

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

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OA No.2714/2002

Date of decision: 29.7.2003

Khub Chand Sharma

.. Applicant

(By Advocate: Shri P.N. Sharma)

versus

Govt. of NCT of Delhi & Ors.

.. Respondents

(By Advocate: Shri Ajesh Luthra)

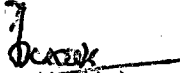
CORAM:

Hon'ble Shri Justice V.S. Aggarwal, Chairman

Hon'ble Shri S.K. Naik, Member (A)

To be referred to the Reporter or not?

YES


(S.K. Naik)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2714/2002

New Delhi, this the 29th day of July, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member(A)

Khub Chand Sharma
7/75B, Vishwas Nagar
Shahdara, Delhi-110 032

.. Applicant

(Shri P.N.Sharma, Advocate)

versus

Govt. of NCT of Delhi, through

1. Lt. Governor
Raj Niwas, Delhi
2. Chief Secretary
5, Sham Nath Marg, Delhi
3. Director of Education
Old Secretariat, Delhi
4. Dy. Director of Education
District East, Rani Garden
Delhi
5. Principal
Govt. Boys Sr. Secondary School No.1
Gandhi Nagar, Delhi

.. Respondents

(Shri Ajesh Luthra, Advocate)

ORDER(oral)

Shri S.K. Naik

The point for adjudication in the instant case relates to the counting of past service for the purpose of service benefits primarily pension, etc.

2. Brief facts of the case are that the applicant Shri Khub Chand Sharma had joined as Lecturer at STCC Inter College, Jhajhar, Bulandshahr in UP and worked there from 5.7.1965 to 25.9.1972. On being selected for the post of Trained Graduate Teacher (TGT) under Respondent No. 2 (Directorate of Education), Delhi, a post for which he had applied through proper channel, he was posted at Govt. Middle School, Nanakheri, Delhi.

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3. Applicant has since retired from the Department of Education under the Govt. of NCT but has been representing for counting of the service from 5.7.1965 to 25.9.1972 which he had rendered with the former employer i.e. STCC Inter College, Jhajhar, Bulandshahr, UP. Respondents have denied him this benefit primarily on two grounds, namely that the applicant is very late in the day to ask for inclusion of the benefit of his past service rendered 29 years ago and therefore his claim is hopelessly barred by limitation; the second contention is that the case of applicant falls in the category of teachers to be treated under the circular of the Directorate of Education, Govt. of NCT of Delhi dated 18.6.1996. For facility of easy reference circular dated 18.6.1996 is reproduced as under:

Counting of past services in case of movement from and to schools other than aided schools-exercising option a necessary condition

In continuation of this Deptt. circular No.DE/Pay Fix/93-94/266-91 dated 24.03.94 the matter regarding counting of past service for pensionary benefits has been further examined in consultation with Finance Department, Government of NCT of Delhi and it has been observed as under:

- (i) Delhi Administration's notification dated 26.03.83 issued by the Directorate of Education is applicable only in the cases of teachers moving from one aided school to another aided school in the Union Territory of Delhi or outside. The cases of teachers who are/were appointed in Govt. schools from aided schools are required to be dealt under letter dated 12.7.88 issued by the GOI, Ministry of Human Resources Development.
- (ii) The requirement of exercising option by the official within one year of joining Govt. service is a necessary condition for counting of past service for pensionary benefits. As such the cases are required to be processed and finalised in terms of the provisions contained in GOI OM dated 29.8.84 and 7.2.86 incorporated in Appendix 12 to

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CCS(Pension) Rules 1972. However, the circular dated 24.6.94 will remain applicable in respect of teachers moving from one aided school to another.

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(iii) In some cases it has come to notice that Distt. authorities have been advising the officials to deposit the CPF contribution etc. in Govt. account without ascertaining the suitability of the case for counting past service in accordance with the criteria laid down in GOI's standing order on the subject resulting in embarrassing position for the Deptt. To avoid such instances no official shall be advised to deposit the CPF contribution etc. to Govt. account without confirming the fitness of the case for counting past service.

4. The learned counsel for respondents has contended that while the cases of teachers who are/were appointed in Govt. schools from aided schools are required to be dealt with under letter dated 12.7.1988 issued by the Government of India, Ministry of Human Resources Development, as per sub-para (ii) thereof, requirement of exercising option by the official within one year of joining Government service is a necessary condition for counting of past service for pensionary benefits.

