

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

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O.A. No. 1908 of 1993
T.A. No.

DATE OF DECISION 26-04-94

Shri R.R. Singh Applicant(s)

Versus

Chief CDA(), Allahabad Respondent(s)
and Another

(For Instructions)

1. Whether it be referred to the Reporter or not? yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

S.K.
(S.K. DHAON)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 1908 of 1993

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New Delhi this the 26th day of April, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.N. Dhoundiyal, Member

Shri R.R. Singh
R/o 58-P, CBI Colony,
Vasant Vihar,
New Delhi-110057.

....Applicant

By Advocate Shri Shyam Babu

Versus

1. Chief C.D.A. (P),
Allahabad (U.P).
2. Air Officer (Commanding),
12 Wing Air Force,
Chandigarh.

...Respondents

None for the respondents

ORDER

Mr. Justice S.K. Dhaon, Vice-Chairman

The applicant, a retired Family Planning Extension Educator (FPPE) in the Air Force has come to this Tribunal with the grievance that the respondents are acting illegally in not counting the services rendered by him in the State of Gujarat as BCG (Technician)/Sanitary Inspector for the purpose of computing pension, gratuity, carry forward leave and fixation of seniority etc. He has also prayed that the communication of the Air Officer (Commanding) dated 19.05.1993 stating therein that the former service of the applicant cannot be considered for counting towards civil pension and gratuity in the post of FPPE in the Air Force, may be quashed.

2. A counter-affidavit has been filed on behalf of the respondents. A rejoinder-affidavit too has been filed by the applicant. Counsel for the applicant has been heard.

3. The material averments in the O.A. are these. The applicant joined as BCG (Technician) in the erstwhile State of Bombay with effect from 22.11.1954. Upon the bifurcation of the State of Bombay into two States of Maharashtra and Gujarat in 1960, the applicant was allotted to the State of Gujarat. By an order dated 29.04.1964, he was promoted to the post of Sanitary Inspector in that State.

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He was posted as Sanitary Inspector in the Rural Health Training Centre (RHTC) Alia Bara, District Jamnagar. An advertisement was issued by the Indian Air Force for recruiting a Family Planning Extension Educator. The applicant submitted his application through the RHTC, Alia Bara, District Jamnagar and the same was duly forwarded by his employer to the Recruitment Training Wing, Air Force Station, Jamnagar, Gujarat. The application was forwarded to the Air Force Station by the applicant's employer unconditionally. On 27.08.1969, he submitted his resignation with the permission of his employer (RHTC) to take up the job as FEPP. On 30.08.1969, the employer gave a No Objection Certificate and also accepted the resignation of the applicant. The applicant was required to resign from the post of Sanitary Inspector. He was relieved from that post to join the post of FPEE in the Air Force. The applicant rendered service to the States of Bombay and Gujarat for a period of 14 years 8 months and 1 day. He joined as FPEE on 05.06.1969. By an order dated 06.10.1970, the resignation of the applicant was accepted by his former employer in the State of Gujarat with effect from 01.09.1969. He was confirmed as a FPEE with effect from 17.08.1983. On 12.11.1990, he made a representation praying that the services rendered by him to the erstwhile States of Bombay and Gujarat may be counted for the purpose of pension, gratuity etc. On 17.01.1991, he made another representation reiterating therein, the contents of the earlier representation. He retired from the Air Force with effect from 30.06.1991. He made another representation on 17.09.1992. He was finally informed vide communication dated 19.05.1993 that his services rendered earlier, would not be counted.

4. In the counter-affidavit filed, the material averments are these. There is no record to show that the applicant applied for the post of FPEE through proper channel. On 17.08.1969, he submitted his resignation. The entry in

his previous service book shows: "resigned with effect from 02.09.1969". No Objection Certificate is dated 30.08.1969 whereas the resignation is dated 17.07.1969. The certificate does not contain the name of the issuing authority. This means that the certificate is an after thought and fabricated one. The cognizance of the said document should not be taken. There is no record to indicate that the application submitted by the applicant to the Air Force had been forwarded by the employer. The applicant did not submit his application to the Air Force through the proper channel. It is not denied that the applicant had submitted representations.

