

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1172/2000

This the 31st day of January, 2002.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

S.D.Mohla, Ex-UDC,
R/O K-41, Bal Udyan Road,
Uttam Nagar,
New Delhi-110059.

... Applicant

(By Shri M.K.Bhardwaj for Shri A.K.Bhardwaj, Adv.)

-versus-

1. Govt. of N.C.T. of Delhi
through Chief Secretary,
Govt. of N.C.T.,
5, Sham Nath Marg, Delhi.
2. Secretary, Public Grievances Commission,
M-Block, IInd Floor, Vikas Bhavan,
New Delhi.
3. Secretary (Services), NCT Delhi,
5, Sham Nath Marg,
Delhi.
4. Officer In-Charge (GA),
Office of the Secretary (Revenue),
Tis Hazari.
5. Director of Education,
N.C.T., Delhi, Old Secretariat,
Delhi.

... Respondents

(By Shri Vijay Pandita, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

The applicant has challenged the act of the respondents in not counting the services rendered by him in the Rehabilitation Finance Administration (RFA), Ministry of Finance, Department of Expenditure, from 7.1.1957 to 27.10.1960, prior to his transfer to DC office, Tis Hazari, Government of N.C.T. of Delhi. The

applicant has also stated that whereas one of his juniors Shri F.C.Gulati was given the benefit of his previous service for purposes of pension, gratuity, promotion etc., similar benefits have been denied to him. (15)

2. The learned counsel of the applicant stated that the applicant made several representations to the respondents between 20.3.1981 and 7.1.2000 but the respondents have decided not to give the applicant any benefit of his previous service. The respondents vide their memorandum dated 8.12.1999 (Annexure A-1) rejected applicant's claim stating that decision in the case of Shri F.C.Gulati was wrong and does not create a claim in favour of other persons.

3. The learned counsel of the applicant contended that the applicant should have been granted benefit of past service in terms of order No.F-3-(15)-EV/A/76 dated 3.12.1977 issued by the Ministry of Finance, Government of India. The relevant portion of the O.M. is reproduced below :

"It has been represented that this is causing great hardship to the concerned employees who in some cases had considerable length of service in such bodies. The question has, however, been carefully considered and the President has been pleased to decide that the services rendered in the Central Govt., Autonomous Bodies and the employees who left the service of those bodies any time prior to their take over by the Central Govt. and who enter of joined service under the Central Govt. with or without break will be allowed to be counted towards pension and/or gratuity to the extent admissible

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under the rules to such persons retire or retired from GOI service, the period of break if any, being condoned."

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According to the learned counsel, the services rendered by the applicant in a Central Government office or even an autonomous body have to be counted for the purpose of fixing pensionary benefits. The learned counsel stated that whereas the applicant had worked in RFA from 7.1.1957 to 27.10.1960, as per Annexure A-4 which is his last pay certificate (LPC) from RFA, he was sent on transfer on 27.10.1960 to DC office, Delhi and that as per RFA OM dated 16.11.1960 he was relieved on 28.10.1960 to proceed to DC office. He assumed his charge on the same day in the DC office. According to the learned counsel, the applicant was never declared surplus from the services of RFA and that his services were passed on to DC office by way of transfer. The applicant has retired on 31.3.1988 and has been representing to the respondents for reckoning his past service with RFA for purposes of retiral benefits.

4. The learned counsel of the respondents, at the outset, raised the objection regarding limitation, stating that whereas the applicant had joined DC office in 1960, he has raised his demand of reckoning his past service for pensionary benefits after the Administrative Tribunals Act, 1985 was put into effect and, therefore, there is an inordinate delay on the part of the applicant for presenting his claim and such delay is untenable. The learned counsel further stated that applicant's

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employment with DC office was not a case of transfer but fresh appointment, the applicant having been declared surplus from the services of RFA. The learned counsel further stated that applicant cannot be given the benefit of past service in terms of OM dated 3.12.1977 referred to above.

5. As respects the objection of delay, we find that the applicant served with the respondents till 31.3.1988 when he retired. The question of availing of retiral benefits arose after 31.3.1988 only. In our view, right of a Government servant to payment of correct salary as well as pension is a recurring cause of action. We are not in agreement with the learned counsel for respondents that the applicant could have raised the issue of reckoning his past service only in the beginning when he started his services with the DC office. We find that the applicant has been making representations to the respondents since 20.10.1981. He made numerous representations and we find that the respondents have not accepted his claims. The objection of respondents in connection with delay in presenting this OA is, therefore, rejected.

6. Whereas the applicant has filed some documents such as LPC and memorandum regarding his relief from RFA (Annexure A-4), respondents have not adduced any evidence in contrast to the same, such as service book, letter of appointment etc. However, the learned counsel of the respondents drew our attention to Annexure A-3 dated

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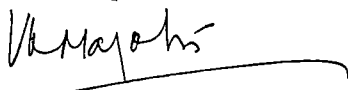
28.10.1960 relating to recruitment to the post of LDCs on the basis of which the applicant was employed as LDC in the office of DC. The learned counsel, by this document, attempted at proving that the applicant was selected for the post of LDC by the office of DC by way of fresh recruitment. From this document we find that the same too does not mention that the applicant's services in RFA had been declared surplus. Even if it is assumed on the basis of this document that this was a fresh appointment, the respondents cannot be absolved from the responsibility of acting in terms of OM dated 3.12.1977. In terms of this OM the services rendered in the Central Government, which is the case here, and of entry in another service under the Central Government, with or without break, have to be counted towards pension and/or gratuity to the extent admissible under the rules. The applicant joined the services of Union Territory where this OM of 3.12.1977 is equally applicable as to the Central Government. We find from the evidence produced by the applicant that there has been no break after the relief of the applicant from RFA and joining the office of DC. The provisions of this circular are definitely applicable to the claim of the applicant and as such he is entitled to cognizance of his past service with RFA for purposes of retiral benefits.

7. The OA is accordingly allowed and Annexure A-1 dated 8.12.1999 rejecting applicant's claim for counting his services with RFA for purposes of retiral benefits is quashed and set aside. The respondents are directed to

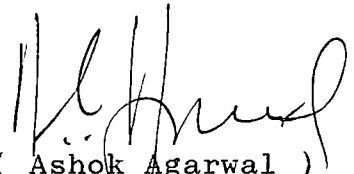
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count applicant's services rendered in RFA between 7.1.1957 and 27.10.1960 for purposes of pensionary benefits. Applicant would be entitled to the difference of pensionary benefits fixed as per these orders, as per relevant rules. These directions be complied with by the respondents within a period of three months from the date of service of this order. No costs.



(V. K. Majotra)
Member (A)



(Ashok Agarwal)
Chairman

/as/