

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

OA.No.539/2016

Dated Tuesday, the 15th day of April, 2019

PRESENT

Hon'ble Mr.R.Ramanujam, Administrative Member

Radha Srinivasan
No. 14, II Link ROAD
CIT Colony, Mylapore
Chennai 600 004.

... Applicant

By Advocate M/s P. Ulaganathan

1. Union of India rep by
The Secretary
Ministry of Water Resources R.D. & G.R.
Shram Shakthi Bhawan, Rafi Marg
New Delhi – 110 001.

2. The Deputy Secretary (GWE)
Ground Water Establishment Section
Ministry of Water Resources, R.D. & G.R.
Shram Shakthi Bhawan, Rafi Marg
New Delhi – 110 001.

3. The Director (Admn)
Central Groundwater Board
Ministry of Water Resources
Bhujal Bhawan
NH IV, Faridabad 121001
Haryana

4. Office-in-charge
Central Ground Water Board
Maharashtra State Unit Office
B Wing, First Floor, GPOA
Kendriya Sadan, Akurdi
Pune – 411 044 (Maharashtra)

... Respondents

By Advocate Mr. S. Nagarajan

ORDER

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

Heard. This OA was filed by Late K.Srinivasan, after whose demise on 28.06.2016, his widow and legal representative Radha Srinivasan filed MA 556/2016 to bring her on record. The same was allowed on 09.09.2016 and accordingly she was brought on record as applicant.

2. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“(i)To call for the records on the file of the second respondent in Order No.6/1/2000-Vig (Pt.II) dated 08.06.2011 treating the period of his absence from 03.02.1981 to 07.02.1984 as dies non for all purposes including pension, causing interruption in service resulting in forfeiture of past service and set aside the same as illegal and direct the respondents to count as qualifying for pension, the said period of absence as well as the past service of the applicant from 01.02.1966 till the date of his superannuation i.e., 28.02.2001, as per the advice of the Union Public Service Commission conveyed to the first respondent by their letter dated 21.07.2008 and further

(ii)To direct the respondents to extend to the applicant the consequential benefit of sealed cover procedure prescribed by the Government of India in their OM No.22011/4/91-Estt-A dated 14.09.1992 and revise the entitlement of pension of the applicant based on the notional promotion, to which he would be entitled from the date one of his juniors was promoted in Feb/1984 in the grade of Senior Hydro Geologist and any further notional promotion to higher grades, for which he would be eligible notionally on a subsequent date, or pass any other appropriate order or direction, in the circumstances of the case and thus render justice..

3. It is submitted that the applicant was on foreign deputation to Algeria effective from 03.02.1979 for a period of two years from 03.02.1979. He was required to resume service in India w.e.f 02.02.1981 after the expiry of the said period. However, he reported back for duty only on 07.02.1984. He was proceeded against by an OM dated 20.08.1982 which culminated in his dismissal from service. During the period of litigation, Writ Appeal and SLP, the applicant superannuated on 28.02.2001.

4. Following the applicant's success in the court cases, an order dated 09.08.2006 was issued setting aside the order of penalty of dismissal from service. However, the respondents further ordered that the disciplinary proceedings could be deemed to continue under Rule 9 of the CCS Pension Rules, 1972 and that he would be deemed to be under suspension w.e.f 15.11.1989. After the applicant made a representation against the OM dated 09.08.2006, the respondents sought the advice of the UPSC. The UPSC advised them that no penalty be imposed on the applicant for the reason that it would be tantamount to discrimination in the treatment of officials similarly placed.

5. The contention of the applicant is that in the case of one K.M.Vedapuri who had similarly overstayed his foreign deputation and remained on unauthorized absence, the period of unauthorized absence from duty w.e.f 11.02.1982 to 12.02.1984 was treated as Dies non for all purposes except pension. Accordingly, the said Vedapuri is allegedly drawing full pension notwithstanding his unauthorized absence during the said period.

6. In the case of the applicant, however, the final order dated 18.06.2014 did not allow the period of unauthorized absence to be treated as Dies non for the purpose of pension. Accordingly, all his past services from 01.02.1966 to 07.02.1984 stood forfeited resulting in a huge loss of pension.

7. Learned counsel for the applicant would argue that in as much as the final order had been passed accepting the advice of the UPSC according to which no discrimination vis-a-vis the said Vedapuri could be made, the respondents could not treat the applicant's case differently. Since the respondents had allowed the past services to be counted for pension in the case of the said Vedapuri, the applicant should be extended a similar benefit.

8. Learned counsel for the applicant also submits that the applicant had been discriminated against vis-a-vis the said Vedapuri in respect of the adhoc promotion granted to the two by Annexure A-5 order dated 18.08.1987. Whereas the said Vedapuri was allowed to continue to enjoy the benefit of adhoc promotion notwithstanding his suspension, disciplinary proceedings, etc, in the case of the applicant alone Annexure A-6 order dated 19.08.1988 was passed reverting him to the grade of Scientist C which was discriminatory.

9. Learned counsel for the respondents would, however, submit that in the case of the aforesaid Vedapuri the period of unauthorized absence was two years whereas the applicant was in unauthorized absence for three years.

10. I have considered the matter. It is not in dispute that the applicant is similarly placed as the said Vedapuri who was also sought to be punished for unauthorized absence by overstaying his foreign deputation and subsequently allowed to superannuate on his due date. By an amendment order dated 04.01.2014, the respondents changed the decision to forfeit the past service under Rule 27 of the CCS Pension Rules, 1972 and the period of his

unauthorized absence w.e.f 11.02.1982 to 12.02.1984 was directed to be treated as Dies non for all purposes except pension. I am not satisfied that merely because the period of overstay of the applicant was longer than that of the said Vedapuri, he should be inflicted with a penalty of forfeiture of the entire service from 1966 to 02.02.1981.

11. The reply of the respondents is silent on the alleged discrimination between the applicant and the said Vedapuri. I am, accordingly of the view that the respondents ought to reconsider their decision to forfeit the services of the applicant prior to the date from which his unauthorized absence commenced and pass revised orders on the same principles as adopted in the case of the said Vedapuri. Accordingly, the impugned order dated 08.06.2011 is set aside to the extent it causes forfeiture of the entire past service of the applicant. The respondents shall pass a revised order on similar lines as in the case of the said Vedapuri unless there are other factors than the length of overstay on the basis of which the two cases are sought to be distinguished. The respondents shall also review their Annexure A-6 order dated 19.08.1988 in the light of the allegation that the adhoc promotion granted to the said

Vedapuri had not been withdrawn and the applicant was discriminated against.

12. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order. OA is disposed of accordingly. No costs.

(R.RAMANUJAM)
MEMBER (A)
15.04.2019

M.T.