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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1032
T.A. No.

1986.

DATE OF DECISION June 9, 1988.

Shri A.N. Gambhir, Petitioner

Shri M.K. Ramamurthi, Sr. Advocate ~~XXXXXXXXXXXX~~ ~~Petitioner(s)~~
with Mrs. Chandan Ramamurthi, Advocate. ~~Advocate for the Petitioner(s)~~

Versus

The Secretary, Ministry of
Water Resources & Agr. Respondents.

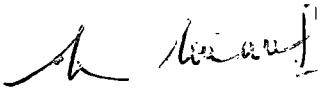
Shri M.L. Verma, Advocate for the Respondent(s)


CORAM:

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement? No.
4. Whether to be circulated to other Benches? Yes.


(Kaushal Kumar)
Member
9.6.1988.


(K. Madhava Reddy)
Chairman
9.6.1988.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

REGN. NO.OA 1032/1986.

June 9, 1988.

Shri A.N. Gambhir

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Applicant.

Vs.

The Secretary,
Ministry of Water Resources & Anr. Respondents.

CORAM:

Hon'ble Mr. Justice K.Madhava Reddy, Chairman.

Hon'ble Mr. Kaushal Kumar, Member.

For the applicant

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Shri M.K.Ramamurthi, Sr. Advocate
with Mrs.Chandan Ramamurthi,
Advocate.

For the respondents ...

Shri M.L. Verma, counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice K.Madhava Reddy, Chairman).

The applicant was appointed as Draftsman in
P.W.D. Irrigation in undivided Punjab State on 2.3.1931.
He was promoted as Head Draftsman on 19.3.1939 and was
further promoted as Circle Head Draftsman on 19.12.1946.
in the pay scale of Rs.250-10-350. He was working as such
in the Central Design Office, Irrigation Secretariat,
Lahore on permanent and substantive basis upto 14.8.1947
on the eve of the partition of India and creation of
Pakistan. He thus rendered 16 years and 6 months
service in the undivided State of Punjab prior to^{the} partition
of India holding a permanent pensionary post.

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In the holocaust that preceded the partition and for some time thereafter, the applicant and his family was uprooted from Lahore. He migrated to East Punjab and joined the East Punjab State Government service from 15.8.1947 to 10.3.1948. During this ^{short} interval, both his married sisters lost their lives in transit camps. His own life was in danger. He resigned his job of the East Punjab Government on 10.8.1948 and migrated to Delhi and joined the Central Water and Power Commission at Delhi on the forenoon of 11.8.1948 as Chief Draftsman in the pay scale of Rs.300-20-500.

It is the case of the applicant that when he joined the Central Water and Power Commission, the then Chairman, Central Water and Power Commission and Additional Secretary to Govt. of India, Dr. A.N.Khosla gave an unqualified assurance that his previous service would be counted for pension under ^{the} Central Government. The applicant served the Central Water & Power Commission from 11.8.1948 to 8.6.1969 in various capacities as Chief Draftsman, Head Draftsman, Extra Assistant Director, Assistant Director and finally he retired as Deputy Director on 8.6.1969. But in computing the retirement benefits, the service rendered by him under the provincial Government of undivided Punjab prior to ^{the} partition of India was totally ignored. His representation to count that service for computing the retirement benefits was rejected on 11.4.1968.

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Thereafter he represented to the Ministry of Irrigation and power on 26-6-1968 and 6-1-1969 (Annexure II and Annexure III.) Those representations were also rejected on 17-5-1969. Since some of the employees of the un-divided Punjab Government who directly joined the Central Government after the partition were given the benefit of their past service and the applicant who joined the East Punjab Government after partition for a short period before joining the Central Government service was not given the benefit of his past service while computing the pensionary benefits, the petitioner made a further representation. He was informed through letter dated 30-7-1986 (Annexure VI) that "Your request has been carefully considered in the Ministry and it is regretted that the same cannot be acceded to as it is not covered under the rules on the subject." Aggrieved by this rejection, the applicant has moved this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for a direction against the respondents to take into account the past service rendered by him under the Government of undivided Punjab in computing pensionary benefits to which he is entitled and to direct them to pay the arrears of pensionary benefits accordingly due to him.

