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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1956/94

New Delhi: September 15, 1995.

HON'BLE MR. S.R.ADIGE, MEMBER (A)

Ajit Singh,
s/o Shri Hakim Rai,
R/o D-31, Karbala,
New Delhi.

.....Applicant.

By Advocate Shri S.K.Bisaria

Versus

1. Lt. Governor
through
Chief Secretary,
Govt. of NCT,
5, Sham Nath Marg,
Delhi.

2. Director of Education,
Govt. of NCT,
Old Secretariat,
Delhi.

.....Respondents.

By Advocate Shri Rajindra Pandita.

JUDGMENT

By Hon'ble Mr. S.R.Adige, MEMBER(A)

In this application, Shri Ajit Singh, retired Vice Principal, Govt. Senior Secondary School, Presidents' Estate has sought for counting of his services for the period 1.8.52 to 15.10.54 when he served as Teacher SGTB Khalsa Senior Secondary School, Dev Nagar, Delhi and 16.10.54 to 6.1.56 when he served as UDC, Northern Railway Office for pensionary benefits, and for quashing of the respondents orders dated 12.3.93, 3.6.94, 27.5.94 and 8.9.94 (Annexure-1 Colly).

2. The applicant's case is that he joined the SGTB School as a TGT Biology on 1.8.52 and served there till 15.10.54 (vide certificates dated 5.3.84 and 29.7.93 at Annexure-2). The school is stated to be private, but under the control of the respondents and governed by the Delhi School Education Act and its rules.

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While serving in that school he applied for the post of UDC in Northern Railway and was duly selected where he worked from 16.10.54 to 6.1.56 (vide certificate dated 3.5.90 at Annexure-3). While working as UDC there, he applied for the post of Teacher in the Directorate of Education, Delhi and was selected, where he joined. He states that he had applied through proper channel and there was no break in service while he changed job from the SGTB School to Northern Railway and then to Directorate of Education, and where he eventually retired as Vice Principal, Govt. Sr. Secondary School, Presidents' Estate, New Delhi on 31.10.89 . He states that by letter dated 17.10.83(later clarified by letter dated 5.5.86) the respondents had issued a scheme for counting of past service of persons who had served in private aided schools and he had submitted his application duly filled in on 10.12.83 giving his option for counting past service. As the respondents despite repeated representations did not count his past services, he has filed this O.A.

3. The respondents' reply to the O.A. indicates that the only reason why they have rejected the applicants' claim is that there is no record of his having applied through proper channel to the Director of Education as required under Decision No.3 to Rule 26(2) CCA(Pension) Rules and in the absence of any such orders being noted in the applicants' service book under proper attestation, they have been compelled to reject his claim .

4. The O.A. was listed for hearing after completion of pleadings on 27.4.95. On that date

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Shri Bisaria appeared for the applicant and was heard. None appeared for the respondents. Orders were reserved and were to have been pronounced on 19.5.95 and later on 8.6.95. Meanwhile on 7.6.95 respondents' counsel filed an application enclosing copies of certain additional documents which appeared extremely relevant for adjudicating on the issue, including a copy of the letter dated 23.1.95 from the Manager, SGTB School Dev Nagar, which tended to support the applicants' claim. Accordingly, in the interests of justice, after copies of these documents had been supplied to the applicants' counsel, both sides were heard further in the matter on 17.8.95 and orders were reserved, which are now being pronounced.

5. The crux of the issue is whether the two periods viz. 1.8.52 to 15.10.54, and 16.10.54 to 6.1.56 can be counted as qualifying service towards the applicants' pensionary benefits consequent to his retirement w.e.f. 31.10.89 as Vice Principal, Govt. Sr. Secondary School, Presidents Estate, New Delhi.

