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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 357 OF 1999

Cuttack, this the 2nd day of November, 2000

Bidyadhar Behera

....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.*

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

Somnath Som.
Somnath

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....
Bidyadhar Behera, aged about 62 years, son of late Harihar Behera, At/PO-Agrahat, Via-Choudwar, District-Cuttack

....Applicant

Advocates for applicant - M/s P.V.Ramdas
P.V.B.Rao

1. Union of India, represented by the Director, Aviation Research Centre, Directorate General of Security (Cabinet Secretariat), Block-V(East), R.K.Puram, New Delhi-110 066.
2. Deputy Director (Admn.), Aviation Research Centre, At/PO-Charbatia, Dist.Cuttack, Pin-754 028.
3. Assistant Director (Admn.), Aviation Research Centre, At/PO-Charbatia, Dist.Cuttack-754 028.
4. Director, Health Services, Orissa, Bhubaneswar-751 001, Dist.Khurda..... Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this application the petitioner has prayed for a direction to the respondents to count his past service rendered by him in the State Government towards pensionary benefits and to increase his monthly pension from Rs.730/- as per rules.

2. The applicant's case is that he was Sanitary Inspector in Aviation Research Centre, Charbatia, from which post he retired on superannuation with effect from 31.7.1995. He originally joined as Sanitary Inspector

under Director of Health Services, Government of Orissa, on 30.3.1959. He applied to Deputy Director, Aviation Research Centre, through proper channel for appointment as Sanitary Inspector. In order date 28.4.1965 the applicant was appointed as Sanitary Inspector. Accordingly he was relieved from the State Government service on 31.5.1965 and joined Aviation Research Centre, Charbatia as Sanitary Inspector on the next day, i.e., on 1.6.1965 and continued as such till his superannuation on 31.7.1995. The applicant has stated that in order dated 10.3.1969 at Annexure-1 the Administrative Officer of A.R.C.Charbatia, had written to him asking him to submit certain informations for the purpose of counting his past service. The applicant submitted these informations in his letter dated 12.3.1969 at Annexure-1/1. But apparently no action was taken in the matter and it is only after retirement of the applicant the Assistant Director (Administration) in his letter dated 24.4.1997 (Annexure-2) requested Director, Health Services, Orissa, to forward the Service Book of the applicant after making proper attestation. Along with this letter of the Assistant Director, Service Book of the applicant was also sent. The Director, Health Services, in his letter dated 16.5.1997 (Annexure-3) returned the Service Book enclosing all documents and orders in support of attestation of his service in the Service Book, but no action was taken. In letter dated 27.4.1998 his prayer was rejected on the ground that there is no provision for counting past service after retirement. The applicant has relied on the circular dated 18.8.1994 (Annexure-5) as also the relevant instruction of Department of Personnel & Training dated 31.3.1982, the gist of which has been printed in Swamy's Compilation, extract of which has been given. His memorial

was also rejected in letter dated 7.4.1999 at Annexure-8. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have admitted that the petitioner applied through proper channel to join the post of Sanitary Inspector as a direct recruit. They have stated that he resigned from the State Government service before joining Aviation Research Centre. They have also admitted that the applicant was asked in March 1969 to furnish certain informations for counting his past service and he furnished the same on 12.3.1969. The respondents have stated that further action taken on this application is not readily traceable as it occurred thirty years ago. It is stated that the petitioner remained silent for 25 years and submitted another application on 23.12.1994. Thereafter, the matter was taken up with the State Government and Joint Director of Health Services was requested to verify the applicant's service under that Department in letter dated 10.2.1995 at Annexure-R/3. The respondents have stated that the Service Book relating to the applicant's service under the State Government was finally received by the respondents on 23.2.1996 after superannuation of the applicant. The respondents have stated that his prayer for counting his past service was rejected because the entries in the Service Book were not duly attested and entries at several places were overwritten and corrected without any attestation. They have also stated that there is no provision for counting past service "in the present circumstances of the case". It is further stated that the applicant joined the post of Sanitary Inspector under the respondents as a direct recruit and on

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that ground he became senior to one Trilochan Rout and Maheswar panda who were ex-Sanitary Inspectors under the State Government even though in the State Government service the applicant was junior to them. They have also stated that the applicant's pension has been correctly calculated as per rules and on the above grounds they have opposed the prayers of the applicant.

