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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO.193/2002

NEW DELHI THIS. 12th DAY OF JULY 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

P.C. Sharma, (Retd)
70/15, Pushp Vihar,
Sector 1, New Delhi

.....Applicant

(By Shri G. S. Lobana, Advocate)

VERSUS

1. Union of india, through
Secretary, Human Resource Development,
Shastri Bhawan, New Delhi
2. The Commissioner,
Kendriya vidyalaya Sangathan,
18 Institutional Area,
Saheed Jit Singh Marg,
New Delhi
3. The Secretary,
D.P.&A.R. & Pension & Pensioner's Welfare,
Govt. of India, North Block,
Room No. 112, New Delhi
4. Asstt. Commissioner,
Kendriya Vidyalaya Sangathan,
Vijay Nagar, Baily Road,
PATNA

.....Respondents

(By Shri S. Rajappa, Advocate)

O R D E R

Counting of service rendered in the previous organisation, for the purpose of grant of retirement benefits subsequent organisation is the request made in this O.A.

2. Heard S/Shri G S Lobana and S Rajappa , learned counsel for the applicant and the respondents respectively.

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3. Shri P C Sharma, the applicant who worked as Senior Teacher (Economics) in the various schools under the Department of Education Rajasthan from 8.8.59 to 13.7.65, applied for through proper channel, was selected and joined service as a Post Graduate teacher under Kendriya Vidyalaya Sangathan (KVS). After serving as PGT (Economics) in various KV Schools he retired as Principal and Education Officer, KV School Rihand Nagar (UP) on 31.1.94. At the time of his retirement on superannuation he had 34 years of continuous service i.e. 6 years under Govt of Rajasthan and 28 1/2 years with KVS. He was therefore entitled for full pension in terms of Govt. of India instructions dated 29.8.84 by counting his service of 6 years under Rajasthan Government along with the service rendered in the KVS. He had also not received any terminal benefits from Govt. of Rajasthan. His request for counting of his past service rendered, made on 4.1.94 was examined by the Commissioner KVS, who had also took up the matter with Govt. of Rajasthan only in February 1996. He had also furnished all the necessary information. However, having received no response to his request he approached Hon'ble Delhi High Court, before whom the Sangathan undertook to consider the matter of counting of his past service. The matter was referred to the Govt. of Rajasthan again. On the applicant moving the Delhi High Court, again the respondents were directed to examine the issue of counting of the past service and take a decision after granting a personal hearing on 3.1.2000. After the personal hearing the respondents rejected the request holding that the petitioner had failed to exercise option in this regard within the prescribed period i.e. upto 31.12.90 as was required in the letter dated 22.10.90 and that pro rata contribution from the Govt of Rajasthan for the period rendered by the

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applicant with them had not been received. According to the petitioner he had not come across the letter dated 22.10.90 and therefore was not aware and the existence of the requirement of filing the option. Therefore, denial of the benefit was illegal. Hence this O.A.

4. According to the applicant (i) the contents of the respondents' letter 21.1.2000 was clearly an after thought and malafide, (ii) the respondents had themselves taken up the matter with the Govt of Rajasthan though in a cursory manner, without any objection (iii) respondents did not raise any objection at all when the applicant filed his request in 1994 for counting his past service (iv) respondents had ignored the plea of the petitioner that he had not received letter dated 22.11.90, (v) the respondents have illegally deprived the applicant the benefit of 6 years service for pensionary benefits and (vi) that he had not received any terminal benefits from the Govt. of Rajasthan, when he left their service. In the circumstances the decision taken by the respondents by the impugned order dated 21.2.2000 was improper, incorrect and was liable to be set aside according to applicant.

5. In their reply the respondents do not dispute the facts of the case, but state that the issue of the service rendered by an employee in an earlier organisation for grant of pensionary benefits on retirement on superannuation from KVS is governed by the instructions of the DoP & AR OM No. 28/10/84-Pension unit, dated 29.8.84 and 28.10.84 as well as those of the Deptt. of Pension and pensioners Welfare dated 7.2.86. These have been duly circulated to all KVs and Regional Offices and also form part of Swamy's Pension Compilation. In terms of KVS circular No.

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F.18/(Mis)/PS/87-88-KVS(P&I) 22.10.90 the last date of date of option for counting of past service was 31.12.90. The applicant had not exercised the said option on time, so as according to him he was unaware of the requirement. Interestingly the applicant himself was a Principal cum DDO and therefore it is highly unlikely that this communication and the condition, therein would have escaped his attention. The Rules/instructions having been given full publicity to all concerned, the applicant cannot adopt the plea of ignorance. Further counting of past service is subject to other conditions including pro rata benefits from the previous employer. In the case of applicant though KVS had taken up the matter with the Government of Rajasthan his previous employer pro rata remittance had not been received by the KVS in respect of the applicant. Thus both on account of non exercise of option and non receipt of the pro rata remittance from the previous employer applicant's case for counting his past service could not be considered. These in fact have been made clear in the impugned order, of 21.1.2000 which was issued after grant of personal hearing to the applicant in terms of Delhi High Court directions. The applicant had been given full pensionary benefits as admissible in terms of service rendered by him in the KVS but the service rendered in the Govt. of Rajasthan could not be so given as the conditions for adding that service had not been fulfilled. There was also no provision for condoning the delay. The applicant had applied for counting of past service only on 4.1.94 i.e. in the month of his retirement on superannuation from the KVS 3 years after the last date for exercising such option. Still the case of the applicant was in fact sympathetically considered by the respondents but the same could not be granted as the conditions of option as well as the receipt of pro rata

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remittance were not fulfilled . The respondents further point out that as the entire matter has been dealt with and decided upon by the Hon'ble Delhi High Court the OA is hit by the principle of resjudicata. Besides the OA has been filed only on 21.1.2002 much later than the Hon'ble High Court order dated 31.7.2000, it is also hit by limitation.

