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Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 999 of 1996 decided on 9th July, 1997.

Dr. Narinder Lal Madan ...Applicant
(By Advocate : S/shri ML Chawla & SL Lakhanpal)

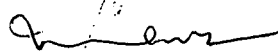
Vs

Union of India & Others. ...Respondents
(By Advocate : Shri N.S. Mehta proxy counsel
for Shri V.K. Mehta)

CORUM

Hon'ble Mr. N. Sahu, Member(A)

1. To be referred to the Reporter or not? YES
2. Whether to be circulated to other Benches
of the Tribunal? NO


(N. Sahu)
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.999 of 1996

New Delhi, this the 9th day of July, 1997

Hon'ble Mr. N. Sahu, Member (A)

Dr. Narinder Lal Madan s/o Shri Khem Chand,
Aged about 60 years, Formerly a permanent
Circle Service Telegraphist and later Retd.
as a Reader, Deptt. of Political Science,
Delhi University, New Delhi and a resident
of A2A/152, Janakpuri, New Delhi-110 058

-APPLICANT

(By Advocate - S/shri ML Chawla & SL Lakhanpal)

Versus

1. Union of India (Through the Secretary,
Ministry of Communications), Sanchar
Bhawan, Ashok Road, New Delhi-110 001

2. Chairman-cum-Secretary, Tele-Com Board,
Deptt. of Tele-Com, Ministry of Tele-
Communications, Sanchar Bhawan, Ashok
Road, New Delhi - 110 001

3. The Chief General Manager (Maintenance)
Northern Tele-Com. Region, Kidwai Bhawan,
New Delhi-110 001

4. The Chief Superintendent, Central Telegraph
Office, Eastern Court, Janpath, New Delhi-
110 001

5. The Secretary to the Govt. of India, Department
of Pensions & Pensionary Welfare, Ministry of
Personnel & A.R., Lok Nayak Bhawan, Khan
Market, New Delhi - 110 003

-RESPONDENTS

(By Advocate-Mr N.S. Mehta proxy counsel for
Shri V.K. Mehta)

J U D G M E N T

Hon'ble Mr. N. Sahu, Member (A) -

The main relief prayed for in this application
is as under-

"8(i) To direct the Respondents to discharge
their statutory duty by remitting one-time
lumpsum payment to the University of Delhi
as a pro-rata pensionary benefit enabling
the applicant to count his past service
rendered with the Respondents' Departments
in first spell together with the service
in Delhi University in the second spell and
that too without a break."

Relief No. 8(ii) is not pressed for. Relief 8(iii) is a
prayer for strictures against respondents 3 and 4 "for
their criminal neglect and hostile discrimination in
dealing with the settlement of the genuine claim of the
pension and pensionary benefits of a retired person."

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Relief 8(iv) is "to allow this application with cost because the applicant has been pushed into avoidable litigation for no fault of his."

2. A few basic facts need to be highlighted. In 1972 the applicant was a Telegraphist working under Chief Superintendent, CTO, New Delhi. He applied for the job of Lecturer through proper channel with an advance copy to the Principal, Dayal Singh College. He was offered the job of a Lecturer. The application sent through official channel did not reach the college. He resigned on 3.12.1972 and joined the College on 4.12.1972. Since 1976, on the basis of DOPT OM No.18016/1/75-Estt(C) dated 4.9.1975, he claimed for pro-rata pensionary benefits of past service. On 24.5.1993, DOT woke up to this matter, Annexure-A-5. On 20.11.93, applicant's services were verified and sent to the Principal. Applicant's claim is he had to resign as a Telegraphist because formal relief was not granted to him. He states that this resignation is a technical resignation in the eye of law.

3. The case of the respondents is that the applicant resigned of his own accord and did not obtain the new appointment through proper channel. He, therefore, did not become entitled to the benefits of his past service in accordance with the instructions. Para 4.7 of the counter affidavit reads as under-

"4.7 Annexure A-2 as enclosed to the O.A. indicates that the acceptance of resignation was under consideration. Entry in the Service Book of the applicant reads "Resignation accepted with effect from 4.12.72 F/N vide GMT ND letter No.STB-1/Resign/71-II/24 dated 23.1.73; C.S. ND Endst.No. P-941/315 dated 30.1.72".

