

8

OA No. 457 of 2006

Mahendra Kumar Dalabehera ... Applicant

Versus

UOI & Ors.

... Respondents

Order dated 13th October, 2009,

C O R A M

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....

The Case of the Applicant in nut shell is that he was in engagement as Assistant Fitter Mistry under Work-charged Establishment in Public Health Department of the Government of Orissa w.e.f. 21.05.1964 and subsequently promoted as Pump Driver and Sanitary Technician. His contention is that after getting necessary permission he applied and appeared at the selection conducted by the Respondents for the post of Tradesman 'A' (Plumber). After being selected and his technical resignation having been accepted he joined the post of Tradesman 'A' (Plumber) on 09.02.1977 under the Respondents and, therefore, his past service ought to have been taken into consideration while calculating his period of qualifying service for the purpose of grant of pension and all other pensionary dues by his present employer. This having not been done, he approached this Tribunal in OA No.562 of 2000. In order dated 18th September, 2003, by making certain observation, this Tribunal disposed of the matter directing that the applicant may submit a representation to the Respondent No.1 who may take a view in the matter in consultation with the Union Government, Ministry of Personnel, Public Grievances and Pension and

L

9
dispose of the representation with a speaking order within a period of six months. By filing RA No.9 of 2004, Respondents sought review of the order of this Tribunal dated 18th September, 2003. The said RA was dismissed by this Tribunal vide order dated 28.02.2005. On consideration of the representation preferred by Applicant under Annexure-A/16, Respondents rejected the contention of the Applicant for counting his past period of service rendered by him under the State Government prior to taking up his new assignment under the Respondents and communicated the order under Annexure-A/17 dated 6/7-04-2006. Being aggrieved by the said order, he has approached this Tribunal in the present OA seeking relief stated hereunder:

- "8-1. That the order dated 6/7-04-2006 (Annexure-17) be quashed;
- 8-2. That the respondents be directed to count the past service of the applicant i.e. 21.5.1964 to 8.2.1977 for qualifying service for pensionary benefits;
- 8-3. That the respondents be directed to pay the arrear pension with effect from 1.10.2005 with interest;
- 8-4. Any other order/orders be passed as deem fit and proper to give complete relief to the applicant."

2. Respondents filed their counter reiterating the stand taken in the order of rejection under Annexure-A/17 putting emphasis that as the case of applicant does not come within the purview of the Pension Rules he is not entitled to any of the reliefs claimed in this OA.

3. Heard the rival submission of the parties and perused the materials placed on record including the rejoinder

L

10
and reply to the rejoinder filed by the Applicant and Respondents respectively. Before proceeding further, it is worthwhile to extract the relevant portion of the impugned order under Annexure-A/17 dated 06/07-04-2006. It runs thus:-

"AND WHEREAS the Department of Pension & Pensioner's Welfare vide their I.D. Note No.513/C/2005-P&PW (B) dated 31.10.2005 after reconsidering the issue opined s under:

'Rule 14(3) of Central Civil Services (Pension) Rules, 1972 provides that in the case of State Government employee on deputation to Central Government, officiating or temporary service rendered under the State Government followed without interruption by substantive appointment shall qualify on absorption under Central Government.

DP&AR's order issued vide Letter No.3 (20)/Pen.A/79 dated 31.3.1982 provides for counting temporary service rendered under State Government for Central Government pension in the situation where a State Government employee has applied for central Government job through proper channel & resigned with proper permission to take up new appointment, subject to satisfaction of various conditions laid down in above order.

In the instant case, Executive Engineer of State Government in his letter dated 25.5.1999 has certified that had Sri Dalbehera continued in service in their Department till the date of his retirement, he would have been entitled for pensionary benefits for the entire service rendered by him in that Department as per the prevailing rules in force. He has not referred to any rule or order of State Government which provided that **Work charged service rendered under State Government is a regular Government and pensionable service.**

Further, according to the order of Central Government as referred to in the above paras, service of a State Government employee can be counted for Central Pension if he has applied through proper channel and resigned with proper permission to take up Central Government job. In the case of Sri Dalabehera there is no proof whether Sri Dalabehera has applied through proper channel. A simple entry in the Service Book exists that he is relieved from the date of resignation.

