

11

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH

ORIGINAL APPLICATION NO. 562 OF 2000

Cuttack, this the 18<sup>th</sup> September, 2003

Mahendra Kumar Dalbehera

.....

Applicant

Vs.

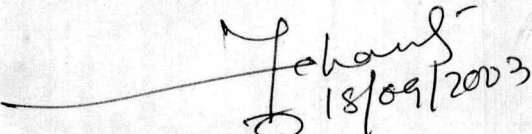
Union of India and others

.....

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? yes

  
(M.R. MOHANTY)  
MEMBER(JUDICIAL)

  
(B.N. SOM)  
VICE-CHAIRMAN

12

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH

ORIGINAL APPLICATION NO. 562 OF 2000

Cuttack, this the 18<sup>th</sup> September, 2003

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R.MOHIANTY, MEMBER(JUDICIAL)

.....  
Mahendra Kumar Dalbehera, aged about 54 years, son of late Raghunath Dalabehera, At Kolathigam, P.O.Daspur, Via Berhampur, District Ganjam, at present working as Tradesman E, Heavy Water Projects, Talcher, P.O.Vikrampur, Dist.angul ..... Applicant

Vs.

1. Union of India, represented by the Chairman-cum-Secretary, Atomic Energy Commission, Department of Atomic Energy, Anushakti Bhawan, S.M.Marg, Mumbai 39, Maharashtra.
2. Chief Executive, Heavy Water Board, Government of India, Department of Atomic Energy, Vikram Sarabhai Bhawan, Mumbai 94.
3. General Manager, Heavy Water Project, Talcher, At/PO Vikrapur, District Angul.... ..... Respondents.

Advocate for the Applicant - Mr.D.P.Dhalsamant.

Advocate for the Respondents - Mr.A.K.Bose, Sr.CGSC.

\*\*\*\*\*

2

## ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

This Original Application has been filed by Shri Mahendra Kumar Dalbehera under Section 19 of the Administrative Tribunals Act, 1985, challenging the arbitrary order of the Respondents in superannuating him from service with effect from 1.12.2000. Later by filing MA No.919 of 2000 the applicant prayed for restricting his prayer made in the Original Application to the extent of counting his past service towards pensionary benefits. After hearing this M.A. filed by him, the Tribunal was pleased to allow the prayer.

2. The facts of the case, in short, are as follows. The applicant was initially appointed as Assistant Fitter Mistry in the work-charged establishment under the Government of Orissa. He was later promoted to the post of Pump Driver and then to the post of Sanitary Technician. In November 1976 the applicant attended the trade test and interview for the post of Tradesman A in the pay scale of Rs.260-350/- under the Department of Atomic Energy, Heavy Water Project. He was selected and joined the said post on 9.2.1977. The applicant later during his service career on 4.5.1999 submitted a representation to his previous employer, i.e., Government of

2

Orissa, for counting his past service for pensionary benefits. The matter remained under correspondence for long. Then on 27.5.2000 the applicant submitted a representation to Respondent Nos. 2 and 3 for consideration of his prayer. However, the said authorities rejected his prayer on the ground that the service claimed by the applicant for the period from 21.5.1964 to 15.1.1977 was under the work-charged establishment of the State Government of Orissa and that as per the extant orders on the subject, there was no provision for counting of work-charged service rendered under the State Government for pension purpose. Aggrieved by this decision of the Respondents, the applicant has approached this Tribunal for justice.

3. The Respondents have contested the Original Application by filing counter submitting that the applicant is not entitled to the relief prayed for. They have argued that Rule 14 of the Central Civil Service (Pension) Rules, 1972 prescribe conditions subject to which the particular nature of service will qualify for the purpose of pensionary benefits. In terms of the said Rules, to be entitled to such pensionary benefits the following conditions are required to be fulfilled:

- “(i) The official while holding temporary post under Central Government/State Government apply for post under State Government/Central Government through proper channel with proper permission of the administrative authority concerned;
- (ii) The official's resignation under the Central

*Q*

Government/State Government apply for post under State Government/Central Government through proper channel with proper permission of the administrative authority concerned;

- (ii) The official's resignation under the Central

Government/State Government should have been accepted for taking up appointment under State Government/Central Government;

- (iii) Fact at (ii) above is to be recorded in the Central Government/State Government Service Book as provided in Government of India Decision quoted in the aforesaid letter in pursuance to Rule 14 of Central Civil Services (Pension) Rules."

