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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi

Case No. 1662/93

New Delhi: March 7, 1995.

HON'BLE MR. S.R. ADIGE, MEMBER (A)

Shri N.P. Singh,
S/o late Shri N.N. Singh,
R/o D-729, Amrit Bedi Niwas,
Chawla Colony, Ballabgarh,
Distt. Faridabad. Applicant
(Advocate: Shri S.S. Tiwari)
VERSUS

Union of India through

1. Secretary to the Government
Dept. of Agriculture & Cooperation
Ministry of Agriculture
Krishi Bhawan,
New Delhi.
2. Secretary,
Dept. of Pension & Pensioners' Welfare,
Ministry of Personnel & Training,
Public Grievances & Pension,
North Block,
New Delhi. Respondents
(Advocate: Shri V.K. Mehta)

JUDGEMENT

HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Shri N.P. Singh has prayed for counting of service in the Defence Ministry from 4.6.46 to 13.2.47 and in Punjab State Government from 14.2.47 to 24.4.50 and for condoning a break in service for 9 months and 5 days for the purpose of retirement benefits.

2. The applicant's case is that he served under the Defence Ministry from 4.6.46 to 13.2.47, and in the Punjab State Govt. from 14.2.47 to 24.10.50, and again from 31.7.51 to 14.11.58 followed by service under Respondent No.1 (Union of India) from 15.11.58 to 21.2.76 on which date he superannuated from service. Admittedly the period from 4.6.46 to 13.2.47 put in by the applicant under the Defence Ministry has been verified by them and is not in controversy. Similarly, it is admitted that the applicant's service from 31.7.51 to 14.11.58

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rendered by him under the Punjab State Government is on record and has been verified by the State Govt. This period, together with the service rendered by the applicant from 15.11.58 till his date of superannuation on 21.2.76, under the Respondent No.1 has been counted for pensionary benefits, and as per rules, the Punjab Govt. bears his pensionary liability for the period of service put in by him under them from 31.7.51 to 14.11.58.

3. The controversy now relates to the service verified for the period 14.2.47 to 24.10.50 and condonation of the interrupted period from 25.10.50 to 30.7.51 for the purpose of retiral benefits.

4. According to the respondents, it is for the State Govt. to verify the applicant's service for the period 14.2.47 to 24.10.50 as he served under them and it is for the State Govt. to condone the interrupted period from 25.10.50 to 30.7.51 because under Rule 28 of the CCS (Pension) Rules which relates to condonation of interruption between two spells of service rendered by a Govt. servant condonation is permissible only where interruption exists between two spells of Central Govt. service and not between two spells of State Govt. service, as under Rule 3(1)(i) of the said Rules, the term 'Government' has been defined as Central Govt.

5. From the material on records it appears that the question relating to verification of the applicant's service from 14.2.47 to 24.10.50 and condonation of break in service from 25.10.50 to 30.7.51 has been subject of protracted correspondence between the Government of India and the State Governments of Punjab and Haryana. Thus in d.o. letter dt. 20.12.91 (Ann. 6)

the Deputy Controller of Accounts, Pay & Accounts Office, Ministry of Agriculture addressed to the Deputy Secretary, Ministry of Agriculture it was stated that the service from 14.2.47 to 24.10.50 had been verified by the Haryana State Government to whom the defunct office of the Land Reclamation where the applicant was transferred at the time of bifurcation of Punjab and Haryana and this has been confirmed vide letter dated 16.9.91 from the Director of Agriculture, Haryana addressed to the Lt. Secretary, Ministry of Agriculture, Govt. of India. This d.o. letter dt. 22.10.91 went on to say that now that as the aforesaid period stood verified, the only question which remained was condonation of break in service from 25.10.50 to 30.7.51 and as the applicant's service after the break i.e. from 31.7.51 had already been counted for pension, the competent authority to condone the break in service was the appointing authority, and as after the applicant's permanent absorption in the Central Govt. the appointing authority became the Central Govt., it was within the Central Govt. competency to condone the break. It appears that this letter was issued with the Chief Controller of Accounts' approval. However, it further appears that after issue of letter dated 16.9.91 by the Director of Agriculture, Haryana State Government, another communication dated 13.12.91 (Annexure 7) was sent by the Haryana State Government addressed to the Deputy Secretary, Ministry of Agriculture, Govt. of India stating that Dr. Mehla who had certified the applicant's service for the period 14.2.47 to 24.10.50,

