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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Original Application No. 1152/93

Dated : This, the 23rd day of Nov. 1995.

Hon'ble Mr. Justice B.C. Saxena, VC
Hon'ble Mr. D.S. Baweja, AM

Shri K.N. Kethiyal, S/o Shri B.P. Kothiyal,
R/o Type I V/8, Kendranchal, Pocket No. 1,
Sulem Sarai, Allahabad (U.P.), now employed
as an Assistant Registrar, Income-tax App-
ellate Tribunal, Allahabad Benches, Allahabad
(U.P.) APPLICANT

C/A SHRI B.K. SRIVASTAVA

Versus

Union of India through the Secretary, Ministry of
Personnel, Public Grievances & Pension, Government
of India, New Delhi. RESPONDENT

C/R Km. Sadhna Srivastava

O R D E R

Hon'ble Mr. D.S. Baweja, Member (A)

The applicant has prayed relief for relaxation in the period of one year for exercising option in terms of Ministry of Home Affairs, Department of Personnel and Administrative reforms dated 29.8.84 for counting the previous service of working in Oil and Natural Gas Commission (ONGC) for pensionary benefits.

2. The brief facts leading to this application are as follows :-

The applicant while working as Assistant Grade II in ONGC Dehradun, applied for the post of Hindi Translator in the Income Tax Appellate Tribunal (ITAT). He was selected for the same and offer of appointment was conveyed by the Registrar of ITAT to ONGC vide letter dated 19.1.74. He was released by ONGC vide letter dated 8.2.1974 and reported on duty in the Tribunal on 11.2.1974 (9th being second saturday and 11th being sunday).

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He made a representation dated 22.1.1975 for regularising his services in the Tribunal counting his earlier service in DNGC. This representation was replied through letter dated 19.12.75 by Ministry of Law, Justice and Company Affairs stating that the request cannot be agreed to since post service of the applicant was not under the Government.

In 1992, applicant came to know of the liberalisation of the rules for counting the post service in Autonomous Body wide office memorandum dated 29.8.84 (CA-1). ^{thus} As per the option was to be exercised within one year of the issue of the letter. He made an appeal dated 14.2.92 stating that he could not know of the circular earlier as he was working in the field units.

This representation was replied by the Registrar of IATA wide letter dated 11.3.92 advising that the request cannot be agreed to. Following this, OA has been filed by the applicant seeking the relief of the relaxation of one year limit for exercising option.

The main pleadings made by the applicant are :-

- a) DNGC is an Autonomous Body of Government of India and therefore covered by the office memorandum dated 29.8.84.

(b) The circular dated 29.8.84 was circulated in a routine way and was not given wide publicity. No information of the circular was given to the applicant and therefore he could not come to know of the opportunity available for exercising option.

(c) Applicant had taken up the case of regularisation of service in 1975. His case was already on record and he should have been allowed to exercise option.

(d) The applicant had 14 years of service in ONGC and not counting the same will cause considerable hardship to him in the pensionary benefits.

The applicant had relied upon in his support, judgments 1994 (26) Administrative Tribunal Cases 682, Supreme Court Judgement in Special Leave to appeal No. 8801/93 dated 23.8.93, and AIR 1975 SC 1331.

4. The respondents in the counter affidavit have averred that the memorandum dated 29.8.84 is not applicable to the applicant. ONGC though established under the Act of the Parliament and under the control of the Ministry of Petroleum and Gas, but ONGC is treated as a Public Sector Enterprise and not an Autonomous Body. As regards circulation of the memorandum, the respondents have submitted that the circulars are either notified in the Gazette or circulated through the various official channels. This procedure was followed and the memorandum was also published in the Income Tax Tribunal's official bulletin No. 10 Volume IX of October 1985, which was distributed to all the Benches including the Jaipur, where the petitioner was working at that time. There are no extant rules of getting the circular noted from each individual employee.

5. We have heard the learned counsel of the applicant and the respondents and also perused the material placed on the record in the application, counter affidavit and the judgements cited. No rejoinder has been filed by the applicant.

6. The main two issues which emerge to be considered are :

(a) Whether ONGC is an Autonomous Body and thus covered by the provisions of the circular dated 29.8.84?

(b) Validity of the contention of the applicant that the circular was not widely publicised and not got noted from the applicant.

As regards the issue (a), the respondents have averred that ONGC is a Public Undertaking and not an Autonomous Body and therefore, the applicants case is not covered by the memorandum dated 29.8.84. The applicant has not filed any rejoinder to counter this averment. However the applicant has drawn support from the judgement of Hon'ble Supreme Court in the case of Sukhdev Singh Vs. Bhagat Ram AIR 1975 SC 1331 and also the reply dated 19.12.75 to his representation by Ministry of Law to prove his contention that ONGC was an Autonomous Body at the time when he joined ITAT. We however, do not intend to dwell on this aspect in detail as this is a secondary issue. The first issue being the prayer for permitting relaxation of the time limit of one year for exercising option as laid down in the memorandum dated 29.8.84. If this prayer is admitted, then only the question of application of the provisions of this circular in case of the applicant will arise.

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In respect of issue at (b), the applicant has not elaborated as to how the memorandum has been circulated in a routine way and not given wide publicity. Also the applicant has not mentioned any specific rules under which there is obligation on the part of the Administration that all the circulars have to be individually communicated to the employee. Respondent, submitted that the memorandum has been circulated in the normal course being followed for the notification of such circulars. The memorandum was also notified in the official bulletin of the Income Tax Administrative Tribunal, ITAT. Bulletin No. 10 Volume IX for the month of October 1985. In fact another memorandum dated 12.9.85 with reference to earlier memorandum of 29.8.84 was also issued.

It is also noted that the applicant had made representation again vide application dated 12.4.90, detailing the same contentions as in the earlier appeal in 1975. This shows that the applicant revived his claim again after lapse of 15 years. The next appeal has been made on 4.10.91, where in he has sought for relaxation of period of one year for exercising option, referring the office memoranda under reference. This was followed by the reminder appeal dated 14.2.92. This representation was replied by the Department vide letter dated 19.9.92, not agreeing to his request for relaxation of the time limit. In spite of this the applicant again made an other appeal vide, letter dated 6.1.93. This was also replied vide letter dated 7.7.93, by the department. In none of the appeals referred to above, he has raised the issue either of non information to him individually ^{or} and lack of giving wide publicity due to which he could not know of the memorandum.

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We are therefore, unable to accept the contention of the applicant that circular was not given wide publicity, and also not informed to him individually and therefore could not exercise option in time, and therefore there is no merit. *in his prayer*

7. We have perused the judgements cited in support of his contentions. In the judgement of Hon'ble Supreme Court in Special Leave to appeal 9881/93, dated 28.3.93, the issue concerns wherein the pension granted to the applicant counting 20 years as a qualifying service was proposed to be withdrawn, after several years. The appeal has been disposed of with the directions to the department to consider representation to be made by the applicant sympathetically.

In the judgement 1994 26 Administrative Tribunal Cases 682, the matter adjudicated in respect of the obligation on the part of the Administration to ask the employee for exercising option for counting miltiry service as a " War time candidate." This was not done by the Department.

The aforesaid judgements are thus clearly distinguishable and have no application to the present case.

8. The application is also hopelessly time barred as the prayer has been made for permitting relaxation of the time limit, after a period of 6 years.

9. In view of the above reasons, the applicant is devoid of merit and also suffers from delay and laches and the same needs to be dismissed and is dismissed accordingly. No order as to costs.

D. Bhupesh
MEMBER (A)

D. Bhakta
VICE CHAIRMAN (J)