

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 61/94
I.A. No.

198

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DATE OF DECISION 11/04/98

Shri P. B. G. HATB Applicant(s)

For parties

Advocate for the Applicant(s)

GOI & others Versus
Respondent(s)

Shri P. H. Rendharam

Advocate for the Respondent(s)

Shri V. S. R. Krishna
Shri R. C. Verma

CORAM:

The Hon'ble Mr. Smt. Lakshmi Swaminathan, M(I)

The Hon'ble Mr. R. K. Attoosai, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? ~~Yes~~ / No
2. To be referred to the Reporter or not? Yes

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(R. K. Attoosai)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.61/94

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Sh. R.K. Ahooja, Member (A)

(A)

New Delhi, this the 11th day of February, 1998

Sh. P.B.Ghate
S/o.Late.Dr.B.G.Ghate (IAS Retd.),
A 71, Nizamuddin East,
New Delhi - 110013.

APPLICANT

(Applicant in person)

1. Sh.R.K.Dar, IAS (Retd)
Formerly, Secy to Govt. of India,
"Krishnarpan"
284, Sector 15-A,
Noida- 201301.
2. Sh.R. Venkatanarayanan, IAS (Retd)
Formerly, Secy to Govt. of India,
22, Sector 14-A,
Noida- 201301.
3. Sh. S.V.S. Juneja, IAS (Retd)
Formerly, Chairman, Noida,
214, Sector 15-A,
Noida- 201301.
4. Sh.Manohar Subranmanyam, IAS (Retd)
Formerly, Secy to U.P Govt,
C-77, Indira Nagar,
Luckbow- 226001. Interveners
(By Sh.G.K. Aggarwal, Advocate for interveners)
Versus

Union of India.

1. The Secretary,
Department of Personnel,
Government of India,
North Block,
New Delhi.

2. The Secretary
Appointments Department,
Government of U.P,
Secretariat,
Lucknow, U.P.

RESPONDENTS

(By Sh.P.H. Ramchandani, Sr.Standing counsel, Sh.V.S.R.
Krishna & Sh.R.C. Verma, Advocates).

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A):

The applicant Sh.P.B. Ghate is a 1965 batch IAS officer of the U.P cadre. While working with the Government of India as an Additional Director General of Tourism, he was sent on

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deputation to the Asian Development Bank, Manila (hereinafter, referred to as ADB) on 1.8.84. The deputation was initially for three years, but was later extended by another two years i.e., upto 31.7.89. According to the applicant, since he was engaged in a major research study for the ADB, the latter recommended to the Government of India a three months extension of his deputation. However, this request was refused. Thereafter the applicant applied for three months Extra Ordinary Leave without pay. This request was also rejected. There-upon he offered to return to U.P immediately on the understanding that he would be permitted to come back to Manila at his own expense to conclude his research work. Vide Annexure-5, this request was also refused by Telex dated 27.12.89. The applicant says that the telex suggested that "in case Sh. Ghate opts to continue on this assignment, he would have the option of doing so by leaving this service." On that, the applicant submitted a request for voluntary retirement as per Annexure-6 dated 11.1.90. On 9.11.90 vide Annexure-7, the applicant was advised to give a three months notice to the Government as per rules. This was done by the applicant vide his letter at Annexure-8 dated 14.2.91 addressed to the Chief Secretary (U.P). The Government of U.P, however, took the view in their letter dated 2.11.91 to the Government of India that since the applicant had opted for ADB pension commencing on his fifty fifth birthday his period of deputation could not count as qualifying period for Indian pension in terms of DPAR's letter No.25011/4/75-AIS (II) dated 26.9.75, Further more, on the date of joining the ADB, as he had rendered only nineteen years one month and two days of qualifying service which fell short of the minimum of twenty years of prescribed qualifying service, he could not be granted voluntary retirement. Subsequently, after the applicant had met the officers of DPAR and U.P Government it was suggested to him that as he had meanwhile attained the age of fifty years on 27.1.91

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he could also apply for retirement under Rule 16 (2) of AIS (Death cum Retirement Rules) 1958 (hereafter referred to as Rules). This was done by the applicant vide his letter dated 16.4.92, Annexure-A14. Finally, on 11.1.93, he received a letter dated 08.01.1993, Annexure-15 whereby he was informed that his request for counting the period of service with the ADB from 1.8.84 to 31.7.89 could not be considered as qualifying service as pension under the Rules, though there did not seem to be any difficulty in retiring him on attaining 50 years of age for which the State government was competent to take action. It is aggrieved by this decision that the applicant has come before the Tribunal seeking in main the following relief:

