

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

6

O.A. No. 1207/88
Tax No.

199

DATE OF DECISION 9.10.81

<u>Shri K.S. Sharma</u>	Petitioner Applicant
<u>Shri B.B.Raval</u>	Advocate for the Petitioner(s) Applicant
Versus	
<u>Union of India & Anr.</u>	Respondent s
<u>Shri O.N.Moolri</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. JUSTICE RAM PAL SINGH, VICE CHAIRMAN

The Hon'ble Mr. I.P. GUPTA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
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 ?

JUDGEMENT

(Delivered by Hon'ble Mr. I.P. Gupta, Administrative Member)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant is a military pensioner who rendered regular military service from 21.3.44 to 6.11.59. He was re-employed in the Defence Accounts Department there CDA, DC, Meerut and served from 1.12.59 to 2.4.66. He was selected as ASM in Northern Railway and joined training on 3-4-66. On successful completion of training, he was absorbed on a working post of ASM in Delhi Division, Northern Railway, w.e.f. 5.5.67. He retired on 31-1-86 and was transferred to Railway Pension Establishment.

2. The applicant had applied in November, 1973 for counting

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of his Army service as well as Civil service in Defence Accounts Department to the Railways for pensionary and allied benefits. There being no response from the Railway administration, he again put up his case in February, 78 and later through a recognised Union called NRMU for according him the above benefits.

3. The Railway authorities did not accede to his request vide their letters dated 30-7-83/2-8-83 and 11-10-83. The applicant has been pursuing the case. He was again informed that the earlier decisions communicated to him would stand.

4. The applicant has sought the relief that his Army service as well other spells of service rendered under the Central Government may be treated as qualifying service for pension and the interruption between the spells of service be treated as automatically condoned. There are two spells of service, i.e., i) Army service from 23.3.44 to 6.11.59 and another, ii) DAD service from 1.12.59 to 2.4.66 for which he had requested the Railway administration to count for pensionary and allied benefits along with Railway service.

5. The learned counsel for applicant argued strenuously that:-

- i) There was no interruption between his leaving the DAD on 2.4.66 and joining the N.R.Zonal Training School on 3.4.66 under the Railway Service/Administration.
- ii) Though he has resigned DAD to join Railways but there was no interruption between leaving ~~between~~ one service and joining another.
- iii) Though he had ^{not} applied through his employer for the Railway service but ^{and their} consent is implicit in the order waiving the condition of 3 months' notice while accepting his resignation.

accepting his resignation.

6. The learned counsel for the respondents brought out the following points :-

- i) In the enquiries made to verify statements, the applicant had not stated in his reply on 4.5.67 that he was working with CDA from 1.12.59 to 2.4.66 and that he had resigned from the Department to take appointment as Assistant Station Master in the Railways.
- ii) ^{been} He had granted pension of Rs.28/- w.e.f.7.11.59 for his service under the Army from 21.3.44 to 7.11.59.
- iii) According to the Indian Railway Establishment Code ~~that~~ 'a Railway servant who is re-employed in Railway service or post before attaining the age of superannuation and who before such re-employment had rendered regular military service after attaining the age of 18 years, may on his confirmation in a Railway service or post opt either to continue to draw the military pension or retain the gratuity received on discharge from military service, in which case his former military service was not counted as qualifying service.'
- vi) He had not applied for the post under the Railways through Proper Channel.

7. Analysing the above arguments, it is clear that:-

- i) The applicant has been granted pension for the military service between 1944 and 1959 and he has drawn this pension.
- ii) He had not applied for the post ~~as~~ under the Railways through proper channel and had resigned from the ~~CDA~~ service before joining the Railway service. The fact his resignation was accepted and the condition of 3 months' notice waived would not ^{per se} perhaps be treated as permission by the CDA to the applicant to join the Railways, more so

when there is no indication in the order for acceptance of resignation that it was being done to enable him to join the Railways.

iii) He had concealed the vital information of his having served with the CDA from 1959 to 1966 while giving his declaration as in 'R-3'.

iv) According to Govt. of India letter dated 31.3.82 at Annexure-R-8 'Those who while holding temporary posts on the Central/State Government apply for posts under State/Central Government direct without the permission of the administrative authority concerned and resign their previous post to join the new appointments under State/Central Governments will not be entitled to count their previous service for pension.'

v) In terms of Indian Railway Establishment Code quoted by the learned counsel for the respondents, the applicant is not entitled to ^{Count} ~~draw~~ ^{Service} ~~service~~ pension.

vi) The argument of the learned counsel that there was no break in service between his leaving the DAD and joining the Railways would not also lend weight to the case of the applicant since the break in service as defined in para 4 of Ministry of Finance O.M. dated 28.2.76 at Annexure A-7 reads as follows :

"4. Break in Service

In the absence of a specific indication to the contrary in the service records and interruption between spells of service rendered under the Central Government including service paid out of Defence Services Estimator or Railway Estimates will be treated automatically condoned and the pre-interruption service treated qualifying service for pension except where it is otherwise known that the interruption was caused by resignation, dismissal or removal from service or participation in strike. The period of interruption itself will under no circumstances be reckoned as qualifying service for pension (underline ours).

In this case, the applicant had resigned from ~~DAD~~ ^{DAD} ~~CDA~~

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and his service in DAD cannot be treated as qualifying service.

8. In the conspectus of the aforesaid facts, the applicant fails. The application is accordingly dismissed. There is no order as to costs.

I.P. Gupta
(I.P.GUPTA)
MEMBER (A)

9/10/91

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN

/PKK/