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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 639 OF 2001
Cuttack this the 20th day of Aug 2004

P. Rama Murty ... Applicant(s)

- VERSUS -

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Yes


(B.N. SOW)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK

ORIGINAL APPLICATION NO.639 OF 2001
Cuttack this the 20th day of August 2004

CORAM:

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

Sri P. Rama Murty, aged about 76 years,
S/o. Late P.S.N.Murty, C/o. A.S.Chakrapani
Railway Qr. No. D/2/A, Retanga Colony
PO - Jatni, Dist - Khurda

Applicant

By the Advocates

M/s. S.S.Rao
S.Patra
DLCK Patnaik
S.K.Patnaik

- VERSUS -

1. Union of India represented through the Secretary, Ministry of Railways, New Delhi
2. Divisional Railway Manager, S.E.Railway, Khurda Road, Dist - Khurda
3. Senior Divisional Accounts Officer, S.E. Railway, Khurda Road, Dist - Khurda
4. Senior Divisional Personnel Officer, S.E.Railway, Khurda Road, Dist - Khurda

Respondents

By the Advocates

Mr.D.N.Mishra
Mr.B.K.Bal

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Shri P. Rama Murty, a retired Asst.Teacher of the Railway Mixed School, under the S.E. Railway, Khurda Road, has filed this application challenging the refusal of the Respondents-Railways to count his past service as Physical Education Teacher in Mummidivaram High School under Zilla Parishad Authority, East Godavari, Kakinada. It is the case of the applicant that he joined as Asst.Teacher, Grade-IV under the Railways in the year 1955. Before his joining the Railways, he worked as Physical Education Teacher in Mummidivaram High School

East Godavari, Kakinada from 03.07.1953 to 14.07.1955.

It is his further case that he had applied for the post under the Railways through proper channel and having joined the Railways on 11.7.1955 he had resigned from his former post. The Respondents having denied the benefit of counting his past service for the purpose of pensionary benefits, the applicant in this O.A. has ventilated his grievance with the prayer as referred to above.

2. The Respondents-Railways have opposed the prayer of the applicant by filing a detailed counter. They have submitted that the applicant had not tendered his resignation before joining the Railways, nor had he applied for the post of Asst.Teacher under the Railways through the Zilla Parishad Authority. They have further stated that the applicant joined the Railway service first and then the school authorities had accepted his resignation with retrospective effect. It is their further stand that the applicant has not submitted the original document for the examination by the railway authorities, as per communication made to him vide Annexure-6 to the O.A. and as such onus lies on the applicant to prove his case that he had applied for the post under the Railways through proper channel. The Respondents have stated further that the applicant neither informed the State Govt/School authorities about his joining the Railway service nor had he informed the Railway authorities about his past service under the State Government till his retirement. To make the claim of the applicant null and void, the Respondents have relied on Railway Board's letter No. F(E)III-82 PNI/6 dated 13.11.1982, circulated under Estt.Sl. No.267/82 dated 15.11.1982.

wherein the Government had decided to count past services of Govt. employees under the Central/State Government in respect of those who held temporary post and apply for the post under either of the Governments through proper channel with proper permission of the administrative authority concerned. It has further been laid down that those who, while holding temporary posts under Central/State Govts. apply for posts under State/Central Govt. directly without the permission of the administrative authority concerned then the resignation in previous post will be taken into consideration to join the new appointments under State/Central Government. Certain conditions/clarifications have been set out in this instruction for satisfying a technical -requirement of tendering resignation from the temporary post held by an official before joining the new appointment. It has been laid down that a certificate to this effect that such resignation had been tendered for administrative reason and/or satisfy the technical requirement to join with proper permission is required for the purpose. A record of this certificate may also be made in the service book under proper attestation to enable the concerned official to get the benefit of retirement. The Respondents have also relied on Estt. Slr. No. 26/69 dealing with similar matter (Annexure-R/1) which stipulates that this benefit will not be allowed to those who secure jobs at the centre on their own volition in response to advertisement or circulars including those by the U.P.S.C. With these submissions, the Respondents have submitted that the O.A. being devoid of merit is liable to be rejected.

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3. I have heard the learned counsel of both the sides and perused the materials placed on record. *Prima facie*, the arguments advanced by the Respondents are convincing. However, it is to be noted here that the procedure of counting past service was introduced by the Government with effect from 31.03.1982 and the procedure laid down at Para-2 of the circular (referred to above) for the purpose of counting past service for pension could only be demanded from that date only.

4. In para-4 of the circular it has been clearly stated that the operation of those orders will come into force with effect from the date of issue and cases of all such Government servants retiring on this date and thereafter will be governed by those instructions. In other words, what it means is that the benefits of past service can be claimed by the Government servants retiring on or after 31.03.1982. Thus, viewed from this angle, it would be impracticable to demand full compliance of the formalities as laid down in Para-2 by an employee who entered service before 31.03.1982 for the purpose of counting past service for pension. For those who were recruited earlier than 31.03.1982 they will have to satisfy that they had past service in Central/State Government from which they resigned to join the new service with the knowledge of the earlier employer. In this respect, it has also been submitted by the applicant that he had resigned from his former post in order to join the new post under the Railways. But he has not been able to give any proof to show that he had

in fact applied with permission of the authorities in the State Government. However, the Respondents have resorted to technical objection to deny the applicant the benefit of his past service of about two years and if benefit of those two years were made available to him, he would have received full pensionary benefit, because, when the applicant retired from service, he had rendered pensionable service of over 31 years under the Railways. As the Zilla Parishad Authority relieved him formally, it would be reasonable to presume that they had given him permission also to apply for the post.

5. With regard to the requirement of technical resignation I hold that once the applicant was relieved from his former post by the administrative authority to join his new assignment under the Railways on his request, it should be treated as resignation, because, it is he, who had approached the administrative authority to relieve him to join a new assignment.

6. The applicant is now about 79 years old. It would not be fair on the part of the Respondents to deny him the benefit of past service on the basis of a mere technicality. I, therefore, direct that the Respondents should treat the applicant to have resigned from the post of Physical Education Teacher under Mummidivaram High School, East Godavari (Kakinada) for the purpose of joining under the Railways and accordingly grant him the benefit of his past service by recalculating his pension and pensionary benefits. The arrears, if any, due to the applicant be calculated and paid to him within a period of 120 days from the date of receipt of copies of this order.

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In the result, the O.A. is allowed as above.

No costs.


(B.N. Son)
VICE-CHAIRMAN

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