

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 420 of 1986 ~~108~~
T.A. No.

DATE OF DECISION 22/12/1987

Vinod Kumar Petitioner

K.K. Shah Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

J.D. Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D.S. MISRA : ADMINISTRATIVE MEMBER

The Hon'ble Mr. P.M. JOSHI : JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal. ✓

[Signature]

J _ U _ D _ G _ M _ E _ N _ T

6

OA/420/86

22-12-1987

Per : Hon'ble Mr. D.S. Mishra : Administrative Member.

This is an application under Section 21 of the Administrative Tribunals Act, 1985 against the order dated 22nd October, 1986 of the Officer in-charge Aeronautical Communication Station, Airport, Ahmedabad, rejecting the request of the applicant for counting his past services for pension.

2. The applicant's case is that prior to his appointment in the Civil Aviation Department the applicant was serving in the Central Reserve Police Force as Radio Operator. That he had applied for the post of Radio Operator in the respondent department pursuant to an advertisement and he was selected for the post and offered an appointment vide letter dated 7-2-1980. Copy Annexure 'C'. That the application for the post of Radio Operator in the Civil Aviation Department was submitted through the Central Reserve Police Force. The authorities of the C.R.P.F. did not relieve the applicant in order to facilitate him to join the Civil Aviation Department. That the applicant was, therefore, compelled to submit his resignation which was accepted vide order dated 19-2-1980. Copy Annexure 'D'. That on May 22, 1984 the applicant requested the Regional Director, Bombay Region, Civil Aviation Department, Bombay (Respondent No.2) to consider his past services in the C.R.P.F. for the purpose of counting the same for pension and other benefits under the Central Civil Services (Pension) Rules. Copy Annexure 'E'. That the applicant was advised by the Officer in-Charge, Aeronautical Communication Station, Airport, Ahmedabad (Respondent No.3) vide letter dated 18-12-1984 to apply

15/12

for counting of past services after he was confirmed in Civil Aviation Department. Copy Annexure 'F'. That the applicant was confirmed in the post of Communication Assistant with effect from March 1, 1984 by letter dated 21st April, 1986 and he submitted another application on May 22, 1986 requesting respondent No.2 to take necessary steps for counting the previous services of the applicant for the purpose of pension and other benefits. That this application was forwarded to Respondent No.2 by Respondent No.3 under his letter dated 22nd May, 1986. Copy Annexure 'H'. That the applicant made a further representation dated August 20, 1986. Copy Annexure 'I'. That the applicant was informed by a memorandum dated 22nd October, 1986 by Respondent No.3 that his request for counting of past services in the C.R.P.F. for pension has been rejected by the Director of Communication. Copy Annexure 'J'. The applicant has sought a declaration that the applicant is entitled to have his past services in the C.R.P.F. counted for the purpose of pension and other benefits under the Central Civil Services (Pension) Rules and a direction to the Respondent Authorities to consider the case of the applicant for counting his previous services in the C.R.P.F. for the purpose of pension and other benefits.

the
3. In reply filed on behalf of the respondents the claim of the applicant is contested and it is stated that since the applicant had joined the Civil Aviation Department after resigning his post in the C.R.P.F. Organisation, he was not entitled to get his past services counted for the purpose of pension and other pensionary benefits. In the rejoinder affidavit filed on behalf of the applicant, the allegations made in the claim petition were reiterated and

b2

reliance was placed on the instructions contained in the Government of India's decision under Rule 26 of the Central Civil Services (Pension) Rules, 1972.

4. We have heard the arguments of the learned counsel for the parties and have carefully perused the documents on record. The learned counsel for the applicant contended that the Government of India's decision below Rule 26 of the Central Civil Services (Pension) Rules, 1972 available in Swamy's Pension Compilation corrected upto 1st June, 1985 fully supports the case of the applicant. The learned counsel for the respondents contends that the request of the applicant was rejected by the competent authority as the applicant did not fulfil required conditions envisaged under sub-rule 2 of Rule 26 of the Central Civil Services (Pension) Rules, 1972. We have considered the matter. As both the parties rely on the provisions of sub-rule 2 of Rule 26 of the Central Civil Services (Pension) Rules, 1972, we may examine the claim of the applicant under these rules. Rule 26(2) of the Central Civil Services (Pension) Rules reads as follows :

"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."