4. We have heard Shri P.V.Ramdas, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have also perused the records. The learned counsel for the petitioner has filed a date-chart along with note of submission which have also been perused. In view of the controversy in this case we had directed the learned Senior Standing Counsel to produce the Service Book of the applicant which is with the respondents and this has been produced and we have perused the same.

5. The admitted position is that prior to joining Aviation Research Centre on 1.6.1965, the applicant was serving under the State Government and on his joining Aviation Research Centre he was asked in letter dated 10.3.1969 to furnish certain informations for counting his past service rendered in the State Government and the applicant had furnished the informations in his letter dated 12.3.1969. These have been mentioned in paragraphs 3 and 4 of the counter. These two letters have also been enclosed by the applicant to his petition. The respondents have stated that action taken on his application is not readily traceable as it occurred thirty years back and the applicant remained silent in the matter for 25 years. From the above it is clear that for the purpose of counting his past service, action was initiated by the respondents and

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the applicant had furnished the relevant informations. But obviously no decision was taken to count the service of the petitioner under the State Government as pensionable service under Government of India. The delay in this case is on the part of the respondents and the applicant cannot be made to suffer on the ground that he had not pursued the matter over all these years. It is also admitted by the respondents that the applicant did submit another application prior to his retirement making the above prayer. In view of this, the contention of the respondents that the prayer of the applicant cannot be accepted because of the delay on his part is held to be without any merit and is rejected.

6. The second ground on which the respondents have denied the prayer of the applicant and have justified their action in their counter is that there is no provision for counting the past service of the applicant in the present circumstances of the case. In Annexure-4 in which the prayer of the applicant has been rejected it has been mentioned that there is no provision for counting past service after retirement of the employee. This contention is also without any merit because as has been noted earlier the applicant shortly after joining Aviation Research Centre in 1965, did apply for counting his past service and the matter was delayed by the respondents and therefore, they cannot take the stand that as in the meantime the applicant has retired his past service cannot be counted. There is also no legal provision that if the issue of counting past service is pending and the Government servant retires, then he will automatically lose the right of counting his past service under the State Government as pensionable service under Government of

India. This contention of the respondents is also rejected.

7. The next contention of the respondents is that the requirements for counting past service, as khas been mentioned by them in paragraph 6 of the counter, have not been fulfilled. This contention is also without any merit. These requirements are that the person should have applied through proper channel, his resignation should be a technical requirement, the certificate about period of service should have been given, and there should be a certificate that no terminal benefits have been allowed to him by the State Government for the period of service under them. We have gone through the Service Book of the applicant and we find that in page 9 of the Service Book, Director of Health Service, Government of Orissa has given the certificate that the petitioner had applied through proper channel and he had tendered resignation to satisfy a technical requirement for joining a new post in Aviation Research Centre. Service certificate has also been given and it has also been certified that no terminal benefits have been paid to him. Thus, all the conditions for counting past service have been fulfilled.

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8. The fourth contention of the respondents is that the entries in the Service Book cannot be relied upon because there is overwriting. We find again from page 5 of the Service Book that service verification certificates have been recorded and these have been based on the report of Chief District Medical Officer, Ganjam and B.D.O., Khallikote where apparently the applicant had worked. In the next page his further service has been certified on the basis of report of S.D.O, Pallahara and

A.D.M.O(Public Health), Cuttack. There is no overwriting in these service certificates and we are unable to accept that there is any ground for ignoring these service certificates.

9. The last point urged is that the applicant had joined Aviation Research Centre as a direct recruit and on that basis he had become senior to Trilochan Rout and Maheswar Panda who were also Sanitary Inspectors earlier under the State Government and were senior to the applicant. This cannot be a ground for denying the applicant his right to count his service under the State Government as pensionable service under Government of India because the question of seniority between the applicant and the other two persons mentioned above is not relevant for the present purpose.

10. In consideration of all the above, we find that the prayer of the applicant for counting his past service under the State Government as pensionable service under Government of India has been rejected on grounds which are not legally sustainable. We, therefore, direct the respondents that the service rendered by the applicant under the State Government, as verified by the service certificates in his Service Books, should be counted towards his pensionable service and his pension should accordingly be revised. This exercise should be completed within a period of 90 (ninety) days from the date of receipt of copy of this order.

11. In the result, therefore, the Original Application is allowed but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

November 2, 2000/AN/PS

(SOMNATH SOM)
VICE-CHAIRMAN

*Commr. Jm.
S. Som
1/11/2000*