In view of position stated above, the service rendered by Sri Dalbehera cannot be counted for Central

R

- 4 -

Government Pension unless there is documentary evidence that conditions laid down in relevant rules/orders of Central Government as indicated above have been satisfied.

AND WHEREAS Department of Pension & Pensioner's Welfare further advised the Department of Atomic Energy to check up from record and verify whether conditions laid down in Rules/Orders indicated above have been satisfied or not and to issue a speaking order to Sri Dalabehera.

AND WHEREAS the facts of the case have been re-verified from the service records of Sri Dalabehera, ex-Tradesman/F, as advised by the Department of Pension & Pensioner's Welfare and made the following observations:

- a) The candidature of Sri M.K.Dalabehera, s/o Late Raghunath Dalabehera, was sponsored by the Colliery Employment Exchange, Talcher for the post of Tradesman A (Plumber) in Heavy Water Plant Talcher. Accordingly, a call letter No.05012/R/5(29-8)/7801 dated 20.11.1976 was sent at his residential address at P.H.D Colony, Qr.No.B.OM.Q.1, Block-3, P.O.Talcher, Dist. Dhenkanal, Orissa. Offer of appointment letter No.05012/R/5(29-8)/84 dated 7.1.1977 was also sent to him to his residential address. He was appointed as Tradesman/A (Plumber) with effect from 9.2.1977 in Heavy Water Plant Talcher. It is also seen from the records that both i.e. interview call letter and offer of appointment were sent to his residential address. Shri Dalabehera after rendering more than 10 years of service in HWP Talcher had submitted a representation dated 15.5.1987 stating that he had rendered Work charged service in the Government of Orissa during the period from 21.5.1964 to 15.1.1977 and requested to count the said period for calculation of qualifying service for getting pensionary benefits under Government of India.
 - b) After receipt of representation dated 15.5.1987 from Sri Dalabehera for counting his past service, HWP Talcher made all efforts to get a clarification from his previous Employer vide letters dated 12.3.1987, 19.2.1988, 11.2.1992, 4.5.1994, 1.10.1994 and 23.10.1999 to find out whether the resignation tendered by Sri Dalabehera was a technical resignation to take up new appointment in HWP Talcher or otherwise.
 - c) While replying to the above communications, Orissa State Government did not clarify whether the resignation of Sri Dalabehera was a technical
- L

12 ✓
resignation i.e. to take up appointment in HWP Talcher under Government of India;

d) Moreover from the letter dated 15.1.1977 of Sri Dalabehera by which he tendered his resignation, it is understood that he had resigned his post in Orissa State Government on personal grounds i.e. to look after the old aged parents and nowhere in the letter had had mentioned that is resignation was to take up appointment in Heavy Water Plant Talcher.

e) The Service Book of Sri Dalabehera maintained by his Employer in the State Government was received in HWP Talcher only after 16.12.1999 in which it was recorded "Relieved from duties with effect from 15.1.77 A/N from the date of tendering resignation as per the O.O.No.6 of 1977 and Memorandum No.517 of 8.2.1977 of Assistant Engineer, Public Health Sub-division, Dhenkanal." This entry was made only on 16.12.1999 i.e. after 22 years of leaving his previous Employer.

f) It is also seen from the records that Sri Dalabehera was relieved on 15.1.1977, but joined Heavy Water Plant Talcher only on 9.2.1977, which clearly indicates that his appointment in HWP Talcher was not immediately followed by his employment in Orissa State Government since the interruption of 24 days between State Government service and HWP Talcher service of Sri Dalabehera was not got regularized at any time.

In view of the above facts as verified from the records, with reference to the advice rendered by Department of Pension & Pensioner's Welfare, it is very clear that Sri Dalabehera did not apply for appointment in HWP Talcher through proper channel and his resignation in Government of Orissa service was not a technical resignation with proper permission to take up appointment in HWP Talcher.

In view of the above, Sri Dalabehera is not meeting the conditions laid down in the Deptt. Of Personnel & Administrative Reforms order No.3(20)/Pen.A/79 dated 31.3.1982 and hence his request to count his past, Work charged service rendered in Orissa State Government cannot be counted for qualifying service for pensionary benefits under Government of India. His representation dated 11.3.2005 is disposed of accordingly."

