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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

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ORIGINAL APPLICATION NO. 112 OF 1994
Cuttack, this the 25th day of January 99


Sri Niranjan Mohanty Applicant

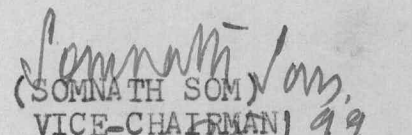
Vrs.

Union of India and others Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not? Yes,
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.


(S.K. AGARWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
25.1.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.112 OF 1994
Cuttack, this the 25th day of January '99

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGARWAL, MEMBER(JUDICIAL)

....

Sri Niranjan Mohanty, s/o late Bhikari
Charan Mohanty, aged 62 years,
retired Enforcement Officer in the office
of Regional Provident Fund Commissioner,
Orissa, Bhubaneswar, at present residing at
529, Laxmisagar, At/PO-Bhubaneswar, Dist. KhurdaApplicant

By the Advocates - M/s S.K.Pattanayak &
B.B.Pattanayak.

Vrs.

1. Union of India, represented through
Central Provident Fund Commissioner,
9th Floor, Mayur Bhawan, Connaught Circus,
New Delhi-110 001.
2. Regional Provident Fund Commissioner,
At/PO-Bhubaneswar, Dist. Khurda.
3. State of Orissa represented through
its Secretary, Health & Family Welfare Department,
At/PO-Bhubaneswar, Dist. Khurda.
4. Director of Health Services, At/PO-Bhubaneswar,
District-Khurda Respondents

By the Advocates - M/s P.N.Mohapatra &
K.C.Mohanty

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ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative
Tribunals Act, 1985, the petitioner has prayed for a declaration
that he was serving under the Director of Health Services as
Health Inspector from 14.6.1954 to 10.1.1962. There is also a
prayer for a direction to respondent nos. 3 and 4 to pay the

pro rata pension contribution of Rs.957/- for the period of four years, ~~two~~ months and six days of service of the applicant under the State Government and for paying the same to respondent no.2. The third prayer is for a direction to respondent no.2 to issue appropriate pension payment order giving full pension taking into account the above period of service.

2. Facts of this case, according to the applicant, are that he was selected for training as Health Inspector by Director of Health and Inspector-General of Prisons, Orissa, in his letter dated 26.6.1953 (Annexure-1). On completion of training, a certificate of having passed the examination with distinction in April 1954 was also issued by Director of Health and Inspector-General of Prisons, Orissa, on 30.6.1954 (Annexure-2). In order dated 8.6.1954 (Annexure-3), Director of Health & Inspector-General of Prisons appointed the applicant as Health Inspector in the pay scale of Rs.60-2-90/- temporarily until further orders and directed the applicant to report for duty to Health Officer, Puri Municipality by 15.6.1954 in connection with Car and Return Car festivals at Puri. In order dated 15.7.1954 the applicant was posted to Cuttack Municipality under Health Officer. In order to secure better employment, the applicant registered his name in the Employment Exchange at Cuttack with due permission of the Director of Health Services. The applicant's name was sponsored for the post of Lower Division Clerk under Regional Provident Fund Commissioner (respondent no.2) and he was given offer of temporary appointment in the post of L.D.C. in the office of respondent no.2 in order dated 10.1.1962 (Annexure-5). The applicant handed over detailed charge to one D.N.Das, Sanitary Inspector, on 10.1.1962 vide charge report at Annexure-6. The applicant states that under ^{his} the State Government, /Service Book was ~~xxx~~ opened but a duplicate Service Book was not given to him. The applicant worked ~~inx~~ as Sanitary Inspector from 14.6.1954 to 10.1.1962 for seven years, six months and 27 days. The applicant has further

