

(K)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1876/2001

New Delhi, this the 24th day of April, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Harbans Sharma, S/o Late
Shri Shiv Narain,
Resident of Village & Post
Office Kharawar,
District Rohtak, Haryana

.... Applicant
(By Advocate : Shri Jitender Diwan)

Versus

1. The Union of India,
through the Secretary,
Ministry of Defence, Govt. of India,
New Delhi
2. The Director General of Inspection,
Bharat Sarkar Raksha Mantralaya,
Nirikshan Mahanideshalaya, DHQ,
Dhakghar, New Delhi - 110 011
3. The Inspector of Armaments,
Government of India, Ministry of
Defence Inspectorate of Armaments,
Varangaon (Maharashtra) - 425 308
4. The Inspector,
Inspectorate of General Stores,
North India, Ministry of Defence,
Government of India,
Anand Parbat, New Delhi - 5
5. The Director General of Quality Assurance,
Department of Defence Production (DQQA/Adm-7A),
Government of India, Ministry of Defence,
DHQ PO : New Delhi - 110 011
6. The Officer-in-Charge,
DEP G1/Civil,
Computer Centre,
Office of the Chief CDA (Pensions),
Draupadighat, Allahabad

.... Respondents
(By Advocate : Shri Harvir Singh, proxy for
Shri Madav Panikar)

O R D E R

The applicant has impugned the orders of the
respondents issued on the 25th March, 2001 and has filed
this OA also in view of the liberty given to him to seek

.....

12

: 2 :

relief regarding claim of pension through a separate OA in accordance with law while disposing of CP No.245/1999 in OA No. 1279/1989 on 13.3.2001.

2. Briefly, the facts of the matter are that the applicant who initially joined the Inspectorate of General Stores, Ministry of Defence, Anand Parbat, New Delhi on the 27th January, 1955, became an active member of the Inspectorate of General Stores Employees Union and he became its President in the year 1960. On January 8, 1968 there was some problem amongst the employees of the Laboratory located within the compound of the building of the Inspectorate of General Stores and the applicant requested the Incharge to grant him permission to enter the Laboratory. Permission sought was refused. This was followed by 2 charge sheets dated January 10, 1968 and February 6, 1968, containing practically same charges but relating to two different dates, namely, 8.1.1968 and 16.1.1968. The charges, briefly, were that he had forcibly tried to enter the Laboratory and that he was not a fit person to be a Government servant. He was placed under suspension vide order dated February 2, 1968. The applicant has submitted that a criminal complaint was also lodged against him and some of his colleagues in the Criminal Court at Delhi complaining that they were likely to commit breach of peace. The applicant has claimed that he and others were, however, acquitted of the offence. An ex-parte departmental enquiry is also reported to have been conducted against the applicant and after which he was dismissed from service vide order dated September 18, 1968. The applicant has alleged that the charge sheets served on

Sharma

him and the departmental enquiry conducted against him was under the Central Civil Services (Classification, Control and Appeal) Rules, 1965, which were not applicable to him being an employee paid out of defence budget. He has also submitted that the order of dismissal in his case was not passed by the President in exercise of the powers under Article 310. It is observed that the penalty of dismissal from service was reduced to removal from service by the President on consideration of a representation/ appeal filed by him (Annexure-IV).

3. It is further observed that an order for reinstatement of the applicant was issued in the year 1979, but he was taken on duty in the year 1981 only with continuity of the order of reinstatement since the year 1979. It is further observed that the applicant has claimed that while he was given fresh appointment from 21.2.1981 and while he continued in service till his retirement as on 31.1.1992 and thereby he had put in more than 10 years of service without any break, and whereby he became entitled to pensionary benefits under CCS (Pension) Rule 49. He has claimed that he is entitled to pension after retirement taking into account the date of his first appointment as on 29.1.1955 to the date of his removal from service, which accounts for 13 years of service and further he had put in more than 10 years of service from 14.5.1981 to 31.1.1992.

4. The applicant has also made a reference to the Contempt Petition which was filed by him before the Tribunal vide CP No.245/1999 in OA No.1279/1989 in which

.....

the Tribunal had taken a view that the dispute in question being as to whether the applicant was entitled to count certain period of his service towards his qualifying service for pensionary benefit and other benefits and as the same could not be decided in the Contempt Petition, liberty was given to the applicant to seek the relief in this regard through a separate OA and hence the present OA.

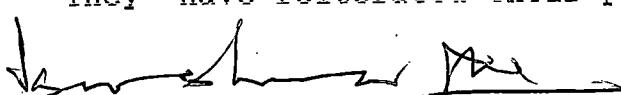
5. The respondents have, however, taken the view that the applicant is not entitled for counting of a particular period of service from 13.9.1979 to 14.5.1981 and from 21.2.1981 to 14.5.1981 being treated as qualifying service when he had received no salary and performed no duty during that period. They have confirmed that the applicant was initially appointed as a Mazdoor w.e.f. 29.01.1955 in the Office of respondent No.4. He was awarded major penalty of dismissal from service w.e.f. 18.9.1968 after an inquiry on charges of misconduct under Rule 14 of CCS (CCA) Rules, 1965. The said penalty was, however, reduced to removal from service vide order dated 13.9.1979. His reinstatement in service from 14.5.1981 has been treated by the respondents as fresh appointment. They have also made a reference to the fact that the Tribunal vide its order dated 6.5.1994 in OA No.1279/1989 (Annexure A-VI) had not accepted the period prior to the date of his fresh appointment as qualifying service for pensionary purposes. They have categorically submitted that while being appointed as Junior Examiner on 14.5.1981, it had been made clear to him that this appointment will be treated as fresh



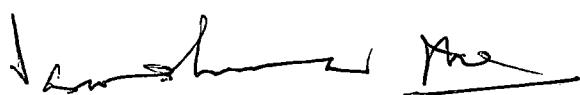
for all purposes and that service rendered prior to 14.5.1981 would not be counted. The applicant thus had accepted the said conditional appointment and reported for duty w.e.f. 14.5.1981. It is observed from the reply filed by the respondents that the applicant was again removed from service w.e.f. 1.5.1985 on disciplinary grounds for mis-conduct, but was reinstated on consideration of his appeal in a lower post of Junior Examiner w.e.f. 11.8.1988 and was finally retired on 31.1.1992 on superannuation. He was paid terminal benefits on the basis of qualifying service as on 31.1.1992.