6. Taking the period 16.10.54 to 6.1.56 first, this period covered service by the applicant as officiating UDC under the Northern Railway. In other words, the applicant wants his service under the Central Govt. (Ministry of Railways) to be counted as qualifying service under the Union Territory of Delhi as it then was at the time of the applicant's superannuation. No rule or instruction has been produced by the applicant in support of his claim. That apart, Rule 26(2) CCS (Pension) Rules

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lays down that "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 Govt. where service qualifies", but GOI's Decision No.3 below that Rule states that "the order accepting the resignation should clearly indicate the employee is resigning to join another appointment with proper permission and that the benefits of Rule 26(2) will be admissible to him". The contents of the above order are also to be noted in the officer's service book under proper attestation. In the instant case, the applicant has not produced any such order accepting his resignation, and from the copy of Northern Railway's letter dated 3.5.90 filed by the applicant (Annexure-3) it appears that his personal file and leave account were destroyed in the year 1962 and the Railway authorities have expressed their inability to reconstruct the same at this point of time. However, in that letter, a reference has been made to the certificate issued vide their office letter dated 31.3.56, and a copy of that certificate has been filed by the respondents' counsel on 7.6.93 in which it has been certified that the applicant worked as UDC in Northern Railway from 16.10.54 to 6.1.56 and resigned from the afternoon of 6.1.56 for private reasons (emphasis supplied). There is not even a whisper that the applicant is resigning to join another appointment after taking proper permission. It might be argued that the CCS (Pension) Rules themselves came into effect only in 1972 and

Decision No.3 to Rule 26(2) of those Rules is also dated 4.12.71 and 20.5.72 while the resignation in question relates to 6.1.56, but then it is for the applicant to show that after resigning from the Northern Railway for private reasons on 6.1.56 he has an enforceable right for inclusion of his approximately 15 months' officiating service in the railways as qualifying service in Delhi Administration. No rule or instruction has been shown to me to establish this.

7. Coming to the period 1.8.52 to 15.10.54 during which the applicant worked as TGT in the SGTB School Dev Nagar, the applicant has relied on the copy of the certificate dated 29.7.93 certifying that he worked in that institution for the above period and applied through proper channel to the Chief Auditor's Office, Northern Railway and was relieved on 15.10.54 as per rules (Annexure-2). He has also relied on the Directorate of Education, Delhi's letter dated 17.10.83 (Annexure-4), their clarification dated 5.5.86 (Annex-4) as well as the particulars furnished by him on 10.12.83 for counting of service (also Annexure-4). A plain reading of the Directorate of Education, Delhi's letter dated 17.10.83 and subsequent clarification dated 5.5.86 makes it clear that the service in aided/ recognised schools in Delhi Administration would qualify for pensionary benefits provided it was followed without interruption by service in Delhi Administration. In the present case that is ~~also~~ ^{as} not so, the applicant resigned from the SGTB School, Dev Nagar to join the Northern Railway and then resigned from there for private reasons to join the Directorate of

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Education, Delhi Administration. Under the circumstance the Manager, SGTB School, Dev Nagar's letter dated 23.1.95 also is not of help to the applicant. It is relevant to mention here that under the proviso to Rule 13 CCS (Pension) Rules officiating or temporary service has to be followed without interruption (emphasis supplied) by substantive appointment in the same or another service^{in or post}. The applicant has not shown any document to establish that his past service in the Northern Railway was substantive.

8. Applicant's counsel Shri Bisaria has emphasised during hearing that the respondents while rejecting the applicant's claim have been changing their stand from time to time which is impermissible. He has pointed out that in their reply dated 27.5.94 (Annexure-1) to the applicant they had rejected his claim on the ground that he had not exercised his option within one year of GOI's letter dated 29.8.84, and when he pointed out that in response to their earlier letter dated 17.10.83 he had furnished the necessary particulars for exercising his option on 10.12.83 itself, they are now denying him the benefit on the ground that the requirements of Decision No.3 to Rule 26(2) CCS (Pension) Rules are not fulfilled. It is to be noted that the applicants' letter dated 10.12.83 strictly speaking does not communicate any exercise of option, and in fact the respondents' letter dated 17.10.83 to which it was a response, did not even call for any option, but even if the applicant's assertion of change of stand by the respondents were accepted, it is for him to establish that he has an enforceable right to count the above two periods as qualifying service for pensionary benefits.

The foregoing analysis indicates that he has not been able to establish that right.

9. In the result, it is not possible under rules to grant the relief prayed for by the applicant. The O.A. fails and is dismissed. No costs.

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(S.R. ADICE)
MEMBER (A)

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