

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

19

O.A. No. 301/1988
T.A. No.

199

DATE OF DECISION 21-05-1991SHRI T.N. NAGAR

Petitioner

SHRI B.B. RAVAL

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & OTHERS

Respondent

SH. B. R. PRASHAR, SH. A. K. SIKRI
AND SH. VIKRAM DHABOLIA

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. I.K. RASGOTRA, MEMBER (A)

The Hon'ble Mr. J.P. SHARMA, MEMBER (J)

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

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

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O.A. NO.301/1988

DATE OF DECISION 21-05-1991

SHRI T.N. NAGAR

....APPLICANT

VS.

UNION OF INDIA & OTHERS

....RESPONDENTS

CORAM

SHRI I.K. RASGOTRA, HON'BLE MEMBER (A)

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

FOR THE APPLICANT

....SHRI B.B. RAVAL

FOR THE RESPONDENTS

....SHRI B.R. PRASHAR
SHRI A.K. SIKRI
SHRI VIKRAM DHABOLIA

JUDGEMENT

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

The applicant, Ex-Manager, Delhi Administration, Animal Husbandry, filed this application under Section-19 of the Administrative Tribunals Act, 1985 aggrieved by the order dated 14.2.1985 by which the applicant was granted provisional pension and the same was not finalised.

The applicant claimed the following reliefs :-

- (a) Confirmation of service from 5.3.1953 to 28.2.82 and final settlement of pension and gratuity

and payment thereof.

(b) Allow the revision of pension taken place from time to time as per Government orders and all other benefits.

The facts of the case are that the applicant joined the Planning and Development Department of U.P. as Assistant Development Officer in Training-cum-Production Centre on 5.8.1953 and was posted at Math in Jhansi (U.P.).

It was an employment under Government of Uttar Pradesh.

The applicant remained with the Government of U.P. till 22.5.1954 and came on deputation to Government of India as Manager, Gular Bhoj, Nainital (I.V.R.I.) and remained there as such till 31.8.1955. The said Gular Bhoj, Nainital 'Gausadan' was taken over by a social body

P.W.R. Fund Trust, Lucknow, a semi-Government body and the applicant worked as a Manager in the same capacity from 1.9.1955 to 4.3.1959. From 5.3.1959, the applicant again came on deputation to Government of India as Technical Assistant, Delhi Hide Flaying Carcess, Council of Gosamwardhana and remained there till 30.9.1961.

From 1st October, 1961, the applicant was again appointed as Manager, Gularbhoj, Nainital and remained there till 30.11.1969. From 1.12.1969, the applicant came to the Union Territory of Delhi under the Delhi Administration and was posted in the capacity of

Manager and worked there till 28.2.1982. The applicant retired as Manager on 28.2.1982. The applicant was issued a pension order on 14.2.1985. While working in Delhi Administration, the applicant was declared as quasi-permanent on 1.12.1972. From 22.5.1982, the applicant was declared as permanent with immediate effect. Thus from the above, it is clear that the applicant was an employee of State of U.P. from 5.8.1953 to 4.3.1959. After that he went on deputation to the Government of India. The applicant in his representation requested the Development Commissioner, Delhi Administration that the presidential order be obtained for counting the period from 5.3.1959 to 30.11.1969 from the Ministry of Food and Agriculture, Government of India to treat this period as Government service. It was further requested that Director of Animal Husbandry Department, U.P., Lucknow may kindly be asked to transfer the Service Book for the period 5.8.1953 to 4.3.1959, i.e., the service rendered in the U.P. Government to the Animal Husbandry Department, Delhi so that the total service may be accounted for the purposes of pension and other

benifits. The contention of the applicant is that under Rule No.14(3) of CCS (Pension) Rules, 1972, the service rendered with the State Government shall also be counted for seniority. The extract of Rule 14(3) is given below :-

"In case of Govt. Servant belonging to a State Government who is permanently transferred to a service on post to which these rules apply, the continuous service rendered under the State Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity as the case may be, shall qualify."

In the case of the applicant, U.P. Government, Planning Department has given no objection to count his services from 5.8.53 to 4.3.59 vide letter dated 22.2.1982, a copy of which has been filed. Thus the claim of the applicant is that the whole period of Government, either under State Government or Central Government or Delhi Administration, i.e., from 5.8.1953 to 28.2.1982 be treated as qualifying service for the purposes of pension and gratuity.

