

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1301 of 1994

Allahabad this the 7th day of July 1999

Hon'ble Mr. S.L. Jain, Member (J)

Dr. A.K. Mukherjee, S/o Late Sri Amrit Lal Mukherjee,
a/a 62 years r/o 232/166-C, Alleganj, Allahabad-211002
(U.P.)

Applicant

By Advocate Shri Satish Dwivedi

Versus

1. Union of India through the Secretary, Ministry of Environment and Forest, Government of India, New Delhi.
2. The Director, Botanical Survey of India, Head Office, P-8, Braibourne Road, Calcutta-700001(WB).
3. The Deputy Director, Botanical Survey of India, Central Circle, 10 Chatham Lines, Allahabad-211002.
4. The Pay and Accounts Officer, Central Pension Account Office, Government of India, New Delhi.

Respondents

By Advocate Shri N.B. Singh

ORDER

By Hon'ble Mr. S.L. Jain, Member (J)

This is an application under Section 19 of the Administrative Tribunal Act, 1985 for a direction to the respondents to count past services rendered by the applicant in Presidency College, Calcutta, and University of Calcutta w.e.f. 29.3.56 to 30.11.59 and 01.12.59 to

to 06.10.60 respectively in total service period and recalculate the pension, gratuity and pay the arrears thereof with interest at the rate of 18% per annum and continue to pay the same in future on the basis of 33 years service period, alongwith cost.

2. There is no dispute between the parties that prior to the appointment of the applicant in Botanical Survey of India, w.e.f. 07.10.1960, the applicant has worked as Laboratory Incharge, Geological department of Presidency College of Calcutta. Under the Government of West Bengal and thereafter w.e.f. 01.12.1959 to 06.10.60, he worked as Laboratory Assistant in Geological department of Calcutta University, the said services were not counted by the respondents for retiral benefits and pension of the applicant.

3. The applicant's case in brief is that he was appointed in Botanical Survey of India w.e.f. 07.10.60 and after attaining the age of superannuation, he retired from the post of Scientist S.O. w.e.f. 31.10.1990. The Ministry of Personnel, Public Grievances and Pension on 28th July, 1989 issued a circular annexure A-4 for counting the services of the employees of Central Government which they have rendered in the central autonomous body and also under the State Government, prior to appointment under the Central Government. On 11.12.1990 a representation made by the applicant for counting his earlier services, Senior Administrative Officer of Head Office Calcutta vide letter dated 11.12.1990 annexure A-5, directed to settle the retirement benefits of the applicant for his services including past services and informed that regarding counting of his past services,

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the matter requires approval of ministry, the same is taken with them and a request was made for the same vide letter dated 01.2.91 annexure A-6. Vide annexure A-7 and A-8, he represented the matter to the sub unit, Ministry of Environment and Forests with a copy to the Director, Botanical Survey of India, Calcutta, another letter to the Ministry of State Personnel, Pension and Pay Grievances, New Delhi for the redressal of his grievances annexure A-9, dated 17.1.1992. Ministry of Environment and Forest replied vide letter annexure A-10. Again represented to the said ministry vide annexure A-11 and copy thereof vide letter dated 28.9.93 and 13.10.93. Certain querries were made by the Desk Officer vide letter dated 13.11.93 annexure A-12 and replied to the same on 18.12.93 vide annexure A-14 and A-15, a remineder dated 21.2.94 annexure A-16 to Sri S. Devnani, District Officer Ministry of Environment and Forest, New Delhi but no action was taken, hence, this O.A. for the above said relief.

