A THE DIRECTOR GENERAL, COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH

v

DR. K. NARAYANASWAMI AND ORS.

B FEBRUARY 21, 1995

[S.C. AGRAWAL AND B.L. HANSARIA, JJ.]

Service Law

C *Central Civil Services (Pensionary) Rules, 1972 : Rules 13.28. Pensionary benefit—Qualifying service—Commencement of—Interruption in service—Condonation of—Service rendered temporarily as Pool Officer under the control of Council of Scientific and Industrial Research—Incumbent resigned from the Post—Later got substantive appointment under Government of India—Held, service rendered as Pool Officer cannot be counted towards* D *qualifying service as there was interruption between temporary service of respondent as Pool Officer and subsequent substantive appointment.*

Interpretation of Statutes.

E *Rule of harmonious construction—Applicability of.*

The Government of India in consultation with the Council of Scientific and Industrial Research constituted a Pool for well qualified Scientists and technologists returning to the country from abroad. While in the Pool, they were temporarily attached to Government or semi-Government F **institutions till their absorption on suitable posts on permanent basis. Their conditions of service were regulated by the regulations were framed by the Council and till such regulations were framed, they were governed by the regulations applicable to temporary Class-I Officers of the Council.**

Respondent No. 1 was appointed a as Pool Officer by letter dated G **7.4.1965 issued by the Council and was attached with the Regional Research Laboratory of the Council Hyderabad. He resigned from the post on 5.3.1969 and joined as Assistant Director (Chemistry), Forensic Science Laboratory (CBI) on 10.6.1969. After serving in different departments of the Government of India he retired on superannuation on 31.12.1992. He** H **filed an application before the Central Administrative Tribunal for a**

direction that his service as Pool Officer rendered in the Council from 1.7.1965 to 5.3.1969 be counted for pensionary benefits. The Tribunal allowed the claim. Aggrieved, the Director of the Council filed the appeal by special leave. A

Allowing the appeal, this Court B

HELD : 1. In view of the first proviso to Rule 13 of the Central Civil Services (Pensionary) Rules 1972, the service rendered by the respondent as a Pool Officer cannot be counted towards qualifying service for the purpose of pensionary benefit, as there was interruption between the temporary service of the respondent as Pool Officer and the subsequent substantive appointment. This interruption cannot be taken to have been condoned as envisaged by r.28 of the Rules. [146-D-G] C

1.2. Prior to substitution of the Rule 28 by Notification dated 19.5.1980, a specific order of the appointing authority was a pre-requisite for condonation of interruptions, in the service of a government servant. Admittedly, there is no such order in the instant case. Secondly, even if the substituted Rule were to apply, because of the superannuation of the respondent in 1992, by which date substituted Rule had come into force, that rule cannot override the proviso to Rule 13. This is for the reason that any contrary view would make the proviso altogether otiose. [147-E] D E

1.3. It is a settled rule of interpretation that where two provisions operate in one field, both have to be allowed to have their play, unless such operation would result in patent inconsistency or absurdity. If Rule 28 were to be confined to the interruption between two substantive appointments, both the provisions can co-exist, and harmoniously. Rule 13 being on the subject of 'commencement' of qualifying service, the same has first to commence, which, because of the first proviso, would not, in any case the incumbent was in temporary service first and there was interruption between temporary service and substantive appointment. Where the qualifying service has commenced. Rule 28 would take care of interruption; and the period of interruption would then stand condoned in the absence of a specific indication to the contrary in the service book. This is the field of operation of these to Rules as the same would permit, in such case, both the provisions to co-exist. [147-E-H] F G

Dr. M.C. Anantha Padmanabha Setty v. *Director, National Institute of* H

A *Oceanography*, **(1990) 14 Administrative Tribunals Cases 314, cited.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2576 of 1995.

From the Judgment and Order dated 30.8.93 of the Central Ad-
B ministrative Tribunal, New Delhi in O.A. No. 12 of 1993.

Ms. Madhu Sikri and A.K. Sikri for the Appellant.

S.S. Tiwari and Ms. Jitendra Mohan Sharma for the Respondent.

C A.S. Nambiar, Ms. Shashi Kiran and Niranjan Singh for the Union of India.

The Judgment of the Court was delivered by

HANSARIA, J. Brain-drain is a loss to any country. It would be more
D for a developing country like our if our scientists and technologists were to prefer to remain abroad because of better service conditions and facilities. With a view to take care temporarily of well qualified scientists and technologists returning to the country from abroad till they are absorbed in suitable posts on permanent basis, the Government of India, in consultation with the Council of Scientific and Industrial Research
E (hereinafter referred to as' the Council') whose Director is the appellant, formulated a scheme on 14th October, 1958 by constituting a Pool for the aforesaid purpose. Persons appointed to the Pool are required by the scheme to be attached to Government departments or State Industrial enterprises, national laboratory, university or scientific institution. The Officers may also be seconded to a Government department or other
F Organisations including industrial establishment in private sector. The Council has been made the controlling authority of the Pool and the Officers appointed to the Pool are required to be paid emoluments to normally range between Rs. 360 to Rs. 600 per month. The strength of the Pool at the time of the initial constitution was mentioned as 100. The
G conditions of service of the Pool Officers are required to be regulated by the regulations framed by the council; till such regulations are framed, the Officers are governed by existing regulations with apply to temporary Class I Officers of the Council.