5. In the rejoinder-affidavit filed, the contents of the O.A. have been reiterated.

6. We may now examine the documents filed by the applicant along with the O.A. which are material to the present controversy. Annexure-BB is a photostat copy of the application dated 17.07.1969 submitted by the applicant to the Flying Officer & Administrative Officer, Air Force Station, Jamnagar. This applicant, no doubt, does not indicate that the same was forwarded by the employer of the applicant. It also does not indicate that the same was submitted through the employer. Annexure-C is a photostat copy of the No Objection Certificate alleged to have been issued by the Lecturer and Medical Officer, Training Centre, District Jamnagar, Alia Bada. The contents of this certificate may be extracted:-

" This is to certify that Shri Ramrup, Ramchandra Singh Sanitary Inspector, Rural Health Training Centre, Alia Bada, has resigned from the post of Sanitary Inspector and if will get employ anywhere, I have no objection at all".

6A. Annexure-D is a photostat copy of the order dated 06.10.1970 of the Director of the Health and Medical Services (Health Section), Public Health Department, Ahmedabad. Its contents are:-

"Read:

1. Application dated 27.08.69 from Shri R.R. Singh, S.I., RHTC, Alia Bada.
2. Letter No.119-RRSingh-446 dated 14.09.70 from L&MO.i/c.Training Centre, Alia Bada.

Order

The Director of Health and Medical Services (Health Section), Ahmedabad, is pleased to accept the resignation of Shri R.R. Singh, S.I. Training Centre, Aliabada, w.e.f. 1.9.1969 A.N."

A copy of the said communication is endorsed to the applicant through L&MO.,i/c. Training Centre, Aliabada. A copy is also endorsed to the Lecturer and Medical Officer,i/c.Training Centre, Aliabada, Distrcit Jamnagar.

6B. Annexure-K is a photostat copy of the letter dated 24.08.1992 of the Air Officer Commanding addressed to the applicant annexing thereto a copy of the letter dated 26.08.1992 of the CCDA(Pension), Allahabad. A perusal of the said letter of the CCDA (Pension) indicates that the same is addressed to the Air Officer Commanding. The subject of the communication is counting of former service of the applicant. In this communication there is a reference to a communication dated 31.03.82 of the Government of India, Department of Personnel & Training. The communication recites that since the applicant, while holding temporary post in the Public Health Department of the Government of Gujarat, had applied for the post in the Central Government directly without proper permission of administrative authority concerned and accordingly resigned from the post to join the new appointment under Central Government on his own volition, he will obviously be not entitled to count his previous service under State of Gujarat for pension.

6C. Annexure-M is a photostat copy of the letter dated 19.05.1993 of the Air Officer Commanding to the applicant. The subject of this communication is counting of former service of the applicant for the purpose

of pension. In paragraph 1 of the communication, a reference is made to a letter dated 06.02.1993 of the CCDA (P), that resignation from service or post entails forfeiture of past service vide Rule 26 of CCS (Pension) Rules, 1972. Since the applicant resigned from the post of Sanitary Inspector, Rural Health Training Centre, Aliabada, his past services are forfeited. However, a resignation, shall not entail forfeiture of past service, if it has been submitted to take up with proper permission another appointment whether temporary or permanent under the Government where service qualifies. In paragraph 2 of the communication, it is stated that on a perusal of the service documents of the applicant, it is revealed that no entry exists therein that he resigned from the post of Sanitary Inspector to take up new appointment as Family Planning Extension Educator. Entry in the service exists as under:-

"Resigned with effect from 02.09.1969".

In paragraph 3 it is stated that in view of the above, the past services of the applicant cannot be counted towards civil pension and gratuity.

7. We may revert to the communication dated 26.08.92 of the CCDA (P), Allahabad to the Air Officer Commanding. In it, reliance is placed upon a letter dated 31.03.82 of the Government of India in the Department of Personnel. It is emphasised that since the applicant was holding a temporary post in Gujarat and had applied for the post in the Central Government with proper permission of the administrative authority concerned and thereafter resigned, he (the applicant) is not entitled to count his previous service for the purpose of pension. However, the communication dated 19.05.1993 goes to show that by its letter dated 06.02.1993, the CCDA(P) Allahabad placed reliance upon Rule 26 of the CCS (Pension) Rules, 1972. In it, there is no reference to the letter dated 31.03.1982 of the Department of Personnel. It has, therefore, to be presumed that the question to be examined is whether the applicant is not entitled to count his past services for

the purpose of computation of his pension on account of the operation of Rule 26, aforementioned.

8. Sub-Rules (1) and (2) of Rule 26 of the CCS (Pension) Rules, 1972 are relevant and may be extracted:-

"(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies".

