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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. No. 2440 of 1993

2nd Day of December, 1993

Mr. J.P. Sharma, Member (J)  
Mr. B.K. Singh, Member (A)

Dr. S.C. Gupta  
SA-106, Shastri Nagar,  
Ghaziabad. ....

Applicant

By Advocate: Shri B.B. Srivastava

VERSUS  
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1. Union of India, through  
The Secretary,  
Ministry of Finance,  
Deptt. of Revenue, North Block,  
New Delhi.

2. The Chairman,  
Central Board of Direct Taxes,  
New Delhi. ....

Respondents

By Advocate: None

ORDER (ORAL)  
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(By Mr. J.P. Sharma, Member (J))  
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The applicant has challenged the order dated 10th August 1993 by which his representation of counting of previous service while he was employed in Sanatan Dharm (PG) College Muzaffarnagar, as qualifying service for pensionary benefits, by virtue of having joined the Central Government as Assistant Commissioner of Incomed Tax and retired on 31.5.92, has been rejected by the respondents. In this application the applicant has prayed that, besides counting his earlier service put in the SD (PG) College, Muzaffarnagar, five years additional service under Rule 30 of CCS(Pension) Rules in addition to the service rendered

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by the applicant in the Income Tax Deptt., be also added as qualifying service for pension. He has also prayed for payment of arrears etc.

2. We have heard the learned counsel for the applicant on earlier date, 22nd November 1993, also and time was granted him to convince on the point that a person who has worked in an institution run by private management, though subsidised by the State Government, can claim the benefit on the some analogy as a State Govt. employee who earlier worked in the State Govt. and subsequently joined as an employee with the Central Government. In reply to this the learned counsel for the applicant has shown certain brochure to us today. The learned counsel has read out the definition of autonomous body. The learned counsel has also referred to Rule 30 of CCS(Pension) Rules 1972 and has also relied on a decision of Single Bench passed in the case of M.C. Sharma Vs. Union of India and Others decided on 22.1.93 in O.A. No.646/91 by the Principal Bench. The learned counsel for the applicant has tried to draw similarity of the applicant's case to that the case of M.C. Sharma showing that the applicant is still more highly qualified and falls within the ambit of Rule 30 CCS(Pension) Rules 1972. Rule 30 CCS(Pension) Rules is reproduced below:

"A Government servant who retires from a service or post after the 31st March 1960, shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years or a period of five years, whichever is less, if the service or post to which the government servant is appointed is one -

- (a) for which post-graduate research, or specialist qualification or experience in scientific, technological or profession fields, is essential; and
- (b) to which candidates of more than twenty-five years of age are normally recruited:

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Provided that this concession shall not be admissible to a Government servant unless his actual qualifying service at the time he quits government service is not less than ten years:

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule.

Provided also that this concession shall not be admissible to those who are eligible for counting their past service for superannuation pension unless they opt before the date of their retirement, which option once exercised shall be final, for the weightage of service under this sub-rule forgoing the counting of the past service.

2. A government servant who is recruited at the age of thirty-five years or more, may, within a period of three months from the date of his appointment, elect to forgo his right to pension whereupon he shall be eligible to subscribe to a Contributory Provident Fund.

3. The option referred to in sub-rule (2) once exercised, shall be final."

After arguing for a considerable length of time, the learned counsel desired more time but we are not inclined to allow this request as we have already heard him at length .

3. Regarding the addition of service rendered by the applicant in the SD (PG) College, Muzaffarnagar prior to joining the Central Government service we do not find that the applicant was a State Government employee at the relevant time. Merely because the private institution was aided by the State Govt. funds could not bring the applicant within the ambit and scope of State Government for any purpose whatsoever and atleast to bring it within the various circulars/notifications issued by Central Government/State Govt. for giving the benefit of the past service to the employees who worked earlier under either of them as public servants. The prayer of the applicant in this regard does not make out a prima facie case.

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4. Regarding addition of five years service on the ground that the applicant has attained higher qualifications than advertised would not by itself entitle him to add five years qualifying service or one-fourth of the total length of service put in as envisaged by Rule 30 CCS (Pension) Rules 1992. The aforesaid rule grants this benefit only to such of the employees who have higher qualifications in that respective field which can be an asset to the government in efficient discharge with more capability than the minimum qualifications required and this fact is mentioned in the advertisement issued for making the recruitment to the post. No such advertisement for such incumbents entitling the benefit of adding qualifying service has been placed before us. What has been referred to is part 4.3 of this O.A. which prescribes the eligibility/qualifications for the post. If the contention of the learned counsel for the applicant is accepted then every person who acquires these qualifications before joining the service would be claiming this benefit which is not the spirit of this rule. The rule when read together makes it clear that the higher qualifications must be of such a nature as may warrant the efficiency in the same sphere better than those similarly situated persons with lesser qualifications, though eligible for the post.

5. We therefore do not find in view of the facts mentioned above, any prima facie case based on the contention of the learned counsel for adding five years of qualifying service to the service already put in by the applicant in the Central Government.

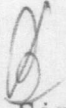
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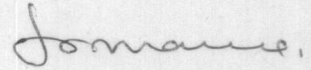
6. Regarding the decision in the case of M.C. Sharma the judgment of the Single Bench is per inquerium and does not lay down the ratio as to when and in what circumstances rule 30 of CCS (Pension) Rules 1972 can be applied in such situations.

7. In view of the above facts and circumstances the application is dismissed at the admission stage itself.

No costs.



( B.K. Singh )  
Member (A)



( J.P. Sharma )  
Member (J)

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