stated that his date of birth is 7.10.1932 and at the time of joining as L.D. Assistant in the office of Regional Provident Fund Commissioner on 12.1.1962 he was more than twenty-nine years of age. Maximum age for entry in the service of respondent no.2 at that time was 21 years. From this, according to the applicant, it is clear that he was allowed late entrance under respondent no.2 considering his service under the State Government. Under respondent no.2 the applicant working from 12.1.1962 was promoted as Enforcement Officer and retired on 31.10.1990 on superannuation. Service of the applicant as Health Inspector under State Government was pensionable service and his service under respondent no.2 was also pensionable. As the applicant had not put in 33 years of service under respondent no.2, he was not entitled to full pension. But, according to him, under the instructions issued on 20.1.1990 (Annexure-7) ^{by} Government of Orissa in Finance Department, his service as Sanitary Inspector under State Government should have been counted towards qualifying service under respondent no.2 provided the State Government paid the proportionate pensionary contribution for the period of shortfall in rendering 33 years qualifying service which in the case of the applicant works out to four years, two months and six days. The applicant further states that in letter dated 14.2.1990 issued by Ministry of Personnel addressed to Chief Secretary, Government of Orissa, it was further clarified that pensionable service rendered under the State Government will count towards qualifying service for pension under respondent no.2. The applicant filed a representation to the Director of Health Services through the Regional Provident Fund Commissioner. The Regional Provident Fund Commissioner in his letter dated 17.8.1990 ^{requested} the Director of Health Services to recognise the past service rendered by the applicant as Health Inspector from 14.6.1954 to 10.1.1962 and arrange to

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pay the pension contribution only for four years, two months and eight days which are the short-fall in qualifying service of the applicant so as to enable him to avail full pension under respondent no.2. In the representation addressed to Director of Health Services the applicant worked out the pensionary contribution for four years which, according to him, was Rs.957/-. Joint Director of Health Services in his letter dated 2.1.1992 (Annexure-11) called upon the applicant to furnish the duplicate Service Book, a copy of the relief order and the calculation-sheet for showing how Rs.957/- has been arrived at. The applicant was also asked to state if any pensionary benefits have been paid to him earlier in respect of his service under the State Government and if he had joined the office of Regional Provident Fund Commissioner on his own option. The applicant sent a reply in his letter at Annexure-12 in which he stated that duplicate Service Book had not been issued to him. He also gave the calculation sheet of Rs.957/- and stated that he had got no pensionary benefits in the State Government. He further submitted that on obtaining no objection certificate, he had registered his name in the Employment Exchange and having been sponsored by the Employment Exchange, he got the job of L.D.C. under respondent no.2. A further letter was sent to him on 22.2.1992 (Annexure-13) by Joint Director of Health Services in which he was asked to clarify if he had applied for the post of L.D.C. through proper channel and if he had taken permission of the competent authority before appearing in the recruitment test for the post of L.D.C. under respondent no.2 and if he was relieved from the post of Sanitary Inspector for joining as L.D.C. under respondent no.2. A copy of the relief order was also asked for. The applicant sent a reply in his letter dated 29.4.1992 (Annexure-14) in which he reiterated that on getting no objection certificate, he had registered his name in the Employment Exchange and as such his ex-employer was

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aware of his search for an alternative employment. He further stated that records of competent authority permitting him to appear at the recruitment examination are not available with him. He was relieved on 10.1.1962 afternoon by the orders of Director of Health on his resignation, but the copy of the order is not with him. Only a copy of charge list is with him and copy of which had been sent to the Joint Director of Health earlier. The applicant also filed an affidavit in original from Shri D.N.Das, ex-Sanitary Inspector who took over charge from him on his relief from State Government. The applicant further states that as at the time of joining the office of Regional Provident Fund Commissioner, he was around 30 years of age, it necessarily proves that he was taken in as an inservice candidate and not a fresh recruit. The affidavit of Shri D.N.Das, which is at Annexure-15, states that he was working in Cuttack Municipality as Sanitary Inspector along with the applicant in 1962. The applicant worked as Sanitary Inspector upto 10.1.1962 when he handed over charge to the deponent D.N.Das on being relieved from Government service. A charge list was prepared and signed by both on the same day. The prayer of the applicant for payment of pro rata pension due was rejected by Government in order dated 2.7.1993 (Annexure-16). The relevant portion of the order is quoted below:

".....I am directed to say that Government after careful consideration have been pleased to reject the representation of Sri Niranjan Mohanty, ex-Health Inspector for payment of prorata pension due to absence of relevant service records.

Shri Niranjan Mohanty, Ex-Health Inspector may be informed accordingly."

Because of this, the applicant has come up with the aforesaid prayers.