4. In view of the above, it is now necessary to examine what the Rule on the subject provides. The provision on the

2

subject is the Rule 14 of the Central Civil Service (Pension) Rules, 1972. It speaks as under:

- “(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 Government/State Government apply for post under State Government/Central Government through proper channel with proper permission of the administrative authority concerned;
- (iii) The official's resignation under the Central Government/State Government should have been accepted for taking up appointment under State Government/Central Government;
- (iv) 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.”

It is seen that the Government of India, Department of Personnel & Administrative Reforms vide Letter No.3 (20) Pen (A)/79 dated 31.3.1982 issued a detailed instruction in this regard. Relevant portion of the instruction is quoted herein below:

“(6) Counting of temporary service under the State/Central Governments-1.The Government of India have been considering in consultation with the State Governments, the question of sharing on a reciprocal basis the proportionate pensionary liability in respect of those temporary employees who had rendered temporary service under the Central Government/State Governments prior to securing posts under the various State Governments /Central Government on their own volition in response to advertisements or circulars, including those by the State/Union Public Service Commissions and who are eventually confirmed in their new posts. It has since been decided in consultation with the State Governments that

proportionate pensionary liability in respect of temporary service rendered under the Central Government and State Governments to the extent such service would have qualified for grant of pension under the rules of respective Government, will be shared by the Governments concerned, on a service share basis, so that the Government servants are allowed the benefit of counting their qualifying service both under the Central Government and the State Governments for grant of pension by the Government from where they eventually retire. The gratuity, if any, received by the Government employee for temporary service under the Central or State Governments will, however, have to be refunded by him to the Government concerned.

2. The Government servants claiming the benefit of combined service in terms of the above decision are likely to fall into one of the following categories: -

(1) Those who having been retrenched from the service of Central/State Governments secured on their own employment under State/Central Governments either with or without interruption between the date of retrenchment and date of new appointment;

(2) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Governments through proper channel with proper permission of the administrative authority concerned;

(3) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Governments direct without the permission of the administrative authority concerned and resign their previous posts to join the new appointments under State/Central Governments.

The benefit may be allowed to the Government servants in Categories (1) and (2) above. Where an employee in Category (2) is required for administrative reasons, for satisfying a technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement, to join, with proper permission, the new posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his Service Book under proper attestation to

enable him to get this benefit at the time of retirement. Government servants in Category (3) will obviously, not be entitled to count their previous service for pension."

7. We have given our thoughtful consideration to various contentions advanced by respective parties with reference to the pleadings and materials placed in support thereof. Question for consideration in this Original Application is whether (i) the Applicant as a work charge employee under the State Government was entitled to pension and if so whether the State Government has discharged responsibilities towards pensionary liability when the applicant left the State Government and joined the Central Government as provided under reciprocal arrangement in the Government of India instruction dated 31.3.1982. It is seen from Annexure-A/8 that had the applicant continued under the State Government he would have been entitled to pension. This is a letter dated 25.5.1999 i.e. much after the instruction of the Government of India dated 31.3.1982 regarding reciprocal arrangement. Applicant left State Government and joined Central Government in the year 1977. At that relevant time there was no such reciprocal arrangement between the Central and State Government regarding their mobility in regard to counting of the period of service for pension. Therefore, question of discharging the pensionary liabilities by the State Government did not arise at that relevant point of time. But when the matter was considered and reference was made to the State Government, this letter of 25.5.1999 was issued. But this by itself does not give any benefit to the applicant because the conditions of reciprocal

2

16
arrangement in regard to pensionary liability in respect of the applicant have not been complied with by the State Government. In the absence of such compliance, the Central Government cannot be held liable to grant the pension and pensionary benefits for the ^{service} ~~period~~ rendered by the applicant under the State Government. In view of the above, we find no infirmity in the order impugned in this OA. Hence, this OA stands dismissed being devoid of any merit. No costs.

Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

Mohapatra
(C.R. MOHAPATRA)
MEMBER (ADMN.)

Rmm,ps