~ holding a higher post in the present organisation of R3 & R4 and as the applicant was working in the lower post under the Central Govt. in the organisation of R1 & R2 that the applicant is not entitled to count his past services under the Central Govt. for pensionary benefits that are payable to the applicant by R3 & R4 i.e. ICAR.
- iv) There is any amount of delay on the part of the applicant in approaching this Tribunal, hence, the remedy of the applicant is time barred, in view

of the provisions of Section 21 of the Administrative Tribunals Act.

So far as the last contention of the learned counsel for the respondents is concerned, it may be mentioned that the applicant is still in service in the 3rd and 4th respondents organisations which is an autonomous body. The applicant till he retires has got a right to ask the respondents 3 & 4 to count his past service in Central Government under respondents 1 & 2 for the purpose of payment of pensionary benefits. So, as the applicant is still in service in ICAR (Respondents 3 & 4), no question of limitation is involved in this OA and we are of the opinion that the applicant is well within time in approaching this Tribunal.

So far as to the contentions 1 ~~etc~~ are concerned, it will be pertinent to refer to a decision reported in 1987(4)SLR Page 728 - RL Marwaha Vs Union of India and others wherein the facts of the case are as follows:

"The Petitioner RL Marwaha entered the services of the Central Government on a temporary basis on 4.10.50 and worked as an Upper Division Clerk in the pay scale of Rs.80-5-120-8-200-10/2-220 in the office of the Settlement Commissioner (Claims Wing) under the Ministry of Rehabilitation, Union of India and he continued to hold that post upto 23.11.53 (F/N). He having been appointed in the Indian Council of Agricultural Research (ICAR) which is an autonomous body sponsored by the Central Government to a higher post of Assistant in the scale of pay of Rs.160-450, joined the service of the ICAR as fresh entrant on the same date that is 23.11.53 (F/N). He was not allowed to carry forward the leave that he had earned and was declared quasi-permanent as an Assistant in the ICAR w.e.f. 17.1.57. The post held by the said RL Marwaha under the Central Govt. before entering the services of ICAR was pensionable post and the post held by the said Marwaha in the ICAR was also a pensionable post. The petitioner (Marwaha) retired from the services of ICAR on 30.9.80, after attaining the age of superannuation that is 58 years. On retirement, the said Marwaha was granted pensionary benefits reckoning his qualifying service from 23.11.53 to 30.9.80. The said Marwaha, ~~and~~ some others who had also retired from the service of the ICAR had been agitating before the authorities to count the period of service put in by him between 4.10.50 and 23.11.1953 in the Central Government as part of the qualifying service and to compute his pensionary benefits ~~and~~ —

on that basis. The petitioner had applied to the ICAR even before his retirement requesting it to count his service in the Central Government as part of his qualifying service for pension. The petitioner received a reply from ICAR stating that according to the then existing policy the Government had not accepted any pensionary liability in cases like that of the petitioner and that there were no rules authorising the ICAR to accept the charge of pensionary liability in respect of the period of service rendered in the Central Government."

In the above judgement, referring to Department of Personnel and Administrative Reforms, Min. of Home Affairs, Govt. of India, OM No. 28/10/84-Pension Unity dated 29.8.84, it is laid down as follows:

"The fact that the petitioner was a temporary Government servant when he was working in the Central Government is immaterial because the Government order itself says that the Service rendered by a Central Government employee under the Government, would be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government provided, he is later on confirmed in the autonomous body....."

Further
It is also laid down- at Page 730 as hereunder.

"It is true that it is prospective in operation in the sense that the extra benefit can be claimed after 29.8.84 that is the date of issue of the Government order. But, it certainly looks backward and takes into consideration, the past even that is the period of service under the Central Government for the purpose of computing qualifying service because such additional service can only be the service rendered prior to the date of issue of Government order. By doing so, the Government order will not become an order having retrospective effect. It still continues to be prospective in operation. Whoever has rendered service during any past period would be entitled to claim the additional financial benefit of that service if he is alive on 29.8.84 under the Government order but with effect from 29.8.84."

The above judgement is applicable to the facts of this case on all fours and the said judgement is a complete answer to all the contentions raised by Mr NR Devraj, SC for the respondents. So, in view of the above cited decision, there cannot be any doubt about the fact that the applicant has a right for counting his past service in the Central Government under Respondents 1 & 2 by the respondents 3 & 4 in the ICAR for the purpose of pensionary benefits. Hence, a direction is liable to be given to the respondents 3 & 4 accordingly.

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In the result, we hereby direct respondents 3 & 4 ~~past~~ to give the applicant the benefit of service rendered by him in the Central Government under Respondents 1 & 2, for the purpose of providing pensionary benefits in accordance with OM No. 28/10/84-Pension Unit dated 29.8.84 ~~for his~~ ~~pensionary benefits and the OA is allowed to this extent~~ only. The OA with regard to other reliefs is dismissed. In the circumstances of the case, the parties shall bear their own costs.

T. Chandrasekara

(T.CHANDRASEKHARA REDDY)

Member (Judl.)

Dated:

24/11 November, 1992

mvl

S. 30/11/92
Deputy Registrar (J)

To

1. The Plant Protection Advisor to Govt. of India, Dte. of Plant Protection, Quarantine and Storage NIHIV, Faridabad, Haryana.
2. The Project Director, Central Plant Protection Training, Institute, Directorate of Plant, Protection, Quarantine and Storage, Rajendranagar.
3. The Secretary, Indian Council of Agricultural Research Krishi Bhavan, New Delhi-1.
4. The Project Director, Directorate of Rice Research 'ICAR) Rajendranagar, Hyderabad-30.
5. One copy to Mr. Y. Suryanarayana, Advocate, CAT. Hyd.
6. One copy to Mr. N. P. Devraj, Sr. CGSC. CAT. Hyd.
7. One copy to Mr. E. Madanmohan Rao, SC for Agriculture, CAT. Hyd.
8. One copy to Deputy Registrar (J) CAT. Hyd.
9. Copy to All Reporters as per standard list of CAT. Hyd.
10. One spare copy.

pvm

*18/11/92
30/11/92*

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TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY:
M(JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER(JUDL)

Dated: 24 - 11 - 1992

ORDER/JUDGMENT:

R.A. /C.A. /M.A. No

in

O.A. No. 240/90

T.A. No.

(wp. No)

Admitted and interim directions
issued.

Allowed

Disposed of with directions

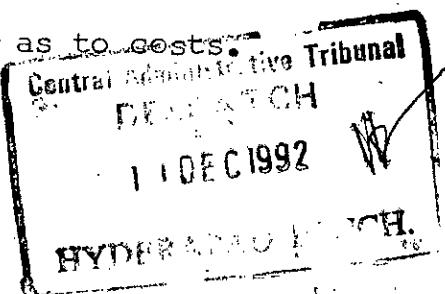
Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected

No orders as to costs.



pvm