5. On the question of limitation, counsel for the applicant has explained that the applicant, for the first time, came to know that he was eligible for getting the benefit of past service counted only during 1990. Thereafter, he has been making efforts continuously to have his service book and the certificate to this effect countersigned to be in a position to file his request to the appropriate authority. He has narrated the long battle he had to fight for obtaining the necessary service records and certificate from the District Inspector of Schools of the earlier employer. Perusal of

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records indicates that he had to approach the Hon'ble High Court of Judicature at Allahabad for a simple matter like obtaining counter signature of District Inspector of Schools on the certificate of the service rendered in the Government aided school. While the Civil Writ petition was in his favour, he had to file a contempt petition to obtain the countersignature. All these took more than 10 years and while the aforesaid certificate was granted to him in October, 2001 he applied for the counting of past service before Respondent No.4 on 18.10.2001. Ever since, the matter was repeatedly represented before the respondents who had rejected his request. Thus, the counsel contends that though the delay is rather long, it cannot at all be attributed to the applicant.

6. On the question of applicant's case being regulated under instructions dated 12.7.88 issued by the Government of India, Ministry of HRD and the requirement of exercising of option by the official within one year of joining Government service, counsel has vehemently argued that instructions dated 12.7.88 have to be acted upon independent of OM dated 29.8.84 and 24.6.94. In support thereof, he has quoted instructions of Dte. of Education dated 24.6.94 in which it has been categorically stated that cases of counting of past service rendered by teachers in various managements of aided schools in Delhi or outside be decided in accordance with notification dated 26.3.83. Since the said notification does not envisage any option, the condition of exercising of option within one year stipulated by the circular referred to above is not necessary in cases of counting of past services rendered in the aided schools. He

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further pleaded that it is incorrect on the part of respondents to hold that the order dated 18.6.96 is applicable to teachers coming from aid^{ed} schools to join Government service as is clear from the heading of the order 'Counting of past services in case of movement from and to schools other than aided schools-exercising option a necessary condition'. According to him, teachers coming from aided schools are not covered under this order. He further states that the cases of teachers who are/were appointed in government schools from aided schools are required to be dealt with as per letter dated 12.7.88 issued by the Govt. of India.

7. Additionally, the counsel for the applicant has argued that respondents have allowed the benefit of past service to similarly placed teachers and has named S/Shri D.D.Jain, M.P.Rastogi, R.C.Sharma and J.S.Aggarwal. In some cases the delay has been as long as 26 years and yet they have been given the benefit of past service and there is no reason as to why his client should be discriminated.

8. We have very carefully considered the averments made before us by both the sides. Perusal of the records clearly indicates that the applicant ever since he was aware of the admissibility of his past service for benefit of pension since 1990 has been trying to obtain necessary records to file his claim. That it has taken more than 10 years to submit final representation is to be seen in the context of the struggle he had to make to obtain his service records from the former employer. We find that despite judicial intervention, all the papers

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were not forthcoming and therefore the delay cannot be attributed to him. On the question of his right being denied on the ground of not exercising his option within one year from the date of joining service, on which learned counsel for respondents has laid much stress, we are not inclined to accept the same. That is because when the applicant joined Government school at Nanakheri in Delhi during the year 1972, there was no such scheme to allow the benefit of past service. The question of his giving any option, therefore, does not arise. When the applicant came to know of the benefit admissible during 1990, he has been tracing his papers which are the basic requirement to prove his claim and it has taken him all these years upto 2001 to reach the stage to submit his representation. Even on the merits of the case, we find that the learned counsel for applicant has laid much stress on the applicability of instructions issued by the Government of India, Ministry of HRD dated 12.7.88. We find that this circular nowhere states that requirement of exercising option by the official within one year of joining Government service will be necessary. On the contrary, the circular issued by the Dte. of Education, Govt. of NCT of Delhi dated 24.6.94 clearly states that condition of exercising of option within one year is not necessary in case of counting of past service rendered in aided schools. ^{relevant extract from} The circular is reproduced for facility of easy reference:-

"Since the said notification does not envisage any option, the condition of exercising of option within one year stipulated vide the circular referred above is not necessary in cases of counting of past services rendered in the aided schools."

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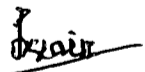
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9. It is not disputed that the applicant came from an aided school in the State of UP and therefore his case should have been considered without insisting on the option.

10. Learned counsel for applicant has also quoted number of examples where teachers in similar circumstances have been extended the benefit of past service, which has not been specifically denied by the respondents but they have submitted that every case is independent in itself and is decided according to specific facts and circumstances of the case. To our mind this is not a sufficient explanation to the instant case as it pertains to the benefit to be extended to an employee who has since retired.

14. Under the circumstances, the OA succeeds and is allowed. We direct the respondents to pass appropriate orders extending the benefit of past service rendered by the applicant for the aforesaid period for the purpose of pensionary benefits. This exercise shall be completed within a period of four months from the date of receipt of a copy of this order. No costs.


(S.K. Naik)
Member(A)


(V.S. Aggarwal)
Chairman

/gtv/