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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2328/2000

New Delhi this the 6th day of November, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Shri A.K. Tripathi,
S/o Shri R.P. Tripathi,
R/o RZ-11/A/214, 'J' Block,
West Sagar Pur,
Delhi.

...Applicant

(By Advocate Shri S.K. Gupta, proxy for Sh. B.S. Gupta,
Advocate)

-Versus-

1. Union of India through
Secretary,
Department of Posts,
Dak Tar Bhawan,
New Delhi.
2. Director of Postal Accounts,
U.P. Circle,
Ameena Bagh Park,
Lucknow.
3. Supdt. of Post Offices,
Shahjahanpur Division,
Shahjahanpur (UP).
4. Central Council for Research
in Ayurveda and Siddha
through its Secretary,
61-65, Institutional Area,
Opposite B-Block, Janak Puri,
New Delhi.

-Respondents

(By Advocate Shri Rajiv Sharma, proxy for Sh. J.B. Mudgil)

O R D E R

By Mr. Shanker Raju, Member (J):

In this OA the applicant has sought direction to respondent No.2 to send the pro rata retiral benefits to the office of respondent No.4, a proforma party.

2. Briefly stated, the applicant is working as an Accountant in a Central Government Autonomous Body, i.e., Central Council for Research in Ayurved and Siddha (for short, CCRAS). The applicant joined as Postal Assistant with respondent No.2 at U.P. Circle, Lucknow as well as under the control of SSPO Shahjahanpur Division.

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The applicant appeared in the Junior Accounts Officers Examination, though qualified but for want of vacancies could not be accommodated. The applicant went on deputation to State Council of Educational Research and Training and joined there on 21.11.94. In pursuance of an advertisement of CCRAS for the post of Accountant the applicant who was eligible applied for the post through proper channel. The borrowing department sent the application to R-3 from where it has been sent to R-4. The applicant applied for the post through proper channel. The applicant appeared in the interview. The information of which was sent to R-3 and the order of appointment dated 25.7.76 was also sent to the parent department of the applicant for onward communication to the applicant. The applicant was relieved from the borrowing office where he was on deputation on 30.8.96. The applicant joined with R-3 and requested for relieving him on the ground that as he has been appointed with R-4 as an Accountant and has to join the same by 8.9.96 he also requested for transferring of his leave and other retiral benefits to R-4. Meanwhile, by communication dated 3.9.96 the applicant has been asked to join as Postal Assistant at Shahjahanpur. Simultaneously, on 3.9.96 he tendered resignation for the purpose of taking up the new assignment with R-4. The resignation was technical and joined the service with R-4 on 4.9.96. On 28.11.96 the applicant has been communicated that his resignation could not be accepted as he failed to comply with the directions of R-3 on 3.9.96. Ultimately, the resignation was accepted without any terms and conditions on 6.2.97. The applicant thereafter requested R-3 to accord him pro rata retirement benefits and the same may be transferred to R-4.

3. The learned counsel of the applicant Sh. S.K. Gupta contended that resignation shall not entail forfeiture of past service if it has been submitted to take up with prior permission another appointment as contained din Rule 26 (2) of the CCS (Pension) Rules. Further placing reliance on OM dated 17.6.95 it is stated that where the Government servant applies for the post in some other department through proper channel and on selection they are asked to resign previous post for administrative reasons, resignation shall be treated as technical formality and further stating on the basis of this OM that where a Government servant intending to apply for the post outside his parent office or department under the Government of India and if such an application has been forwarded unconditionally and the person concerned is offered the post applied for he should be relieved of his duty to join the new post as a matter of course and the question of resigning his post held by him in such circumstances should not arise. In a nut shell, he contends that the resignation is an empty formality and the respondents themselves have forwarded the application of the applicant without any condition and also communicated the appointment merely because he has not joined back in pursuance of the directions contained in letter dated 3.9.96 and the subsequent action of the respondents to accept his resignation without any terms and conditions is contrary to the guidelines and also prejudicially effects his retiral benefits on account of rendering 12 years service with the respondents. It is also stated that pension and retiral benefits being a right of the Government servant he should not be deprived of the same on

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mere technicalities. Further placing reliance on OM dated 11.2.88 it is stated that the Government servant who applies for the post in some other department through proper channel on selection the befit of past service, if otherwise, admissible under the rules be given for the purpose of fixation of pay.

