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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A. No. 2134/93

New Delhi this 29th day of July, 1994.

Hon'ble Mr. S. R. Adige, Member(A)

Shri V. B. Saran,
s/o Shri Mahabir Saran,
R/o M-117, Sector, 25,
NOIDA.

Last employed as Manager(Distribution),
Delhi Milk Scheme, Deptt. of Animal
Husbandry & Dairying,
Ministry of Agriculture,
New Delhi

.....Applicant.

By Advocate Shri C. B. Pillai.

Versus

Union of India
through

1. The General Manager,
DMS,
West Patel Nagar,
New Delhi.

2. The Secretary to the
Govt. of India,
Deptt. of Animal Husbandry &
Dairying, Ministry of Agriculture,
New Delhi

.....Respondents.

By Advocate Shri V. S. R. Krishna.

JUDGMENT

In this application, Shri V. B. Saran, Ex. Manager(Distribution), Delhi Milk Scheme has prayed that the respondents be directed to sanction him full pension on regular basis taking into account his service from 20.11.59 upto 28.2.93, and also to release the gratuity and commuted value of pension with 12% p.a. interest from 28.2.93 till it is released.

2. The applicant's case is that he joined as a Sales Supervisor in the Central Dairy Farm Aligarh, on 20.11.59 and worked till 19.9.69.

Thereafter, he worked as Sales Manager, Kanpur Sahkari Milk Board Ltd, a autonomous body under U.P. Government from 20.9.69 to 19.11.73. Subsequently he was appointed to the post of Manager(Distribution) in Delhi Milk Scheme, Ministry of Agriculture and Cooperation, Govt. of India and worked in that capacity from 20.11.73 till the date of his retirement i.e. 28.2.93. He wants his previous services rendered under the Govt. of U.P. and the autonomous body under U.P. Government to be counted for the purposes of pension and other retiral benefits.

3. The respondents in their reply have challenged the contents of the O.A. and have pointed out that the applicant during the period 20.11.59 to 19.9.69 did not serve in Govt. of U.P. but in U.P. Pashudhan Udyog Nigam Ltd, which is a State undertaking and the service rendered in that undertaking does not qualify for the pension purposes. It is also averred that the services rendered in the Kanpur Sahkari Milk Board from 20.9.69 to 19.11.73 does not qualify for pensionary benefits on retirement from the Central Government Service. They point out that the applicant was appointed as Manager (Distribution) Delhi Milk Scheme, Central Government Department under the Ministry of Agriculture w.e.f. 20.11.73 as a fresh recruit. They state that the cases of Central Govt. servants appointed in the State Govt. and vice-versa will continue, will be decided in accordance with DPAR's O.M. dated 29.8.84(Annexure-RIII), and the case of the

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applicant was taken up with the U.P. Government for sharing pensionary liability for the period of service rendered by the applicant in U.P. Pashudhan Udyog Nigam Ltd (a State Govt. Undertaking) as well as Kanpur Sahkari Milk Board Ltd. (A State Autonomous Body) but the U.P. Govt. did not agree to share the pension liability. They further aver that the service rendered by the applicant in the Undertaking/ Autonomous Body of the U.P. Government, the applicant is understood to have received Rs. 16,939/- at the time he had left ^{to join the} the service of Govt. of India.

4. The applicant relies upon the contents of Department of Pension & Pensioners' Welfare O.M. dated 20.3.1987 and related O.M.s regarding counting of service put in by employees working under the State Government/State autonomous bodies ^{to} who move to the Central Government for being counted towards pension. These instructions reproduced in Section-VII at Annexure A-XI lay down that such cases may be decided in accordance with the principles annunciated in the D.P.A.'s O.M. dated 29.8.1984, according to which the option to continue in the CPF scheme or to count the service rendered in the autonomous body as qualifying service for pension in Government by foregoing employer's share of CPF contribution with interest thereon, has to be exercised within one year from the date of absorption. If no option is exercised within the stipulated period, the employee is deemed to have opted to receive CPF benefits and the option once exercised shall be final. The applicant has failed

to produce any evidence to established that he exercised his option within the said period, and furthermore, this O.M. itself became applicable only from 7.2.1986. Hence, this O.M. does not help the applicant.

