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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

D.A. No. 877/1994

Date of decision 2-8-1995

Hon'ble Shri N.V.Krishnan, Vice Chairman (A)  
Hon'ble Smt.Lakshmi Swaminathan, Member (J)

Smt.Meena Sinha,  
wife of Shri Ajay Sinha,  
r/o F-24, Milap Nagar,  
New Delhi-59

... Applicant

(By Advocate Shri Surinder Singh )

Versus

1. Govt.of National Capital Territory, Delhi  
The Deputy Director of Education,  
District West, Moti Nagar, New Delhi-15
2. Deputy Director(Accounts),  
Govt.of India,  
Archaeological Survey of India,  
Janpath, New Delhi.

... Respondents

(By Advocate Shri S.K.Sinha, proxy counsel  
for Shri Jog Singh, counsel for respondent  
No.1.)

(By Advocate Shri M.M.Sudan, counsel for  
respondent No.2)

ORDER (ORAL)

[Hon'ble Shri N.V.Krishnan, Vice Chairman (A)]

The simple question for consideration  
in this case is whether the applicant should be  
deemed to have resigned from the service of the  
Govt.of India-having been employed as Assistant  
Librarian in the Archaeological Survey of India  
when she took up employment under the Delhi  
Administration (respondent No.1) as Librarian  
or she gets the benefits of Rule 26(2) of CCS  
(Pension) Rules, 1972 i.e. this will not be treated  
as resignation.

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2. The brief facts are that admittedly, the applicant was working as Assistant Librarian in the Govt. of India, Archaeological Survey of India in the pay scale of Rs 1400-2300. It appears that the post of Librarian was vacant in the Delhi Administration in the pay scale of Rs 1400-2600. The applicant's name was sponsored by the Employment Exchange for this post. When she received call for interview she intimated her employer Archaeological Survey of India as follows:-

"I have the honour to state that my name is sponsored by Employment Exchange to Directorate of Education under Delhi Administration for the post of Librarian (Higher Grade Rs 1400-2600) directly. They have called me for an interview on 30th Jan., 89. This is for your information and necessary action please."

3. Apparently, Archaeological Survey of India did not object to her appearing in the interview to be held on 30-1-1989 on the ground that she had not applied for this post through them.

4. The applicant was selected and she joined the Delhi Administration as a Librarian. On her selection, the office of the respondent No. 2 issued Annexure A-5 order dated 20-12-1989 which reads as follows:-

"Consequent upon her selection in Delhi Administration Smt. Meena Sinha, Assistant Librarian is hereby relieved from the office of the Director General, Archaeological Survey of India, New Delhi in the afternoon of 20.12.1989 to enable her to join her new assignment in Delhi Administration."

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5. Applicant joined the Delhi Administration on 21.12.1989. Under the respondent No.2 (Archaeological Survey of India), the applicant was drawing pay at the stage of Rs 1520/-p.m. in the pay scale of Rs 1400-2300. On her joining in the Delhi Administration the applicant's pay has been fixed only at Rs 1400/-i.e. the minimum of pay scale of Rs 1400-2600.

6. Her representation for proper fixation of pay taking into account the service rendered from 10-7-1986 to 20-12-1989 in the Archaeological Survey of India has remained un-answered. However, by the Annexure A-8 order dated 20-9-1993, respondent No.1, Directorate of Education (Delhi Administration), has given approval to count this service towards pension and pensionary benefits only. Hence this O.A. has been filed for a direction to the respondents to re-fix her pay taking into account her past service with Archaeological Survey of India.

7. Respondent No.1 has furnished a reply stating that as Respondent No.2 has not issued any certificate in the above circumstances, applicant is not eligible to get benefits of Rule 26(2) of the CCS (Pension) Rules, 1972. Even though the respondent No.2 was requested to give certificate on this behalf, such certificate has not been

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furnished. It also stated that even the Annexure A-8 order dated 20-9-93 giving approval to count the previous service was issued by a mistake.

8. Shri M.M.Sudan, counsel for respondent No.2 states that IIInd respondent is not concerned in this behalf. When the applicant was selected, IIInd respondent issued annexure A-5 order of relief dated 20-12-1989. In response to the letter received from the Govt. Boys Secondary School, Sultan Pur, Delhi, where the applicant was working in the Delhi Administration, the IIInd respondent intimated that it was for that authority to decide the issue regarding pay fixation. The LPC and service Book had already been sent to them. The GPF amount was also transferred to her new GPF account. The same position is reiterated in another letter dated 22-3-1993 (Annexure A-10). In other words, Respondent No.1 alone has to take an appropriate decision.

9. Thus the dispute is whether the applicant can get the benefit of Rule 26(2) without any certificate.

10. We have heard the parties. We wanted to know whether applicant sent her application through Archaeological Survey of India which is not evident from the records. This apparently,

was not the case, because her name was directly forwarded by the Employment Exchange to the competent authority. Therefore, the applicant did not have any opportunity to take prior permission. It is only when the interview letter was received that the applicant gave an intimation to Respondent 2 (Annexure A-4) reproduced above. No doubt, the applicant did not seek any permission to appear in the interview. But the respondent 2 too did not direct her not to appear in the interview, as she did not take prior permission. ~~The~~ <sup>2</sup> The Respondent No.2 would have been well within his authority to refuse permission in the above circumstances. Not having done so, we are of the view that she should be deemed to have given consent to the applicant to appear in the interview for selection.

11. Likewise, in Annexure A-5 letter of relief of the applicant there is no specific mention that this was consequent upon a resignation to take another appointment for which prior permission had not been sought by the applicant. In our view the very fact that the respondent relieved the applicant would imply that consent and permission was given to the applicant to take her new appointment.

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12. In the circumstances, we hold that the applicant is entitled to the benefit of Rule 26(2) of the CCS(Pension) Rules, 1972. We dispose of this OA with a direction that the applicant should be deemed to have resigned, with proper permission, from the earlier service in the Archaeological Survey of India under Respondent 2 in order to take up with post of Librarian under the first respondent. Accordingly, the first respondent is now directed to re-fix the pay of the applicant, within three months from the date of receipt of a copy of this order, in accordance with rules, taking into account the previous service rendered by the applicant under respondent 2

Lakshmi Swaminathan  
(Smt. Lakshmi Swaminathan)

Member (J)

N.V.Krishnan  
(N.V.Krishnan )  
Vice Chairman (A)

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