But in the instant case the above conditions, the Respondents have stated, having not been fulfilled, the applicant is not entitled to counting of his past service. They have further submitted that as per the records of the State Government, the applicant was working under the work-charged establishment of the State Government of Orissa and not in regular/temporary establishment. Moreover, the applicant had applied directly to the Heavy Water Board without processing his application through the proper channel and accordingly, he was not entitled to the benefits. Further, the relieve order dated 8.2.1977 issued by the Assistant Engineer, Public Health Sub-division, Dhenkanal, does not indicate that he was relieved for taking up appointment under the Central Government and that there is no such record in the Service Book of the applicant maintained by the State Government.

g.

4. We have heard Shri D.P.Dhalsamant, the learned counsel appearing for the applicant and Shri A.K.Bose, the learned Senior Standing Counsel for the Respondents.

5. The applicant has been denied the benefit of counting past service under the Government of Orissa on the grounds that he did not submit retirement notice in prescribe format, that he did not apply through proper channel for the post to which he was selected, and that he was working under the work-charged establishment of the State Government of Orissa. Shri Bose, the learned Senior Standing Counsel for the Respondents, has drawn our notice to the Government order dated 31.3.1982 and also to the provisions of the Central Civil Services (Pension) Rules, 1972 to stress the point that the applicant had not fulfilled any of the conditions prescribed under Rule 14 of the said Rules to be eligible for counting his past service. He also placed before us the Service Book for our perusal. Shri Dhalsamant, the learned counsel for the applicant, forcefully rebutted all the objections of the Respondents and submitted that the Respondents were denying the benefit of past service of the applicant in an irrational manner. He placed a copy of *Compilation of Orissa Public Works Department Code, Volume II*, to prove that the work-charged employees under the Government of Orissa are governed by the Employees Provident Fund Act, 1952. Secondly,

g

refuting the contention of the Respondents that the applicant had not applied for the post under the Respondent-Department through proper channel, he drew our notice to letter No.05012/R/5(29-8)/8628, dated 23.12.1976 issued by the Department of Atomic Energy, Heavy Water Projects. By means of this letter, that Department had informed the Executive Engineer, Fertilizer Project, P.H.Division, the controlling officer of the applicant that the applicant had been called upon to attend the interview for the post of Tradesman A (Plumber) and in that connection, requested him to send the CR dossier of the applicant for their perusal and return. At such a distant date the applicant was unable to lay his hand on a copy of the document submitted by him seeking permission of his authorities to apply for the post, relying on the letter dated 23.12.1976 of his present employer he has sought to prove that his previous controlling officer by acceding to the request of the Respondents in supplying the CR dossier to him for perusal had ipso facto confirmed the statement of the applicant that he had the permission of his controlling authority to apply for the post.

6. We have carefully considered the submissions made by the rival parties and have also considered the materials placed before us. As submitted by the Respondents, three conditions are to be fulfilled under Rule 14 of the CCS (Pension) Rules, 1972 for claiming the benefit of past service

1

for pension. Firstly, the official should apply through proper channel with prior permission of the administrative authority concerned. Secondly, the official shall tender resignation from service under the Central/State Government, which is to be accepted before he can take up an appointment under the State/Central Government, and lastly, the fact of his resignation is to be recorded in the Service Book. It is, therefore, clear that if the applicant in this case had fulfilled all the above three conditions, he should not have been refused the benefit of past service under the State Government. It is a fact that the applicant could not produce any document which would prove that he had applied for the post through proper channel with prior permission of the administrative authorities, as urged by Shri Bose, the learned Senior Standing Counsel. Although there is no such direct proof produced by the applicant, we have no doubt, after perusing the letter sent by the Administrative Officer, Heavy Water Projects to the Executive Engineer, Fertilizer Project P.H.Division, Talcher, Government of Orissa, dated 23.12.1976 that the administrative/controlling authority of the applicant was aware of the fact that the applicant had applied for the post and by obliging the Respondents by sending his CR dossier, he had given his stamp of approval/permission to the applicant for seeking the job in question even if that would mean an ex post facto approval.

