

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 1263/2000
T.A No.

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Date of Decision 21-5-2001

Shri Rajesh Kumar

..Petitioner

Present in person

..Advocate for the Petitioner(s)

Versus

The Accountant Genl.1
'Audit-1) Bihar and Ors

..Respondent

By Advocate Shri M.K.Gupta..Advocate for the Respondents
counsel for R-1

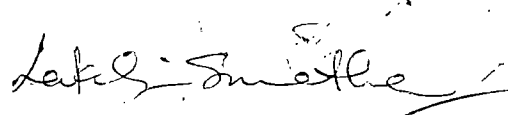
By Advocate Sh.G.R.Nayyar
counsel for R-2

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)

Hon'ble Shri Govindan S.Tampi, Member (A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to
other Benches of the Tribunal ?. No


(Smt.Lakshmi Swaminathan)
Vice Chairman (J)

Central Administrative Tribunal
Principal Bench

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O.A. 1263/2000

New Delhi this the **21ST** day of May, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri Govindan S. Tampi, Member(A).

Rajesh Kumar,
S/o Shri Maheshwar Pd. Sinha,
R/o Qr. No. 83/III, ESIC Colony,
Sector-56,
Noida-201301.

... Applicant.

(In person)

Versus

1. The Accountant General-I (Audit-I)-
Bihar, Indian Audit and Accounts
Department, Birchand Patel Marg,
Patna-800001.

2. The Director General,
Employees State Insurance Corporation,
Panchdeep Bhawan,
Kotla Road,
New Delhi-110 002.

... Respondents.

(By Advocate Shri M.K. Gupta - for Respondent 1,
By Advocate Shri G.R. Nayyar - for Respondent 2)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicant is aggrieved by the orders issued
by Respondents 1 and 2 dated 23.3.2000 and 12.11.1998,
respectively.

2. The relevant facts of the case are that the
applicant joined Respondent 2, Employees State Insurance
Corporation (ESIC) on 7.2.1985 as Manager Grade-II/
Insurance Inspector. Prior to that date, he
was working as Auditor in the office of Respondent 2
from 04.07.1980 to 05.2.1985. His main contention is
that the period of service rendered by him in the office
of Respondent 1 should be counted for the purposes of

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pension, in terms of the Government of India Notification/O.M. dated 29.8.1984. According to the applicant, while working as Auditor with Respondent 1, he applied for the post of Manager Grade-II/Inspector with Respondent 2 in 1984 and he was granted permission to appear in the selection examination for the said post. Thereafter, he was offered the appointment for the post of Insurance Inspector/Manager Grade-II by Respondent 2 which was accepted. He was also granted lien on the post of Auditor for two years and was relieved on 5.2.1985 by Respondent 1 by order dated 5.2.1985 permitting him to join the post of Deputy Manager which is equivalent to the post of Insurance Inspector/Manager Grade-II in ESIC at Indore. He joined that post on 7.2.1985 and completed his probation period on 6.2.1987. He resigned the post of Auditor in the office of Respondent No.1 w.e.f. 1.2.1987.

3. The grievance of the applicant is that Respondent 1 has declined to pay any retirement or terminal benefits to him vide their letter dated 21.7.1987 because the transfer was not in public interest but it was on his own request. His claim to the Comptroller and Auditor General of India (CAG), New Delhi for sanction of retirement/terminal benefits was also rejected vide their letter dated 9.3.1988. He has stated that thereafter he had approached Respondent 2 for counting of his past service vide his application dated 2.1.1988. Respondent 1 had in their letter dated 9.11.1999 stated that regarding payment of pro-rata pensionary benefits to the applicant, the matter has

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been reconsidered but they have not agreed to it due to non-fulfilment of qualifying service essential for being given to this benefit. The applicant has stated that he had sent a number of representations and reminders to the respondents to count his past service to which they have not agreed. Hence, this O.A. He has relied on the provisions of Rule 26(2) and (3) and Rule 37 (3) of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'the Pension Rules').

4. We have also heard the applicant at some length who has submitted that the actions of the respondents in not giving him the pro-rata pensionary benefits and counting his past service are unjust and against the Rules. He has prayed for a direction to the Respondents to allow his claims. He has also prayed for a direction to Respondent 2 to sanction leave for 6.2.1985 so that there is no break in service till he joined their service on 7.2.1985, and for costs.

5. In the reply filed by Respondent 1, they have submitted that the claim of the applicant for pensionary benefits for the service rendered in their office was rejected vide their letters dated 21.7.1987 and 9.3.1988. They have, therefore, submitted that the O.A. is barred by limitation. According to them, the applicant had served in the office of Accountant General, Bihar from 4.7.1980 to 5.2.1985 and, therefore, he did not fulfil the minimum qualifying service under Rule 11(1)(a) of the CCS (TS) Rules, 1965. They have also stated that his transfer to ESIC was not in public interest. They have accordingly submitted that as he

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has not completed the minimum period of five years qualifying service for pensionary benefits, his claim has been rejected under the relevant Rules. In the circumstances, they have prayed that the O.A. may be dismissed.

