

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.932/98

199

T.A.No.

25

DATE OF DECISION 21.1.2000.

S.N. Chattopadhyay

....Petitioner

Sh.Mahesh Srivastava

....Advocate for the
Petitioner(s)

VERSUS

Govt.of NCT of Delhi and
ors.

....Respondent(s)

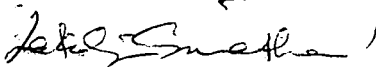
Sh.Vijay Pandita

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)
The Hon'ble Shri

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.


(Smt.Lakshmi Swaminathan)
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 932/1998

26

New Delhi this the 21st day of January, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

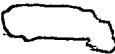
Shri S.N.Chttopadhyay
Ex-Deputy Director
29/c Anubhav Appartment
Sec.13 , Rohini ,
Delhi -110035

PETITIONER

(By Advocate Sh.Mahesh Srivastava)

VERSUS

1. **GOVT. OF N.C.T.,**
THR.ITS CHIEF SECRETARY,
SHYAM NATH MARG,
DELHI.
 2. **DIRECTOR OF EDUCATION,**
GOVT.OF N.C.T.
OLD SECRETARIAT,
DELHI.
 3. **ADDL.DIRECTOR (EDU.),**
OLD SECRETARIATE,
DELHI.
 4. **DIRECTOR (VIGILENCE)**
GOVT. OF N.C.T.
OLD SECRETARIATE,
DELHI.
 5. **PAY & ACCOUNTS OFFICER**
OFFICE OF THE PAY & A/CS.-IV (HOSPITAL)
LOKNAYAK HOSPITAL,
NEW DELHI.
- ...RESPONDENTS**

(By Advocate Sh.Vijay Pandita. )

O R D E R (ORAL)

27

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the action of the respondents in only granting him provisional pension and according to him, they have unnecessarily delayed granting his pensionary amounts after he has retired on superannuation from service on 30.6.1995. He has claimed that penal interest @ 18% per annum on the amounts with-held by the respondents may be granted and the responsibility may be fixed for the delay.

2. The brief facts relevant to the issues for consideration, which are not disputed, are that the applicant retired as Deputy Director of Education on 30.6.1995. He had been sanctioned provisional pension from February, 1997 on the ground that the respondents were investigating certain complaints received against him. The date and nature of the complaints have, however, not been indicated by the respondents in their reply. The respondents have submitted that after scrutiny of preliminary inquiry reports, the competent authority decided not to go ahead further and the case against the applicant was closed on 7.7.1998. Thereafter, admittedly the respondents have paid all the pensionary benefits to the applicant by August, 1998. This O.A. has been filed on 29.4.1998.

3. The Tribunal by order dated 27.1.1999 had noted the above facts regarding the inquiry which was being held against the applicant having been dropped, and hence relief claimed in paragraph 8 (2) to quash the order dated 23.3.1998 no longer survives.

28

4. In view of the above, the only claims to be adjudicated are whether the applicant is entitled to count his service rendered by him as Teacher from 18.1.1968 to 17.7.1972 as part of the qualifying service for pensionary benefits and regarding the question of interest.

5. Regarding the question whether the past service rendered by the applicant from January, 1968 to July, 1972 which was in an aided school could be counted for the purpose of qualifying service, the learned counsel for the applicant relies on the circulars issued by the respondents dated 26.3.1983 and 27.6.1994. Shri Vijay Pandita, learned counsel has, however, submitted that these circulars do not apply to the present case as he did not move from one aided school to another aided school. According to him, the relevant circular is the one dated 29.8.1984 which deals with the question where a person has resigned from service from an aided school and has joined another aided school whereas the applicant was directly appointed by the Govt. of NCT. The claim of the applicant for including his service from 1968 to 1972 in the aided school has been rejected by the respondents, on the ground that as required under this circular, he did not exercise his option within one year from the date of issue of the Govt. circular dated 29.8.1984. In this case, it is seen that the applicant himself has not stated that he had exercised his option after he resigned from the aided school and joined service with the Govt. of NCT on 17.7.1972 and he had requested the respondents to count his past service many years later.

js

29

6. The relevant portion of the Govt. of NCT circular dated 27.6.1994 reads as follows:

"Apropose of this department circular No. DE/PAYFIX/93-94/2558-85 DATED 2nd Dec. 1993, it is elucidated that the case of counting of past services rendered by teachers under various management of aided school in Delhi or outside be decided in accordance with the notification No. F.4(56)74-88/Acts. I/5503-585 dated 26.3.1983 (copy enclosed for ready reference since the said notification does not envisage any option, the condition of exercising of option within one year stipulated vide the circular referred above is not necessary in case of counting of past services rendered in the aided school.

This issues within the concurrence of finance department of Govt. of national capital territory of Delhi vide there UO no. 11S/C/AC dated 3.3.94".

The Notification dated 26.3.1983 provides that there is an automatic condonation regarding exercise of option provided the concerned teacher pays upto date interest on the pensionary amounts received earlier. Shri Mahesh Srivastava, learned counsel for the applicant has submitted that in the case of the applicant he had not received any contribution of Provident Fund or other terminal benefits from the previous aided school where he was working and, therefore, he submits that there was no question of refunding this amount.

7. After careful consideration of the aforesaid circulars relied upon by both the parties, I find merit in the submission made by the learned counsel for the respondents that the circular dated 27.6.1994 which deals with the counting of past service rendered by teachers under various management of aided schools in Delhi or outside will not apply to the facts of the present case. The applicant

18-

had admittedly resigned from service from the aided school and had been directly appointed under the Govt. of NCT in July, 1972 as a fresh entrant. He could, therefore, not be entitled to have his past service counted, as he did not fulfil the relevant conditions and this claim fails.

8. On the other hand, with regard to the claim of interest on the delayed amount of pensionary benefits, I find merit in applicant's claim for the following reasons:

9. Admittedly after the applicant had retired on superannuation as Deputy Director of Education w.e.f. 30.6.1995, the respondents granted him provisional pension and that too with effect from February, 1997. There is force in the argument of the learned counsel for the applicant that during the intervening period, the applicant could not be expected to be left high and dry, without any pensionary amounts being given, - not even in the form of provisional pension. He has also emphasised the fact that in the present case, not even a charge-sheet had been issued against the applicant in the meantime, as an excuse for the respondents to withhold even the payment of the provisional pension. The respondents have stated that they had held a preliminary inquiry and after scrutiny of preliminary inquiry reports, the competent authority had decided to drop the same on 7.7.1998. As mentioned above, neither the date nor the nature of the complaints received by them against the applicant have been mentioned in their replies.

10. In the facts and circumstances of the case, it is seen that there has been inordinate delay in the action taken by the respondents firstly, to pay the provisional pension in 1997 and secondly, to pay the final retiral

13

31
amounts in August, 1998. No doubt, the learned counsel for the respondents has stated that after the decision had been taken to drop the preliminary inquiries on 7.7.1998, the due amounts had been paid immediately thereafter to the applicant. This prompt action, no doubt does save the situation a little for the respondents, but not entirely.

11. In view of what has been stated above, the O.A. partly succeeds and is allowed to the following extent:

The respondents are directed to pay interest @ 12% per annum on all the pensionary amounts due to the applicant from 1.7.1995 till the date of actual payment. This action shall be taken within a period of three months from the date of receipt of a copy of this order.

No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'