

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Monday 26th day of November Two Thousand And Eighteen

PRESENT:
THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

O.A. 310/1731/2015

Dr. M. G. Sreekumar,
Chief Librarian and Information Officer,
Indian Institute of Management Kozhikode,
Kozhikode- 673570,
Kerala.

....Applicant

(By Advocate: Mr. S. Kumaresan)

Versus

1. Director General,
Indian Council for Medical Research,
Ansari Nagar,
New Delhi- 110 029;
2. Director,
National Institute of Research for Tuberculosis,
(formerly Tuberculosis Research Centre)
1, Sathyamoorthy Road,
Chetpet,
Chennai-31.

...Respondents

(By Advocate: Mr. M.T. Arunan)

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member (A))

Heard. The applicant has filed this O.A seeking the following reliefs:-

“to direct the respondents to consider the representation of the applicant dated 07.01.2015 in respect of payment of Rs. 4,95,015/- towards the transfer of pro-rata retirement benefits relating to the service rendered by the applicant to the Respondents.”

2. It is submitted that the applicant served the second respondent institute as a Librarian from 15.06.1992 to 19.11.1997 when he was relieved to take up the assignment of Librarian in IIM, Kozhikode, his present employer. He joined the latter on 20.11.1997 itself and as such there was no break in service. The applicant is entitled to pensionary benefits for the service rendered to the second respondent institute in terms of Department of Personnel and A.R. O.M. dated 29.08.1984 as amended from time to time as would be seen from Appendix-7 of Swamy's Pension Compilation (incorporating corrections upto December 2017). However, the respondents did not reply to his representations in this regard. Hence, this O.A.

3. Learned counsel for the applicant would argue that the applicant was continuously in service from 1992 and he was entitled to the benefit of service rendered to the previous employer who was also an autonomous body from 1992 to 1997. As there was absolutely no break in service before joining the present employer, another autonomous institution under the Government of India, the aforesaid provisions were fully applicable in his

case. Accordingly the respondents are liable to be directed to consider the applicant's Annexure-A/13 representation dated 07.01.2015 and the Annexure A/14 reminder dated 09.03.2015 and grant him the pro-rata benefit thereof.

4. Learned counsel for the respondents would however submit that the applicant resigned from service while moving from the second respondent institute to the present employer and he had not stated that the resignation was technical. As the applicant had resigned, he was not entitled to any relief, it is contended.

5. I have considered the pleadings and the submission by the rival counsel. It is not in dispute that the applicant served in the second respondent institute from 15.06.1992 to 19.11.1997 and joined the service of his present employer i.e. IIM, Kozhikode as Librarian on 20.11.1997 without any break in service. Accordingly, the applicant appears to be entitled to be considered for grant of benefits as provided in the Government of India Department of Personnel and AR., OM No. 28-10/84-Pension Unit of dated 29.08.1984 as amended from time to time. The relevant extracts of Swamy's Pension Compilation are reproduced below:-

"3. This matter has been considered carefully and the President has now been 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 Autonomous Body moving to another Central Autonomous Body may be regulated as per the following provisions:-

- (a) In 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 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 lumpsum as a one-time payment, the pro- rata pension/service gratuity/terminal gratuity and retirement gratuity for the service up to the date of absorption in the Autonomous Body/Government, as the case may be. Lumpsum 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.

[NOTE.- Various Ministries/Department of the Government of India may accept pension liability in all these cases where Central Government employees move to Central Autonomous Bodies with proper permission and discharge the same in the prescribed manner. For this purpose, 'proper permission' means that Government servant applies for the post in Autonomous Body through 'proper channel' and he resigns with due intimation that he

is doing so to take up assignment in Autonomous Body or the Government servant is relieved of his duties by the Government Department/ Office to take up assignment in an Autonomous Body. Pension liability may also be accepted in past cases, provided the Government servant took up the assignment in Autonomous Body with proper permission. The Ministry of Defence, etc., may please issue specific directions to their Financial Advisers to advise the Autonomous/Statutory Bodies under their administrative control to make the above provisions in their rules and regulations. In cases where any practice other than that mention above is presently being followed, the same may be revised in accordance with these decisions and they may also provide for acceptance of pension liability for the past service]

(ii) [A Central Government employee with Contributory Provident Fund benefits on permanent absorption in an Autonomous Body will have the option either to receive CPF benefits which have accrued to him from the Government and start his service afresh in that Body or choose to count service rendered in Government as Qualifying service for pension in the Autonomous Body by forgoing Government's share of CPF contributions with interest, which will be paid to the concerned Autonomous Body by the concerned Government Department. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulated period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final.]

(b) Autonomous Body where the Pension Scheme is not in operation:

(i) A permanent Central Government employee borne on pensionable establishment on absorption under such Autonomous Body will be eligible for pro rata retirement

benefits in accordance with the provisions of the Ministry of Finance, O.M.No.26 (18)E.V(B)/75, dated the 8th April, 1976 [Order (4)], as amended from time to time. In case of quasi-permanent or temporary employees, the terminal gratuity as may be admissible under the rules would be actually payable to the individual on the date when pro rata retirement benefits to permanent employees becomes payable. However, in the case of absorption of a Government employee with CPF benefits, in such an Autonomous Organisation, the amount of his subscriptions and the Government contribution, if any, together with interest thereon shall be transferred to his new Provident Fund account with the consent of that Body.

(ii) [An employee of an Autonomous Body on permanent absorption under the Central Government will have the option either to receive CPF benefits which have accrued to him from the Autonomous Body and start his service afresh in Government or choose to count service rendered in that Body as qualifying service for pension in Government by forgoing, employer's share of CPF contributions with interest thereon, which will be paid to the concerned Government Department by the Autonomous Body. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulated period, employee shall be deemed to have opted to receive CPF benefits. This option once exercised shall be final]

(c) Absorption of employees of one Central Autonomous Body in another Central Autonomous Body:

The above procedure will be followed mutatis mutandis in respect of employees going from one Autonomous Body to another."

6. In view of the aforesaid clear provisions, the ground taken by the respondents that the applicant forfeited his previous service merely because he failed to mention in his letter of resignation that the resignation was technical is unjust. If an employee moving from one autonomous body to another is entitled to pensionary benefits otherwise, the mere fact that he did not state in his resignation letter that it was technical must not be held against him. Nor should the failure to exercise the option referred to at 3(b)(ii) at para 5 above unless such lapse is intentional to derive an undue benefit. As a provision is also available at para 5(b) of the OM for refund of the employer's contribution to CPF with interest thereon by the employee seeking the benefit, such requests should be considered taking a lenient view. I accordingly direct the respondents to consider Annexure A/13 and A/14 representations of the applicant dated 07.1.2015 and 09.03.2015 in accordance with the aforesaid provisions in Swamy's Pension Compilation and pass a reasoned and speaking order in regard to the applicant's claim for counting of past service rendered in the second respondent institute from 15.06.1992 to 19.11.1997 within a period of two months from the date of receipt of copy of this order. No costs.

(R. RAMANUJAM)
MEMBER (A)

26.11.2018

Asvs.