"The applicant should be granted voluntary retirement under Rule 16 (2A) of the DCRB Rules w.e.f., 1.8.89, counting his services on deputation with the ADB. Alternatively he should be granted retirement under Rule 16 (2) at the age of 50, which he attained on 27.10.91. In the latter case the period between 1.8.89 (the day after his deputation ended), and 27.10.91, will have to be regularized."

2. The case of the applicant has two ~~points~~ grounds. On the first he contends that the period spent by him on deputation on foreign service as a member of All India Service has to count as qualifying for pension in terms of Rule 8 (7) of the Rules. If this period is counted as qualifying service then he would be deemed to have completed twenty years of qualifying service and could seek voluntary retirement under Rule 16 (2A) w.e.f., 1.8.89, i.e., at the end of his deputation with the ADB. Alternatively he has to be allowed to retire w.e.f., 14.5.91 on expiry of three months notice vide Rule 16(2) counting his deputation with ADB as qualifying service for pension. His second argument is that many other officers of the IAS and Indian Foreign Service have been allowed to retire on completion of or even during their deputation with United Nation and International Agencies such as FAO, ADB etc. and therefore he is entitled to be treated in like manner.

3. The respondents in reply have stated that the terms of deputation of the applicant stipulated that on completion of the ADB assignment, he would revert to his parent cadre. By not doing so, the applicant violated the terms and conditions of his deputation. The applicant's request for further extension of his deputation was turned down by Government of India, in view of their policy that foreign deputation would not be allowed for more than five years. They further stated that Rule-4 of the Rules provides that "a member of service cannot earn two pensions in the same office at the same time or by the same continuous service". However, as per Rule 8 (7) the foreign service rendered by a member of service shall count as qualifying service provided contribution towards cost of retiral benefits have been paid either by a member of the service himself or by the foreign employer. Since a situation may occur in which a member of the AIS has opted for the pension scheme of the foreign employer and has also paid towards the cost of pensionary benefits, Government instructions have clarified vide DPAR's letter No.25011/52/76-AIS(II) dated 2.3.77 that such a Government servant will have two options i.e., opt for pension from the Government by paying contributions towards pensionary benefits or for foreign pension by forgoing the pensionary benefits of the Government for that period. Since, the applicant had opted for foreign pension for the relevant period he could not opt for pensionary benefits of the Government of India for that period. Accordingly, the applicant was not entitled to count the period of his deputation for qualifying service for pension from the Government.

4. The respondents have also denied the allegations of the applicant that he has been discriminated in the matter compared to the officers whose cases have been cited. The respondents have stated that either such cases were covered by the Rules as

the officers had already rendered the requisite twenty years of service or that pension was sanctioned to them as they had given no intimation regarding having opted for the foreign pension for the same period. (A5)

5. While this case was pending, an application was received on behalf of four retired IAS Officers of U.P Cadre, namely, S/Sh. R.K.Dar, R.Venkat Narayan, S.V.S.Juneja and Manohar Subramaniam seeking permission to intervene on the ground that they were likely to be affected by any decision in the OA. It was stated by these retired officers that they had also served on deputation with international agencies and under the Rules had been granted pension in India, as well as by the foreign employers and they had been allowed to count towards their pensionable service the periods spent by them with the international organisations for which they had also earned foreign pensions. They expressed the apprehension that after the OA was filed by Mr. Ghate the U.P Government was considering to reduce their pension under Rule-18 by excluding from their qualifying service the period purchased by them and by returning the cost; they were therefore interested in the question of law directly or substantially in issue in the OA. After hearing the application filed by the M/s.R.K. Dar and Others, they were allowed to join as interveners and were heard in the matter. In substance, their contentions are the same as those of the applicant, namely, that they had the option to count their period in foreign service as qualifying service under Rule 8 (7) by making the necessary contributions towards their retiral benefits. It is their contention as well as that of the applicant that their entitlement under a statutory rule i.e., Rule-8 (7) could not be taken away by administrative instructions issued by the letter dated 8.7.75. The interveners have also contended that hundreds of All India Service Officers

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have been allowed the same benefit and it is only in the case of Mr. Ghate that a contrary view was adopted. It is also their contention that the instructions contained in letter dated 8.7.75 applied only to Members of Central Service and not to the Members of All India Services who are governed by their separate rules.

