IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 393/89
T.A. No. 199

DATE OF DECISION March 6, 1991.

Shri D.N. Pandey — Petitioner

Shri T.C. Agarwal — Advocate for the Petitioner(s)

Versus

Union of India — Respondent

Shri N.S. Mehta — Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(AMITAV BANERJI)
CHAIRMAN
6.3.1991.

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PRINCIPAL BENCH
NEW DELHI.

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REGN. NO. O.A. 393/89.

Shri D.N. Pandey. ... Applicant.

Versus

Union of India. ... Respondents.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Applicant. ... Shri T.C. Agarwal, Counsel.

For the Respondents. ... Shri N.S. Mehta, Sr. Standing Counsel.

(Judgement of the Bench delivered by Hon'ble Mr. Justice Amitav Banerji, Chairman)

Two questions arise in this Application filed by the applicant. Firstly, whether the earlier period of service from 17.1.1955 to 8.3.1956 rendered by the applicant with the respondents is to be considered as a qualifying service for the purpose of pay and pension of the applicant, who retired on 31.3.1988; secondly, whether the applicant is to be remunerated under F.R. 49 for having rendered duel duties as Administrative Officer, Delhi and as Administrative Officer, Bombay, from 30.12.1986 to 31.3.1988.

The allegation of the applicant is that he had rendered service with the respondents at Nagpur Branch as Upper Division Clerk from 17.1.1955 to 8.3.1956 when his services were terminated by an order purporting to in exercise of power under Rule 5(i) of C.C.S.(T.S.)Rules, 1965. He had urged the authorities that his service had to be taken into consideration in view of the provision of Pension

Rules, as there would be an automatic condonation of interruption between two spells of civil service. In support of the other question, reference was made to F.R. 49, but the respondents had failed to fix the pay of the applicant, which caused recurring loss to the applicant in the matter of pension. Reference was made to the decision of the Supreme Court laying down the law in the case of Smt. P Grover Vs. State of Haryana (1983(2)AISLJ 389), and the decision of the Tribunal in the case of B.P. Singh Vs. Union of India & Ors.(TA 1128/85), decided on 2.2.1988. The prayer was that in such cases the pay could be fixed under F.R. 49(iii). The applicant, therefore, prayed that his pension be revised by raising his pay as per revised fixation of pay admissible under FR 49 with monetary benefits accrued to applicant and pension raised accordingly. Secondly, the qualifying service from 17.1.1955 to 8.3.1956 be taken into account for computing pension.

The respondents in their reply took the stand that the applicamt had prayed for counting of past service at the fag end of his service i.e. after a lapse of about 30 years. The present Application as such was barred by limitation. It was further stated that the applicant was appointed as a U.D.C. in the office of the Films Division at Nagpur with effect from 17.1.1955. It was temporary service and it could be even terminated without assigning

any reason or just by giving one month's notice or payment of one month's salary in lieu thereof. The verification of character and antecedents of the applicant as per the report from the Addl. Assistant Inspector General of Police, Special Branch, Madhya Pradesh, had been received in March, 1956, which revealed that while filling the attestation form, the applicant had suppressed vital information in regard to his conviction for participating in RSS movement in December, 1948 for which he was sentenced to undergo 3 months rigorous imprisonment. The police took the view that the suppression of this information about his conviction led to the inference that he was unreliable and his conduct made him unsuitable for employment in Govt. service. This was the precise reason for the termination of his service on 8.3.1956. The services were not terminated merely because of his participation in the RSS activities. The Govt. of India had clearly laid down that persons who had participated in RSS activities would be re-employed provided their conduct has been above board. He had been convicted for the activities in the RSS. But, at the time of submitting particulars about himself for the verification of his character and antecedents, he had clearly stated that he had never been convicted. The suppression of this fact amounted to moral turpitude. While considering the prayer for re-employment of service, the

Government made it clear that the applicant should not be given any benefit for the service rendered by him prior to his re-employment. Accordingly, the applicant had given in writing that he would not claim any benefit of the previous service. Reference was made to Rule 28(b) and (c) of the C.C.S.(Pension) Rules, 1972. Consequently, the applicant was not entitled to any benefit of his previous service for the purpose of pay and pension.

In respect of the claim for remuneration of duel posts at Delhi and Bombay, it was stated that the duties cast on the applicant was normal and routine arrangement that can be resorted to in any Government office in given circumstances. Previously, the Administrative Officer for Bombay was used to look after the work of Delhi Office also. There was nothing extraordinary or abnormal pressure of work to give him additional remuneration. The applicant's plea that his pay should have been fixed at a higher stage under F.R. 49 which would have also resulted in grant of pension at a higher rate was not accepted. Lastly, it was stated that both the claims made by the applicant were untenable and the O.A. deserves to be dismissed.