5. Shri Pillai, for the applicant, also relied upon a decision of the Cuttack Bench of the Tribunal dated 24.12.1987 in T.A. NO. 17 of 1987 - R. M. Bhattacharjee vs. Union of India reported in 1988 (4) SLJ CAT 131. There, the petitioner served the 5th Bataillion of the Assam Rifles as a qualified Radio Wireless Technician from 23.11.1951 to 25.3.1960 from where he was relieved to join the post of Wireless Operator in the Police Radio Organisation, Nagaland, Kohima, where he served from 1.4.1960 to 22.9.1963. He joined the Department of Lighthouses and Lightships under the Government of India as a Radio Technician on 29.9.1963 on transfer from the Police Radio Organisation, Nagaland. He prayed that his entire service including service rendered under the Assam Rifles and the Nagaland Government should count towards pension and respondents 4 and 5 should be directed to share the pensionary contribution for the period he served under them. The Tribunal in its judgment dated 24.12.1987 held that as the Assam Rifles was one of the five Central Police Organisations under the Ministry of Home Affairs, Govt. of India, and since the period of service rendered by the petitioner in Nagaland did not constitute any break in service, the period served under the Assam Rifles would be treated as a part of the total service rendered under

the Central Government. In that case the Assam Rifles was a Central Police Organisation under the Ministry of Home Affairs whereas in the present case the applicant worked in two autonomous bodies financed and controlled by the State Government. Furthermore, in that judgment the Tribunal noted that that applicant had been transferred from the Police Radio Organisation, Nagaland (under the State Government) to the Department of Lighthouses and Lightships under the Government of India, whereas in the present case the applicant was not transferred, but it is a case of fresh recruitment to the post of Manager (Distribution), D.M.S. vide the offer of appointment dated 8.11.1973 (Annexure R-I). This offer makes it clear that the appointment was on a temporary basis and the applicant was on probation for a period of two years. Under the circumstances, the prayer for counting of the service rendered by the applicant prior to his joining the DMS on 20.11.1973 fails. Learned counsel for the applicant also placed reliance on the case of T. S. Subramaniam Iyer vs. Union of India - 1993 (2) ATJ 111, but as already discussed, the applicant's appointment in the DMS is a fresh appointment and hence, that judgment also does not help the applicant.

6. In so far as the question of release of the applicant's gratuity and commuted value of pension with interest thereon is concerned, from a perusal of the reply filed by the respondents and the submissions made by the learned counsel for the respondents, it appears that gratuity and commuted value of pension has been held up owing to departmental

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proceedings which are pending against the applicant, and for that reason only provisional pension, equal to the maximum pension which would have been admissible to the applicant on the basis of the qualifying service upto his date of retirement from Government service under the Central Government has been paid to him. Learned counsel for the respondents has also argued that under Rule 10 of the C.A.T. (Procedure) Rules, 1987, the prayer for release of gratuity and commuted value of pension is not maintainable because an application has to be based upon a single cause of action and the reliefs sought have to be consequential to one another. He has urged that the prayer for release of gratuity and commuted value of pension is not a consequential to the relief for counting of service put in by the applicant prior to joining the DMS for purposes of pension. There is merit in this contention of the learned counsel for the respondents, and having regard to the fact that the respondents have stated on affidavit that in the light of the provisions of Rule 9 CCS (Pension) Rules read with Rule 69 CCS (Pension) Rules, only provisional pension has been sanctioned and gratuity and commuted value of pension shall be regulated on conclusion of the departmental proceedings, no further directions on that score are warranted.

7. In the result, this application fails and is dismissed. No costs.

S. R. Adige
(S. R. Adige)
Member (A)

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