6. We have heard the applicant in person, the counsel for both the respondents and the counsel for the interveners. Before proceeding further, it would be profitable to cite the Rules in question and the Government of India instructions dated 8.7.75 which are extracted below:

"(a). Rule-4 Limitation- A member of the Service cannot earn two pensions in the same office at the same time or by the same continuous service.

b). Rule-8 (7)- Foreign service rendered by a member of the Service shall count as qualifying service provided that contributions towards the cost of retirement benefits of the member of the Service, at such rates as the Central Government may prescribe from time to time to have been paid either by the foreign employer or, failing that, by the member of the service himself, in respect of the entire period of foreign service, unless the payment of contributions have been waived by Government.

(c). Rule-10 counting of period of deputation or leave outside India or purposes of qualifying service -(1) Where a member of the service is deputed out of India on duty, the whole period of his absence from India on such deputation shall count as qualifying service.

(2) Where a member of the service on leave out of India is employed, or is detained on duty out of India after the termination of his leave, the period of such employment or detention shall count as qualifying service :

Provided that the periods of deputation converted into leave shall count for purposes of qualifying service as leave and not as deputation.

(d). DP&AR letter No.25011/4/75-AIS (II), dated 26.9.75.

The period of foreign service of members of All India Services with International Organisations like the U.N. Secretariat, Commonwealth Secretariate, on the tenure of five years or more may at their option:-

(a). pay the pension contributions in respect of their foreign service and count such service as qualifying for pension under these rules; or

(b). avail of the retirement benefits admissible under the rules of the aforesaid Organisation and not count such service as qualifying for pension under these rules:

Provided that where a member of a member of the service opts for clause (b), the retirement benefits accrued to him under the United Nations Rules will be payable in rupees in Indian and Pension contribution, if any paid by him shall be refunded to him.

In the case of officers who opted for clause (b) of Rule-I and who rejoin Government on the expiry of the foreign service with the United Nations Organisations the retirement benefits sanctioned by the United Nations will not be payable concurrently with the salary from the Government but will be credited to the revenues of the Government of the State concerned, under intimation to the concerned Accounts Officer, so that suitable record could be kept in the service record of the officer, of the amounts received from the United Nations authorities. This amount will be paid to the officer concerned along with other service of the Government. For the purpose a provision should be made for such payments under the relevant head of account, for the respective year."

e) DP&AR letter No.25011/16/81-AIS(II), dated 5.11.1981:

(23) In continuation of the Department of Personnel and A.R. letter No.25011/4/75-AIS(II) dated 26.9.1975 reproduced as Government of India Decision No.22 below Rule 8 of the All India Services (Death-cum-Retirement Benefits Rules, 1958). It has been decided, in consultation with the Ministry of Finance (Dept. of Expenditure), that the decision contained in their O.M. No.8(5)-E III2/79, dated the 8th April, 1981 (copy annexed), dated the 8th April, 1981 will also apply to members of All India Services sent on deputation to U.N.Bodies and the Commonwealth Secretariat."

7. It is the contention of the applicant that the provisions of 1975 instructions quoted above are analogous to Rule-31 of CCS Pension Rules which is as follows :

"A Government servant deputed on foreign service, for a period of (five years or more), to the United Nations' Secretariat or other United Nations' Bodies, the International Monetary Fund, the International Bank of Reconstruction and Development, or (the Asian Development Bank or the Commonwealth Secretariat), may at his option -

(a) pay the pension contributions in respect of his foreign service and count such service as qualifying for pension under these rules; or

(b) avail of the retirement benefits admissible under the rules of the aforesaid organisation and not count such service as qualifying for pension under these rules:

Provided that where a Government servant opts for clause (b), retirement benefits shall be payable to him in India in rupees from such date and in such manner as the Government may, by order, specify:

Provided further that pension contributions, if any, paid by the Government servant, shall be refunded to him."

