

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.

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Date of Decision: 29.05.1992

OA 1843/88

KEWAL KRISHAN KAPOOR

... APPLICANT;

Versus

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant

.... In person.

For the Respondents

... Shri K. S. Dhingra,  
Senior Administrative  
Officer, departmental  
representative.

1. Whether Reporters of local papers may be  
allowed to see the Judgement ? *ys*

2. To be referred to the Reporters or not ? *ys*

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant, retired as Private Secretary, Office of the Chief of the Air Staff on superannuation and has come for the redress of his grievance that his service which he has already put in with DESU, MCO prior to his joining the present service in June, 1959 be also counted, as qualifying service for grant of pensionary benefits.

The applicant had filed this application before his date of superannuation, i.e., 30.9.1988. The applicant

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made representation but to no effect. The applicant has prayed that the respondents be directed to grant to the applicant pensionary benefits for his service with the DESU and till that time he may be paid a provisional pension for the service rendered by him with DESU, he also claimed interest on this amount.

2. The admitted facts are that the applicant joined the Armed Forces Head Quarter Stenographers Service in 1959. At that time the applicant was in the employment of DESU since 1.9.1947 and he applied for the AFHQ post with the approval of his then employer. The applicant had to resigned his <sup>earlier</sup> service with the DESU. The Govt. of India vide OM No.28/10/84-Pension Unit, dated 29.8.84 have decided to take into account the service rendered by its employees with Central Statutory and Autonomous Bodies for grant of pensionary benefits. The applicant, in pursuance of that OM has <sup>also to</sup> refund the Contributory Provident Fund received by him from the DESU together with interest thereon. However, since the respondents have not taken any decision in his case so he could not deposit the said amount.

3. The respondents contested the application and took the preliminary objections that the applicant cannot take advantage of the OM referred to in the application (Annexure A-4) at this belated stage. The said memo clearly

stipulates that an employee of an Autonomous body on permanent absorption in the Central Govt. has to exercise the option either to retain the CPF benefits of the Autonomous body or to count the service rendered in that body as qualifying service or pension in the Govt. within one year from the date of absorption. If no option is exercised <sup>within</sup> the stipulated period, then the employee shall be deemed to have opted to retain to CPF benefits. The applicant applied for counting past service on the verge of his retirement. It is also stated that since the applicant has resigned from DESU and the reason for submitting resignation has not been given so as per Rule 26 of the CCS (Pension) Rules, 1972. resignation from a service entails forfeiture of past service. Thirdly, it is stated that the applicant has not applied for the job in AFHQ through proper channel. Lastly, it is also stated that DESU is not a Central Autonomous body and the applicant cannot take the benefit of the said OM. Thus, according to the respondents the applicant is not entitled to any benefit.

4. I have heard the applicant in person and the learned <sup>for the respondents</sup> counsel/at length and have gone through the records of the case. The simple issue involved in the present case is whether a Central Govt. employee who has earlier served in a Central Autonomous body or Central Govt. as

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the case may be, who have already been sanctioned or have received pro-rata retirement benefits or other terminal benefits for their past service/for pension will be entitled subject to certain conditions. These conditions are laid down in para-5(1) of the DM dated 29.8.84 are as follows :-

The employees of the Central Govt./autonomous bodies would have the option either :

- "(a) to retain such benefits and in that event their service will not qualify for pension under the autonomous body or the Central Government, as the case may be, or
- (b) to have the past <sup>service</sup> counted as qualifying service for pension under the new organisation in which case the pro-rata retirement or other terminal benefits, if already received by them, will have to be deposited along with interest thereon from the date of receipt of those benefits till the date of deposit with the autonomous body or the Central Govt., as the case may be. The right to count previous service as qualifying service shall not revive until the whole amount has been refunded. In other cases where pro-rata retirement benefits have already been sanctioned but have not yet become payable, the concerned authorities shall cancel the sanction as soon as the individual concerned opts for counting of his previous service for pension and inform the individual in writing about accepting his option and cancellation of the sanction. The option shall be exercised within a period of one year from the date of issue of these orders. If no option is exercised by such employees within the prescribed time limit, they will be deemed to have opted for retention of the benefits already received by them. The option once exercised shall be final."

As regards DESU, whether it is a Central Autonomous body or not, para-4 of the above DM defines Central Autonomous body as follows:-

"Central autonomous body, means body which is financed wholly or substantially from cess or Central Government grant. "Substantially" means that more than 50 percent of the expenditure of the autonomous body is met through cess or Central Government grants. Autonomous body includes a

Central statutory body or a Central University but does not include a public undertaking.