24

7. Regarding the question whether he tendered resignation, we have perused the Service Book, Vol.I, of the applicant maintained by the State Government. The relevant entry in his Service Book dated 22.12.1977 reads as follows:

“Relieved of his duties with effect from 30.11.76 A.N. on his own request to join the new appointment under the Heavy Water Project (Talcher) vide T.O. order No.13320 dt.29.11.76.

On relief he will not have any lien or claim against the present post held by him in this organization.”

From above, we find that it has been clearly noted in the Service Book that the applicant had tendered resignation and this resignation obviously was accepted by the controlling authority, otherwise the aforesaid entry could not have been recorded in his Service Book.

8. With regard to the point raised by the Respondents that the service of the applicant was not under pensionable establishment, the learned counsel for the applicant has produced before us the *Compilation of Public Works Department Code, Volume II*. Paragraph 11 is relevant for our purpose. It is laid down in Paragraph 11 that all employees are covered under the Employees Provident Fund Scheme of 1952. By virtue of this Provident Fund Act, a Provident Fund Scheme was started in 1952 which was enlarged with effect from 1.4.1971 to include the Employees Family Pension Scheme, 1971. Under the Family Pension Scheme, the family of the member was entitled to pension in the event of the death of the member.

2

This Scheme was later in November 1995 converted into a full-fledged Pension Scheme, called, Employees' Pension Scheme, 1995, providing superannuation, death and disability pension.

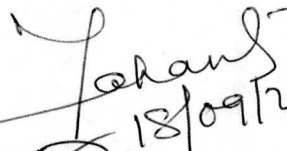
9. The applicant has argued in the Original Application that "the Respondents are duty bound to count the services of the employees belonging to the State Government and permanently transferred to a service/post under the Central Government towards pension". The argument advanced by the applicant would have been unassailable, had he been borne in the regular/temporary establishment of the State Government. But in this case, as the Respondents have pointed out, the applicant was working under the work-charged establishment of the State Government. They have also argued that whereas the Government of India have allowed counting of temporary service under the State/Central Government on a reciprocal basis for the purpose of pension, they have not extended the same benefit to the employees belonging to the work-charged establishment of the State/Central Government. In this connection, the Respondents have drawn our notice to the Government of India, Department of Personnel & Administrative Reforms letter No.3 (20) Pen. (A)/79, dated 31.3.1982. In the face of this instruction, the applicant is not entitled to any relief.

10. However, there is another aspect of this case. As pointed out earlier, the applicant was a member of the Employees' Provident Fund Scheme, under which he was a member of Employees' Family Pension Scheme, 1971. It was a contributory Family Pension Scheme to which the Central Government used to contribute 1.16% of the wages of the applicant towards the Scheme. In other words, his service from April 1971 was pensionable although that Pension Scheme was limited to payment of family pension only. In view of the aforesaid, the Respondents may consider the prayer of the applicant for counting of his past service from 1971 to 1976, i.e., since the time the Employees' Family Pension Scheme was introduced, for the purpose of pension on the analogy of Government decision to count the service of temporary Government servants moving from State Government to Central Government employment or vice versa, or on the analogy of the liberalization of Pension Rules for counting service of the employees on permanent absorption from central Government to Central autonomous/statutory bodies or vice versa under Government of India O.M.No.28-10/48-Pension Unit, dated 29.8.1984. Accordingly, the applicant may submit a representation to Respondent No.1 and upon receipt of such representation, the said Respondent may take a view in the matter in consultation with the Union Government, Ministry of Personnel, Public

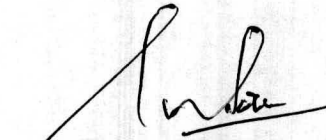


Grievances and Pension and dispose of the representation with a speaking order within a period of six months.

11. With the above observation and direction, the Original Application is disposed of. No costs.

  
(M.R. MOHANTY)

MEMBER(JUDICIAL)

  
(B.N. SOMAI)

VICE-CHAIRMAN

AN/PS