

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.44/1999

New Delhi, this the 11th day of May, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (J)

Shri V.B. Saran
s/o Shri Mahabir Saran
R/o E-74, Sector 21,
Noida (U.P.) - 201 201.

Last employed as :
Manager (Distribution)
Delhi Milk Scheme
Deptt. of Animal Husbandry & Dairying,
Ministry of Agriculture,
New Delhi.

... Applicant

(By Advocate: Shri C.B.Pillai)

V E R S U S

Union of India - through

1. Secretary to the Govt. of India,
Deptt. of Animal Husbandry & Dairying,
Ministry of Agriculture,
Krishi Bhavan,
New Delhi - 110 001.
2. The General Manager,
Delhi Milk Scheme,
West Patel Nager, New Delhi - 110008.
3. The Pay & Accounts Officer,
Deptt. of Agri & Co-op.
Delhi Milk Scheme,
New Delhi - 110 008.

... Respondents

(By Advocate: Shri V.S.R.Krishna)

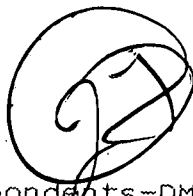
ORDER

By Shri Kuldip Singh, Member (J):

Applicant Shri V.B. Saran, who had retired as Manager (Distribution) of Delhi Milk Scheme (hereinafter referred to as DMS) has filed this OA for redressal of his grievances that his pension has not been properly fixed. According to the applicant his qualifying service has been taken into consideration only w.e.f. 20.11.1973 to 28.2.1993

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when he was serving with the respondents-DMS, but his services under the State Government of U.P. w.e.f. 20.11.1959 to 19.9.1969 and further period of 20.9.1969 to 19.11.1963 under an autonomous body has not been taken into account. Hence the applicant has prayed for the following reliefs:-

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- (a) To direct the respondents to grant full pension, gratuity and other retiral benefits to the applicant taking into account his service under the Government of U.P. from 20.11.1959 to 19.9.1969 and under Kanpur Sahkari Milk Board (an autonomous Body) under the Government of U.P. from 20.9.1969 to 19.11.1973 in addition to the service under the Government of India which has been counted for pension.
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- (b) To grant interest at penal rates for the delayed payment from 1.3.93 till the date of payment on all such retiral benefits.
- (c) To get the service period counted from 20.9.69 to 19.11.1973, the applicant relies upon an OM dated 28.10.1984 and also submits that he is willing to refund the CPF benefits received by him for the period and to pay the pension contribution if necessary as admitted by respondent No.1.

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2. The applicant also alleges that he had applied for the post under the DMS under the Central Government through proper channel and had taken up the job only after having been properly relieved and in such like cases the applicant is entitled to count the service for the purposes of pension.

3. The respondents in their reply have pleaded that the applicant had earlier taken up this matter by filing an OA which was dismissed on 29.7.94. The applicant was not satisfied and filed an RA which was dismissed vide order dated 12.9.94, but still the applicant was not satisfied and filed an SLP before the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the SLP but stated that since there are disciplinary proceedings pending against the petitioner so the grant of provisional pension at this stage cannot be assailed for. But still, if any grievance survives regarding the amount of pension finally fixed, he would then be entitled to challenge the fixation of amount before the appropriate forum since that question cannot be examined at this stage.

4. The respondents, however, admit that while granting pension to the applicant the services rendered by the applicant in DMS 20.11.1973 to 28.3.93 only has been taken as qualifying service as the period of service rendered by him in U.P. State Government Undertaking from 20.11.1959 to 19.9.69 and from 20.9.69 to 19.11.1973 in Kanpur Sehkari Milk Board Ltd. cannot be counted for qualifying service

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in view of the Department of Personnel & Administrative Reforms OM No.29.8.84 and stated that the pension so sanctioned had been rightly issued by the PAO of the DMS.

5. The respondents also pleaded that the period for which the applicant had worked in U.P. Pashudhan Udyog Nigam Ltd. does not qualify for pension purposes.

6. The respondents also pleaded that since the applicant had agitated this matter earlier which was dismissed, so this cannot be re-agitated again.

7. Besides that it is also pleaded that the case of the applicant for counting of qualifying service was considered as per the DPAR OM dated 29.8.84 but since there was doubt about the taking into consideration of the period with regard to the service rendered by the applicant with the Kanpur Sehkari Milk Food Ltd, but it was found that the Kanpur Sehkari Milk Board Ltd. was an autonomous co-operative society and was registered under the UP Co-operative Societies Act, 1965 and received funds in the shape of loans, grants, share capital etc. from the Government of Uttar Pradesh so there was a doubt about the same for counting of the service rendered by the applicant in the said Board as such it is submitted that this application be dismissed.



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8. I have heard the learned counsel for the parties and have gone through the records of the case.

9. Shri Pillai appearing for the applicant submitted that as regards the period of service from 20.11.1959 to 19.9.69, there is no doubt about the same as the applicant was working under the U.P. State Government. But as regards the period from 20.9.69 to 19.11.1973 is concerned, for that period the applicant was working in an autonomous body under the State Government and the Ministry of Agriculture had written to the Milk Commissioner, Government of U.P. to confirm whether the Kanpur Sahakari Milk Board Ltd. fulfils the definition of an autonomous body which is financed wholly or substantially through cess or Government grants and vide Annexure A-12 the Milk Commissioner had replied that Kanpur Sahkari Milk Board is an autonomous body so the applicant is entitled for counting of that period for the purposes of pension and then in this regard the learned counsel for the applicant has also referred to a judgment reported in 2000 (1) ATJ page 584 entitled as Professor Dr.R.R. Sharma Vs. Post Graduate Institute of Medical Education and Research, Chandigarh. In that case the petitioner had joined as Lecturer in the Education Department in the State of Uttar Pradesh. From there he was selected for the post of Lecturer in Physics at the Kamal Institute, which is a Central Government autonomous body. From there petitioner had joined services in the Post

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Graduate Institute at Chandigarh after obtaining permission from the previous employer, i.e., from Kamal Institute and there was no break in service and in that case also the Writ Petition was allowed by the Punjab and Haryana High Court and respondents were directed to pay the full amount of pension and gratuity by counting his qualifying and continuous combined service from 1954. So relying upon this judgment, the counsel for the applicant submitted that he is also entitled to similar treatment and is also entitled to pension.