At the outset we must refer to the contention of

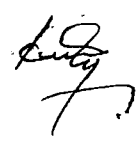


the respondents that this application is barred by time. No doubt, the applicant retired from service in the year 1969. But he had made representations in this behalf. After his representation was rejected in 1969, he made further representations that other similarly placed persons were given the benefit of their past service. His representation was registered and he was intimated accordingly. It was on 30.7.1986 that this representation was rejected. Immediately on receipt of this reply, he ~~was~~ filed the present application.

In B.KUMAR Vs. U.O.I (1) we have held that once a representation is entertained and considered on merits, as was done in this case, the order rejecting the representation gives a fresh starting point of limitation. This is not a case where his representation was not entertained at all. This application is, therefore, held to be within time.

After hearing the parties for some time on the merits of his claim, by our order dated 5.1.1988, we directed the applicant to file an affidavit giving specific instances of persons who had joined the Central Government service after having earlier served State/ Provincial Government in that part of India which now form part of Pakistan and were given the benefit of

1. ATR 1988 (1) CAT 1.



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past service in computing their retirement benefits.

The applicant filed such an affidavit on 25.1.1988 quoting seven instances where service ranging from 19 to 24 years rendered under ^{the} State/Provincial Governments which now form part of Pakistan was counted for the purpose of calculating and paying the retirement benefits ^{the} to Central Government Officers. The respondents were given sufficient opportunity to controvert this sworn averment. But in spite of a lapse of nearly five months and several opportunities being given, the respondents have not been able to deny the applicant's assertion. All that Shri M.L. Verma, learned counsel for the respondents states at the Bar on the strength of the letter No.8/29/86-Estt.I dated 8th June,1988 issued by the Under Secretary to the Government of India, Ministry of Water Resources, New Delhi is that the respondents cannot concede his request as the concerned file could not be traced and it cannot be said that the cases of those persons and that of the applicant mentioned in the additional affidavit dated 25.1.1988 are identical.

From the letter No.23/27/68-Admn.I dated 17th May,1969 (Annexure-IV) it is clear that the respondents do not deny that the applicant had served the undivided Punjab Government as claimed by him. His claim was rejected on the sole ground that that

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period cannot be counted for the purpose of pension. No specific provision in the Pension Rules governing the calculation of pension in such cases has been brought to our notice; nor is there any Office Memorandum governing such a situation. What was, however, decided by the Government of India at least in respect of seniority of such persons is laid down in Office Memorandum No.30/44/48 Appts. dated 22.6.1948 issued by the Government of India, Ministry of Home Affairs is as under:

"It has now been decided in consultation with the Federal Public Service Commission that the question of seniority in each grade should also be examined in the same context and specific rules suitable for each service prescribed in framing those instructions. The question of seniority of Assistants in the Secretariat was recently examined very carefully in consultation with all the Ministries and Federal Public Service Commission and the decisions reached are incorporated in para 8 of the Instructions for the initial constitution of the grade of Assistants an extract of which is attached. It has been decided that this rule should generally be taken as the model in framing the rules of seniority for other services (emphasis supplied) and in respect of persons employed in any particular grade seniority should as a general rule, be determined on the basis of length of service in that Grade

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irrespective of whether the latter was under the Central or Provincial Government of India or Pakistan. It has been found

(emphasis supplied)

difficult to work on the basis of comparable posts or grades and it has been therefore decided that service in an 'equivalent grade' should generally be defined as service on a rate of pay higher than the minimum of time scale of the grade concerned. The seniority of persons appointed on permanent or quasi-permanent basis before the 1st January, 1944 should, however, not be disturbed".

