

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

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O.A.No.2053/1996

Date of Decision: 21-5-1998

Shri S.S. Lamba ..

APPLICANT

(By Advocate Shri G.D. Bhamotari)

versus

Union of India & Ors. ..

RESPONDENTS

(By Advocate Shri K.C.D. Gangwani)

CORAM:

THE HON'BLE SHRI

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?

  
(S.P.Biswas)

Member(A)

Cases referred:

Commander Head Quarter, Calcutta & Ors.  
Vs. Capt. B. Prabendra Chandra (JT 1997(10)SC 371)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

OA No.2053/1996

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New Delhi this the 21st day of May, 1998.

Hon'ble Shri S.P. Biswas, Member(A)

Shri S.S. Lamba  
s/o Shri Harnam Lamba  
KGII/18, Vikas Puri, New Delhi .. Applicant

(By Shri G.D. Bhandari, Advocate)

versus

Union of India, through  
Secretary  
Dept. of Bio-Technology  
M/Science & Technology  
Block No.2, CGO Complex, 7th Floor  
Lodi Road, New Delhi .. Respondents

(By Shri K.C.D. Gangwani, Advocate)

ORDER

The applicant is before us in the second round of litigation claiming relief in terms of counting of his past services rendered in Mineral Development Board (MDB for short) for purpose of pensionary benefits on his permanent absorption in the Indian Vaccine Corporation Ltd. (IVCL for short). His earlier O.A.No. 2061/94 was disposed of by this Tribunal on 14.2.96 with the following directions:-

"(a) The Deptt. of Bio-technology will examine the case of the applicant by counting the service rendered by him in MDB as a qualifying service for pension and also as if the applicant had exercised the option in favour of drawing pensionary benefits;

(b) The respondents will also consider the service rendered by the applicant prior to joining the MDB as per rules.

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2. Since liberty was granted to the applicant to agitate the issue in case he so desired, he has approached this Tribunal staking his claim on the basis of reliefs obtained by S/Shri R.K. Bhatnagar and Purshotam Lal, who were his erstwhile colleagues.

3. The background facts, necessary for the proper appreciation of the case, are as under:-

The applicant joined as L.D.C. in the office of Director Audit & A/Cs P & T, New Delhi on 5.12.68 and was in Government service till 18.7.89 when he resigned from the Government services while working as Executive Assistant in the scale of Rs.2000-3500/-. Following his resignation, the applicant was paid all the terminal benefits under the rules. After this, the applicant got a job with the IVCL, a Private Company in the capacity of Private Secretary from where he finally retired w.e.f. 31.5.96.

4. The applicant's claim has been rejected by A-1 order issued in May 1996 on the basis that he, <sup>claim</sup> violated the provisions of Rule 26(1) of CCS.(Pension) Rules. The respondents have submitted that if the applicant had asked for voluntary retirement under Rule 48(a) of the CCS

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(pension) Rules, the Government would have had no objection to grant pension subject to verification of the past services prior to joining IVCL as was done in the case of S/Shri R.K. Bhatnagar and Purshotam Lal.

5. I shall now proceed to examine applicant's main plea i.e. "to calculate his pensionary benefits after taking into account his service rendered by him prior to joining the M.D.B. as also the service so rendered by him in the M.D.B."

6. Provisions under Rule No.26 of the CCS (Pension) Rules stipulate the following conditions:-

"(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."

7. I find that the applicant had directly applied to IVCL without getting his application forwarded through proper channel and that he resigned from the services of his own. The applicant has annexed Annexure -B to substantiate his claim that he had applied through proper channel. This is only an advanced copy. However, I do not find any ~~any~~ material produced by the applicant in support of his claim. The applicant resigned from the services of his own and, therefore, there is some force in

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the contention of the respondents that the applicant's case is covered under Rule 26(1) of CCS (Pension) Rules which stipulates that a resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. It is not in dispute that the applicant was paid all terminal benefits on his resignation. It is also not disputed that the offer of appointment, as at Annexure-C dated 7.10.87, stipulates that "he/she will not be entitled to any benefits like counting of previous service for seniority, fixation of pay, pension etc. The applicant vide his communication at Annexure-B accepted those conditions. Applicant's claim is hit by principles of estoppel.

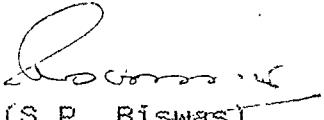
8. Yet another issue is relating to applicant's claim of having expressed his option for the pensionary benefits. He mentions of having expressed such an option, but has not come out with any document to substantiate that the said option was exercised by him in time. The applicant is, therefore, stopped in making such claim in terms of the law laid down by the Hon'ble Supreme Court in the case of Commander Head Quarter, Calcutta & Ors. Vs. Capt. B. Plabendra Chanda JT 1997(10)SC 371. It has been held therein that a retiree cannot stake claim on the basis of the revised rules as he has not been found eligible and he cannot be made eligible retrospectively. I also find that the impugned communication at A-1 of 1996 is a speaking and reasoned order and as such the action of the respondents cannot be faulted.

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9. The fact that the case of the applicant, in general, was similar to S/Shri R.K. Bhatnagar and Purshotam Lal cannot be in dispute in the light of the decision of this Tribunal in O.A.No.2601/94 as aforesaid. However mere similarity in terms of absorption in another organisation on transfer/superannuation/ resignation is not enough for entitlement of pension. That is why this Tribunal rightly remitted the matter to the respondents. All the stipulations under the pension rules need to be fulfilled. The applicant has not come out with specific provisions/rule under which an official having resigned from services and obtained all the post-retiral benefits, can refund the amount and then switch back to "Pension Scheme". The applicant mentions that he had opted the Pension Scheme, but the reasons as to why he could not avail that opportunity is not known to us.

10. In the result, the application fails on merits and deserves to be dismissed. I do so accordingly. Our orders, however, will not debar the applicant to reagitate the issue, if he is so advised and if he really fulfills all the binding conditions in such matters.

No costs.

  
(S.P. Biswas)  
Member(A)

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