

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**
ORIGINAL APPLICATION NO. 180/00153 of 2017

Tuesday, this the 30th day of July, 2019

CORAM

Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member

K.Pushparajan, aged 61 years
S/o (late) P.K.Kuttikrishna Menon
(Retired Senior Private Secretary, Income Tax
Appellate Tribunal (ITAT), Ernakulam, Kochi – 682 037)
Permanent Address: “Nandanam”
Thunjan Road, Annara, Opposite: Thunjan Parambu
Tirur – 676 101, Malappuram District ... Applicant

(By Advocate M/s.T.C.G Swamy & Ms.Kala T.G)

Versus

1. The President, Income-tax Appellate Tribunal
Central Government Offices Building
4th Floor, Maharshi Karve Marg
Mumbai – 400 020
2. The Registrar
Income-tax Appellate Tribunal
Central Government Offices Building
4th Floor, Maharshi Karve Marg
Mumbai – 400 020
3. Union of India represented by the
Secretary to the Government of India
Ministry of Law and Justice
'B' Wing, IV Floor, Janpath Bhavan
New Delhi – 110 001
4. The Secretary to the Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
New Delhi – 110 001

5. The Divisional in charge (Personnel)
 Uptron India Ltd., (Hazratganj)
 U.P Electronic Corporations
 10, Ashok Marg, Lucknow – 226 001

6. The Assistant Registrar
 Income-tax Appellate Tribunal
 First Floor, Block C
 Kendriya Sadan, Kakkanad
 Kochi – 682 037

..... **Respondents**

(By Advocate Mr.N.Anilkumar,SCGSC)

The above application having been finally heard on 24.7.2019, the Tribunal on 30.7.2019 delivered the following:

ORDER

Per: Mr.E.K.Bharat Bhushan, Administrative Member

Original Application No.180/00153/2017 is filed by Shri.K.Pushparajan, retired Senior Private Secretary of the Cochin Bench of Income Tax Appellate Tribunal (ITAT for short). He seeks the following reliefs:

“ (i) Call for the records leading to the issue of Annexure A1 and quash the same;

 (ii) Declare that the date of regular appointment of the applicant in the ITAT is 24.2.2003 and direct the respondents accordingly;

 (iii) Declare that the applicant is entitled to be granted pension and other

retirement benefits under the CCS (Pension) Rules, 1972 for the entire service from 27.10.1978 to 31.12.2015 or at least for the service from 24.2.2003 to 31.12.2015 or at least for the service from 24.2.2003 to 31.12.2015 and direct the respondents accordingly;

(iv) Direct the respondents to release the applicant's pension and other retirement benefits in the light of the declaration in 8(ii) above and direct further to grant all the consequential benefits arising there from with interest calculated @ 9% per annum on the arrears thereof;

(v) Award costs of and incidental to this application

(vi) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case. ”

2. The applicant had initially joined the service of the fifth respondent, Uptron India Ltd., On 27.10.1978. Uptron India Ltd is a subsidiary unit of UP Electronics Corporation, fully owned by the Government of Uttar Pradesh. While working in the said Unit, the applicant responded to a Notification issued by the ITAT, Mumbai, inviting applications for appointment to the post of Senior Personal Assistant on deputation basis. The applicant, thereupon being found qualified, was offered the post of a Private Secretary in the ITAT, Panaji Branch on deputation basis as per communication dated 27.1.2003, issued by the

Registrar in the office of the 2nd respondent (Annexure A-3). Applicant accepted the offer and joined the post of Private Secretary in the ITAT, Panaji Branch on 24.2.2003 on deputation basis and this is evident from a notification dated 24.3.2003, a copy of which is at Annexure A-5.

3. Applicant submits that the staff employed at Uptron India Ltd. were governed by the Contributory Provident Fund Scheme (CPF for short) and on the applicant's joining the ITAT in the month of February 2003, the employee's contribution and the employer's contribution up to his relieve period were transferred to ITAT where the applicant was inducted into the GPF scheme from the date the applicant joined. It is stated that the monthly contribution towards GPF was being recovered from the applicant's salary and the applicant was being treated as a person covered by CCS (Pension) Rules, 1972.

4. Applicant has produced a communication at Annexure A-7 dated 21.9.2005 issued from the office of the 2nd respondent to the effect that Central Government is not liable to pay pension for the service rendered in Uptron India Ltd. unless and until Uptron India Ltd. discharges its liability of leave salary contribution and pension contribution/CPF (employer's share) with interest thereon for the service up to the date of absorption.

5. Meanwhile, the applicant having fulfilled the requirement for the post of Senior Private Secretary, submitted his option and was appointed as a Senior Private Secretary on regular basis with effect from 1.3.2007 as per Annexure A-9. Applicant's date of entry into the grade in the ITAT was also shown as 24.2.2003 and that date has been reckoned for all purposes including in the matter of seniority. All these facts are evidence that the applicant's date of entry is the date on which he came over on deputation to ITAT.

6. He superannuated from service on 31.12.2015 and no pension or retirement gratuity even for the service rendered under ITAT was paid to the applicant. He submitted a representation dated 5.8.2016, addressed to the first respondent, a copy of which is at Annexure A-13. Annexure A-1, said to be in implementation of the directions in the Original Application stated to have been filed by one Shri.R.N.Mishra and others, who are similarly situated Senior Private Secretaries of Jaipur Bench, conveyed the views of the Government of India which states that :

“The pensionary benefits for the service rendered in ITAT, it is mentioned that this Department's OM dated 13.9.1996 states that the service rendered in Public undertaking do not count as qualifying service for the purpose of pension. The services rendered by the above employees of PSU on deputation basis in ITAT shall also not count as qualifying service for the purpose of pension.”

