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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1977 of 2000

New Delhi, this the 9th day of August, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (JUDG.)

Dr. D.K. Jain
Deputy Director General,
Working with Additional Director General,
Indian Council of Medical Research,
Ansari Nagar,
New Delhi-110 029.

- APPLICANT

(By Advocate: Dr. M.P. Raju)

Versus

1. Union of India through
Secretary,
Ministry of Health,
Nirman Bhawan,
New Delhi-110 001.
2. The Director General,
Indian Institute of Medical Research,
Ansari Nagar,
New Delhi-110 029.

-RESPONDENTS

(By Advocate: Shri V.K. Rao)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judg.)

This is an OA filed by applicant under Section 19 of the Administrative Tribunal's Act, 1985 as he has a grievance that the respondents have excluded the period of 9 years and one month from his service for the purpose of computing his pensionary and retirement benefits vide letter dated 5.7.2000. He is also aggrieved of the fact that his representation has not been considered so he is aggrieved of the inaction on the part of the respondents.

2. Facts in brief, as alleged are that the applicant had initially joined the service under respondents No.2 on 14.5.1971 on a higher starting pay of Rs.900/- in the scale of pay of Rs.700-1250, plus usual

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allowances etc. While he was working satisfactorily, on 10.4.74 his services were terminated. The applicant filed a Writ Petition before the Hon'ble High Court alleging mala fide and while the Writ Petition was pending some observation was made by the Court and the Director General of Indian Council of Medical Research was asked to re-consider the entire case of the petitioner including the circumstances in which the services of the petitioner was terminated on 10.4.74 and he was also to inform the court about his decision on the question of reinstatement or absorption of the petitioner in any other project of the Council. He was also asked to give a hearing to the applicant.

3. In pursuance thereof the then Director General reconsidered the case. The High court disposed of the Civil Writ Petition on the basis of the letter addressed to the Court by the then Director General of Indian Council of Medical Research. Since the interpretation of the said order of Hon'ble High Court is in dispute before this Tribunal so it would be appropriate to reproduce the short order passed by the Hon'ble High Court:-

" The respondents council has addressed a letter to this Court dated 22.4.1983. Let this letter be placed on record.

The petitioner has been offered a post on the terms and conditions given in the aforesaid letter. The petitioner has conveyed his acceptance to the council of the offer made to him. This disposes of the writ petition.

Mr. Gupta on behalf of the petitioner further submits the following two points:

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1. That the petitioner should be considered for appointment to the post of Assistant Director. I have no doubt that if the post is available the petitioner will be considered for the same and if found eligible, he will be given his due promotion.

2. The petitioner has been appointed against a regular post. He should be considered for confirmation. This request also seems to me to be reasonable since the petitioner has been reinstated in service."

4. In accordance with the judgment of the High Court which is at Annexure A-8, the applicant was offered a post of Senior Research Officer in the revised pay scale of Rs.1100-50-1600 vide letter dated 29/30.4.83 which contained certain conditions with regard to seniority and back wages etc. On the strength of these two documents the counsel for the applicant has submitted that the applicant had a continuity of service and he was reinstated in service so the respondents cannot take out the period from 10.4.74 to 10.5.83 out of his service career for the purpose of calculating his pensionary benefits so applicant's retiral benefit should be calculated accordingly.

5. It will not be out of place to mention here that in between the period from 27.1.1975 to 10.5.83 the applicant was employed with the Indian Cancer Registry (hereinafter referred to as ICR), Mumbai and had been drawing emoluments therefrom which is clear from Office Memorandum of the respondents which is at page 47 of the paper book when the respondents considered granting back wages to the applicant.

6. So the short question which remains to be decided is whether the intervening period between his date of termination and when he had accepted the job

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after his Writ Petition was disposed of by the Delhi High Court, can be treated as continuity in service and whether the same can be counted for the purpose of retiral benefits to be paid by respondent No.2.

7. Shri M.P. Raju appearing for the applicant referred to the order of the Hon'ble High Court quoted above wherein the Writ Petition was disposed of. The counsel for the applicant pointed out that the Hon'ble High Court in the last paragraph had mentioned that when the petitioner made a request for confirmation so the court had observed that the request seems to be reasonable since the petitioner has been reinstated in service. Shri Raju also confirms that when he was confirmed from the back date, i.e., from 23.1.1978 as it is very much clear from letter dated 1.4.97 of the respondents which is placed on page 47 of the paper book that shows his continuity in service so on the strength of this letter the applicant submitted that he should be treated as if he was in a continuous service of the respondents.

8. Shri V.K. Rao appearing for the respondents submitted that it is an admitted case of the respondents himself that in between the period of his termination and when his case was pending, the applicant had been working at ICR, Mumbai and for the services rendered to some third organisation the respondent No.2 cannot be burdened to pay pensionary benefit under any rule since respondent No.2 cannot ask the third party to contribute towards the pensionary or retiral funds of the applicant. The counsel for the respondents also submitted that as per

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the letter of offer of appointment it was made clear that the applicant was not to be given any back wages though his case may be considered for back wages but the offer clearly indicated that he was not to be given back wages. Only his seniority was to be protected since he had worked with ICR, Mumbai and had gained sufficient experience as Senior Research Officer so his seniority was protected but there is no question of continuity of service as it is a fresh letter of offer of appointment. So in this background I have to see whether it is continuity of service or not.

9. To my mind, the contentions raised by the applicant that he is entitled to count the period towards his retiral benefit is not tenable because the Writ Petition filed by the applicant was disposed of in terms of the order as reproduced above. The opening paragraph of the order says that the petitioner has been offered a post on the terms and conditions and he has conveyed his acceptance so this disposed of the Writ Petition. The order nowhere says that the impugned order of termination is quashed and the petitioner is reinstated with consequential benefits. Even the terms mentioned in the offer of appointment dated 29/30.4.83 also show that it was a fresh appointment though at a higher start and applicant was assigned seniority at a higher level keeping in view the services rendered by him at ICR, Mumbai. The tenor of the order of the Hon'ble High Court read with the offer made by the respondent No.2 and accepted by applicant, which was also before the Hon'ble High Court at the time when the Writ Petition was disposed of go to show that it was a fresh offer as per
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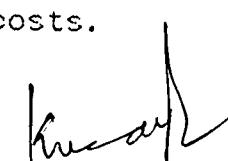
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the suggestion given by the High Court in one of its previous hearings. By no stretch of imagination this order can be treated as if it has quashed the order of termination of the applicant with all consequential benefits.

10. Hence, I find that the applicant is unable to establish that by this order he was allowed continuity in service which may compel the respondents to count the said period for the purpose of giving retiral benefits.

11. Even otherwise since the applicant had worked with ICR, Mumbai so the respondent No.2 cannot compel the said ICR, Mumabi to contribute towards the pensionary benefits of the applicant as the applicant must have joined the service at ICR, Mumbai as a direct recruit without taking along with him the past services which he had rendered before termination with the respondent No.2.

12. Thus I find that the OA has no merits and the same is liable to be dismissed and the applicant is not entitled to count his period of 9 years and one month for the purpose of pensionary benefits. No costs.


(KULDIP SINGH)
MEMBER(JUDL)

Rakesh