4. The respondents filed the counter-affidavit and the supplementary counter-affidavit, resisting the claim of the applicant with the allegation that the claim is barred by time, he was appointed as a fresh recruitee through permissible channel without any consideration, knowledge of his past services, hence the said services cannot be considered for pensionary benefits under the rules as both the employers have stated vide annexure A-2 and C.A.-3 that no pensionary/terminal benefits were due to the applicant for his short period of service. Neither at the time of appointment nor at any time thereafter till his retirement, he never made any claim for counting of his services in previous organisations, the services rendered by an employee outside

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the Central Government is not to be counted for pension under excepting circumstances that service under autonomous body followed by service under the Central Government, pensionary benefits will accrue only incase the autonomous body discharges its pension liability by paying a lump sum one time payment for the services upto the date of absorption of the employee in the Central Government. An employee of autonomous body under the Central Government has an option either to receive contributory provident fund benefits which have accrued to him from the body and start his service afresh in Central Government or choose to count service rendered by him in that body as qualifying service for pension in government by fore-going employers shares of contributory provident fund contribution with interest there on, which are required to be paid to concerned government department by the autonomous body and the said option is to be exercised within one year from the date of absorption. Incase of failure to do so, the employee is deemed to have received the contributory provident fund benefit where no terminal benefits for the previous services have been received by an employee, the previous service in such cases will be counted as qualifying service for pension only if the previous employer accepts pension liability for the service in accordance with O.M.No - - - - - dated 28.10.84, pension unit dated 29.8.94 where the transfer of an employee from one organisation to another was/is with the consent of the organisation under which he was serving including the cases where the individual has secured employment directly on his own provided he had applied through proper channel or prior permission of the administrative authority. The applicant's case is not covered by any of the condition stated above.

5. In rejoinder and supplementary rejoinder-affidavit, it is stated that while appointment in Botanical Survey of India, services rendered by him earlier, were considered. He has made oral request before retirement and ~~also~~ a claim regarding retiral benefits is not barred by time. He further stated that he is prepared to deposit the lump sum in one time for the services rendered by him in earlier organisation. In original application, the applicant has relied on annexure A-4 which makes it clear that operation of the same was extended to State of Haryana, hence the said O.M. is not of any assistance to the applicant.

6. The defence raised by the respondents in view of O.M. dated 28.10.1984 pension unit 29.8.94 if properly read, does not help the applicant for the reason that the earlier organisation have not accepted liability of the applicant in respect of the pensionary benefits and the applicant has also failed to pay employer's share of contributory provident fund with interest thereon and failed ~~and~~ to exercise the option within one year.

7. It is not a case of absorption but it is a case of direct recruitment, hence, question of absorption does not arise. Annexure S.R.A.-1 O.M.No.28 C 10/84-P and PW/Volume II dated 07th February, 1986, 17th June, 1986, 30th October, 1986, 28th March, 1987 etc. issued by Government of India, Department of Pension and Personnel Welfare para-2 is worth mentioning which is as under;

"In the circumstances explained above, it was felt that reciprocal arrangements may be entered into with the various State Governments to the effect

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that where employees of the State Governments/State Autonomous Bodies/State Statutory Bodies, have been absorbed in the Central Autonomous Bodies, they may be allowed the same benefits as have been extended to the Central Government servants and vice versa."

8. Perusal of the same makes it clear that before application of the same O.M., reciprocal arrangement may be entered into with the various State Government to the effect. Such reciprocal arrangement have been entered into or not, cannot be gathered from para-5 of the said O.A. and State Government of West Bengal have been entered into and the date 07.02.1986 in the circumstances, the applicant is ^{not - h} entitled to counting of dated his services on the ground mentioned in the O.M. No. 28/10/84 pension unit, 29.8.94 which the applicant has failed to establish.

9. In the result, the applicant is not entitled to get it counted his earlier services rendered by him in Geological department of Presidency College, Calcutta and as a Laboratory Assistant in the Geological Department of University of Calcutta under the Government of West Bengal w.e.f. 29.3.56 to 30.11.59 and 01.12.59 to 06.10.60 respectively. The O.A. deserves to be dismissed and is dismissed accordingly. No order as to costs.

P.L.D.M. —

Member (J)

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