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8. The applicant says that there is no Rule akin to Rule-31 of CCS (Pension) Rules in the AIS (DCRB) Rules 1958. Therefore the insertion of any condition on the lines of Rule 31 of CCS Rules through the 1975 letter would be in violation of the substantive provision of Rule 8 (7) in AIS (DCRB) Rules. For this, he relies on Supreme Court Judgement in (i) Ratan Kumar Tandon & Ors. Vs. State of U.P (1997) 2 SCC 161, (ii) Union of India & Another Vs. M.Bhaskar and Ors. JT 1996 (5) SC 500, (iii) State of M.P and Another Vs. M/s.G.S.Dall and Flour Mills 1992 Supp (1) SCC 150, (iv) Capt.Balasubramanian and Ors. Vs. State of Tamil Nadu and Ors. (1991) 2 SCC 708, and (v) Union of India Vs. Arun K. Roy (1986) 1 SCC 675, in all of which it was held that administrative instructions cannot modify or supersede the statutory rules.

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9. We have considered the matter carefully. In our view Rule 8 (7) can be harmoniously read with Rule 4 of the AIS DCRB Rules 1958. Rule 8(7) only provides that foreign service rendered by a member of the Service shall count as qualifying service subject to the payment of cost of retirement benefits. It does not speak of a situation in which a member of the service is also claiming pensionary benefits from another agency for the same period. In other words Rule 8 (7) is silent as regards the entitlement of the member of an All India service to accept pension from a foreign source for a period for which he also claims pension from the Indian Government. In our view, therefore, failing any relaxation, the limitation provided under Rule 4 would apply, namely, that a member of the service cannot earn two pensions in the same office in the same time. It has been contended before us that the limitation of Rule 4 is applicable only in respect of pensions earned from the Indian Government or from Indian resources and does not cover the pension earned from foreign sources, once a permission has been given to earn such a pension. We are unable to accept this

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contention, since the acceptance of the pension from the foreign employer is contingent upon the consent of the Indian Government and since the member of All India Service such as the applicant and the interveners do not cease to hold that status merely because of foreign service with an international or foreign employer.

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10. It is seen that there is no provision in the AIS (DCRB) Rules regarding the acceptance of foreign pension by officers deputed to foreign service. By Ministry of Home Affairs of OM No.2/52/53-AIS(I) dated 24.8.53 and Ministry's Office Memorandum No.1(47)-E.IV(A)/60 dated 18.10.60 AIS Officers were permitted to join the United Nations Joint Staff Pension Fund as associate parties when the period of foreign service did not exceed five years. By DP&AR letter No.25011/15/78-AIS(II) dated 20.5.1978 it was laid down that:

"(21) The question of regulating the period of foreign service of members of All India Services, who are permitted to go on foreign service to the developing countries of Asia, Africa, and Latin America, for the purpose of pension, has been under the consideration of this Development. It has been decided that members of All India Services who are permitted to go on deputation to these countries by registering their names in the Foreign Assignment Section of the Department of Personnel and A.R. will be governed by the orders contained in the Ministry of Finance OM No.1(14)-E.III(B)/71, dated the 13th December, 1971, the 7th January, 1974 and No.1(14)-E.III(B)/76, dated the 7th December, 1976. The period of foreign service rendered by members of the Service who are deputed for assignment to developing countries under the Indian Technical and Economic Cooperation Programme of the Ministry of External Affairs will be regulated for the purpose of pension, in accordance with the orders issued by the Ministry of External Affairs.

Members of All India Services, who are deputed for service under the International Organisation like the I.M.F., I.B.R.D., etc., or the Commonwealth the U.N. Secretariat or other United Nations Bodies, such as Secretariat, will be governed by the orders contained in the Department of Personnel & A.R. letter No.25011/52/76-AIS(II), dated the 2nd March, 1977."