Only such service which qualifies for pension under the relevant rules of Government/Autonomous body shall be taken into account for this purpose."

The case of the applicant, therefore, is that he is eligible for the counting of that service as DESU is a Central Autonomous body and the contention of the respondents in that regard cannot be accepted. DESU comes under the Municipal Corporation of Delhi which is a local authority and Autonomous Statutory body (AIR 1983 SC Page 581).

5. The objections taken in the counter that the applicant has not given the option for the grant of pensionary benefits within one year from the issue of the said OM dated 29.8.84. It is clear from the record that this OM was amended vide OM No.28/2/85-P & PW dated 22.2.88 and the applicant could not exercise option earlier nor he was ever asked about it. The applicant joined the service in 1959 and the said OM came for the first time in August, 1984. Otherwise also in the case of Gerald D'Souza Vs. UOI reported in ATR 1989 Vol.I CAT P-573, the Bombay Bench held that the outer date fixed in giving option for persons who retired earlier in 1963 from the Railways and wanted to switch over to the pension scheme within the time prescribed was not fixed under the Limitation Act, or any other law but it was only meant that application be made expeditiously and the claim of such persons were not

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defeated on that account. In the reported case, the applicant retired in 1953 and the pension scheme in the Railways had not been introduced and the applicant was paid the compulsory Contributory Provident Fund (CPF) in accordance with the Rules. In 1967, the Railway Board introduced payment of ex-gratia pension for those who were beneficiary of CPF, but are still alive and fixed by a subsequent order 31.12.1970 as the last date for making application. In the present case also, the one year period was restricted so that those who had already been sanctioned retirement benefits under CPF Scheme after leaving the service under Autonomous Central body may also apply for the benefit of pension for the service they have put under Central Autonomous body. Thus this contention of the respondents also cannot be accepted that the applicant has not applied within one year and has applied for the pensionary benefits much after, i.e., just on the verge of retirement.

6. The third contention raised by the respondents is that the applicant has not applied through proper channel for the post of Stenographer in AFHQ. In the counter, the respondents have very meekly averred this fact on the presumption that the appointment letter was not sent to the applicant at his office address through the DESU. It cannot

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by itself establish the fact whether the applicant sent his application through proper channel or not? There is nothing on record to substantiate this contention of the respondents nor the personal file of the applicant in possession of the respondents has been produced to confirm this fact.

7. Next objection of the respondents is that the applicant has resigned from DESU <sup>and</sup> under Rule-26 of the CCS (Pension) Rules, so that service cannot be counted as qualifying service for pensionary benefits. The respondents have stated that the applicant has not given the reason of resignation. However, it is obvious from the record that the applicant has joined AFHQ in 1959 after resigning from DESU. This matter has already been adjudicated upon by the Principal Bench in the case of Kirti Chandra Vs. Director General of Health Service & others, reported in ATR 1989 Vol.II CAT P-449. In this reported case the applicant applied with proper permission to take up another appointment under the State Govt. and the application was forwarded but after selection the department refused to relieve and the applicant has thus resigned and joined the new appointment. Such a resignation is only a technical resignation and the applicant can very well claim as if he has been relieved by the department to join the new post. Thus, the objection to this effect has no basis.

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8. During the course of the arguments Shri K.S. Dhingra, representing the respondents gave a statement that they have no objection to the counting of the service provided that the DESU, furnishes the service record of the applicant for the period he has worked under DESU. A letter in this connection has already been written to DESU and a copy of the reply sent by DESU of the same has been filed during the course of the arguments, which is reproduced below :-

"Subject: Counting of Former Civil Service for pensionary benefits - Shri Kewal Krishan Kapoor, Private Secretary to the Chief of the Aif Staff.

Dear Sir,

Kindly refer to your D.O. No. Air HQ/22940/1629/I/PC-1 dated 7th February, 1989 addressed to our General Manager (E) on the subject mentioned above.

In this connection, I am directed to inform you that Shri G. Vijaya Kumar, Deputy Director, Pcrs Civ was informed earlier to this about the non-availability of the records vide this office letter No. APO(E)RPH/GDG(N)R-1/92 dated 6.1.88, a copy of which is enclosed herewith for your ready reference and informations.

As regards the informations/documents, required vide letter No. Air HQ/22940/1629/I/PC-I dated 16th Sept., 1987 received from Shri GVS Moorthy, CSO/ADPC I am to state as under :-

- (a) that no service documents of Shri Kapoor are available with us as the same could not be traced out despite of our best efforts.
- (b) that Shri Kapoor left this Undertaking in Jan., 1959 as per photo copy of service certificate sent to this office and it is not possible now to get the service period verified from our audit authority.