6. During the oral submissions both Shri Lobana and Shri Rajappa, learned counsel reiterated points already made by them. According to Sh. Lobana, learned counsel, the applicant could not have exercised the option as required as he was not aware of the requirement at all and the respondents themselves had not intimated him about this requirement till 2000 i.e. 6 years after the representation was made. They cannot take shelter behind the plea that the applicant had been sleeping while they had themselves been inactive for nearly 6 years and they had themselves taken up the matter with Govt of Rajasthan. He also states that his was a case where relaxation of the technical requirement of exercise of option was called for and the respondents could still have the matter taken up with the Government of Rajasthan at the appropriate level, to render justice to the applicant. On the other hand, according to Shri Rajappa the applicant's not having exercised the option , a condition precedent to the grant of the benefit of counting of past service the respondents' action cannot be faulted . They had taken up the matter with the Govt of Rajasthan only , as a matter of indulgence and generosity and the same did not confer any right on the applicant to gain the benefit which he had failed to earn by fulfilling the required condition.

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7. I have carefully deliberated on the matter. Facts are not disputed. The applicant who was working as a Sr. Teacher (Economics) under the Directorate of Education, Rajasthan, had after completing six years of service, applied for with the permission of the competent authority, was selected and joined KVS as a Post Graduate Teacher (PGT-Economics), on 14.7.65, wherefrom after completing 29 1/2 years of service, he retired as Principal, on superannuation on 30.4.94. The applicant's claim is that the service he rendered with Rajasthan Govt. should also be counted with his service in KVS so that he would be eligible for full pensionary benefits. Respondents have raised two preliminary objections - of res judicata and limitation, neither of which merits endorsement. Perusal of the order dated 31.7.2000, passed by the Hon'ble Delhi High Court, while disposing of the CCP 8/99, filed by the applicant, makes it clear that the applicant could take the plea with regard to the service in Rajasthan Government was a separate issue, for which he could take an appropriate remedy. This is exactly what the applicant has done by this OA. Therefore res judicata does not vitiate the instant OA. On the aspect of limitation also, the respondents do not have a case. Pensionary benefits being a continuous cause of action, the applicant gets the protection of the Hon'ble Supreme Court in the case of M.R. Gupta Vs UOI & Other [1995 (5) SCALE 29]. Thus both the preliminary objections fail.

8. On merits, I observe that the applicant's claim for counting his past service in Rajasthan Govt; along with the service rendered in KVS, an autonomous body of the Central Govt. is governed by the instructions in DoP&AR's OM No.28-10/84 Pension Unit dated 29.8.84 and 28.10.84 as



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well as of Deptt. of Pensioners and Pensioner's Welfare dated 7.2.86. In terms of the above, the individual seeking that his previous service be counted along with his subsequent service, was expected to exercise his option for the purpose by 31.12.90. Further the subsequent authority should also receive pro rata payment from the earlier authority. In the case of the applicant the above two conditions have not been fulfilled. Hence the impugned order dated 21.1.2000. In normal circumstances, the respondents' action in denying the benefit of counting the previous service, on the grounds of the failure applicant to exercise option in time as well as of non receipt of pro rata remittance would be difficult to fault. According to the applicant, he had failed to exercise the necessary option by 31.12.90, as he was unaware of the recruitment. This argument is a bit difficult to appreciate. The fact however, remains that on receipt of the applicant's request the respondents had taken up the matter with Rajasthan Govt. on the aspect of pro rata remittance. That being the case the respondents are deemed to have waived the condition of exercise of option by the applicant and therefore the said objection could not have been raised in the impugned order. The objection that remains is the non receipt of the pro rata remittance from the Rajasthan Govt. This could be facilitated by the respondents taking up the matter with Rajasthan Govt. at an appropriate higher level. It would also pose no problem for the Rajasthan Govt. as the applicant had not received any terminal benefits at the time of his relief from the Directorate of education, Govt. of Rajasthan. Justice calls for the above.

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9. In the above view of the matter the OA succeeds and is accordingly disposed of. The impugned order No. F.6-72/88-KVS (Estt.II) dated 21.1.2002 is quashed and set aside in so far as para 2) counting of past services is concerned and the respondents are directed to take up the matter at the highest possible level with the Dte. of Education, Rajasthan and take necessary action. This exercise shall be completed within three months from the date of receipt of a copy of this order. The applicant shall also provide all assistance to the respondents. in performing the above task. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

Patwal/