Though normally the service rendered in the undivided Punjab Government is not taken into account in computing the seniority, having regard to the great upheaval and the disturbed conditions that followed the partition, uprooting the entire families from the homeland ~~and~~ forcing them to migrate from the present territory of Pakistan to the remaining part of the Indian territory, the interest of the displaced employees of the Government, irrespective of whether they were State/Provincial Government employees or Central Government employees was sought to be safeguarded by counting the service rendered by them under the Provincial Government. In continuation of that Office Memorandum, further Office Memoranda were issued of which judicial notice was taken in UNION OF INDIA Vs. RAVI VARMA & ORS (2) upholding and justifying the

counting of past service of the employees under the Provincial Government upon their joining the Central Government for the purpose of determining the seniority even in cases where they joined after a break in service. When such a benefit is extended in the matter of seniority, we see no reason why the same benefit should not be extended for computing the pensionary benefits to employees who joined the Central Government in such extraordinary circumstances. Of course, the liability for paying the retirement benefits for the service rendered under the Provincial Government cannot ordinarily be the liability of the Central Government. But having regard to the unique situation in which there was a huge exodus of not only public servants but large sections of population, these benefits were conferred on the displaced employees who served State Governments now falling within the territory of ~~the~~ Pakistan. Of course, this benefit was not extended to the public servants of the Provincial Governments which always formed part of undivided India and continued to be ^apart of India after partition as well. These public servants form a class by themselves distinct from the public servants of provincial Governments of States which have gone to Pakistan.



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The complaint of the applicant is ^{that} while the seven persons mentioned in the affidavit who were similarly placed as the applicant were given the benefit of their past service under the Provincial Governments, the applicant is denied the benefit. The denial of treatment at par with those seven others seems to be only because after migrating from Lahore, the applicant joined the East Punjab Government service for a brief period and he resigned therefrom to join the Central Water and Power Commission. This, in our opinion, should not and cannot stand in his way of getting the benefit of his past service in the united Punjab for the simple reason that those who joined Central Govt. service even after a break were also given the benefit of past service notwithstanding the break in service. Therefore, the brief period during which the applicant served the East Punjab Government only because he was left without any means of livelihood cannot be put against him. That service could be wholly ignored and he could be deemed to be a person who joined the Central Government service with a break in service after serving the Provincial Government which now forms part of Pakistan and given the benefit of that service in determining his retirement benefits.

Shri M.L. Verma, learned counsel for the respondents relied upon Rule 418 of Civil Service

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Regulations which reads as follows:

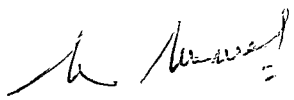
"418 (a) Resignation of the public service, or dismissal or removal from it for misconduct, insolvency, in-efficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.

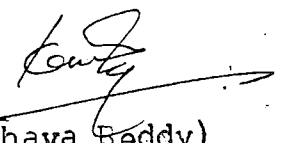
(b) Resignation of an appointment to take up another appointment, service in which counts, is not a resignation of the public service".

In our view, on the facts of this case, this Rule has no application. While it is true that the applicant resigned the East Punjab Government service to join the Central Water and Power Commission, he does not claim that this period should be counted. What he claims is that the service rendered by him in the undivided Punjab Government which he left consequent upon partition should be counted. The question really is whether on account of joining the East Punjab Government service for^a shortwhile, in the peculiar and abnormal conditions then prevailing, he would also lose the benefit of his past service in undivided Punjab Government when others similarly placed were given the benefit of such service in spite of a break of more than a year or two in their service before joining the Central Government service. When others have got the benefit of their past service in spite of a break, the fact that the applicant joined the East Punjab Government which he immediately thereafter resigned must

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be ignored. That could be treated as^a/break in service so as to give him the benefit of past service rendered in the undivided Punjab Government. In the circumstances, we direct that the service rendered by the applicant under the undivided Punjab Government from 2.3.1931 upto 14.8.1947 shall be counted for the purpose of computing the pensionary benefits due to him. As the applicant has been given some retirement benefits, that shall be adjusted and balance of the pensionary benefits together with arrears shall be paid to him within a period of 3 months from the date of this order. This application is accordingly allowed with no order as to costs.


(Kaushal Kumar)
Member
9.6.1988.


(K. Madhava Reddy)
Chairman
9.6.1988.