4. Besides the case of T.S.Thiruvengadam Vs.Union of India, (1993) 24 ATC 102 on which the applicant relied, the learned counsel for the applicant cited the decision of Principal Bench of the Tribunal in the case

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of R.R.Singh Vs.Chief Controller of Defence Accounts (Pension),Allahabad and another, (1992) 28 ATC 46. This decision interpreted the words 'proper' and 'permission'. "The expression 'permission' imports application of mind of the authority granting such permission. The authority has to focus his attention on three aspects, namely, legality, propriety and genuineness of the transaction. The fulfilment of three requirements is highlighted by the word 'proper' which includes competence of authority granting permission." That was also a case of resignation for taking another appointment with proper permission. Non-existence of specific entry regarding proper permission in service book was the ground on which pro-rata pensionary benefits were refused in that case. Allowing the claim, the Bench held that official acts are presumed to have been done according to their usual course. The learned counsel for the respondents also cited the decision of Jabalpur Bench of the Tribunal in the case of Khageshwar Prasad Yadav Vs.The Secretary,Ministry of Communication and ors. 1988 (4) SLJ(CAT) 383. That decision interpreted only the Ministry of Home Affairs' instructions No.8-5/68 Estt(c) dated 19.12.1969 and also FR 27. This decision is of no assistance to the respondents because it has not taken into account number of subsequent developments liberalising the grant of pro-rata pensionary benefits to Central Government employees who have rendered more than 10 years of service in the Central Government and later on joined either public enterprises or an autonomous body. It is necessary at the outset to highlight the instructions in O.M.No. 28016/1/75-Estt(C) dated 4.9.1975 of Department of Personnel and Administrative Reforms. Para 2 of that

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circular is reproduced below-

"2. The question of retirement benefits which may be made available to the permanent Government servants who get appointed in the autonomous bodies on the basis of their own application shall, on his permanent absorption in such autonomous body, be entitled to the same retirement benefits in respect of his past service under the Government as are admissible to a permanent Government servant going on deputation to an autonomous body and getting absorbed therein. Thus, permanent Government servants who have been or are appointed in autonomous bodies, financed wholly or substantially by Government on the basis of their applications in response to press advertisement, circulation of vacancies etc. and who are absorbed thereafter on a permanent basis in the autonomous body(ies) in which they have been so appointed will also be entitled to pro rata pensionary benefits, in terms of Ministry of Finance O.M.No.F.24(12)E.V/66 dated the 16th June, 1967 read with O.M.No.44(8) E.V/71, dated 19th June, 1972, in respect of their service under the Government upto the date of their absorption in such autonomous bodies, payable either from the earliest date from which they could have retired voluntarily under the Rules applicable to them, or the date of absorption in such autonomous bodies, which is later. Each such case of absorption will be decided in consultation with the Ministry of Finance as stipulated under the Ministry of Finance O.M.No.F.24(12)EV/66 dated 13th May, 1968."

Annexure-A-10 to the Original Application is an instruction of the Department of Personnel and Administrative Reforms dated 29.8.1984 which states that the Government will discharge its pension liability by paying in lump sum as a one time payment the pro-rata pension/service gratuity/terminal gratuity and DCRG for the service upto the date of absorption in the autonomous body. This lump sum amount of the pro-rata pension will be determined with reference to commutation table laid down in CCS (Commutation of pension) Rules, 1981, as amended from time to time. The basic condition for these benefits to be extended is in para 6 which stipulates that "these orders will be applicable only where the transfer of the employee from one organisation to another was/is with the consent of the organisation under which he was serving earlier, including cases where the individual has secured employment directly on his own volition provided he had applied through proper channel/with

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proper permission of the administrative authority concerned."