Learned counsel for the applicant Shri T.C. Agarwal contended that the applicant was neither dismissed nor removed from service and the termination of his service

under Rule 5(i) of the C.C.S.(TS) Rules, 1965 would not attract the application of Clause(b) of Rule 28 of the C.C.S.(Pension) Rules, 1972. That clause would be attracted where a person has been dismissed or removed from service. The respondents' stand makes it clear that his services were not terminated for participating in R.S.S. movement. Consequently, the provision of Rule 28(b) has no application in the present case. As a consequence, the provision of Clause(a) of Rule 28 would be applicable and there would be an automatic condonation of interruption between two spells of civil service rendered by the applicant. He also urged that there was no claim for treating the period of interruption as a qualifying service. In support of his case, learned counsel referred to the following decisions:

(a) N.I. George Vs. Chief Executive, 1989(9) ATC 744.

(b) M. Venugopalan Vs. Govt. of India, 1990(1)SLJ(CAT) 38.

(c) Miss Tripty Kakoty Vs. U.O.I. 1990(13) ATC 60.

(d) Rajeshwar Kanwar Vs. U.O.I. 1990(13)ATC 453.

(e) Sushil Kumar Yadunath Jha Vs. U.O.I. AIR 1986(SC) 1636.

In regard to the grievance regarding pay of higher post, learned counsel contended that the applicant was entitled to additional remuneration. He cited three cases:

(a) Smt. P. Grover Vs. State of Haryana (1983(2)AISLJ 389)

(b) Shri B.P. Singh Vs. U.O.I. (T.A. 1128/85 decided by the Principal Bench of the Tribunal on 2.2.1989)

(c) Ramesh Chandra Chaturvedi Vs. Secretary, Ministry of Defence, Govt. of India (1990(13)ATC 242).

He prayed that the applicant should be compensated by grant of special pay till the date of retirement from service.

Learned counsel contended that the plea of the claim for taking into consideration the earlier period of service for the qualifying service for pay and pension was not barred by limitation, as it raises a cause of action which was recurring.

Learned counsel for the respondents Shri N.S. Mehta, urged that the claim for additional remuneration for holding charge of two offices would come under Clause (iv) of the F.R. 49, but not under Clause(iii). If a Govt. servant is appointed to another post, no additional pay is admissible to him. Learned counsel contended that the cases which have been cited by the learned counsel for the applicant, are not applicable to the facts of the present case and are distinguishable.

In regard to the first point, learned counsel contended that the applicant was not entitled to the relief claimed as the provision of Rule 28(a) of the CCS(Pension) Rules

did not apply in this case. He had participated in a strike and was convicted by a Court of law and consequently clause(b) would apply.

We have heard learned counsel for the parties and perused the material on the record. We will take up the two points separately.

As regards the first point, there is no dispute about the facts that the applicant was earlier appointed as U.D.C. and served with the respondents at Nagpur from 17.1.1955 to 8.3.1956 and that he was subsequently re-appointed in 1957 and continued his service till 31.3.1988. There was a break in service. It is also clear that there is no prayer to treat the interim period between two services as a qualifying service. The only question is whether the first service from 17.1.1955 to 8.3.1956 may be taken as a qualifying service.

Reference may be made to Rule 28(a) and (b) of the C.C.S. (Pension) Rules, 1972:

"28. CONDONATION OF INTERRUPTION IN SERVICE.

(a) In the absence of a specific indication to the contrary in the service book, an interruption between two spells of civil service rendered by a Government servant under Government including civil service rendered and paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(b) Nothing in clause(a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike".

It is evident from the above that there would be an automatic condonation of interruption in service between two spells of service rendered by a Government servant and the pre-interruption service treated as qualifying service. Clause(b) makes it clear that this benefit would not be available where the interruption is caused by resignation, dismissal or removal from service or for participation in a strike. There is no case of any resignation in the present case. It is not a case of dismissal or removal either. It appears that the termination was because of participation in RSS movement and conviction by a court of law. But it has been made clear in the pleadings of the respondents that the action was not taken because of his participation in RSS movement, but because of his giving a wrong statement that he had not been convicted for any offence earlier. This is not one of the conditions which is mentioned in Clause(b). Since the termination from service under Rule 5(i) of the C.C.S.(TS) Rules, 1965 was not for participation in strike, there is no bar for the application of Clause(a) of Rule 28 of the C.C.S.(Pension) Rules. The making of a wrong statement in the application form for employment that he

had not been convicted is not one of the conditions mentioned in Clause(b) to deprive him the benefit of Clause(a) of Rule 28 of the C.C.S.(Pension) Rules. In our view, the provision of Rule 28(a) of the C.C.S.(Pension) Rules had application and the applicant was entitled to benefit under this Clause.

