



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 4646/2018

This the 27th day of February, 2020

Hon'ble Mr. R.N. Singh, Member (J)

Dr. Kirti Nathuram Borkar,
Aged about 48 Years,
W/o Sh. Rajesh Nagdeve,
R/o 431, B-8, Ashiana Village,
Rangoli, Rangoli, Bhiwadi,
Rajasthan-301019

...Applicant

(By Advocate: Sh. M.K. Bhardwaj)

VERSUS

1. Employees State Insurance Corporation,
Through its Director General,
Panchdeep Bhawan, CIG Road,
New Delhi
2. The Director (P),
Employees State Insurance Corporation,
Panchdeep Bhawan, CIG Road,
New Delhi

...Respondents

(By Advocate: Sh. Shobhit Kumar for Sh. Murari
Kumar for Respondents No. 1 and 2)

ORDER (Oral)

Hon'ble Mr. R.N. Singh, Member (J):

Heard the learned counsels for the parties.



2. At the outset, Sh. M.K. Bhardwaj, learned counsel for the applicant submits that Respondent No. 3 is only a proforma party and no relief has been sought from them. Accordingly, he prays that the applicant may be permitted to delete the Respondent No. 3 from the array of parties. Permission is granted. Learned counsel for the applicant is permitted to make necessary corrections in the memo of parties today itself.

3. The present original application has been filed by the applicant u/s 19 of the Administrative Tribunal Act, 1985 against alleged inaction at the end of Respondents No. 1 and 2 in not considering his representation dated 22.09.2017 (Annexure A-1), wherein the applicant has requested for counting her past service rendered as Pathologist, Uttarakhand w.e.f. 08.12.2004 till 27.12.2012 prior to joining the services of the Respondents No. 1 and 2, i.e., Employees State Insurance Corporation (in short, ESIC).

4. Learned counsel for the applicant contends that the applicant was initially appointed as Pathologist in District Hospital, Baurari, Uttarakhand on 08.12.2004 and was confirmed subsequently in the said post. Subsequently, in pursuance of an advertisement issued by the Respondents No. 1 and 2, the applicant applied for the post of Specialist Grade-II (Junior Scale) under



the Respondents No. 1 and 2 through proper channel and after consideration of her candidature by the respondents, the applicant was selected for the said post and an offer of appointment dated 23.11.2012 was issued.

5. It is further contended that in view of the applicant's such selection by the Respondents No. 1 and 2, the applicant has tendered technical resignation to Uttarakhand administration on 27.12.2012 and w.e.f. 28.12.2012, the applicant joined the services of the Respondents No. 1 and 2 as Specialist Grade-II (Junior Scale). Thereafter, the applicant has made a representation dated 16.12.2014 requesting Respondents No. 1 and 2 for counting of her past services under Uttarakhand administration for pension and pay fixation, however, such request of the applicant was ignored and no order was passed by them. Subsequently, the applicant is stated to have made a detailed representation dated 22.09.2017 (Annexure A-1) to the Respondent No. 1, requesting therein to count past services rendered by the applicant w.e.f. 08.12.2004 till her joining as Specialist Grade-II (Junior Scale) under ESIC and for grant of GPF scheme under old pension being governed under CCS (Pension) Rules, 1972.



6. Learned counsel for the applicant submits that in spite of lapse of more than six months of the said representation; no order was passed by the respondents compelling the applicant to approach this Tribunal by way of the present OA. In the OA, the applicant has prayed for the following reliefs:-

(i) to direct the respondents to give the benefit of Old Pension Scheme under CCS (Pension) Rules, 1972 to the applicant by counting her past service rendered under State Govt. of Uttarakhand w.e.f. 08.12.2004 till joining of ESIC.

(ii) to direct the respondents to count the past service of applicant rendered under State of Govt. of Uttarakhand as Pathologist, District Hospital, Baurari, Uttarakhand for the purpose of pension and pay fixation etc. with all consequential benefits.

(iii) to allow the OA with cost.

(iv) to pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case."

7. In response to notice from this Tribunal, Respondents No. 1 and 2 have filed their counter affidavit. In the counter affidavit, respondents have opposed and disputed the claim of the applicant. The basic objection is that since the applicant entered in the employment after 01.01.2004, which is after the implementation of New Pension Scheme of Govt. of India, no merit was found in the claim of the applicant and therefore the same was not acceded to. In para 4.5 of their counter reply, it is claimed by the respondents that



a communication dated 16.12.2014 was issued by the respondents. However, in the counter reply, it is not disputed that the respondents have not considered representation dated 22.09.2017 (Annexure A-1).

8. I have perused the pleadings on record and considered the submissions made by the learned counsels for the parties.

9. In the representation dated 22.09.2017, the applicant has preferred and relied upon the letter No. A-40-12/475/99-EIII dated 16.11.2017 of the Respondent No. 1 on the subject of counting of past service for the purpose of pension in ESIC (Annexure A-5) and has also relied upon the judgment of this Tribunal dated 13.02.2017 in OA No. 2802/2012 to contend that even after joining the services under the respondents after 01.01.2004, the benefit of old pension scheme could be applicable to the applicant. Besides this, the applicant has also referred to various OMs of DOPT on the subject in the said representation.

10. Learned counsel for the applicant argues that it is incumbent upon Respondents No. 1 and 2 to consider her representation dated 22.09.2017 and to dispose of the same by passing a reasoned and speaking order. I find force in the arguments put forth by learned counsel



for the applicant to the fact that Respondent No. 1 and 2 should consider the applicant's representation dated 22.09.2017 and dispose of the same by passing a reasoned and speaking order.

11. Accordingly, the OA is disposed of with direction to Respondents No. 1 and 2 to consider the applicant's representation dated 22.09.2017 (Annexure A-1) and to dispose of the same by passing a reasoned and speaking order as expeditiously as possible and in any case within eight weeks from the date of receipt of certified copy of this order.

12. The OA stands disposed of in the aforesaid terms.
No order as to costs.

(R.N. Singh)
Member (J)

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