

(24)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
OA NO. 1558/2001.

New Delhi: dated this the 25<sup>th</sup> day of April, 2003.

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

Dr. J.P. Gupta  
Senior Orthopaedic Surgeon  
E-6, DDU Hospital Residential Complex  
Hari Nagar, New Delhi.

(Shri D.K. Nag, Advocate)

....Applicant.

Versus

1. Secretary  
Dept. of Personnel & Training  
North Block, New Delhi.
2. Secretary  
Ministry of Health & Family Welfare  
Nirman Bhavan, New Delhi.
3. Medical Superintendent  
Deen Dayal Upadhyay Hospital  
Hari Nagar, New Delhi.
4. Commissioner  
Municipal Corporation of Delhi  
Town Hall, Delhi-6.
5. Director of Medical Services  
ESI Scheme, Ashram Road, Ahmedabad
6. Secretary  
Dept. of Health & Family Welfare  
Govt. of Gujarat, Gandhi Nagar.
7. Secretary (Health)  
Govt. of NCT of Delhi, New Delhi.
8. All India Institute of Medical Sciences  
through its Director  
Ansari Nagar, New Delhi.

(Shri S.P. Singh, Advocate for R-2)

....Respondents.

O R D E R

Shri S.K. Malhotra, Member (A)

The present OA has been filed by the applicant against the impugned order dated 13.11.2000 (A/1) passed by Respondent No. 1 whereby it has been decided not to count the services of the applicant rendered by him as a doctor during the period 1978-1985 in All India Institute of

Medical Sciences (AIIMS), Municipal Corporation of Delhi (MCD) and Department of Health & Family Welfare, Government of Gujarat, for the purpose of pension etc.

2. The facts of the case in brief are that the applicant was Senior Resident in AIIMS from 12.5.1978 to 26.3.79. Thereafter, he worked as GDMO-II on ad hoc basis in Hindu Rao Hospital under MCD from 27.3.79 to 28.9.83 and as Orthopaedic Surgeon from 30.9.83 to 30.9.85 in ESI Hospital, Baroda under Govt. of Gujarat. He is presently in Deen Dayal Upadhyay Hospital under Govt. of NCT of Delhi.

3. The grievance of the applicant is that his services on ad hoc basis under MCD and Govt. of Gujarat have not been treated as qualifying services for the purpose of pension. It has been stated by him that while in AIIMS where he was working as Senior Resident, he applied for the post of GDMO-II in a hospital under MCD, which he joined on 27.3.79. While working on this post on ad hoc basis, he again applied through proper channel for the post of Orthopaedic Surgeon in the State of Gujarat and after having been selected, joined the post on 30.9.1983. He remained on that post for two years upto 30.9.1985. In the meantime, he had also applied for the post of Medical Officer (MO) in Ministry of Health & Family Welfare, Govt. of India and was selected for the post. He submitted a technical resignation to the Govt. of Gujarat and joined the post of MO under Govt. of India w.e.f. 1.10.1985. While submitting his resignation, he deposited one month's salary in lieu of one month's notice with the State Govt. of Gujarat. His resignation was later accepted by the State Govt.

4. The applicant was worried about his pensionary benefits, while working in the aforesaid three organisations. On a representation made by him to the respondents to count his past service, MCD opined that as the

applicant remained with MCD on adhoc basis and held the post for a period of less than five years, his services are not eligible for pro-rata pensionary liability. Similarly, State Govt. of Gujarat also did not agree to consider his service as pensionable as he had resigned from the service without their consent. Besides the services rendered by him were for two years only, as against five years required for eligibility for the purpose of pension. Applicant has stated that denying the benefit of counting past services rendered by him in the above organisations is arbitrary and also discriminatory because in one similar case of Dr. B.G. Matapurkar, who was also working in various institutions/organisations before joining the service with Central Health Services (CHS), he had been allowed to count his past services for the purpose of pension.