5. The facts of this case are that the applicant by a letter dated 6.10.1972 addressed to the Chief Superintendent requested that his application be forwarded to Dyal Singh College for the post of Lecturer. He also informed the authorities that he had directly sent to the Principal on the same date another application. The fact remains that the applicant had submitted his application through proper channel. The respondents state at Annexure-A-2 "the acceptance of resignation tendered by Shri Narinderlal C/S TL of this office at present working in D.T.O. Paharganj, New Delhi, w.e.f. 4.12.72 F/N is under consideration and he is struck off from the strength of this office w.e.f. 4.12.72 F/N subject to formal acceptance by the circle office." The verification memo in respect of the services of the applicant by the competent authority stated "resignation accepted w.e.f. 4.12.72 F/N and service from 29.11.55 to 3.12.72 verified". The facts show that the applicant had applied through proper channel very much well in advance with a copy to the Principal, on 6.10.1972. He was immediately selected and he was required to resume duties. He, therefore, had to choose either to tender his resignation or wait for a release order in due course. If he had waited he apprehended that the job offered would not wait and, therefore, he resigned. In this background it is very clear that the joining was with 'proper permission'. If the respondents did not want to forward the application they should have said so and passed orders on that application. The pleadings show that they did not pass any order. It is not very clear whether they have forwarded the application but I will take it that the application was not forwarded. This is a case of applicant's applying voluntarily and securing a job. Thereupon he sent

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a letter of resignation because release by way of relief would take a long time. Resignation was considered and accepted. If the respondents did not want to relieve the applicant they could have withheld him and refused permission to resign. The conduct of the respondents shows that they have not passed ~~any~~ any adverse order on the application filed for forwarding the same to the College. They have on the contrary discussed, over a period of time, the letter of resignation and then accepted the same; verified the service book and intimated to that effect both to the College authorities as well as to the applicant. The above facts show that there was proper consideration before acceptance of resignation and coupled with the fact that the applicant ~~having~~ applied in advance through proper channel shows that the applicant had joined the College with proper permission.

6. I have considered a similar matter in the case of B.L.Gupta Vs. Union of India through the Secretary, Ministry of Defence & another, O.A.No.1958 of 1995 decided on 2.7.1997, and upheld the claim of the applicant for pro-rata pensionary benefits. The facts of this case are more or less similar to the facts of Mr.B.L.Gupta's case. In that order I have cited the decision in Prabhakar Rao's case, 368 Swamy's CL Digest 1994/2. In that case the applicants registered in the Employment Exchange for recruitment to Visakhapatnam Steel Plant, were offered suitable jobs. They were released from the Naval Command where they worked during different dates. The Hyderabad Bench held that acceptance of the resignation would clearly imply that the applicants were permitted to join the Public sector undertakings. I next cited the decision of R.L.Marvaha Vs. Union of India, (1987)4 SCC 31.

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The apex Court held that the benefit conferred by a Government notification is prospective in operation in the sense that such benefit can be claimed only from the date of such notification. But all such notifications look back and take into consideration the period of service under the Central Government for purposes of computing qualifying service. I have finally cited the case of Pradyumn Kumar Jain Vs. Union of India (1994) 28 ATC 70. The Apex Court at para 6 of the order emphasised that the condition that resignation to secure employment in Central Government public enterprises must be with proper permission. In this case it is very clear that the applicant's resignation has been duly processed and approved and, therefore, is a resignation with proper permission.

7. Rule 37 of the C.C.S. (Pension) Rules has been substituted vide notification dated 9.10.1991. The revised Rule 37 states that a Government servant permitted to be absorbed in service of a Public Sector undertaking shall be deemed to have retired from service from the date of such absorption and he shall be eligible to receive retirement benefits which he may have elected. Rule 26(1) states a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission another appointment.

8. I have held above that the applicant's case before me is a case of proper permission because the respondents acquiesced first when the application for the job was accepted ^{when} and resignation was submitted, this resignation was processed, considered and accepted; and an entry made about the verification of the service in the service register. Therefore, the respondents cannot state that simply because the application was not

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forwarded by them which fact is also not well established they cannot deprive the applicant of the pro-rata pensionary benefits for the services rendered by him from 29.11.1955 to 4.12.1972 roughly 17 years. As my order dated 2.7.1997 in the case of B.L.Gupta (supra) would show that much earlier the distinction between absorption on account of deputation and acquiring a job voluntarily has ceased to exist because of the liberalised rules and even persons voluntarily applying are entitled to pro-rata pensionary benefits.