6. According to the respondents, the total service rendered by the applicant is 10 years 8 months and 17 days from 14.5.1981 to 31.1.1992 and that the total non-qualifying period w.e.f. 14.5.1981 to 31.1.1992 being subtracted from the total length of service from 14.5.1981 to 31.1.1992, the total qualifying service remains 7 years, 5 months and 8 days. They have, therefore, taken a position that the applicant has rendered less than 10 years of qualifying service and, therefore, he is not entitled to pension as per Pension Rule 49 of CCS (Pension) Rules, 1972.

7. I have considered the facts of the matter as submitted by both the sides and find that the respondents have not allowed the applicant the benefit of service that he had rendered prior to his reinstatement w.e.f. 14.5.1981. They have reiterated their position that reinstatement of



the applicant from 14.5.1981 was by way of fresh appointment only and it was expected that the applicant was not ignorant of the terms and conditions of his fresh appointment. The respondents have, however, not responded very clearly to what the applicant has submitted in paragraph 4 (13) of his OA in which he has submitted that the gap between 14.5.1981 and 31.1.1992, which was the period from the date of another removal from service from 1.11.1985 to the date of reinstatement in service on 10.8.1988 and which was treated as regularised as on duty for all purposes in terms of the letter of the respondents dated 21.6.1999. Though this letter does not appear to have been annexed to the OA, it appears quite difficult not to take notice of this period of the service as claimed by the applicant as spent on duty in the light of the letter of the respondents. It has also not been clearly commented upon by the respondents as to whether they have given any consideration to the period of service rendered by the applicant from the initial date of his appointment as on 29.1.1955 to the date of his removal from service after having rendered 13 years of service. The matter does not appear to have been presented in clear terms by the respondents as to whether they have applied their mind to this aspect of the submissions made by the applicant, except taking a position that the matter has been dealt with by them by treating the reinstatement of the applicant w.e.f. 14.5.1981 as a fresh appointment and only allowing the benefit of qualifying service from the said date. It should have been possible for the respondents to have taken a more rational and holistic consideration of the services

A handwritten signature in black ink, appearing to read "Anil Kumar", is written over a horizontal line.

rendered by the applicant at least in the matter of granting the benefit of qualifying service to the applicant. Reference by the applicant to the decisions of this Tribunal in OA No.1279/1989 as decided on the 6th May, 1994 in paragraph 6 (iv) also does not seem to have been responded to by the respondents in their reply specifically. The relevant part of the order of the Tribunal in the said OA which needs to be kept in view by the respondents is given hereunder:

"10. On the consideration of all the facts and circumstances, the application is partly allowed and the matter is remanded to the reviewing authority exercising power under Rule 27 of the CCS (CCA) Rules, 1965 to consider the matter afresh and pass necessary order according to law in the light of the observations made above. The order of 16.10.1985 of removal from service of the applicant had already been modified by the order dated 9.3.1988/20.4.1988 and both these later orders are quashed. The reviewing authority shall pass the order afresh on the basis of the appeal preferred by the applicant against the order of removal from service dated 16.10.1985. The applicant will be entitled to the benefits, if any, arising from the final order, if favourable to him. In these circumstances the parties to bear their own costs. The respondents to pass such an order within three months from the date of receipt of the copy of this order."

8. On perusal of the observations of the Tribunal in the above paragraph in OA 1279/1989 read with what has been submitted by the applicant in paragraph 6 (ii) to (vii), I find that some of the elements of the said case are relevant to the instant case also and, therefore, the matter should have been given a consideration with reference to the said observations of the Tribunal. I,

however, do not find any specific reference to these aspects of the matter in the reply of the respondents. The respondents appear to have taken a highly legalistic and technical view of the matter while submitting their view point in paragraph 6.3 of their counter. They have further proceeded to take the same kind of position in paragraph 7 of their reply where they have not gone beyond stating that the appointment of the applicant as Junior Examiner on 14.5.1981 was to have been treated as fresh for all purposes and the service rendered by him prior to 14.5.1981 will not be counted and also the applicant will not get any benefit of his previous service. While they have submitted that the applicant had accepted the said conditional appointment while reporting for duty on 14.5.1981, we do not find any letter on the record in which such a conditional appointment has been accepted by the applicant.

9. It is also not quite explicable as to whether the respondents have applied their mind to the submissions made by the applicant in his rejoinder to the counter affidavit, particularly to what has been stated in paragraph 1.9 of the rejoinder.

10. Having regard to the facts and circumstances of the case and also taking into account the principles of equity and rationality, I am of the considered view that the ends of justice will be met if the matter is given a fresh consideration by the respondents in the light of my observations as given above and the same is disposed of by issuing a reasoned and speaking order within a period of

Jawad Hussain Patel

YQ

: 9 :

three months from the date of receipt of a copy of this order.

IV. The OA thus stands disposed of in terms of the above observations/direction with no order as to costs.


(SARWESHWAR JHA)
MEMBER (A)

/pkr/