2. Delhi Administration as respondent No.4 filed the reply to the application. It is stated that the applicant retired w.e.f. 28.2.1982 from the Government service. The services of the applicant for the period from 5.8.1953 to 4.3.1959 were not counted as qualifying service due to interpretation of Rule 14(3) of the CCS (Pension) Rules, 1972 and Government of India OM dated 31.3.1982. It is stated that after 28.2.1959, the petitioner got himself posted as Technical Assistant without getting any extension of sanction of deputation of his own sweet will. Later on he was absorbed under Government of India. As such, the non return of the applicant to the parent department after 28.2.1959, i.e., after the expiry of his deputation, clearly implies that he opted for Central Government service and as such his lien in the parent department was cancelled. The rules as per G.O. No. S. 3-1239/Dus-917/79 do not permit pension and liability for the period the petitioner served under U.P. Government or on foreign service with the specific sanction of U.P. Government. U.P. Government refused to bear pension and liability vide letter dated 5.6.1987. So it is prayed that the application be dismissed.

3. Respondent No.2, Director, I.V.R.I., Izat Nagar, New Delhi also filed the reply to the Original Application. It is stated that the applicant was appointed as Assistant Development Officer by Planning and Development Department, U.P. and thereafter appointed as Manager, Central Gausadan, Gularbhoj, Nainital, U.P. from 23.5.1954. The administrative control of this Gausadan was entrusted to respondent No.1, Union of India only for the period from 23.5.1954 to 31.8.1955 and thereafter the administrative control of the said Gausadan was transferred to U.P. Post War Reconstruction Fund, Lucknow. Thus the applicant as Manager of the Gausadan under the administrative control of respondent No.2 has worked only for the period from 23.5.1954 to 31.8.1955. The applicant was on deputation at Central Gausadan, Gularbhoj, Nainital for the aforesaid period. The applicant was permanently absorbed by Delhi Administration from 1.12.1969 from where the applicant retired. As such there is no cause of action against the answering respondent No.2.

4. The other respondents have not filed any reply.

5. We have heard the learned counsel of the applicant at length. None appeared for the respondents. Since the matter was pretty old and the applicant has retired from service in February, 1982, so the arguments of the learned counsel for the applicant were heard at length and the case was reserved for judgement on 13.5.1991.

6. According to the Government of India's OM dated 26.12.1977, the pension and liability are to be born in full by the department in the case of Central Government and Union Territories to which the servant permanently belongs at the time of retirement. No recovery of proportionate pension is required to be made on the service share basis. However, in terms of OM dated 31.3.1982, pension and liability are required to be shared on service share basis between the Central Government and the State Government. The question at issue, therefore, in this case relates only to the counting of the period of service rendered by the applicant in U.P. Government from 5.8.1953 to 22.5.1954, i.e., before he came on deputation to the Central Government and got absorbed. The applicant's case is that he was originally employed with the U.P. Government

42

and under the orders of the employer Government, he has gone on deputation. It was only on the orders of the Government that the applicant had to move from one office to another as he was duty bound to obey the orders of the transfers and postings. The lien of the applicant to the parent department, therefore, cannot be cancelled for the purposes of retirement benefits.

It is contended by the learned counsel for the applicant that the applicant has every right to claim his full pension benefits for the period when the Central and State Governments collectively took his services at their own sweet will at different places without having an option of the applicant for such postings to different places under Central and State Governments. The Government G.I., M.F., Controller General of Accounts, O.M. No.5-11031 1 SO TA/1494 dated 21.4.1980 is reproduced below :-

"Counting of temporary service under the State Central Governments and allocation of pensionary liability-The Government of India have been considering in consultation with the State Governments, the question of sharing on a reciprocal basis, the proportionate pensionary liability in respect of those temporary employees who had rendered temporary service under the Central Government/State Governments prior

4

to securing posts under the various State Governments/Central Governments on their own volition in response to advertisements or circulars including those by the State/Union Public Service Commissions and who are eventually confirmed in their new posts. It has since been decided in consultation with the State Governments that proportionate pensionary liability in respect of temporary service rendered under the Central Government and State Governments to the extent such service would have qualified for grant of pension under the rules of the respective Government, will be shared by the Governments concerned, on a service-share basis, that the Government servants are allowed the benefit of counting their qualifying service both under the Central Government and the State Governments for grant of pension by the Government from where they eventually retire. The gratuity, if any, received by the Government employee for temporary service under the Central or State Governments will, however, have to be refunded by him to the Government concerned.

2. The Government servants claiming the benefit of combined service in terms of the above decision are likely to fall into one of the following categories :-

- (1) Those who having been retrenched from the service of Central/State Governments secured on their own employment under State/Central Governments either with or without interruption between the date of retrenchment and date of new appointment;
- (2) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Governments through proper channel with proper permission of the administrative authority concerned;

(3) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Governments direct without the permission of the administrative authority concerned and resign their previous posts to join the new appointments under State/Central Governments.

