

CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1586/87  
T.A. No.

199

DATE OF DECISION 2.8.1991

<u>Shri Jangi Ram</u>	<u>Petitioner Applicant</u>
<u>Miss Geeta Luthra</u>	<u>Advocate for the Petitioner(s) Applicant</u>
Versus	
<u>Ministry of Health &amp; F.W.</u>	<u>Respondent</u>
<u>Shri K.C. Mittal</u>	<u>Advocate for the Respondent(s)</u>

CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative 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 it needs to be circulated to other Benches of the Tribunal? *No*

The applicant, who has retired from the Safdarjang Hospital as Nursing Orderly, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the respondents be directed to count his past service in Lady Linlithgow Sanatorium for the purpose of pensionary benefits for 30 years of service after adjusting the amounts already received by him.

2. The facts of the case in brief are as follows. The applicant has worked in Lady Linlithgow Sanatorium, Kasauli, Himachal Pradesh, from 1.4.1954 to 14.8.1976, when the said Sanatorium was closed. The applicant was rendered surplus

He was, however, absorbed in the Safdarjang Hospital as Nursing Orderly w.e.f. 14.8.1976. He attained the age of superannuation on 31.5.1984. He has been paid a lump sum amount ✓ on account of retirement benefits by the Lady Linlithgow Sanatorium in 1976. The applicant has not been paid any pension/gratuity on the ground that he was not eligible for the same as his past service could not be computed for the grant of pension.

3. The contention of the applicant is that he should not be penalised for the closure of Lady Linlithgow Sanatorium and that he should be given the benefit of service for more than 22 years rendered at the Sanatorium. The representations made by him were rejected by the respondents.

4. The respondents have contended in their counter-affidavit that as per the Office Memorandum No.28/10/84 dated 29.8.1984, issued by the Department of Personnel, the service rendered by the applicant in Lady Linlithgow Sanatorium is not to be counted as qualifying service for the purpose of pension.

5. We have carefully gone through the records of the case and have considered the rival contentions. The applicant is relying upon the decision of this Tribunal dated 20.1.1989 in TA-1197/85 (CW-2017/85 - Shri Ramesh Chand Vs. Ministry of Health & Family Welfare). In that case, the Office of the

Medical Superintendent, Safdarjang Hospital, had informed the petitioner, who had also rendered service in the Lady Linlithgow Sanatorium, that his service would not be counted for the purpose of pensionary benefits. The petitioner's plea was that his service in the Lady Linlithgow Sanatorium should be counted for the purpose of pension. He had stated that the amount that had been received by him would be adjusted against the dues to be received by him from the Government as pensionary and other benefits as a result of counting of his previous service along with the service rendered by him under the Government for the purpose of pension. Allowing the application, the Tribunal made the following directions:-

".....We see no objection to this request which is reasonable provided the amount to be received by the petitioner from the Government is equal or more than what he had obtained from the aforesaid Sanatorium along with interest. If the amount which had been received by the Petitioner from the Sanatorium along with interest is more than what he has to receive from the Government, the Petitioner should refund the balance. If it is otherwise, then the Government should deduct from the amount due to him such amount as he had received from the aforesaid Sanatorium along with interest. The petitioner is directed to satisfy the Respondents with documentary

*an*

and such other evidence as he may choose to produce, about the amount received by him from the aforesaid Sanatorium. The petition is disposed of accordingly with the aforesaid direction. The aforesaid process of adjustment by refund or payment as the case may be should be completed by the Respondents within a period of next three months from the date the petitioner furnishes the necessary details to the Respondents. The petition is disposed of accordingly."

6. In our opinion, the applicant before us should also be given the same benefit as was given to the petitioner in TA-1197/85, as he is also similarly situated. Non-extension of the benefit of the said judgement to the applicant, would amount to discrimination.

7. With regard to the contention of the respondents that the O.M. issued by the Department of Personnel on 29.8.1984 is applicable only to those who have retired after 29.8.1984, the learned counsel for the applicant relied upon the decision of the Supreme Court in R.L. Marwaha Vs. Union of India & Others, 1987 (4) A.T.C. 584. In that case, the Supreme Court had considered the validity of the cut-off date laid down in the O.M. dated 29.8.1984 that it would take effect from the date of issue of the revised policy and will be applicable to those employees who retired from Government/autonomous body

service on or after the issue of the said order. In that case, the petitioner had retired on September 30, 1980 and he was <sup>not ✓</sup> ~~was~~ accorded the benefit of that order. The Supreme Court allowed the writ petition and held that para.7 of the said O.M. which laid down the cut-off date, cannot be used against persons in the position of the petitioner to deny them the benefit of the past service for the purpose of computing the pension. In this context, the following observations made by the Supreme Court, are relevant:-

"We do not also find much substance in the plea that this concession being a new one it can only be prospective in operation and cannot be extended to employees who have already retired. It is true that it is prospective in operation in the sense that the extra benefit can be claimed only after August 29, 1984 that is the date of issue of the government order. But it certainly looks backward and takes into consideration the past event that is the period of service under the Central Government for purposes of computing qualifying service because such additional service can only be the service rendered prior to the date of issue of the government order. By doing so the government order will not become an order having retrospective effect. It still continues to be prospective in operation. Whoever has rendered service during any past period would be entitled

✓

to claim the additional financial benefit of that service if he is alive on August 29, 1984 under the government order but with effect from August 29, 1984."

8. In view of the decision of this Tribunal in the case of Ramesh Chand and of the Supreme Court in the case of R.L. Marwaha, we are of the opinion that the applicant is entitled to the relief sought in the present application. Accordingly, the application is disposed of with the following orders and directions:-

- (i) We hold that the respondents shall count the past service of the applicant in Lady Linlithgow Sanatorium, Kasauli, from 1.4.1954 to 14.8.1976 for the purpose of pensionary benefits to be given to him.
- (ii) The applicant is liable to refund the amount received by him together with interest from the said Sanatorium in order to become entitled to pensionary benefits. The amount need not be refunded in cash but shall be adjusted against the dues to be received by him from the Govt. as pensionary and other benefits as a result of counting of his previous service along with the service rendered by him in the Safdarjang Hospital for the purpose of pension. The

10  
applicant would thus receive only the  
✓and other retirement  
pensionary/benefits after deducting the

amount refundable by him to the Government.

The respondents shall pass necessary orders  
regarding revision of the pension and other  
retirement benefits of the applicant as  
indicated above within a period of two months  
from the receipt of this order.

(iii) There will be no order as to costs.

*B.N. Dhoondiyal*  
(B.N. Dhoondiyal) 2/8/91  
Administrative Member

*P.K. Kartha*  
2/8/91  
(P.K. Kartha)  
Vice-Chairman(Judl.)