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was not the competent officer to do so and the Haryana State Government had no information on this account, as the applicant had left the composite Punjab State service on 4.11.58 itself i.e. even before the Haryana State had come into existence. They said that the Haryana State Government did not come into picture at all and whatever information was needed by the Central Government in this regard may be obtained from the Punjab State Government. This subsequent letter does not appear to have been referred to the Deputy Controller of Accounts' letter dated 20.12.91 as it was issued barely one week before and the Deputy Controller of Accounts was probably not aware of it. Meanwhile the Punjab State Government in its letter dated 9.4.91 (Annexure 5/C) addressed to the Government of India had requested them to decide the matter at their end and further stated that from their side the matter may be treated closed, and the Government of India vide their letter dated 7.1.92 (Annexure 4) in their turn informed the applicant that the matter had been considered by them in consultation with the Punjab and Haryana State Governments, but had not been found possible to accede to applicant's request and this matter had, therefore, to be treated as closed.

6. I have heard Shri Tiwari for the applicant and Shri Mehta for respondents. I have perused the materials on records given for my careful consideration.

7. At the outset it is noted that the cause of action relates to 14.2.47 i.e. far beyond the period of 3 years prior to the inception of the Tribunal on 1.11.85. Furthermore, even if the cause of action is treated as having risen from the date of respondent's

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final reply to the applicant i.e. 7.1.92, while the O.A. ^{was} ~~by~~ was filed on 17.8.93 and, therefore, prima facie appears to be hit by limitation under Section 21 AT Act. Even if this O.A. is not rejected on grounds of lack of jurisdiction, delay, laches and limitation on the ground that the claim affects pension which is a continuing cause of action, as has been held in a number of judgments, it is to be noticed that the period 14.2.47 to 24.10.50 for which the applicant seeks inclusion as pensionable service, was spent by him under the Punjab State Government, over which the Tribunal has no jurisdiction, and the break in service was itself followed by another spells under the State Govt. which the Central Govt. is not empowered to condone vide Rule 28 read with Rule (1) (i) of CCS (Pension) Rules, as discussed above.

8. In this connection, Shri Tewari has invited attention to the O.M. dated 9.10.86 (Annexure- VIII) whereby, with a view towards simplification, the system of allocation of leave salary and pension between the Central Government and the State Government has been dispensed with. All liability for pension including gratuity has been decided to be borne in full by the Central/State Government to which the Government servant belongs at the time of retirement without any proportionate pension from the Central/State Government under the rule itself. These orders came into effect from 1.4.87 and were to be made applicable for all cases of leave salary and pensions sanctioned on or after that date. Shri Tewari has argued that in the case of R.L. Marwah Vs. UOI -1987(4) ATC 1984 the Hon'ble Supreme Court held that there cannot be

two cases of pensioners and the above circular is applicable to all persons whether they retired before or after 1.4.87. He has also relied upon the ruling in G.T. Khayam Vs. UGL- SLJ 1992 (3) CAT 83 in support of his submission that the respondents are competent to verify the applicant's service from 14.2.47 to 24.10.50 and condone the break in service from 25.10.50 to 30.7.51.

9. However, in the face of the express provision of Rule 28 read with Rule 3(1) (i) of CCS(Pension) Rules neither the O.M. dated 9.10.86 nor the rulings relied upon by Shri Tewari do help the applicant, because neither cover the specific issue, namely the authority who is competent to verify the service of Govt. functionary and /or condone the break in service between two spells of such Government service. The service of a Govt. functionary can be verified only by the authority under whom he has served, and as it was the State Government under whom the applicant claimed to have served for the period 14.2.47 to 24.10.50 it is ultimately for them to verify the applicant's service for that period, and under Rule 3(1) (i) read with Rule 28 CCS(Pension) Rules, ^{the} Central Govt. is also not competent to condone the break in service from 25.10.50 to 30.7.51. As the State Govt. does not fall within the jurisdiction of the CAT, no direction from this Tribunal can be issued directing them to do so.

10. In the result, this O.A. is disposed of leaving ^{open} it to the applicant to move the appropriate forum to have his service verified for the period from 14.2.47 to 24.10.50 and for condonation of break in service from 25.10.50 to 30.7.51 and in the event the said periods are verified/condoned, he may approach the respondents afresh for counting of these periods as pensionable service, ^{only} ~~if~~ thereafter if ^{any} grievance still survives.

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he may, after exhausting the departmental remedies available to
him, ^{Agitate} ~~indict~~ the matter through a fresh O.A. in accordance with
law, if so advised. No costs.

Nyohgi
(S.R. ADIGE)
MEMBER (A).