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- (c) that in the absence of Original service documents it is not possible to give the statement showing the period of Non-Qualifying Service."

In fact, the applicant has annexed the Service Certificate dated 1.7.1959 as Annexure A-12, which mentioned the date of birth and post on which the applicant was employed and the date of appointment as 1.9.1947, date of leaving service as 28.1.1959(FN) and the reason for leaving the service i.e. resigned, and the last pay drawn Rs.100/- and the scale of pay is Rs.80-5-120-EB-8-200-10/2-220. This Service Certificate gives full indication and is signed by the competent authority on behalf of the DESU. Now the DESU cannot say that <sup>they</sup> have no service records available with them. If the original documents is not traceable then the secondary evidence of that documents can be procured and nobody can be put to a loss for default of the administration itself. Thus, the applicant cannot be denied the benefits and his case is fully covered under Rule 26 Sub-clause 2 of the CCS (Pension) Rules, 1972 which lays down that a resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission for another appointment whether temporary or permanent under the Government where service qualifies.

9. The Civilian Staff Officer has written to CDA Allahabad a letter dated 23.6.1987 (Annexure R-4).

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This letter shows that the CDA(P) Allahabad was informed about the terminal benefits received by the applicant on account of Provident Fund Rs.2347.33 out of which the Board's(DESU) contribution was Rs.880/- approximately and the break down of the sum has also been noted in the said letter. The office of CDA Allahabad replied to this letter on 7.8.87 that in absence of the service record for any period secondary evidence under CCS (Pension) Rules may be submitted along with a statement showing the period of non-qualifying service, if any. The office of CDA Allahabad had again written to the Chief of the Air Staff on 10.8.87 (Annexure R-5(B)) that whether liabilities will be borne by DESU Delhi or not? Thus, there was active correspondence suggesting favourable consideration of the applicant's case, but the benefit of the service could not be given to the applicant by the respondents because of non-cooperation of DESU in supplying certain documents. Rule-14 of the CCS (Pension) Rules, 1972 sub-clause 3 specifically entitles a person to claim pensionary benefits by counting of service rendered with Central Autonomous body. The applicant has also referred to the extracts from OM No.4(12)/84-P & PW dated 31.3.87 and referred to clause-II that in case <sup>is</sup> no option/exercised within stipulated period, he will be eligible for pension based on combined service.

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This OM ofcourse relates to the payment of pro-rata retirement benefits to the employees who <sup>are</sup> permanently absorbed in Central Govt., Public Sector Undertaking and Central Autonomous bodies. The applicant has also placed reliance on the case of R.L. Marwaha Vs. UOI & ors. reported in 1987(4) SCC P-31 where the Hon'ble Supreme Court held that there should be no discrimination among government servants holding pensionable post absorbed by autonomous body where also the pension scheme in operation but the OM dated 20.8.84 (No.2810/84) make the benefit available only to those who retired on or after the date of issue of the OM, such denial of the benefit to those retiree prior to that date is discriminatory. It was further held that fixation of a date for grant of benefit must have nexux with the object sought to be achieved.

10. Having gone through the various contentions raised on behalf of the respondents in para 6.3 of the counter it is stated that DESU have been asked to furnish a certificate that the applicant had applied through proper channel and that the resignation was only a technical formality but when the applicant has himself filed a Service Certificate (Annexure A-12) and in the same it is written that the applicant has resigned, the querry with further DESU has no meaning. The only contention is that the previous service could not be verified by

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the competent authority and the final decision regarding the eligibility of the applicant to count his previous service could not be taken for want of requisite confirmation by DESU cannot be said to be sound basis to refuse the counting of the service rendered with DESU by the applicant as qualifying service for pension.

11. Having given a careful consideration, the application is allowed and the respondents are directed to grant the benefit flowing from the provisions of OM No.28/10/84-Pension Unit dated 29.3.1984 in respect of the applicant's service with the DESU w.e.f. 1.9.1947 to 20.1.1959 (only to the extent of eligible years-total period not to exceed 33 years) provided the applicant deposits the prorata retirement or other terminal benefits received by him under CPF Scheme from DESU with interest @6% thereon from the date of receipt of those benefits till the date of deposit with the autonomous body and the right to count previous service as qualifying service shall not revive until the whole amount has been refunded by the applicant within one month from the date of this order.

The respondents are directed, in the event of the applicant depositing the aforesaid amount as said above, to comply with the above directions within a period of six months from the date of receipt of a copy of this order.

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In the circumstances, parties shall bear their own costs.

*J. P. Sharma*

25.8.92

(J.P. SHARMA)  
MEMBER (J)