10. The counsel for the applicant has also referred to another judgment of the Madras Bench of the Central Administrative Tribunal in the case of W.C. Saroja Vs. Union of India which is also reported in 1992(2) ATJ 397 wherein it was held as follows:-

" Constitution of India, Article 300-A -Central Civil Service (Pension) Rules, 1972 - Rule 26(2)-Pensionary Benefits-Applicant was a Research Assistant in the Institute of Public Health under State Government Department-Selected as Education Officer in a department of Central Government-Tendered her resignation-Resignation accepted on an administrative grounds treated it as technical resignation-Whether service rendered by the applicant in State Government as a Research Officer can be counted for the purpose of pension-Held yes."

11. So on the basis of the above judgment he again submitted that the applicant is entitled for counting of his past service.

12. In reply to this, the learned counsel appearing for the respondents submitted that since

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the matter had already been agitated and the same had been dismissed by the Tribunal itself so it cannot be re-opened as the case is barred by the principles of res judicata.

13. The counsel for the respondents then referred to the earlier judgments given in OA 2134/93 and review thereupon and submitted that in this case also since the applicant had not exercised his option for pension and the applicant had been serving in such an organisation where the Scheme of CPF was available and at that stage the applicant had not exercised the option nor at that stage the said scheme was available because the applicant had joined the services of the respondents in the year 1973 and the scheme for option came in operation in the year 1984 extending to the former employees of the autonomous bodies of the central Government which was further modified by the Scheme of 1986 when the employees of the State Government autonomous bodies were allowed but to count previous service since that scheme was not applicable in the year 1973 and the applicant could not have given an option in the year 1973, so now he cannot be allowed the benefit of the said scheme.

14. In this regard I may mention that the letter Exhibit A-11 which is a letter dated 13.1.1989 which has also been relied upon by the respondents and the same has been annexed as Annexure-F to their written statement. This is a letter written by the

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Government of India, Ministry of Agriculture and is addressed to the General Manager, Delhi Milk Scheme, wherein the Ministry had taken a stand that there was no objection for the respondents to count the services rendered by Shri V.B. Saran, former Manager (Distribution) because it is an office of the State Government. However, they had a doubt about the status of Kanpur Dugdh Utpadak Sahkari Sangh Ltd. and they had taken up the matter with the Board and it has been indicated that it is an autonomous co-operative Society registered under the U.P. Co-operative Societies Act, 1965 and received funds in the shape of loans etc. from the Government of U.P., so the Ministry of agriculture wanted to confirm from the Milk Commissioner, Government of U.P. whether the said Board fulfils the definition of an autonomous body and this letter was replied by the Milk Commissioner vide Annexure A-12 annexed with the OA and therein the Milk Commissioner had categorically advised the Ministry who had written letter Annexure A-11 filed along with the petition and which is also Annexure-F filed along with the reply and the Milk Commissioner had categorically stated that the Board is an autonomous body and the reply had been given by the Milk Commissioner in reference to the letter dated 13.1.1989 which is also on the subject regarding the counting of service render by the applicant in the Kanpur Sahkari Milk Board Limited and thereby the Milk Commissioner had confirmed that it is an autonomous body. Thus the doubt raised by the respondents as per their


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Annexure-F also stands clarified and confirmed by the Milk Commissioner of Government of U.P., Lucknow.

15. Not only this but the respondents have further entered into correspondence with Shri R.S.Tolia, Managing Director, Pradeshik Cooperative Dairy, Lucknow wherein they had made mention that in order to facilitate the counting of service rendered by Shri Saran in the above mentioned Board one of the pre-requisite conditions is that the Board should accept to bear the pro-rata pensionary liability for period of the service rendered by Shri Saran in the Board as per OM No.20.10.84 and further they had asked them to look into the matter for favourable response.

16. But in reply to this it appears that the Kanpur Dugdh Utpadak Sahkari Sangh Ltd. had again replied that since the applicant had not given the option within a stipulated period of one year, so it is to be presumed that the concerned employee had accepted the benefit of CPF scheme so the same is applicable in the case of Shri Saran and at this stage the Kanpur Dugdh Utpadak Sahkari Sangh Ltd., has stated that Shri Saran is not entitled to the benefit of pension.

17. Thus it is clear that for getting the benefit of pension the applicant was supposed to give his option within one year from the said memo of the DPAR 29.8.84 which was made applicable to the

 applicant. As the applicant had not exercised the option at the right time, so he is not entitled to the benefit of the same. The earlier OA was also rejected on the same very ground but applicant had taken a plea that the Hon'ble Supreme Court had allowed to agitate the matter so he has filed the present OA. Though the judgments referred to by the applicant do speak about the counting of the service for the purpose of pension but as regards the option of pension scheme and from change over from CPF to pension scheme is concerned he was required to give an option and to deposit the amount which he had received under the CPF scheme within the stipulated period. Since that has not been done, so I find that the OA does not call for any interference.

18. In view of the above, OA is dismissed.

No costs.


(Kuldip Singh)
Member (J)

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