The benefit may be allowed to the Government servants in categories (1) and (2) above. Where an employee in category (2) is required for administrative reasons, for satisfying a technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement, to join, with proper permission, the new posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to get this benefit at the time of retirement. Government servants in category (3) will, obviously, not be entitled to count their previous service for pension.

3. The above arrangement will not apply to the employees of the Governments of Jammu and Kashmir and Nagaland.

4. These orders come into force with effect from the date of issue and cases of all such Government servants retiring on this date and thereafter will be regulated accordingly.

(G.I. Dept. of Personnel & A.R. letter No.3 (20)/Pen.(A)/79, dated the 31st March, 1982 addressed to all State Governments except Jammu & Kashmir and Nagaland.)

7. Rule 14 (3) of CCS (Pension) Rules, 1972 is also of the same effect. It has been reproduced on page-4. The contention of the respondents in their reply is that the G.O. No. Sa-3-1239/Dus-917/79 dated 13.9.1982 gives benefit to only those Government servants who retired on 31.3.1982 or after that.

8. In fact, the Delhi Administration ^{had} taken over the administrative control alongwith assets and liabilities of Gosadan, Gularbhoj, Nainital w.e.f. 1.12.1969 vide letter dated 30.11.1969 (Paper No.25). There is a letter dated 22.1.1982 (Paper No.39 of the Paper Book) from the Government of U.P. to the Central Government that they have no objection to the counting of the service rendered by the applicant in U.P. Government for the purposes of pensionary benefits towards the qualifying service of the applicant for pension. The Delhi Administration has informed the applicant by the letter dated 18.4.1983 (Paper No.42 of the Paper Book) that the qualifying service for pension rendered by the applicant with the Central Government and Delhi Administration may presently be considered and the services rendered with U.P. Government be taken up separately.

The Ministry of Agriculture by its letter dated 26.4.1983 (Paper No.44) which informed the Delhi Administration that the applicant has been in continuous service from 5.8.1953 to 28.2.1982 and for this he is eligible for pension, is as under :-

1. 23.05.54 to 31.08.55 : Service in I.V.R.I. Izatnagar, a Central Government Office (pensionable).
2. 05.03.59 to 30.11.69 : Service of Central Council of Gosamvardhana eligible for pensionary benefit as Central Government Service
3. 01.12.69 to 28.02.82 : Delhi Administration Service (Pensionable).
4. 05.03.53 to 22.05.54 : U.P. Government Service (eligible for pension).
&
01.09.55 to 04.03.59 The U.P. Government may recover the pension contribution for the period w.e.f. 01.09.55 to 04.03.59 from the U.P. Post War Reconstruction Fund Trust U.P. Lucknow for which they have agreed to pay vide letter No.2309/IX/12(74) dated the 4th April, 1983 referred to above."

9. It appears that Delhi Administration has also written to Commissioner, Agricultural Production and Rural Development, Lucknow (U.P.) for the settlement of

32

pension and gratuity claims of the applicant for counting for the purpose of qualifying service for pension, the service rendered by the applicant in U.P. Government and desired proportionate pension charges to be born by the State of U.P. Thus from the face of records and various other letters, it is evident that Delhi Administration and U.P. Government have been corresponding for the purposes of payment of pensionary benefits to the applicant for the services rendered while the applicant was serving the U.P. Government. There is no dispute or controversy nor there is any legal bar to the counting of service of the applicant rendered under U.P. Government as qualifying service for the purposes of pension. As such, the applicant is entitled to get the pensionary benefits for all the length of service, i.e., 1953 to 1982 irrespective of the fact under which of the Government he has served. The applicant had been in continuous service through out. Since the applicant last retired from Delhi Administration, so it shall be the liability of the Delhi Administration to pay the pensionary benefits counting whole of the qualifying service rendered by the applicant from 1953 to 1982.

10. In view of this discussion, we allow the application and direct the respondent No.3 i.e., Delhi Administration through its Secretary to pay to the applicant full pensionary benefits including gratuity etc. counting for the purposes of pension whole of the qualifying service rendered by the applicant from 3.8.1953 to 28.2.1982 and calculate the revised pensionary benefits payable to the applicant within three months from the date of receipt of this order and make payment of all the arrears including ad hoc increment etc. in the pensionary benefits from time to time. However, in the circumstances, the parties shall bear their own costs.

J. P. Sharma
(J.P. SHARMA)
MEMBER(J)

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

21/5/91

pronounced by me in the open court
on 21/5/1991

Delhi