9. The contents of sub-rule(1) are absolute. They stipulate that in a normal situation where a resignation is tendered by a Government servant, there can be no escape from forfeiture of his past service. However, in sub-rule(2), the rigour has been relaxed. For attracting sub-rule(2), the conditions imposed therein have to be satisfied. The key words in sub-rule (2) are "proper permission". The expression "permission" imports application of mind of the authority according the same. Therefore, in the said expression it is implied that the relevant authority shall focus his attention to three aspects, namely, legality, propriety and the genuineness of the transaction. The fulfilment of these requirements is highlighted by the preceding expression "proper". The said expression includes the competence of the authority granting permission.

10. Permission may be express or implied. Therefore, for applying sub-rule (2) of Rule 26 to the instant case, we have to examine whether the applicant tendered his resignation with either express or implied permission of the competent authority to take up an assignment in the Air Force. In his application dated 17.07.1969 addressed to the Flying Officer and Administrative Officer, Air Force Station, Jamnagar in response to the advertisement dated 08.06.1969, the applicant categorically stated that on that

day, he was serving as a Sanitary Inspector at RHTC, Aliabada. The applicant has made two distinct averments in relation to this application. The first is that he submitted the same through the competent authority and the second is that the same was duly forwarded by that authority. It appears to be an admitted position that on the basis of the said application dated 17.07.1969, he was appointed as FPEE in the Air Force. Judicial notice can be taken of the fact that, in the Government, no application for an appointment made by a candidate, who is already serving in a particular Department of the Government either Central or State, is normally considered unless the same is forwarded for consideration by the concerned authority of the Department where such a candidate is already working. The applicant, therefore, is entitled to press into service the well-known rule of evidence that there is a presumption of official acts being duly performed. This presumption, however, is rebuttable. The respondents have contended themselves by merely stating that the records are not available. This is not enough to rebut the presumption. We, therefore, find no reason to disbelieve the version of the applicant that his application dated 17.09.1969 was forwarded by the authority competent, i.e., RHTC, Aliabada. On 30.08.1969, as already pointed out above, the Lecturer and Medical Officer, Training Centre, District Jamnagar, Aliabada issued a certificate that the applicant had resigned from the post of a Sanitary Inspector and that officer will have no objection, if he got employment elsewhere. The order dated 06.10.1970 of the Director of Health and Medical Services (Health Section) of the Public Health Department, Aliabada (Annexure-D) is important. The said order is to the effect that the applicant's resignation ^{is accepted} with effect from 01.09.1969. The acceptance of the resignation with retrospective effect, from 1.09.1969 fully corroborates the version of the applicant

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that, he submitted his resignation with proper permission to take up another appointment and on 30.08.1969 a No Objection Certificate was issued to him. We may at this stage note that the averments made in paragraph 4(11) of the O.A. that the applicant joined as FPEE in the Indian Air Force on 05.09.1969 and his previous employer in the State of Gujarat accepted his resignation with effect from 01.09.1969 by an order dated 06.10.1970 are admitted in the counter-affidavit filed on behalf of the respondents.

11. The conclusion is inevitable that the applicant submitted his resignation to take up another appointment with the implied permission of the competent authority and nothing will turn upon the entry in the service book upon which, reliance has been placed by the Air Officer Commanding in his communication dated 19.05.1993. We also hold that the past services rendered by the applicant are not liable to be forfeited. It follows that the applicant submitted his resignation with a view to accept an appointment in the Indian Air Force with proper permission within the meaning of sub-rule (2) of Rule 26 aforementioned.

12. This application succeeds and is allowed. The communication dated 19.05.1993 of the Air Officer Commanding is quashed and we issue the following directions:-

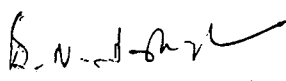
(i) The Chief CDA(Pension) Allahabad (respondent No.1) shall compute the pension of the applicant after taking into account the services rendered by him in the erstwhile State of Bombay and in the State of Gujarat on the footing that he fulfils the requirements of sub-rule(2) of Rule 26 of the CCS(Pension) Rules, 1972 and in disregard of the fact that the applicant had directly applied for a post under Central Government without proper permission of the administrative authority concerned.

(ii) The amount payable to the applicant towards gratuity shall be recomputed after taking into account the past services rendered by him in the erstwhile States of

□ Bombay and in the State of Gujarat.

(iii) The computation of the pension and gratuity payable to the applicant shall be done by respondent No.1 within a period of 4 months from the date of presentation of a certified copy of this order by the applicant before it.

There shall be no order as to costs.


(B.N. DHOUNDIYAL)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN

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