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CENTRAL ADMINISTRATIVE TRIBUNAL  
Principal Bench

D.A. No. 2410/95  
New Delhi, dated the 8<sup>th</sup> September, 1995

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

Dr. Sunil Kumar,  
R/o 513, Vigyan Sadan,  
Sector X, R.K. Puram,  
New Delhi-110022

(By Advocate Shri K.B.S. Rajan) ..... APPLICANT

VERSUS

1. Union of India through  
The Secretary,  
Ministry of Urban Development,  
Nirman Bhawan,  
New Delhi-110011.
2. The Director of Horticulture,  
Central Public Works Department,  
Y Shape Building, I.P. Estate,  
New Delhi-110002.
3. The Chief Controller of Defence Accounts  
(Pensions),  
Draupati Ghat,  
Allahabad-211001.
4. Scientific Adviser to R.M.,  
and Secretary (R&D),  
Ministry of Defence,  
South Block,  
New Delhi-110011.

(None for the respondents) ..... RESPONDENTS

JUDGEMENT

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

In this application, Dr. Sunil Kumar has  
prayed for counting of his services rendered with  
respondent No.2 (Director, Horticulture, CPWD) from  
29.4.1981 to 14.8.1985 for all purposes including pension;  
his services in the National Seeds Corporation from  
14.8.1985 to 19.11.87 also accounted for all purposes, subject  
to his refunding to the National Seeds Corporation, employer's  
contribution and the latter accepting the pension liability  
for the said period; and respondent No. 4 Secretary (R&D),

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Defence Ministry counting the services of the applicant from 29.4.81 to 19.11.87 for the purpose of pension and other purposes.

2. The applicant claims that he was appointed as S.O. in CPWD, Horticulture Wing vide order dated 27.3.81 and successfully completed his probationary period on 28.4.1983 vide order dated 15.7.1985 (Annexure 'C'). He was made Quasi Permanent vide order dated 12.8.1985 (Annexure 'D'). Meanwhile he had applied for the post of Dy. Seeds Officer in the National Seeds Corporation and was selected there. He requested the authorities to relieve him from his duties as S.O., which was forwarded to the Director (Horticulture), CPWD on 6.8.85 (Annexure 'E') and upon <sup>anuq</sup> ~~accept~~ his request, he was ordered to be relieved w.e.f. 13.8.85 (Annexure 'F'). He took the new assignment in NSC as Dy. Seeds Officer on 14.8.85. He states since the NSC had only Contributory Provident Fund he applied for withdrawal of credit balance in his G.P. Fund in CPWD and, accordingly he was paid Rs.6065/- being the Fund balance. Similarly, as there was no CGEI Scheme in the Corporation he drew the amount due under that scheme in CPWD after joining the NSC and leave encashment was paid by the CPWD. While in the service of NSC, he applied for the post of Scientist 'C' in the DRDO under Respondent No. 4 and after being selected, was relieved from the post of Dy. Seeds Officer w.e.f. 19.11.87 and took over as Scientist 'C' on 20.11.87 and was confirmed on 21.3.1990. In January, 1988 he was paid by the National Seeds Corporation his credits in Employees Provident Fund and leave encashment.

The applicant contends that having joining a Govt. Department in 1981, and moved to a public sector undertaking, and after duly applying through proper channel, and on having applied through proper channel get selected in a Govt. organisation, he is entitled to count his past service rendered in the previous organisation, but the CPWD in their letter dated 24.5.93 (Annexure A) is contending that the applicant is deemed to have resigned from the Government service and his claim for counting of past service, therefore, stands forfeited. Therefore, he is not entitled to prorata service benefits. It is this decision that the applicant challenges and also the stand of Respondent No. 3 that the service rendered by the applicant in the National Seeds Corporation would not qualify for counting of his past service.

3. The respondent in their reply, state that upon the applicant's selection and appointment in the NSC (a public sector undertaking and not an autonomous body of Govt. of India) the applicant was ordered to be relieved vide order dt. 13.8.85 under the (Annexure F) under the terms and conditions laid down in DOP's Memo dated 14.7.67 and the applicant furnished an undertaking that effect. He was relieved of his duties vide order dated 13.8.85 w.e.f. 13.8.85 (Annexure R 4) with the remarks "by the Director of Horticulture, acceptance of applicant's resignation, which was further amended by Office Letter dated 25.9.91 (Annexure R 5). It is contended that the applicant is being a Quasi Permanent, has requested vide letter dated 13.8.95 (Annexure R 6) that he be allowed to retain his liaison in that department, and he was required to comeback to that department by 12.8.87 i.e. two years from the date of his relief. But neither did he revert nor did he resign. He was, therefore, relieved by the Office