9. The learned counsel for the applicant cited O.M.No.28/10/84-Pension Unit of Department of Personnel and Administrative Reforms dated 29.8.1984 which dealt with counting of service for pension. It has taken cases of autonomous bodies where pension scheme is in operation and cases where pension scheme is not in operation. It is in cases of autonomous bodies where a pension scheme is in operation that the instructions of lump sum payment, alluded to earlier in this order, has been allowed. An extract of OM dated 29.8.1984 is reproduced below-

"3(A) (1)

The Government/autonomous body will discharge its pension liability by paying in lump sum as a one-time payment, the pro-rata pension/service gratuity/terminal gratuity and DCRG for the service upto the date of absorption in the autonomous body/Government, as the case may be. Lump sum amount of the pro-rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time."

Again, Paras 6 and 7 of these instructions are crucial, which are reproduced below-

"6. These orders will be applicable only where the transfer of the employee from one organisation to another was/is with the consent of the organisation under which he was serving earlier, including cases where the individual had secured employment directly on his own volition provided he had applied through proper channel/with proper permission of the administrative authority concerned.

7. These orders will take effect from the date of issue and the revised policy as enunciated above will be applicable to those employees who retire

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from Government/autonomous body service on or after the issue of these orders."

The above provisions show that these benefits are operative from the date of issue of the OM, namely, 29.8.1984. The further condition is : "applied through proper channel/with proper permission". The applicant no doubt applied through proper channel, but there was no positive act by way of a permission forwarding the application. There was no negating the request or prohibition either. Still certain road blocks remained and in my view these are all cleared only by OM No. 28016/5/85-Estt(c) dated 31.1.1986 which takes effect from 6.3.1985. First is: a definition of the meaning and effect 'resignation' for 'pensionary benefits'

"(4) (1) Resignation from Government service with a view to secure employment in a Central public enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the Government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation."

Second is: a definition of immediate absorption-

"2. For the purpose of these instructions immediate absorption means acceptance of resignation of an officer from Government service to enable him to take up an appointment in a Central public enterprise for which he had applied with proper permission."

Third is : scope of immediate absorption-

"4. The stipulation of 'immediate absorption' will apply to all appointments of Central Government servants in the Central public enterprises, irrespective of the level of appointment, the mode of recruitment, and whether an appointment is in public interest or otherwise, but subject to the exceptions made in the OM dated 6.3.1985, referred to above".

Fourth is : a further relaxation with regard to applicants' voluntarily applying without permission-

"6. The terminal benefits, etc., enumerated in Para 1 above will be admissible to all Central

Government servants, who secure appointments in Central Public enterprises with the proper permission. A Government servant selected for appointment in an enterprise on the basis of an application submitted by him before joining the Government service will be deemed to have applied with proper permission for the purpose of these orders."

Full liberalisation has become effective only with the above circular. There is no distinction between deputationists and voluntary applicants. There is no condition now that the Government servant should be sponsored in the public interest. Any voluntary applicant securing a job in response to open advertisement is also entitled to the pro-rata pensionary benefits provided the said application is with prior permission. It is also now said that resignation to secure employment with proper permission will not entail forfeiture of service. An enabling definition of 'immediate absorption' has further helped the claimants like the applicant.

10. Thus, I hold that these benefits cannot be considered in favour of the applicant before 29.8.1984⁸⁴, Annexure-A-10. In my view prorata retirement benefits shall be fully paid to the applicant only after 6.3.1985 for the reasons mentioned above. That is, these benefits cannot be given from 4.12.1972 but they can be paid from 6.3.1985. While the applicant is entitled to pro-rata pensionary and retirement benefits from 6.3.1985, the question of lump sum payment has to be worked out in terms of OM No.28/10/1984 dated 29.8.1984 (Annexure-A-10) read with O.M.No.28106/5/85-Estt(c) dated 31.1.1986. A number of factors have to be considered. What are the Pension Schemes of the Dyal Singh College, Delhi University? Has any option been obtained? What are the options of the applicant? In view of his getting the benefits with effect from 6.3.1985, would he still want commutation? All options shall be obtained afresh if time limit has expired now within four weeks of the receipt of a copy of this order. The respondents 2 and 3 shall


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consider and apply the rules in view of the above decision and pass orders on the applicant's claims within twelve weeks of receipt of a copy of this judgment.

11. The Original Application is disposed of as above. No costs.

rkv.


(N. Sahu)
Member (A)