7. Ultimately, the applicant was left without any pension or retirement gratuity even for the service rendered under the Government of India, Ministry of Law and Justice. He submits that this is gross injustice and violation of fundamental rights. He submits that his date of appointment in ITAT should be treated as 24.2.2003 thereby making him eligible as a person appointed prior to 1.1.2004 and eligible to be covered under CCS (Pension) Rules, 1972.

8. Respondents have filed a reply statement denying the contentions made by the applicant. It is maintained that the applicant had joined ITAT Panaji Bench on 24.2.2003 on deputation basis and was absorbed in the ITAT w.e.f 24.2.2006 only. His contention that the employee's contribution and the employers' contribution upto 24.2.2003 has been transferred to the ITAT by his parent department is false and factually incorrect. It is true that the GPF account was opened for the applicant in the absence of operative account of the parent department, but it was a temporary measure and only in order to deposit the deductions made from the salary of the applicant. This does not entitle the applicant to be covered under the Old Pension Scheme.

9. As regards his contention that his last employer should pay pension for

the period he worked with Uptron India Ltd., it is to be noted that the parent department of the applicant Uptron India Ltd. failed to discharge its liability for its contribution to be deposited with the Government of India/ITAT and although the applicant has submitted a letter showing his willingness that he would discharge the liability of his Parent Department on his own, he has failed to do so eventually.

10. Heard Shri.T.C.G Swamy, learned counsel for the applicant and Mr.N.Anilkumar,SCGSC, learned counsel for the respondents. Perused the records.

11. Shri.T.C.G Swamy called to his assistance the judgment of the Apex Court in ***S.I.Rooplal and Anr. v. Lt. Governor through Chief Secretary in Delhi and Others*** in Appeal (Civil) No.5363-64 of 1997. The following observations were made:

We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority

in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See **R.S.Mokashi and Ors. v. I.M.Menon and Ors.**, (1982) 1 SCC 379 and **Wing Commander J, Kumar v. Union of India and Ors.**, (1982) 3 SCR 453.

12. The facts of this case being different, this Tribunal is not of the view that this judgment is applicable to the case under consideration. The applicant had initially joined ITAT on deputation and had come to be absorbed in ITAT only from 2006 onwards. In so far as his pension for the period he worked under Uptron India Ltd. is concerned, the communication at Annexure A-7 issued by ITAT is clear in its assertion that the Central Government is not bound to pay pension for the period unless that organisation discharges its liability with interest for the services upto the date of absorption. The reply statement asserts that this is not done.

13. The only point to be considered by this Tribunal is whether he should be treated as having joined on 24.2.2003,i.e, the date of joining ITAT on deputation basis or 24.2.2006, i.e, the date of absorption in ITAT on regular basis. The facts of the case are quite clear that his regular service starts only from the date of his absorption. As the New Pension Scheme came into

effect from 1.1.2004, it is clear that the applicant is eligible for pension only under the New Pension Scheme.

14. The Original Application is dismissed. No costs.

**(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures

Annexure A1 - A true copy of Order bearing F.OA.No.291/00545/2016 dated 24.10.2016 issued by the 1st respondent

Annexure A2 - A true copy of letter bearing No.UIL:PER:277 dated 25th October 2002 issued by the 5th respondent

Annexure A3 - A true copy of communication bearing No.F.301-Ad(AT)/2003 dated 27.1.2003, issued by the Registrar in the office of the 2nd respondent

Annexure A4 - A true copy of communication bearing Ref. No.UIL:PER:2191 dated 18th Feb 2003, issued by the 5th respondent

Annexure A5 - A true copy of Notification bearing No.F.301-Ad(AT)/2003 dated 24.3.2003, issued by the 1st respondent

Annexure A6 - A true copy of order bearing F.301-Ad(AT)/2005 dated 25 July 2005, issued by the 1st respondent

Annexure A7 - A true copy of Memorandum bearing F.301-Ad(AT)/2005 dated 21.9.2005, issued from the office of the 2nd respondent

Annexure A8 - A true copy of reply dated 6.10.2005, addressed to the Deputy Registrar in the office of the 2nd respondent

Annexure A9 - A true copy of order bearing No.F.301-Ad(AT)/2007 dated 28.2.2007 issued from the office of the 2nd respondent

Annexure A10 - A true copy of communication issued by the Assistant Registrar in the office of the 2nd respondent under U.O. No.F.301-Ad(AT)/2015 dated 30.4.2015

Annexure A11- A true copy of Memorandum bearing No.F.47-Ad/AT/Coch/MP/2015 dated 20 April 2015 issued from the office of the 6th respondent

Annexure A12 - A true copy of letter dated 11 May 2015 less its enclosures specified therein, addressed to the 6th respondent

Annexure A13 - A true copy of representation dated 5.8.2016 addressed to the 1st respondent

Annexure A14 - A true copy of order in O.A
No.291/00545/2016 dated 19.7.2016, rendered by the Hon'ble Tribunal,
Jaipur Bench

Annexure R1 - True copy of the OM No.2/29/91-Estt(Pay II)
dated 5.1.1994

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