

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 05th day of December 2000.

Original Application no. 69 of 1997.

Hon'ble Mr. S.K.I. Naqvi, Judicial Member

Shri Radhey Shyam Sharma, S/o Late Natthu Lal,  
C/o Shivam Plastic Board near Krishna Coaching  
Rajendra Nagar, Bareilly.

... Applicant

C/A Shri K.P. Singh

Versus

1. Union of India through its Secretary Ministry of Agriculture New Delhi.
2. Assistant Settlement Commissioner Government of India, Ministry of Home Affairs Department of Internal Security, Rehabilitation Division, (Settlement) Jaisalmer House, New Delhi.
3. Assistant Administrative Officer, Indian Veterinary Research Institute Izatnagar, Bareilly.

... Respondents

C/Rs. Sri J.N. Tewari, Sri Rakesh Tewari & Sri N.P. Singh

O R D E R (Oral)

By Hon'ble Mr. S.K.I. Naqvi, Member (J)

Shri Radhey Shyam Sharma started his service career with effect from 01.12.1956 when he joined as L.D.C.

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in the Office of the Assistant Custodian in the Department of Evacuee Property, Ministry of Relief and Rehabilitation and when retrenched from that service on 28.2.1961, he joined the Ordnance Clothing Factory on 01.3.1961 and there he continued upto 27/6/61, where his appointment was only for a period of 3 months or as long as a duly selected Clerk is posted, whichever is earlier. During the tenure of this service at Ordnance Clothing Factory, his consent was sought to move with the Platoon but, the applicant declined, keeping in view his individual circumstances and under expectation of some job through Employment Exchange where he got himself enrolled after obtaining 'no objection' certificate from his employer at that time. On movement of Platoon, the services of the applicant were severed w.e.f. 27.6.1961 and thereafter, with a gap of few months, the applicant joined respondent no.3 on 06.12.1961 and completed his service journey on attaining superannuation on 31.8.1990. At this stage, his retiral benefits were to be settled and controversy arose whether the period of break in service is to be counted as qualifying service for pension or it is treated as exclusion of period of service rendered prior to that with the Establishment of Rehabilitation (Dept. of Custodian of Property). The applicant has a case that this period of break in service has already been condoned vide order dated 22.7.1991, copy of which has been annexed as annexure A-13 and, therefore, he is entitled

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to retiral benefits for a complete period right from the year 1956 to 1990, for which the applicant has come up through this O.A., seeking direction

2. Notices were issued to all the three respondents but, it has been responded only by respondent no.3 i.e. Assistant Administrative Officer, Indian Veterinary Research Institute, Izzatnagar, Bareilly, whereas no reply has been filed on behalf of Ministry of Agriculture or Ministry of Home Affairs, Department of Internal Security and Rehabilitation Division, <sup>il</sup> the respondents no.1 and 2 respectively.

3. As per pleadings from the contesting respondents, they have taken recourse of Rule 28(b) of C.C.S. Pension Rules, according to which the applicant is not entitled to get condonation of the broken period w.e.f. 01.3.1961 to 06.7.1961, because he resigned from the service and, therefore, he cannot be <sup>given</sup> ~~get~~ benefit of condonation.

4. Heard the learned counsel for the rival contesting parties and perused the record.

5. In this matter, the main point to be investigated is as to whether the break in service between two services can be condoned or not and the authority who can pass order in this regard.

6. As per Rule 14 C.C.S. (Pension) Rules,

the liability for pension including gratuity will be borne in full by the Central/State Department to which the Government servant permanently belongs at the time of retirement. No recovery of proportionate pension will be made from Central/State Government under whom he had served. Regarding condonation, there is provision under Rule 28<sup>clause(a)</sup> of the Pension Rule, which runs as under;

"(a) In the absence of a specific indication to the contrary in the service book, an interruption between two spells of civil service rendered by a Government servant under Government including civil service rendered and paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualifying service."

7. The most important provision to decide the present controversy is Rule 26(2). According to which, "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."

8. Keeping in view the arguments placed from the contesting authorities and their pleadings, it is found that as per respondents case, the applicant resigned from the service at Ordnance Clothing Factory, Shahjahanpur, whereas the applicant has the case that his appointment at Ordnance

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Clothing Factory, Shahjahanpur was only for a period of 3 months and for further augment of his service resources, he got himself enrolled with the Employment Exchange, Shahjahanpur after having obtained 'no objection' from his employer at that time. It has also been specifically pleaded from the ~~side~~ <sup>side</sup> of the applicant and not denied in so many terms from the side of the respondents that the services of the applicant were not severed at Shahjahanpur Ordnance Factory because of any resignation from his side but, it was because he did not give a consent to move with the Platoon, for which an option was sought from him. Learned counsel for the applicant has emphasised that the consent is obtained or called only when the employee has an option to accept the same or to decline, and not to give consent does not amount to resignation or relinquishment of services.

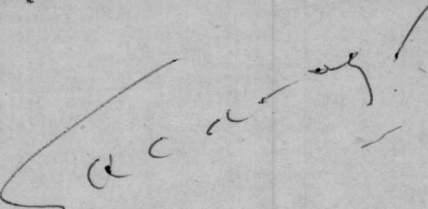
9. From the above, I find that there is no specific pleading or denial from the side of the contesting respondents that the applicant was disengaged from service at Ordnance Clothing Factory, Shahjahanpur for having submitted his resignation or because of not having consented to move with the Platoon. I find it a fit matter to remand the same for fresh consideration in view of above observation, and to decide the same within 3 months from the date of communication of this order keeping in view the fact that the applicant did not submit his resignation while relinquishing

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services at Ordnance Clothing Factory, Shah-jahanpur and the provision under Rule 14(4), 14(5), 2(b), 26(2) and 28(a) of the C.C.S. Pension Rules and also the order dated 22.7.1991, copy of which has been annexed as annexure A-3. In the meantime, the impugned orders shall remain in abeyance. The O.A. is disposed of accordingly. No order as to costs.

  
Member (J)

/M.M./