We are fortified in our views by the decision of the Madras Bench of the Tribunal in the case of N.I. George Vs. Chief Executive(Supra). The argument in the above case on behalf of the respondents that Rule 24 of the C.C.S. (Pension) Rules makes it clear that dismissal or removal of a government servant from service entails forfeiture of his past service, and the term 'termination' was a 'generic term' and would apply to any case of removal also. The Division Bench at Madras looked into the service book of the applicant and noted that there was no specific entry therein either in the old service book or in the new one that the applicant's past service would not count for purposes of qualifying service. Since there was no specific indication in the service book, the applicant's pre-interruption service had to be treated as automatically condoned. Reference was made to the case of M. Venugopalan Vs. Govt. of India (Supra). The Division Bench at Ernakulam held that the purpose of police verification is not to find political affiliation, but to see if one had indulged in any subversive

activities. Having a particular view point of politics or being a relationship of political figure did not bar a citizen for applying under the Union or the State. Reference may also be made to the case of Miss Tripty Kakoty Vs. U.O.I. & Ors. (Supra). The Division Bench at Guwahati held that the termination simpliciter of even temporary employee for suppressing facts of arrest and criminal trial ought to have been preceded by departmental enquiry, and the order of termination of service was struck down. The contention of the learned counsel for the respondents that none of these cases have any application in the present case is not quite correct. Each one of them throws light on the subject under consideration. We are, therefore, of the view that the applicant's claim for counting his previous service from 17.1.1955 to 8.3.1956 has to be taken into consideration for the purpose of pay and pension.

In regard to the second point that the applicant was entitled to additional pay for having worked at Delhi and Bombay, we are of the view that Clause(iv) would be attracted for the facts of the present case and not clause (iii) of the F.R. 49. The facts clearly revealed that he was the Administrative Officer in Delhi and he had been asked to look after the work at Bombay / which post had not been filled up. We are satisfied from the material on the record that this

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was asked to be done by the applicant in addition to his duties, and he had to visit Bombay for the same from time to time. Learned counsel for the applicant placed reliance on the decision of the Supreme Court in the case of Smt. P. Grover Vs. State of Haryana(Supra). This was a case where the applicant Smt. P. Grover was promoted to the post of District Education Officer, a Class-I post, on an acting basis. Their Lordships of the Supreme Court observed that their attention had not been invited to any Rule which provided that promotion on an acting basis would not entitle the officer promoted to the pay of the post. In the absence of any rule justifying such refusal to pay to an officer promoted to a higher post the salary of such higher post, Smt. Grover would be entitled to pay the salary of a District Education Officer from the date she was promoted to the post.

In the present case, the two posts which were held by the applicant, were of the same pay scales and it was not a case where he was holding a higher scale of post as Administrative Officer, Bombay. We have been referred to the case of B.P. Singh Vs. U.O.I. & Ors.(Supra), but we find that there is a distinction between the present case and the case of B.P. Singh. In B.P. Singh's case, he was holding three posts and one was of Commissioner for Linguistic

Minorities. The posts he held were not in the same cadre/line of promotion, and these were distinct and separate, and consequently in this case F.R. 49(iii) was attracted. However, this is not the case in the present O.A. The applicant in the present case held the post of Administrative Officer in Delhi and Bombay in the same cadre and in the same office. It is a case where he was discharging the routine duties of the respondents. We are, therefore, unable to accept the contention of the learned counsel for the applicant.

In the result, therefore, the O.A. succeeds in part. The respondents are directed to treat the period of service of the applicant from 17.1.1955 to 8.3.1956 as part of the qualifying service for the purpose of fixing his pay and pension. We further direct the respondents to refix his pay and pension within two months from the date of receipt of a copy of this order and calculate the amount that would be due to the applicant as arrears of pay and pension. The amount of arrears due to the applicant shall be paid to the applicant within a period of further one month. The relief claimed by the applicant for holding two posts, however, fails.

In view of the above, we leave the parties to bear their own costs.

(I.K. RASGOTRA)
MEMBER(A)
6.3.1991.

(AMITAV BANERJI)
CHAIRMAN
6.3.1991.

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