11. Taking into account the terms under which AIS officers were allowed to earn foreign pension we find no conflict between the 1975 instructions and Rule 8 (7) of the AIS (DCRB) Rules. The deputation of the AIS Officer on foreign deputation is with

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the express consent of the cadre controlling authority under the Government of India. The terms and conditions under which that officer serves in the international organizations would also be subject to the consent of the Government of India. It is open, therefore, to the Government of India to apply the ratio of Rule 4 in so far as counting of foreign service towards pension is concerned, i.e., that during this period of foreign deputation he would earn pension with the Indian Government or the foreign employer, but not with both. As the order of Government of India quoted above shows the very permission to join United Nations Pension Fund entailed the condition laid down under Rule 4. The contention ^{of} of the applicant, therefore, as well as the argument of the interveners that administrative instructions cannot supplant the statutory rules is besides the point since we find neither any conflict nor any contradiction between the administrative instructions and the statutory Rule 8 (7); on the contrary we find that these administrative instructions are merely an amplification of Rule 8 (7) read with Rule 4 for the benefit of those serving on foreign deputation with United Nations or other International Agencies who might find it more profitable to avail of the Pension Scheme of the international agency with whom they might be serving on deputation as compared to their service scheme for the relevant period.

12. In so far as the applicant is concerned, there are two other aspects of his case of which notice has to be taken. The first is the question of the acceptance of his request of voluntary retirement. As he has admittedly earned pension from the ADB during the period of his deputation, he cannot count his service on deputation with ADB towards qualifying service of twenty years in the IAS. The applicant has sought ~~for~~ voluntary retirement under Rule 16 (2). He has also argued that he sought such voluntary retirement on the advice of the Government of

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India given when his request for extension of his deputation was rejected. We find on the other hand that the Department of Economic Affairs by their message dated 27.12.89, Annexure-5 had only conveyed that the "applicant would have the option to do so by leaving the service." This in no way meant that the applicant had the option of seeking voluntary retirement under the Rules; it was ofcourse open to him to resign from the Service. Be that as it may, the fact remains that the Government have not so far taken a final decision on the request for the retirement made by the applicant under Rule 16 (2). The correspondence annexed by the respondent shows that the Government of India have even considered the question of taking disciplinary action against the applicant for his unauthorised over-stay with the ADB. Clearly, the question of any pension will arise only after a decision is taken on applicant's request for pre-mature retirement and the manner in which the Government regulates the period between the departure of the applicant from India to join ADB and the date from which Government would accept his request for retirement. At this stage however we do not consider it necessary to comment on issue, as it is for the respondents to take an appropriate decision in accordance with the rules.

13. The second aspect to be noted in this case is that the applicant has in any case deposited his contributions with the Accountant General(A&E) II, U.P, Allahabad only on 2.12.91 as per letter dated 30.12.91, Annexure-A24 which has been annexed to the rejoinder by the applicant. In other words the pension contributions which incidentally have also been made in rupees towards his Indian pension were made much after the expiry of

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his sanctioned deputation and even after the date of his request for voluntary retirement. Strictly, therefore, under the terms of deputation to the ADB the applicant could not have the period of his foreign deputation counted towards his Indian pension. (51)

14. We now come to applicant's grievance on the issue of discriminatory treatment in as much as according to him the respondents have treated his case differently from those of many others, similarly placed. Some of them have in fact come before us as interveners. The respondents have denied discriminatory treatment and have even cited the cases of some of the officers who have been denied the counting of foreign deputation towards Indian pension in similar conditions. We also observe that the respondents have stated that some including the interveners have been granted Indian pension because they did not bring to the notice of the respondents that they had earned foreign pension for the same period. In view of this statement by the respondents and noting that full details of such cases and the circumstances in which the alleged orders were passed are not before us, we cannot allow any benefit to the applicant on that score. In any case the applicant cannot claim the benefit of any wrong order by the Government. The Supreme Court in State of Haryana & Ors. Vs. Ram Kumar Mann JT 1997 (SC 450) has also observed that a wrong order by the Government does not give a right to claim parity or equality.

15. The interveners in this case have made various pleas regarding their eligibility to receive both foreign as well as Indian pension. The interveners were allowed to argue only on the point of law and this concerns to the question whether Rule 8 (7) prevails over Rule 4 and whether the administrative instructions issued by the letter of 1975 seek to supplant the

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statutory rules. Both these points have already been dealt with by us above and we find no merit in the proposition advanced by the interveners.

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16. In the light of the above discussion, we find no merit in the case of applicant. The O.A is accordingly dismissed subject to our observation that Government should take a final decision one way or the other on applicant's request for retirement under Rule 16 (2). We direct that this should be done within a period of four months from the date of receipt of a copy of this order. No costs.

R.K. Ahuja
(R.K. AHOOJA)
MEMBER (A)

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)

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