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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.893/1996

New Delhi, this 4th day of February, 2000

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

Dr. (Mrs.) Madhu Asthana
N-187, Sector 8
R.K.Puram, New Delhi .. Applicant
(By Shri K.C.Mittal, Advocate)

versus

Union of India, through

1. Secretary
M/Health & Family Welfare
Nirman Bhavan, New Delhi
2. Secretary
M/Labour
Shram Shamti Bhavan, New Delhi
3. Commissioner
Coal Mines Labour Welfare Orgn.
Dhanbad (Bihar)
4. Medical Superintendent
Central Hospital, Assansol .. Respondents

(By Shri V.S.R.Krishna, Advocate for R-1)

Hon'ble Smt. Shanta Shastry ORDER

The applicant is aggrieved by the impugned order dated 30.11.95 of the Chief Medical Officer(South Zone), CGHS, New Delhi rejecting to treat her service with effect from 24.12.75 to 27.2.76 as continuous service.

2. The applicant was appointed as Junior Medical Officer (JMO, for short) in the Central Hospital at Assansol(CH/A, for short) with effect from 19.3.74 initially on ad hoc basis. She proceeded on casual leave from 24.12.75 which was granted. She however remained on leave till 27.2.76. During the aforesaid period, she applied for extension of leave upto 1.3.76 with medical certificate. In the meantime, she was

offered appointment as JMO in Safdarjung Hospital (SJH, for short), New Delhi on ad hoc basis on an application made by her. She sent assumption as well as relinquishing of charge reports on 28.2.76 to the Medical Superintendent, CH/A alongwith medical fitness certificate from Delhi itself. Thereafter, she sent her resignation to R-4 on 14.2.77 on the basis of advice from Respondent No.1. Her request was finally accepted by R-2 with effect from 24.12.75. Applicant is aggrieved that her request should have been accepted from the date she joined duty as JMO in the SJH i.e. from 27.2.76 instead of from 24.12.75 when she had proceeded on leave with due permission.

3. The learned counsel for the applicant contended that the applicant had taken up the matter of regularisation of her leave period with R-4. R-4, however, wrote to her on 23.3.76 asking her to send medical certificate in the prescribed proforma and to complete other formalities alongwith leave application in triplicate. She complied with the same and proceeded with a reminder on 15.11.76. She was informed on 18.11.96 that the question of regularisation of leave was under consideration of R-2. She sent reminder again on 21.12.76 and also brought the matter to the notice of R-1. R-1 informed her on 25.1.77 to submit her resignation to Coal Mines Labour Welfare Organisation, Bihar(R-3) and thereafter the matter could be considered. Accordingly, she sent her resignation. R-4, in turn asked her to address her resignation to the Ministry of Health (R-1) for acceptance. Applicant approached R-1 who in turn wrote to R-3 to certify that

no disciplinary proceedings were pending and that there were no dues. R-3 issued order on 27.3.79 accepting the resignation from 24.12.75. Applicant feels that since her application for extension of leave was sent in time and since she had joined under the Central Health Scheme as MO in SJH, her leave period should have been treated as continuous service and also her ad hoc service as JMO under R-4 should have been counted for all other purposes.

4. Learned counsel for the respondents submits that the applicant had been given offer of appointment as JMO in SJH w.e.f. 28.2.76 on ad hoc basis afresh on her request. This had no link or continuity with her appointment on ad hoc basis under the Labour Welfare Organisation (LWO, for short) with effect from 19.3.74. Casual leave is normally for 12 days. She could not have been on casual leave for more than two months. According to the respondents, she represented against non-treating of her continued service only on 21.1.94 requesting for regularisation of the leave by granting her extraordinary leave. She was on EOL and HPL from 10.2.75 to 3.5.75 while she was JMO in CH/A which clearly indicates that she was not interested in continued service with the LWO and was only waiting for an opportunity to get away from there. She represented in 1994 only because she was attempting to steal a march over other MOs who also came to be regularised by the judgement of the Hon'ble Supreme Court in the case of Dr. Rawani & Ors. decided on 25.10.97 by which the applicant also was regularised. Respondents admit that the LWO under the Ministry of Labour is a participating

Unit of the Central Health Services. Before the applicant was regularised with effect from 28.2.76 details had been called for from all the units regarding the ad hoc service put in by the applicant. Her ad hoc service was shown to be with effect from 28.2.76 and therefore it was regularised from that date only. Further she resigned on her own. It was not on technical grounds. This being the position, applicant cannot claim continuity of service or counting of her ad hoc service in the LWO.

5. Respondents have also raised objection regarding limitation as the applicant had slept over the matter of regularisation of her leave for nearly 17 years and that it suffers from laches and delay and on the ground of limitation itself, the application needs to be dismissed.

6. We have heard the learned counsel for the applicant as well as for the respondents and have considered the matter carefully.

7. We find that the applicant's leave from 24.12.75 to 27.2.76 was not regularised and her resignation was accepted from the date she proceeded on leave i.e. from 24.12.75. When her resignation was accepted on 27.3.79 she has not pursued the matter further for getting the leave regularised. She represented for continuity in service only in 1994, after a lapse of 15 years. It is totally time barred as she has come to court in 1996.

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Her application suffers from laches and delay. On the ground of limitation itself the OA is liable to be dismissed.

8. On merits also in our view there is no case. Had the applicant taken up her fresh appointment in SJH with proper permission and submitted the resignation accordingly she would have been on a firm ground. But she has not taken up her fresh appointment through proper permission. She tendered the resignation on her own. According to Rule 26(2) of the CCS (Pension) Rules a resignation does not entail forfeiture of past service if it is submitted to take up with proper permission another appointment under the Central Government where the service qualifies. It is only when the Government servant is asked to resign from the previous post for administrative reason after applying for the post through proper channel that the benefit of past service can be given by treating the resignation as technical. The applicant's resignation in the light of the extant rules cannot be treated as a technical resignation.

9. We therefore hold that both on the ground of limitation as well as on merits the OA is devoid of merit. The OA is accordingly dismissed without any order as to costs.

Shanta J.
(Smt. Shanta Shastry)
Member(A)

W. Rajagopala Reddy
(V.Rajagopala Reddy)
Vice-Chairman(J)

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