2. Respondent No. 1 was one of such Pool Officers to be appointed
H by letter dated 7th April, 1965 issued by the Council. He was to be paid a

salary of Rs. 520 per month plus admissible allownces. He was attached with the Regional Research Laboratory of the Council at Hyderabad. He resigned from the post, which was accepted w.e.f. March 5, 1969, whereafter he joined Assistant Director, (Chemistry) Central Forensic Science Laboratory (CBI) w.e.f. June 10, 1969 and worked there till January 1984. Thereafter, on 28th January, 1984 he joined as Principal Scientific Officer in the Department of Science and Technology to be transferred in 1986 to the Department of Bio-Technology. He retired on superannuation on 31.12.1992.

3. What led the respondent to approach the Central Administrative Tribunal, New Delhi was that his service as Pool Officer rendered in the Council for the period from July 1, 1965 to March 5, 1969 was not counted for pensionary benefits, and so, he sought a direction from the Tribunal or the appellant to count the aforesaid period as a qualifying period for the purpose of grant of pensionary benefits. This prayer has come to be allowed by the Tribunal. Hence this appeal.

4. The relevant provisions governing pension for an incumbent like the respondent are to be contained in Rules 13 and 28 of the Central Civil Services (Pension) Rules, 1972 (the Rules) which read as below :

"13. Commencement of qualifying service-

Subject to the provisions of these rules qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post :

Provided further that -

x x x x x x x x

28. Condonation of interruption in service -

(a) In the absence of a specific indication to the contrary in the service book, an interruption between two spells of civil

A service rendered by a government servant under Government including civil service rendered an paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

B (b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.

(c) The period of interruption referred to in clause (a) shall
C not count as qualifying service."

5. The principal contention of the appellant is that a Pool Officer like the respondent is not an employee of the Council, and so, the service rendered by the respondent as Pool Officer cannot count as qualifying service. The contention of respondent on the other hand is that if the
D aforesaid scheme and its various provisions are borne in mind, there would be nothing to doubt that a Pool Officer has to be regarded as an employee of the Council, as was the view taken by Central Administrative Tribunal, Bangalore in *Dr. M.G. Anantha Padmanabha Setty* v. *Director, National Institute of Oceanography*, (1990) 14 Administrative Tribunals Cases 314.

E 6. For the disposal of the present appeal it is not necessary to express any opinion on the aforesaid question inasmuch as, according to us, even if we were to agree with the respondent on the aforesaid question the service rendered by him as a Pool Officer cannot be counted towards qualifying service in view of what has been mentioned in the first proviso
F to Rule 13 of the Rules. This is for the reason that there was admittedly interruption in the temporary service and the substantive appointment. The submission of Shri Tiwari for respondent No. 1 is that this interruption must be taken to have been condoned because of what has been provided in Rule 28 of the Rules. For the reasons to be alluded, we have not been
G able to persuade ourselves to agree with Shri Tiwari.

7. There are two reasons for our disagreement. The first is that Rule 28 as quoted above was substituted by Notification of even number dated 19th May, 1980. Prior to that, Rule 28 was in the following language :

H "28. Condonation of interruption in service

(1) The appointing authority may, by order, condone interuptions in the service of a Government servant : A

Provided

(i)the interruptions have been caused by reasons beyond the control of the Government servant; B

(ii) the total service excluding one or more interruption, if any, is not less than five year's duration; and

(iii) the interruption, including two or more interruptions, if any, does not exceed one years. C

(2) The period of interruption condoned under sub-rule (1) shall not count as qualifying service."

8. If the aforesaid Rule were to determine the question of condonation, specific order of the appointing authority was a pre-requisite. Admittedly, there is no such order. Secondly, even if the substituted Rule were to apply because of the superannuation of the respondent in 1992, by which date substituted Rule had come into force, we are of the view that Rule cannot override what has been mentioned in the aforesaid proviso to Rule 13. This is for the reason that any contrary view would make the proviso altogether otiose. It is a settled rule of interpretation that where two provisions operate on one field, both have to be allowed to have their play, unless such operation would result in patent inconsistency or absurdity. If Rule 28 were to be confined to the interruption between two substantive appointments, as is the contention on behalf of the appellant, we are of the view that both the aforesaid provisions can co-exist, and harmoniously. Rule 13 being on the subject of 'commencement' of qualifying service, the same has first to commence, which, in case the incumbent be in temporary service first would not if there be interruption between temporary service and substantive appointment, because of what has been mentioned in the first proviso. Where the qualifying service has commenced, Rule 28 would take care of interruption; and the period of interruption would then stand condoned in the absence of a specific indication to the contrary in the service book. This is the field of operation of these two Rules, according to us, as the same would permit, in such a case, both the provisions to co-exist. D E F G H

A 9. For the aforesaid reasons, we hold that there being interruption (in the present case) between the temporary service of the respondent as Pool Officer and the subsequent substantive appointment, the period of temporary service cannot be counted as qualifying service for the purpose of pensionary benefits. The appeal is, therefore, allowed by setting aside the impugned judgment. We, however, make no order as to costs

B

R.P. Appeal allowed.