

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.217/92

Date of decision:-

14.5.93

Sh.A.P.Chaudhary ... Applicant
versus

Union of India through
General Manager
Northern Railway
Baroda House,
New Delhi & anr. ... Respondents

CORAM: THE HON'BLE MR.J.P.SHARMA, MEMBER(J)

For the Applicant ... Sh.K.N.R.Pillay, counsel.

For the Respondents ... Sh.M.L.Verma, Counsel.

JUDGEMENT

The applicant joined on 7.6.59 as Commercial Apprentice in the Railways on the basis of an advertisement through the Railway Service Commission with the prior permission of the previous employer, Collectorate of Quality Assurance, Textiles and Clothing, Ministry of Defence, Kanpur. He tendered resignation from the post of Draughtsman Grade III to the previous employer. From the Railways, he retired on superannuation on 30.10.89.

2. The grievance of the applicant is that his previous service as Draughtsman Grade III under the Central Government in the Ministry of Defence, Collectorate of Quality Assurance has not been counted for pensionary benefits though he has put in service from 1.5.51 to 6.6.59.

3. In the present OA, the applicant has the prayed that a direction be issued to respondents to treat his service period under the 2nd respondent from 1.5.51 to 6.6.59 as qualifying service for the purpose of pensionary benefits.

(9)

4. The respondents contested the OA and took a preliminary objection that the application is barred under Sections 20 & 21 of the Administrative Tribunals Act, 1985. It is further stated that the claim made by the applicant is very much belated inasmuch as the service record is maintained only for a period of 25 years and in his case upto 1984. It is further stated that the applicant resigned from the service himself and the certificate of the service rendered in the Ministry of Defence in the Office of the Collectorate of Quality Assurance is not correct as the certificate submitted by the applicant dated 5.1.90 goes to show that the applicant served in that organisation as Draughtsman Grade III from 1.5.51 to 10.6.59. While, in fact, the applicant joined the Railways on 7.6.59. Thus, it is stated that the applicant is not entitled to the relief claimed.

5. I have heard the learned counsel for both the parties at length and have gone through the records of the case. The objection of the respondents that the OA is barred by Sections 20 & 21 of the Administrative Tribunals Act, 1985 is not tenable. The applicant has made a representation on 28.7.90 on his retirement as Statistics & Analysis Officer requesting that his previous service rendered in the Collectorate of Quality Assurance, Ministry of Defence, Kanpur be counted for pensionary benefits. Along with this representation, the applicant had also enclosed a certificate issued by the Collectorate of Quality Assurance, Textiles and Clothing, Kanpur. This certificate clearly shows that the applicant

(10)

has served as Draughtsman Grade III from 1.5.51 to 10.6.1959. The respondents also entered into correspondence with the Controller of Quality Assurance and by their letter dated 2.5.90, it was asked from the earlier employer to intimate about the actual period of service rendered by him; whether he applied through proper channel & resign for joining new post; and whether any terminal gratuity was given at the time of his release. In reply, the Controller of Quality Assurance by the letter dated 11.5.90 informed the General Manager, Northern Railway that the applicant had served from 1.5.51 to 10.6.59; that he applied through proper channel for getting the new job under the Railways and that he was not paid any terminal gratuity at the time of his release. Thus, it cannot be said that the applicant has not made any representation to the respondents. He awaited the result of his representation and thereafter, filed this application in January, 1992. The respondents by letter dated 25.7.90 made certain further queries to the Controller, Ministry of Defence, Controller of Quality Assurance, Textiles and Clothing, Kanpur but the applicant has not been granted the relief. Hence within 1½ years, the present application has been filed. Thus, it cannot be said that the present application is barred by Section 21 of the Administrative Tribunals Act, 1985. The plea of limitation taken by the respondents has no force.

6. The applicant has also applied through proper channel and he has tendered technical resignation to accept the post of Commercial

Apprentice under the Railways. Under Para 426 of the Manual of Railway Pension Rules, 1950, which is quoted below, the applicant is entitled for the counting of the earlier service.

" 426.

(1) (ii)

Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts full or in part, is not a resignation of public service."

7 The contention of the learned counsel for the respondents that the records are weeded out 25 years after joining the service cannot be accepted as such because the applicant retired only on 31.10.89 and secondly the earlier employer has given a certificate and also replied to various letters written by the respondents regarding certain particulars such as whether the applicant had applied through proper channel; the period of service rendered by him; and lastly whether any terminal gratuity was given to him at the time of his release from the post of Draughtsman Grade III from the Controller of Quality Assurance, Kanpur. Thus, the case of the applicant is fully covered under the above provision of Para 426 of the Manual of Railway Pension Rules, 1950, quoted above. The respondents have not given any specific reply to the applicant as to how this period of service which he has rendered in an organisation of the Central Government cannot be counted as qualifying service for the purpose of grant of pension.

8. In view of the above facts and circumstances, the applicant has made out a case for counting of his service he has rendered

between 1.5.51 to 6.6.59 as Draughtsman Grade III in the Controller of Quality Assurance, Textiles & Clothings, Kapur. The contention of the learned counsel for the respondents that there is some ⁱⁿ⁻correctness in the date of service with the earlier employer cannot be accepted.. In fact, the certificate goes to show that he has worked with the previous employer upto 10.6.59. But in fact, the applicant has already joined on 7.6.59 with the Railways as Commercial Apprentice . Thus mention of 10.6.59 may be a typographical error and does not put the applicant to any advantegous position. He has already put in 30 years of service with the Railways and only he wants the qualifying service to be increased with the maximum limit by counting his earlier service in another organisation of the Central Government.

9. In view of the above circumstances, the application is allowed and the respondents are directed to count as qualifying service of the applicant which he has rendered with the earlier employer from 1.5.51 to 6.6.59 for the purpose of pensionary benefits as per extant rules. In the circumstances, the parties are left to bear their own costs. The respondents are directed to comply with these directions within a period of three months from the date of receipt of a copy of this order.

for record
(J.P.SHARMA)
MEMBER(J)

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