5. Respondent No. 2 (Ministry of Health and Family Welfare, GOI) have filed a detailed written statement. It has been stated by them that the period of Senior Residency in AIIMS can be treated as qualifying service for pension purpose only if it is followed by regular service and the break between the Senior Residency and regular appointment does not exceed two years. Since the applicant worked in AIIMS only for about 10 months and he was not regularly appointed thereafter, his services cannot be counted for purpose of pension. The service with MCD from 27.3.79 to 28.3.83 was on ad hoc basis and since it was less than 5 years, no pro-rata pensionary benefit was admissible to the applicant under the Rules. In so far as his service in State of Gujarat is concerned, he had resigned after paying one month's notice pay and did not wait even for acceptance of his resignation by the appropriate authority. He relieved himself and joined the post under Govt. of India. Besides the above, <sup>as</sup> the service rendered by him was only for

two years as against 5 years, he was not entitled to any terminal benefits nor his services could be counted for the purpose of pension.

6. We have heard the learned counsel on both sides and have also gone through the pleadings.

7. Learned counsel for the applicant during the course of submissions drew our attention to OM dated 30.5.1995 (Annexure A/4) issued by Department of Pension & Pensioners Welfare (DPPW), Govt. of India wherein the question of pro-rata pensionary benefits by the autonomous bodies/Government of India even in cases where the employee has less than 5 years of qualifying service has been discussed. It has been clarified that discharge of pro-rata pensionary liability by the parent organisation is necessary in all such cases of mobility of personnel from Govt. to autonomous bodies and vice-versa. However, the learned counsel for the respondents has brought to our notice a clarificatory memo. dated 26.11.2002 issued by the same Deptt. (DPPW) in the instant case, to the effect that the above orders do not provide for counting of ad hoc services for pension purposes. As the service rendered by the applicant in MCD was on ad-hoc basis, it cannot be treated as qualifying service for the purpose of pension. As the service rendered by the applicant in MCD was on ad-hoc basis, it cannot be treated as qualifying service for the purpose of pension. In so far as allegation of discrimination vis-a-vis Dr. Matapurkar is concerned, it has been clarified by the respondents that his services with MCD which were less than 5 years, were not counted for the purposes of pension. His services which were confirmed in LNJP were allowed to be counted and his services with CHS was also allowed to be counted as it was followed by regularisation, without any break. Thus, the analogy of the

case of Dr. Matapurkar is misplaced and cannot be made applicable in the case of the applicant.

8. In this connection, it would be relevant to refer to Rule 14(3) of the CCS (Pension) Rules, concerning qualifying service for the purposes of pension which is reproduced below:-

"In the case of a Government servant belonging to a State Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under the State Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify."

In the instant case, the applicant was not permanently transferred by the State Govt. but had resigned from the post and without even waiting for the acceptance of the same by the State Govt. joined the new post under Central Government. As such his service does not qualify for the purpose of pension. It is further mentioned under Rule 14 that "proportionate pensionary liability in respect of temporary service rendered under the Central Govt. and State Govts. to the extent such service would have qualified for grant of pension under the rules of the respective Govt. will be shared by the Governments concerned." The emphasis in this decision is that the service should have qualified for the grant of pension. In the case of the applicant, his services in the aforesaid three organisations were for less than 5 years and also on ad hoc basis and as such could not be counted for grant of pension. In the above decision, it has further been mentioned that even in case where an employee is required for administrative reasons, for satisfying a technical requirement, to tender resignation before joining a new post, it has to be with proper permission of the concerned State/Central Govt. This

requirement was also not met by the applicant. The Ld. counsel for the applicant emphasised that since the applicant had been sending his applications for the new post, through proper channel, the services rendered by him in these organisations should be counted for the purposes of pension. This argument does not carry any weight, as the services in the three organisations did not qualify for grant of pension, for the reasons already explained.

9. In view of the Rule position and the clarification received from the authorities concerned, we are of the view that the services rendered by the applicant in the aforesaid three organisations cannot be counted for the purposes of pension. We do not find any justifiable ground to interfere with the decision taken by the respondents vide order dated 13.11.2000 (Annexure A/1).

10. The O.A. which turns out to be devoid of merits is accordingly dismissed. No order as to costs.

*Malhotra*  
(S.K. MALHOTRA)

MEMBER (A)

*V.S. Aggarwal*  
(V.S. AGGARWAL)

CHAIRMAN