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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 500 OF 2009
CUTTACK, THIS THE 31st DAY OF August, , 2010

Sri Kashinath Sahoo Applicant

Vs

Union of India & Others Respondents

FOR INSTRUCTIONS

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


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

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 500 OF 2009
CUTTACK, THIS THE 3rd DAY OF August, 2010

CORAM :

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

Sri Kashinath Sahoo, S/o- Ghanashyam Sahoo, aged bout 43 years, permanent resident of Vill: Kantapari, P.O.-Chasakhand, Via- Pritipur, Dist- Jajpur, at present working as Enforcement Officer/Accounts Officer in the District Office of EPFO (Employees Provident Fund Organization) at Govt. Bus Stand, First Floor, Badambadi, P.O-Tala Telengabazar, Cuttack-753009, Orissa.

.....Applicant

Advocate(s) for the Applicant- Mr. K.C.Kanungo.

VERSUS

1. Comptroller & Auditor General of India, Bahadur Saha Jafar Marg, New Delhi-1.
2. Accountant General (A&E), Orissa Officer of Accountant General (A&E), Bhubaneswar, Dist- Khurda, Orissa.
3. Central Board of Trustees, represented through Central Provident Fund Organisation, Bhabisyanidhi Bhawan, 14, Bhikaji Cama Place, New Delhi-110066.
4. Regional Provident Fund Commissioner, Employees Provident Fund Organisation, Bhabisyanidhi Bhawan, Janpath, Unit-9, Bhubaneswar-22, Dist-Khurda, Orissa.

..... Respondents

Advocates for the Respondents - M/s. S.S.Mohanty, S.B.Jena (For R-1&2).

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ORDER

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

The present O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 challenging the order of the Accountant General (A&E), Orissa, Bhubaneswar, under which the claim of the applicant for pro rata pension and other retirement dues/pensionary benefits has been rejected. The applicant has sought for following relief.

“.....to quash Annexure-A/15 for the ends of justice.

AND

Be further pleased to hold that the Annexure-A/8 is bad in law to the extent it contains word 'deputation' and 'deputationist.

AND

Be further pleased to hold that the Annexure-A/10 is bad in law to the extent it directed the Applicant to reply whether the period from Dt. 25.03.2000 to 26.03.2002 to be treated as deputation.

AND

Be further pleased to hold that Annexure-A/12 is bad in law to the extent it contains word 'deputation' which should be read as pro rata pensionary benefits.

AND

Be further pleased to direct the Respondent No.2 to pay the pro rata pension for the period Dt. 31.03.1991 to 26.03.2002 with interest thereof till the actual payment is made for the ends of justice.

AND

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Be further pleased to direct the Respondent No.2 to pay other entitlements such as GPF, Leave Salary and CGIS which are consequential of the pensionary benefits for the ends of justice."

2. The undisputed facts of this case are that the applicant while working as Clerk in the office of Respondent No.2 applied for the post of Enforcement Officer/Asst. Accounts Officer in the Employees Provident Fund Organization through proper channel in response to an open advertisement. On being selected to the post of Enforcement Officer/Asst. Accounts Officer, the applicant was relieved from the office of Respondent No.2 w.e.f. 24.03.2000 (Afternoon) with permission to retain his lien in his parent office initially for a period of two years. The contention of the applicant is that according to the order of appointment, he was on probation for a period of two years from the date of appointment and was confirmed in the cadre of EO/AAO w.e.f. 27.03.2002. Applicant submits that he was entitled to lien for two years from 25.03.2000 to 26.03.2002 and on computation of lien period he completed 11 years and 3 months of service including the lien period (31.01.1991 to 26.03.2002). As such, he has more than 10 years of service to his credit in the parent

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organization, i.e. in the office of Respondent No.2 and, hence, he is entitled to pro rata pension as per the provisions of Rule 37 of CCS (Pension) Rules, 1972. It is the contention of the applicant that the office of Respondent No.2 raised a demand from the new employer, i.e. Respondent No.4 in regard to the leave salary and pension contribution for calculation of pro rata pension and also required a letter of resignation from the applicant from the post of clerk on which he was retaining lien after joining the new organization. The applicant submitted his resignation vide letter dated 20.09.2004. Respondent No.2 on receipt of the letter of resignation arrived at an amount of Rs. 26,031/- towards leave salary and pension contribution for the period 25.03.2000 to 26.03.2002 treating the period as on deputation vide Annexure-A/8. The applicant contends that it was a mistake on the part of the Respondents to have shown him under deputation to the office of Respondent No.4. However, Respondent No.4 remitted the above amount which was credited into the account of Respondent No.2. On asking from the office of Respondent No.4 as to whether the period from 27.03.2000 to 26.03.2002 will be treated as deputation for remitting leave salary and pension contribution, the applicant submits that without understanding the purport of the query, he

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responded by agreeing that the period of service under the EPFO from 27.03.2000 to 26.03.2002 may be treated as deputation vide his reply dated 20.01.2006. Applicant further submits that Respondent No.3 had clarified that the applicant was entitled to pro rata pension benefits from his previous department and to that effect the leave salary and pension contribution was payable to his previous department by his present employer. Accordingly, Respondent No.4 had remitted the amount to the Respondent No.2 as already stated above.

3. Consequent to a legal notice dated 27.10.2008 served by the applicant to finalize the prorata pension and other claims, the office of Respondent No.2 rejected the plea of the applicant on the ground that he has not completed the minimum length of service of 10 years in his parent office. The applicant submits that on compliance of all formalities, including the encashment of banker's cheque of Rs. 26,031/- towards the pension and leave salary contribution of the applicant, he cannot be deprived of pro rata pension benefits particularly having allowed the lien period of two years. The applicant asserts that he was never deputed by his parent office to the office of Respondent No.4 notwithstanding the fact he has stated so in his reply dated 20.01.2006. The applicant also cites

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the instructions of Department of Personnel and Training dated 31.01.1986 in support of his claim for grant of pro rata retirement benefits.

4. Respondent Nos. 1 and 2 have filed their counter and a separate counter has been filed by Respondent Nos. 3 and 4.

5. In their counter, Respondent Nos. 1 and 2 have pointed out that as the applicant was on probation for a period of two years from 25.03.2000 to 26.03.2002 in the office of Respondent No. 4, the office of Respondent No.2 was not aware of his absorption nor the same was communicated to his parent department either by the applicant or by the foreign body. Respondent No.2 raised demand for leave salary contribution/pension contribution on the pretext that the applicant may revert to his parent office. The applicant under Annexure-A/7 intimated to tender his resignation from his parent office from 26.03.2002 after confirmation in the post of EO/AAO. Though the amount of Rs. 26,031/- was remitted by EPF Organization, the same was refunded by the Respondent No.2 as the period spent in the EPF Organization from 25.03.2000 to 26.03.2002 was not spent on deputation but he joined the new assignment on own volition and no benefit as is admissible to deputationist joining the foreign body in public

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interest, such as joining time, TA etc. was even allowed. As such, the said period cannot be reckoned as service rendered in the office of the parent office for the purpose of pro rata pensionary benefits. