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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2072/2002

New Delhi this the 30<sup>th</sup> day of May, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Abu Bashar S/O M.A.Hagur,  
R/O 4/19 NCERT Campus,  
Sri Aurobindo Marg,  
New Delhi-110016.

-Applicant

( By Shri R.Doraiswami with Shri H.D.Pandey, Advocates )

-Versus-

1. Railway Board through its  
Secretary, M/O Railways,  
Rail Bhawan, New Delhi-110001.

2. General Manager,  
N.E.Railway,  
Gorakhpur (UP).

3. The Chief Works Manager (P),  
Office of the Chief Workshop Manager,  
N.E.Railways, Gorakhpur (UP).

4. Secretary,  
National Council of Educational  
Research and Training,  
Sri Aurobindo Marg,  
New Delhi-110016.

-Respondents

( By Shri Rajinder Khatter, Advocate )

O R D E R

Applicant challenges respondents order dated 18.10.2000, 6.12.2000 and 5.3.2001 and seeks transfer of pro rata pension/service benefits of his past service in the North-East Railway to his present employer i.e. NCERT in the wake of his retirement on superannuation on 31.3.2004.

2. Applicant was appointed as a Chargeman "B" in North-East Railway on 16.7.1962 and continued to work till 29.4.1977. Applicant tendered his resignation on personal grounds and joined NCERT. At the time of relieving applicant was paid PF.

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3. Applicant sought benefits of pro rata pension from his ex-employer in the light of DOPT OM dated 16.10.89 on which clarification was sought from NCERT. Applicant also represented his case with Public Grievances, Railway Board and in principle entitlement for pro-rata benefits was agreed to. By letter dated 5.3.2001 without any reason claim of applicant was rejected. On further representation nothing was heard, giving rise to the present OA.

4. Learned counsel for applicant Sri R. Doraiswamy contended that applicant has been discriminated in so far as pro rata benefits are concerned, as one Dharampal Toor an ex-Head Clerk who has served for 10 years in Northern Railway his proportionate pensionary benefits were liquidated to NCERT whereas similar treatment has not been meted out to applicant.

5. Further drawing my attention to various communications it is stated that in principle it was agreed upon to transfer pro rata benefits of applicant to NCERT and applicant has also deposited interest as per respondents' letter dated 5.12.96. It is also stated that by a letter dated 24.4.97 in response to a communication by the Railways NCERT had certified that applicant had applied through proper channel and a recommendation has been made for grant of pro rata pensionary liability as per OM dated 30.10.96 and also referred to various communications in 2000 to buttress his claim. Moreover, by referring to OM of Ministry of Finance dated 8.8.1983 it is contended that in case of transfer of employee to Central/Autonomous/Statutory Bodies the CP balance alongwith interest may be transferred to new organisation where pension scheme is in vogue and one who is absorbed

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shall be allowed the service rendered in earlier pensionable establishment of Central Government towards qualifying service for pension as per DOPT OM dated 29.8.84.

6. MA for condonation of delay filed by applicant has been pressed to contend that as no reply has been served upon his reminders for pro rata benefits as a recurring cause of action OA is within limitation.

7. On the other hand, respondents' counsel Sh. Rajinder Khatter took a preliminary objection as to limitation by contending that as the question of pro rata benefits had arisen in the year 1997 when the applicant had joined autonomous body. In view of Section 21 (2) of the Administrative Tribunals Act, 1985 any grievance which has arisen preceding three years, i.e., 20.11.1985 on establishment of the Tribunal cannot be taken cognizance of.

8. By referring to the DOPT OM of 1987 it is contended that in the aforesaid OM all the conditions contained in OM dated 31.1.86 shall apply, which inter alia, include that resignation from government service with a view to seek employment in Public/Central Enterprises without proper permission would entail forfeiture of service for terminal benefits.

9. One of the contentions put-forth by the learned counsel for respondents is that as applicant had remained in CPF contributory and had not opted for pension

despite opportunities made available on promulgation of various notifications laying down cut off dates applicant cannot claim benefit of combined service.

10. In so far as case of Sh. Toor is concerned, it is contended that therein technical resignation has been made through proper channel for joining NCERT, whereas the request of applicant for resignation was on personal grounds.

11. On merits as well it is stated that as applicant had not applied through proper channel in NCERT he was paid PF balance under contributory scheme and as DOPT OM dated 16.10.89 takes effect prospectively the same would not apply to the case of applicant who severed his connection with the Railways w.e.f. 29.4.1987.

12. In so far as agreement of Board in principle is concerned, it is contended that vide DO letter dated 20.9.2000 applicant was not found entitled for pro rata benefits and his matter was examined and was not found as per Rules. Employees who were absorbed prior to 31.3.87 were required to exercise option for counting past service within one year and as applicant has not exercised the aforesaid option he is not entitled to pensionary benefits.

13. I have carefully considered the rival contentions of the parties and perused the material on record. Though the grievance raised and the cause of action in the present OA relates back to the year 1977, this Tribunal has no jurisdiction to entertain the grievance but as the orders have been passed denying

applicant pro rata benefits in 2000 and 2001 being a recurring cause of action preliminary objection as to limitation is rejected.

14. However, on merits and keeping in view the Constitutional Bench decision of the Apex Court in Krishan Kumar v. Union of India, (1990) 4 SCC 207, wherein in so far as cut off date for exercising option to switchover to pension scheme it has been held that one who has not come forward to exercise the option and after a delay the same cannot be allowed. As per the DOPT OM the aforesaid option is to be exercised within one year which applicant had failed to exercise and even in 1999 when an opportunity was afforded through OM he has not exercised the same. As such not being a pensioner and having not opted for pensionary benefits applicant remained as CPF beneficiary and in that event his claim for combined service or pro rata benefits cannot be allowed.

15. In so far as 1989 OM is concerned, the same would have no application.

16. As per OM dated 31.1.86 where the conditions are laid are to be complied with. As applicant has resigned not in public interest and not for the purpose of joining NCERT and has not applied through proper channel to be absorbed in Central Autonomous Body his resignation which is a personal reason would not confer upon him a right to reckon his past service for the purpose of qualifying (combined service) for the purpose of pensionary benefits. Before applicant can take resort to the benefits accrued to him in the OM pre-conditions are to be

satisfied. Having failed to amenable to the provisions contained in OM, applicant's case false beyond its ambit and he cannot be given any benefit on that count.

17. In the result, for the foregoing reasons, though the learned counsel for applicant has prayed for a compassionate view but the same cannot be countenanced, as applicant de hors the rules cannot be accorded the benefits prayed for. The OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju  
(Shanker Raju)  
Member (J)

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