3. Respondent nos. 1 and 2, i.e., Union of India represented through Central Provident Fund Commissioner and the Regional Provident Fund Commissioner have filed a counter

in which they have stated that there are no records available with them regarding the applicant's service under the Directorate of Health, Orissa. It has been stated that his name was sponsored by Employment Exchange as a fresh candidate. The applicant was duly selected and appointed temporarily and he joined on 12.1.62 as L.D.C. as a fresh candidate. The applicant retired on 31.10.90 as Enforcement Officer and taking into account his service under respondent no.2, pension at the rate of Rs.932/- per month was sanctioned to him. It is not within the knowledge of respondent nos. 1 and 2 if the applicant was an ex-employee of Directorate of Health. His representation was forwarded to the Director of Health Services to pay lump sum amount of Rs.957/- for four years' pro rata pension contribution and for issuing a Bank Draft in favour of respondent no.2 in terms of letter dated 14.2.1990 of Department of Personnel, but Government of Orissa in their letter dated 2.7.1993 rejected the applicant's representation for payment of pro rata pension due to absence of relevant service record. Respondent nos.1 and 2 have stated that as the Director of Health Services has not recognised the service of the applicant under him, he is not entitled to any additional pensionary benefit than what has already been sanctioned by respondent no.2. On the above grounds, the prayer of the applicant has been opposed.

4. Respondent nos. 3 and 4 have filed a counter in which it has been stated that the applicant was appointed as Health Inspector in the scale of pay of Rs.60-90/- as per order dated 8.6.54 of Director of Health & I.G. of Prisons. As the case relates to 37 years ago, the relevant Personal File of the applicant is not traceable and as such, it is not possible to know if the applicant registered his name in the Employment Exchange with due permission from the Director of Health Services in order to secure better employment or not.

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The applicant was asked to furnish information as to whether he ^{had} applied for the post of L.D.C. through proper channel, whether he had taken permission from the competent authority before appearing at the recruitment test, and whether he had been relieved by the competent authority. Respondent Nos. 3 and 4 have stated that the applicant's reply to the above letter was not satisfactory. Respondent nos. 3 and 4 have further stated that from the relevant records available in the office of Health Officer, Cuttack Municipality, it appears that the applicant's resignation was accepted with reference to memo dated 12.12.1961 of the Health Officer, Cuttack Municipality, vide letter dated 5.1.1962 of Joint Director of Health Services (PH) and instructions were issued to relieve the petitioner with effect from 10.1.1962 afternoon. The order dated 5.1.1962 issued by Joint Director of Health Services to the Health Officer, Cuttack Municipality, accepting the resignation of the applicant is at Annexure-R-3/3 and the letter of Health Officer, Cuttack Municipality, relieving the applicant of his duties on 10.1.1962 afternoon is at Annexure-R-3/4. Respondent nos. 3 and 4 have stated that as the resignation of the applicant was accepted on 5.1.1962 and as the offer of appointment was given to him by respondent no.2 only on 10.1.1962, there was a gap and therefore the past service cannot be counted. It is also stated that the applicant did not obtain any relief order from the competent authority in order to join his new assignment under respondent no.2. They have stated that Rule 34, Clauses (1) and (2) of Orissa Civil Services (Pension) Rules, 1962 lays down that resignation from service or a post entails forfeiture of past service. In this Rule, under sub-rule(2) it is laid down that 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 State Government where service qualifies. Respondent nos. 3 and 4 have further stated that the circular dated 20.1.90 of Government of Orissa and a letter dated 14.2.1990 of

Government of India are not applicable to the applicant because he resigned and joined his new service under respondent no.2 as a fresh recruit and therefore, the question of payment of lumpsum amount of pro rata pension contribution does not arise. On the above grounds, respondent nos. 3 and 4 have opposed the prayer of the applicant.

5. We have heard the learned lawyer for the applicant, the learned Additional Standing Counsel, Shri P.N.Mohapatra appearing on behalf of respondent nos. 1 and 2, and the learned Government Advocate, Shri K.C.Mohanty appearing on behalf of respondent nos. 3 and 4. At the time of hearing, on 28.11.1997, at the instance of the Tribunal it was submitted by the learned lawyer for the applicant that the petitioner was prepared to deposit the pensionary contribution of Rs.957/- for counting the period of four years towards his qualifying pensionable service under respondent no.2. On this averment, learned Government Advocate was asked to obtain instructions if on depositing the lumpsum pensionary contribution by the applicant, himself, the State Government would be prepared to recommend his case to respondent no.2. Learned Government Advocate filed a memo of instruction dated 8.12.1997 with the verification of Joint Director (PH), Health Directorate, in which it has been indicated that the applicant having resigned from State Government service and his resignation having been accepted on 5.1.62, his past service stands forfeited and the applicant may deposit the amount directly with Regional Provident Fund Commissioner for him to take a view regarding counting of past service. As the applicant has resigned from State Government service on 5.1.1962, the State Government is not in a position to recommend for counting the period of his service in State Government towards qualifying service under respondent no.2.