4. On the other hand, strongly rebutting the contentions of the applicant, the learned counsel for the respondents contended that the applicant who was on deputation on his being repatriated at the time of his relieving has not handed over the charge of the post and has also not complied with the communication dated 3.9.96 and as he has not joined at Sahajahanpur Headquarter the technical resignation tendered without information and without acceptance would entail forfeiture of past service as the resignation of the official was not accepted technically and was later on accepted without any terms and conditions. The applicant had worked with CCRAS w.e.f. 3.9.96 to 7.2.97 without acceptance and relieving from the Division. The learned counsel for the respondents placing reliance on Rule 26 (1) of the Rules ibid contended that resignation from a service unless it is allowed to be withdrawn entails forfeiture of past service and further placing reliance on OM dated 11.2.96 stated that a Government servant who has been selected for a post in Central Autonomous Body of the Government the resignation from Government service with a view to secure employment with proper permission will not entail forfeiture of past service. But as the proper permission was not taken before joining the Autonomous Body this would have an effect of forfeiting the previous service and he will have no claim

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for the retiral benefits of past service, as contended. However, it is stated that the applicant is entitled only for GPF and 50% of the leave earned for the period but he is not entitled for pro rata retiral benefits.

5. I have carefully considered the rival contentions of the parties and perused the material on record. A resignation as per Rule 26 (2) ibid shall not entail forfeiture of past service if it is submitted to take up with proper permission another appointment under the Government were service qualifies. However, as per the OM dated 17.6.65 in the event the Government servant intending to apply for the post outside his parent office/department under the Government of Indias should forward his application through competent authority under whom he was serving and it is upto the authority either to forward the same or to withhold the same but it should not be forwarded conditionally, i.e., in the event the applicant is successful he will be required to resign his post. It is envisaged that once the application has been forwarded unconditionally and person concerned is offered the post applied he should be relieved of his duty to join the new post as a matter of course and the question of resigning the post held by him in such circumstances should not arise. As this instruction is supplementing the rules and is not supplanting it the same is legally enforceable. Having regard to this instruction and the circumstances of the present case it is not disputed that the applicant who was on deputation as in pursuance of the advertisement for the post of Accountant in CCRAS applied for the post through proper ^h ~~through proper~~ channel at the place he was serving and the same has been forwarded by the parent

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department of the applicant and the appointment letter was also referred to the parent department of the applicant. As such as the respondents have unconditionally forwarded the application of the applicant for appointment to the post under Central Autonomous Body and has not been withheld, in my considered view, once the applicant has been offered the post and has been directed to join before 6.9.96 he should have relieved of his duty to join the new post as a matter of course and the question of his resigning in such circumstances would not arise. Apart from it, the instructions contained in OM dated 11.2.88 do clearly envisage that when the resignation is for applying a post in some other department through proper channel on selection the benefit of past service should be accorded for the purpose of fixation of pay if this service after following the requisite criteria has to be counted for the purpose of pay etc. The same is also to be treated equally for the past service as well as retiral benefits.

6. The contention of the learned counsel for the respondents that as the applicant has not complied with the instructions of the department dated 3.9.96 and has not joined at Sahajahanpur as directed and without any formal order of relief and acceptance of resignation previous service is to be forfeited as per Rule 22 is arbitrary, unjust and unreasonable. The respondents were very much aware about the appointment of the applicant to the post which has been taken up through proper channel with their consent. The applicant, on 3.9.96 requested the respondents for relieving him for the purpose of joining new post by 8.9.96. The applicant has also tendered his technical resignation which was not acted upon and later on

acceptance of the same without terms and conditions would not affect the rights of the applicant as the resignation was only an empty formality. The OM on 17.6.65, which refers to applying for the post outside the parent office does include the autonomous bodies, as admittedly the applicant has been appointed in CCRAS, which is an autonomous organisation of the Centre, i.e., Ministry of Health and Family Welfare. The instructions contained in OM would certainly have application in case of the applicant. Apart from it, on equity and fair play, admittedly, the applicant has rendered 12 years qualifying service with the respondents and he should not have been deprived of the same on mere ^hypertechnical ground ignoring the instructions of the Government of India and the fact that the relieving of the applicant was to be treated as a matter of course and the resignation is a technical formality and as the same has been accepted later on the applicant cannot be deprived of his rightful claim.

7. In the result, having regard to the reasons recorded above, the OA is allowed. Respondent No.2 is directed to send the pro rata retiral benefits like DCRG, leave encashment, pension, commuted value of pension etc. to the office of Respondent No.4, within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

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