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to join his new assignment in NSC. He thereafter went to the DG, R&D, Ministry of Defence, where he is presently working but he did not intimate this fact to CPWD. He was, therefore, deemed to have formerly resigned from the post of S.O. (H) from the Directorate of Horticulture, CPWD from 13.8.85 and served all his connections from this department (Annexure R 7). It has been contended that the applicant vide his application dated 28.9.85 (Annexure R.8) stated that he had resigned from the post of S.O. (H) w.e.f. 13.8.85 and prayed for his G.P. Fund and Insurance to be paid to him (Annexure R.8). He also submitted, prescribed form 10-B (Annexure R.9) in that respect. Accordingly his final credits in G.P. Fund was authorised for payment vide authority letter dated 30.10.85 (Annexure R.10) with the remarks that he resigned on 13.8.85. An amount of Rs. 6065/- was accordingly paid to him and his CGEIS amounting to Rs.732/- was also paid to him vide Office Order dated 29.10.95 (Annexure R.11). By his application dated 5.3.86 (Ann. R.12) the applicant stated that he had resigned from the post of S.O. (Horticulture), CPWD w.e.f. 13.8.85 and E.L. due at the time of his resignation be encashed. He was paid encashment of E.L. for 48 days (half of 98 days E.L.) vide order dated 21.3.86 (Ann. R.13) in accordance with the rules which provide that a Govt. employee quitting service is paid encashment of E.L. to the extent of half the leave to his credit (subject to a maximum of 120 days) wherein a Govt. servant

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permanently absorbed in service is paid leave encashment subject to a maximum of 240 days. According to the respondents this proves that the applicant quitted the service of his own volition and was not absorbed in the NSC in the public interest. The applicant therefore forfeits his past service and is not entitled to getting his past services counted, nor any prorata benefit.

4. Furthermore it is stated that as per NSC's Office Order dt. 19.11.87 (Annexure G) on acceptance of the applicant's resignation by the competent authority he was relieved from his duties w.e.f. 19.11.87 and his name was struck off the NSC pay rolls from that date. He was paid his terminal benefits viz. 50% of E.L. and Rs.1701.60 in full and final settlement and was also paid Rs.4633/- being a member of the E.P.F. Hence his service rendered with the NSC from 14.6.85 to 19.11.87 was not countable towards his current services. I note that the NSC has not been impleaded as a party in this O.A.

5. I have heard Shri Rajan for the appointment. None appeared for the Respondents. I have also perused the materials on record and given the matter my careful consideration.

6. The applicant joined duty as S.O. (Hort.) in C.P.W.D. in a temporary capacity on 29.4.81 and completed his probation period satisfactorily on 28.4.83. He was appointed in a Quasi permanent capacity as S.O. w.e.f. 29.4.84, vide order dated 12.8.1985. Meanwhile, he had applied for the post of Deputy Seed Officer in the National Seeds Corp. through proper channel and his application was on his recommendation. That application was filed on that date, he was appointed on 27.10.87.

forwarded by the Director (Horticulture) vide letter dated 21.3.1983. He submitted a letter dated 5.8.85 for being relieved from the duties upon his selection in the NSC, which was forwarded to the Director of Horticulture by <sup>Mr. W.H.</sup> the Deputy Director dated 6.8.1985, and the Director of Horticulture issued instructions to relieve the applicant w.e.f. 13.8.85, under the terms and conditions laid down in DPAR's O.M. dated 14.7.67.

7. Taking the periods spent by the applicant in the CPWD first, Rule 3(q) CCS (Pension) Rules defines qualifying service as service rendered while on duty or otherwise which shall be taken into account for the purpose of pension and gratuity admissible under these rules. Rule 13 CCS (Pension) Rules lays down that qualifying service of a Govt. servant shall commence from the date he takes charge of the post to which he was first appointed, either substantively or in an officiating or temporary capacity, provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post. Rule 14 CCS (Pension) Rules states that the service of a Govt. servant shall not qualify unless his duties and pay are regulated by the Govt. or under conditions determined by Govt., and 'service' is defined as service under the Govt. and paid by that Govt., from the Consolidated Fund of India, or a local fund administered by that Govt., but that does not include service in a non-pensionable establishment, unless such service is treated as qualifying service by that Govt.

8. Admittedly at the time of resigning from the CPWD the applicant had attained only Quasi permanent status, and not been appointed ~~as~~ substantively to any post in that organisation. The applicant has contended that he is entitled to count the period in CPWD towards qualifying service for pension, subject only to the conditions that he has not resigned from the post, but a plain reading of the above rules quoted above, makes it clear that the period spent in CPWD could be counted only if he had been appointed substantively in that organisation. It might have been different if the applicant upon leaving CPWD had immediately thereafter joined the DRDO and had been made substantively, but that is not the case here, for the applicant resigned from the CPWD to join the National Seeds Corporation, a Central Public Sector Undertaking. Thus there was an interruption when the applicant was not even ~~a~~ Govt. servant, but a CPSU employee, and during that period in the CPSU, neither the applicant's duties nor his pay were regulated by the Govt. or under conditions <sup>as</sup> determined by the Govt. and was neither paid from the Consolidated Fund of India or from any local fund administered by any Govt.

9. Shri Rajan has relied upon the rulings in Kirti Chandra Vs. D.G.H.S., New Delhi, 1990 (12) ATC 158; Vinod Kumar Vs. UOI ATC 1988 (1) P. 369 and R.R. Singh Vs. Chief Controller of Defence Accounts (Pension) 1994 (28) ATC 46.

All these cases discuss Rule 26 CCS (Pension) Rules, <sup>subrules (1) and (2) of which are</sup> 1972, as follows:-

1) Resignation from a service or 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 Govt. where service qualifies.

Shri Rajan has argued that as the appointment in NSC was taken up with proper permission, the applicant does not forfeit his service in the CPWD, and has relied upon the rulings referred to above, ~~not~~ to fortify his stand. In none of the three cases cited above did the applicants resign to join a CPSU, and in view of the express conditions laid down in sub-rule 2 quoted above, that ~~if~~ the resignation not to entail ~~for~~ <sup>it</sup> forfeiture of past service, ~~which~~ has to be ~~made~~ to take up appointment under the Govt. where such service qualifies, Neither Rule 26(2) CCS (Pension) Rules, nor the rulings cited by Shri Rajan help the applicant. Shri Rajan has also sought to place reliance on MHA O.M. dated 19.12.69 (Annexure 1) which lays down that continuity of service benefits may be allowed in the matter of leave and pension in respect of permanent/Quasi Permanent Central Govt. servants who have to resign from the parent deptt. upon being appointed in another Central Deptt. Para 8 of this O.M. relating to release of a Govt. servant for appointment in CPSU lays down that a Govt. servant who has been selected for a post in a Central PSU/Central Autonomous Body may be released only after the appointing authority accepted his resignation from the Govt. service. Resignation from Govt. service with a view to secure employment in a Central Public Sector

Undertaking with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the Govt. servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation.

10. This O.M. does not help the applicant either because he did not resign from the parent deptt. to join another Central Govt. Dep'tt. Instead, he resigned as S.O. (Hort.) to join in the NSC, a CPSU. Furthermore para 8 of that O.M. also does not advance the applicant's case, because he had rendered barely two years as S.O. (Hort.) and that too only in a temporary/quasi permanent capacity and was not eligible for any retirement/terminal benefits as S.O. (Hort.).

11. In this back ground, the Govt. of India decision No.1 under the head "Effect of interruption in Service" (Annexure II to rejoinder) relied upon by Shri Rajan, defining where a resignation is a technical formality and where it subsists is not relevant to the facts of this particular case. That being the position, in view of the facts stated above, it is not possible to treat the applicant's service as S.O. (Hort.) for purposes of qualifying service in DRDO.

12. As regards, counting of the applicant's service in NSC is concerned, Shri Rajan has relied upon Govt. of India's order No.3 under Rule 14 CCS (Pension) Rules (Ann. III to rejoinder) but this relates to counting of services rendered in Central Govt. autonomous bodies before their being taken over by the Central Govt. NSC is not a Central Govt. autonomous body but a Central Public Sector Undertaking, and moreover it has <sup>Hence</sup> not been taken over by the Central Govt. ~~However~~, this order does not help the applicant either. Further more, the Chief Controller of Defence Accounts (Pension) in his letter dated 28.8.92 (Annexure A.1) to the O.A. has categorically stated that in terms of DPAR's O.M. dated 29.8.84, the applicant's services in NSC during the period 14.8.85 to 19.11.87 do not qualify for pensionary benefits, as it is a GOI undertaking. The applicant has not cited any order or instruction issued by the respondents modifying this O.M., to include GOI undertakings also. Shri Rajan has sought to argue that for purposes of counting of service for pension purposes, there cannot be any distinction between a Central Govt. Undertaking and an autonomous body. This reasoning is erroneous, because the two entities are legally distinct. A Central Public Enterprise is an undertaking wholly or substantially owned by the Govt. of India and which is accepted as such by Bureau of Public Enterprises (Refer para 5 of DPAR's O.M. dated 31.1.86 reproduced at Appendix 12 page 311 of Swamy's Pension Compilation),

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while a Central autonomous body is a body which is financed wholly or substantially from cess or Central Govt. grants. "Substantially" means that more than 50% of the expenditure of the autonomous body is met through cess or Central Govt. grants. Autonomous body includes a Central statutory body or a Central University but does not include a public sector undertaking (Refer para 4 of DPAR's DM. dated 29.8.84 at App. 12 page 397 of Swamy's Pension Compilation).

13. In the result this case warrants no interference. This O.A. fails and is dismissed. No costs.

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

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