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6. The normal rule is that resignation from a post entails forfeiture of past service. Rule 26 of CCS(Pension) Rules provide for this. But sub-rule (2) of Rule 26 lays down that 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 Government where service qualifies. According to Ministry of Home Affairs' letter dated 14.7.1967, gist of which has been printed at page 53 of Swamy's Pension Compilation, 13th Edition, permanent/quasi permanent Central Government servant appointed under another Central Government Department has to resign from his parent Department unless he reverts to that Department within a period of two years of his appointment in other Department. Government of India have held that resignation in such cases shall be deemed to be a resignation under sub-rule (2) of Rule 26 of CCS (Pension) Rules and such cases will not entail forfeiture of past service. This Rule applies when Government servant resigns from one Department of Central Government for joining another Department. The circulars dated 20.1.1990 and 14.2.1990 (Annexures 7 and 8) can be referred to at this stage. The subject of the first circular is "Mobility of personnel between State Government Departments and Autonomous Bodies - Counting of service for pension". Paragraph 9 of this circular is quoted below:

"9. These orders will also apply to the employees of the State Government moving to Central Autonomous Bodies and employees of State Autonomous Bodies to the Central Government and their Autonomous Bodies and vice-versa who are in service on the date of issue of these orders, irrespective of the date of their absorption."

In this case, the applicant was an employee under State Government and he went over to Regional Provident Fund Commission which is a Central Autonomous Body and therefore, by virtue of paragraph 9 of the circular quoted above, this circular is applicable in his case. Paragraph 3 of the circular deals

with this aspect more fully and this is quoted below:

"3. This matter has been considered carefully and the Governor has now been pleased to decide that the cases of State Government employees going over to a State autonomous body or vice-versa and employees of the State autonomous body moving to another State autonomous body of this State may be regulated as per the following provisions :-

(a) In case of Autonomous Bodies where Pension scheme is in operation.

(1) Where a State Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him/her under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent under Government.

The Government/Autonomous body will discharge its pensionary liability by paying in lump sum as a one-time payment, the pro-rata pension/service gratuity and DCRG for the service upto the date of absorption in the autonomous body/Government, as the case may be. Lump-sum amount of the pro-rata pension will be determined with reference to commutation table in force at the time of the absorption of the employee concerned."

Reference to paragraph 3, more particularly sub-paragraph (a)(i) makes it clear that where a State Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent under Government. In such cases, the Government/Autonomous Body will discharge its pensionary liability by paying in lump sum as a one time payment the pro-rata pension/service gratuity and DCRG for the service upto the date of absorption in the autonomous body/Government, as the case may be. As these instructions apply mutatis mutandis in case of employee of State Government moving to Central Autonomous Body by virtue of paragraph 9 of the circular quoted above, it is clear that if a State Government employee is allowed to be absorbed in Autonomous Body, the service rendered by him under State Government will count towards pensionable service under Autonomous Body, in this case the Regional Provident

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Fund Commission. But the moot point here is that the employee must have been allowed to be absorbed in the Autonomous Body. This aspect about obtaining permission for going over to Regional Provident Fund Commission has been much emphasised by the respondents 3 and 4 in their counter. Paragraph 7 of this circular deals with this aspect more fully and this is quoted below:

"7. These orders will be applicable only where the transfer of the employee from one organisation to another was/is with consent of the organisation under which he was serving earlier, including cases where the individual had secured employment directly on his own volition provided he had applied through proper channel/with proper permission of the administrative authority concerned."

From paragraph 7 quoted above, it appears that such counting of service will be applicable only where transfer of the employee from one organisation to another has been done with the consent of the organisation under which he was serving earlier. This paragraph also lays down that this includes cases where the individual has secured employment directly on his own volition provided he had applied through proper channel/with proper permission of the administrative authority concerned. In the present case, the applicant has stated in paragraph 4(v) of the petition that after joining as Health Inspector, he had got his name registered in the Employment Exchange at Cuttack with the due permission of Director of Health Services.