6. Respondent 2 have filed only a short reply. On 3.5.2001 when the case was heard finally, learned counsel has stated at the bar that after seeking further clarifications from the respondents - ESIC, their stand taken in the short reply is correct. In other words, he has submitted that the ESIC has no objection to counting the Government service of the applicant for pension purposes provided the pro-rata contributions for such service are paid to them by Respondent 1 in accordance with the CCS (CCA) Rules, 1965, and Government of India instructions. He has submitted that the applicant had joined the ESIC on 7.2.1985 after resigning from service under Respondent No.1.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. From the facts mentioned above, it is noted that the applicant had rendered service with Respondent 1 for less than five years, that is from 4.7.1980 to 5.2.1985. The applicant has relied on Rule 26(2) of the Pension Rules which provides 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

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Government where service qualifies. The main ground taken by Respondent 1 is that no pro-rata pension is admissible to him as the applicant has rendered less than five years service, as required under the Government of India Notification dated 29.8.1984. A copy of this Notification has been annexed to the O.A. by the applicant. The ESIC/Respondent 2 have submitted that they have no objection to count the Government service rendered by the applicant with Respondent 1 for pension provided they are paid the pro-rata contributions for such service in accordance with the Pension Rules read with the provisions of the same O.M. dated 29.8.1984. One of the conditions mentioned in this O.M. is that where no terminal benefits for the previous service have been received, the previous service in such cases will be counted as qualifying service for pension only if the previous employer accepts pension liability for the service in accordance with the principles laid down in the O.M. It is also provided that on absorption of such employees in a Central Autonomous Body, "...Only such service which qualifies for pension under the relevant rules of Government/Autonomous body shall be taken into account for this purpose". The applicant has very vehemently argued that his resignation from the service with Respondent 1 was only a technical formality and, therefore, his past service should be counted. This has been denied by Respondent 1 who has categorically submitted that the "transfer" of the applicant to the Service of Respondent 2 was not in public interest but it was done on his own request.

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9. Under the Government of India's Decision (3) below Rule 26(2) of the Pension Rules, the procedure to be followed when benefit of past service is allowed has been provided, in the Government of India, Ministry of Finance O.Ms dated 4.12.1971 and 20.5.1972. It is stated, inter alia, that in case of a resignation of an appointment, the order accepting the resignation should clearly indicate that the employee is resigning to join another appointment with proper permission and that the benefits under Rule 26(2) will be admissible to him. No such document has been placed on record by the applicant, although he has very vehemently submitted that he is entitled to the benefits under Rule 26(2) of the Pension Rules, which has been categorically denied by Respondent 1 in their letters dated 21.7.1987 and 23.3.2000.

10. In this regard, the recent judgement of the Hon'ble Supreme Court in Union of India Vs. Rakesh Kumar (JT 2001(4) SC 306), decided on 30.3.2001 is relevant. In this case, reference has been made to the definition of qualifying service as given in Rule 3(q) of the Pension Rules to mean Service rendered while on duty or otherwise which shall be taken into account for the purpose of pension and gratuity admissible under these Rules. In this case, it was held that on the basis of Rule 49 of the Pension Rules, a member of the BSF, who has resigned from his post after completing more than 10 years of qualifying service but less than 20 years would be eligible for getting pensionary benefits. It was also held that "There is no other

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provision in the CCS (Pension) Rules giving such benefit to such Government servants". The Apex Court further held:

"The G.O. nowhere reveals Government's intention to confer any additional pensionary benefit to the members of the BSF who retired before completing the requisite qualifying service as provided under the CCS (Pension) Rules. It neither supplements nor substitutes the statutory Rules. The G.O. read with Rule 19 of the BSF Rules would only mean that in case of resignation and its acceptance by the competent authorities, the member of the BSF would be entitled to get pensionary benefits if he is otherwise eligible for getting the same under the CCS (Pension) Rules and to that extent Rule 26 which provides for forfeiture of service on resignation would not be applicable..

....Respondents who were permitted to resign from service under Rule 19 of the BSF Rules before the attainment of the age of retirement or before putting such number of years of service, as may be necessary under the Rules, to be eligible for retirement are not entitled to get any pension under any of the provisions under CCS (Pension) Rules.

(Emphasis added)

It is also to note that the Supreme Court had further held that "... in such cases there cannot be any consideration "on the ground of hardship". The Apex Court has made it clear that if Rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate Rules but "Court cannot direct payment of pension on the ground of so called hardship likely to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits". Following the dicta in this case, as the applicant does not have the qualifying service for getting pensionary benefits, the action of the respondents cannot be faulted as against the Pension Rules or unjustified. We have also considered

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the other submissions made by the applicant but do not find any merit in the same.

11. Therefore, taking into account the facts and circumstances of the present case and the judgement of the Apex Court in Rakesh Kumar's case (supra), we find no merit in this application. The O.A. fails and is dismissed. No order as to costs.

Govindan S. Tampi
Member(A)

SRD

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)