According to this rule if the second appointment under the Government has been obtained after obtaining proper permission of the previous employer, the resignation of the Government servant to take up the second employment shall not entail forfeiture of past service. In the present case the contention of the applicant that he had

be

submitted his application for employment under the respondent through the authorities of the C.R.P.F. and that he had resigned his job under the C.R.P.F. to take up the assignment under the respondents when the C.R.P.F. Authorities refused to relieve him, has not been contested by the respondents. In this way the conduct of the applicant fully confirms to the requirements of sub-rule 2 of Rule 26 of the Central Civil Services (Pension) Rules, 1972. The case of the applicant is further supported by the Government of India's decision under Rule 26 printed on pages 44 and 45 of Swamy's Pension Compilation corrected up to 1st June, 1985 which reads as follows :

"(1) When resignation a technical formality and when it subsists.-A Government servant intending to apply for a post or posts outside his parent office/department under the Government of India should have his application forwarded through the competent authority under whom he was serving at the time of applying for the post. Such an authority should either forward the application or withhold it according as the exigencies of public service may indicate but it should not forward the application conditionally, for example, that in the event of the applicant coming out successful, he will be required to resign his post before taking up the new one. Once the application has been forwarded unconditionally and the person concerned is offered the post applied for, he should be relieved of his duties to join the new post as a matter of course and the question of his resigning the post held by him in such circumstances should not arise.


bc

Accordingly the amended article is intended to cover the cases where even though the applications were forwarded by the competent authority, the applicant had been asked for one reason or the other to resign his post before taking up the new one. The above position holds good whether the Government servant held the post in permanent or temporary capacity, before resigning the post."

The learned counsel for the respondents contended that the C.R.P.F. is a para-Military Organisation and Central Civil Service (Pension) Rules were not applicable in the present case.

5. We have examined this matter and we are of the opinion that even though C.R.P.F. is a para-Military Organisation, it is an organisation of the Central Government and the claim of the applicant has to be examined with reference to the terms and conditions of the service of the applicant under the respondents which is admittedly covered under the Central Civil Services (Pension) Rules, 1972. Neither in their written statement nor in the oral submission before us, the respondents were able to enumerate the requisite conditions of Rule 26 of the Central Civil Services (Pension) Rules, 1972, which the applicant has failed to satisfy.

6. For the reasons mentioned above, we are of the opinion that the applicant is entitled to count his past service under the C.R.P.F. for the purpose of pension and other benefits in Civil Aviation Organisation. Accordingly, we allow the application without any order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER


(D.S. MISRA)
ADMINISTRATIVE MEMBER.

Coram : Hon'ble Mr. P. H. Trivedi : Vice Chairman

08-07-1988

In this case by judgment dtd. 22-12-1987 the application was allowed by the Tribunal which opined that the applicant is entitled to count his past service in the Central Reserved Police Force for the purpose of pension and other benefits in Civil Aviation Organisation. Thereafter the Civil Aviation Organisation has made attempts to secure the service book and particulars from the authorities of C.R.P.F. for working out pension and other benefits in terms of the judgment referred to. Unfortunately, this has not been successful. It is stated by the learned advocate that there is no intention to commit contempt as steps have been taken.

2. We must note that the Union of India is a party and both C.R.P.F. and Civil Aviation Organisation are parts of the ^{govt.} Union of India. It is, therefore, incumbent upon the Civil Aviation Organisation to comply with the judgment and for this purpose the burden of taking up the matter with other organisations for service particulars is on Civil Aviation Organisation. We however, appreciate that so far as contempt is concerned, there may not be any sufficient ground at this stage of proceedings being initiated.

3. However, in the circumstances of this case, it will be expected of Civil Aviation Organisation to take up the matter at a higher level and also with the Union Home Ministry for securing the compliance of the directions in the

judgment without further delay. It is necessary also to inform the C.R.P.F. authorities of the particulars available from the pleadings in the case and ~~such other process~~ of the judgment as may be relevant for the contention of the petitioner regarding his claim of service in the C.R.P.F. This be done ⁱⁿ addition to giving normal reminders of previous correspondence.

4. It ~~can be~~ ^{to} reasonable expect that if the matter is taken up at sufficiently higher level, compliance will be effected within a period of about two months. The result be reported accordingly. The case is adjourned to 9-9-88 for final hearing in the Chamber (of Hon'ble Vice Chairman) at 3.00 p.m.



(P. H. Trivedi)
Vice Chairman


Shah/-


C.A./24/89 88
in
O.A./420/86

CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman
Hon'ble Mr. P.M. Joshi .. Judicial Member

21/6/1989

Mr. K.K. Shah learned advocate for the petitioner has filed sick note. Heard Mr. J.D. Ajmera, learned advocate for the respondents who states that the statement has been filed showing strict compliance of the direction issued in the judgment, Accordingly if the petitioner is unable to satisfy on the next date why further proceedings should not be continue, the case is liable to be closed. The case be posted on 5th September, 1989 for orders.


(P H Trivedi)
Vice Chairman


(P M Joshi)
Judicial Member

*Mogera