J Jm Respondent nos. 3 and 4 in their counter have stated in reply that it is not possible to say, in the absence of the relevant personal file, whether the applicant had registered his name in the Employment Exchange with permission of the Director of Health. Thus it is seen that the applicant's averment in this regard has not been specifically denied. Moreover, had he registered his name in the Employment Exchange with the permission of Director of Health Services, as has been submitted by him,

then under paragraph 7 of the circular dated 20.1.1990 quoted above, his case would be covered by the circular and by virtue of paragraphs 3 and 9 also quoted earlier, his service as Health Inspector would count towards qualifying pensionable service under respondent no.2.

7. There is also another aspect of this matter which has to be noted. The questions as to whether the petitioner applied for the post of L.D.C. under respondent no.2, with permission of Director of Health, and whether he resigned from the post of Health Inspector for the purpose of joining as L.D.C. under respondent no.2 are points which have been brought out only in the counter filed by respondent no.3. From the order dated 2.7.1993, the relevant portion of which has been quoted by us earlier, it is clear that the sole ground on which the applicant's request for pro rata pension contribution has been rejected was due to absence of relevant service records. From the counter, however, it appears that respondent nos. 3 and 4 have admitted in paragraph 2 of the counter that the applicant was appointed as Health Inspector in order dated 8.6.1954 and his resignation was accepted in letter dated 5.1.1962 and he was relieved on 10.1.1962. Therefore, it is clear that some of the old service records relating to the applicant are now available with respondent nos. 3 and 4. Once his prayer has been rejected on the ground of absence of service records and once the service records are available, it is not open for respondent nos. 3 and 4 to bring out some other point to disallow recognising his service under the State Government. In the case of Commissioner of Police, Bombay v. Gordhandas Bhanji, AIR 1952 S.C. 16, Hon'ble Supreme Court have laid

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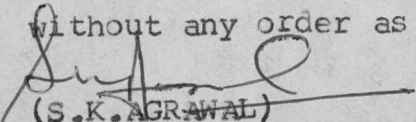
that public orders, publicly made, cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. In order dated 2.7.1993 the only ground mentioned for rejecting the prayer of the applicant was that his service records were not available. After these records have been traced out, it is not open for the respondents 3 and 4 to reject the prayer on some other ground later on discovered. Moreover, in this case, the State Government do not have to bear any pensionary liability. The increased pension will be paid by respondent no.2 and they are willing to pay the pension if the service will be recognised by the State Government and the pensionary contribution of Rs.957/- is paid. The applicant is willing to deposit this amount with the State Government and therefore, there is no liability of the State Government in this regard. Moreover, the fact that the applicant had worked as Health Inspector from 14.6.1954 to 10.1.1962 is now undisputed. In consideration of all the above, it is ordered that the applicant will deposit a sum of Rs.957/- or a few rupees more than that, as has been explained below, with respondent no.4.

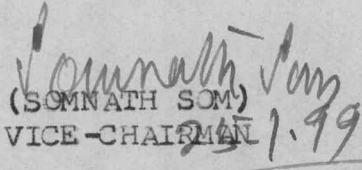
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Respondent no.4 will certify that the applicant had worked as Health Inspector under him from 14.6.1954 to 10.1.1962,

as admitted by respondent nos.3 and 4 in their counter, and will forward the amount to respondent no.2, along with a certificate indicating his service under the State Government for the aforesaid period within a period of 60(sixty) days from the date of receipt of copy of this order. It is further ordered that on receipt of the amount of lump sum pension contribution and the above certificate, respondent no.2 will take up the question of revision of pension of the applicant and pass appropriate orders within another period of 60 (sixty) days from the date of receipt of pensionary contribution from respondent no.4 as noted earlier.

8. It is to be noted here that in the application, paragraph 8(II) it has been mentioned that Rs.957/- is equivalent to lump sum pension contribution for four years, two months and six days. It, however, appears from the detailed pension calculation that Rs.957/- accounts for only four years excluding two months and six days and therefore, the applicant is directed to deposit a sum slightly more than Rs.957/- covering the total period of four years, two months and six days, because Rs.957/- represents pension contribution only for a period of four years.

9. In the result, therefore, the Application is allowed but, under the circumstances, without any order as to costs.


(S.K. AGRAWAL)
MEMBER(JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN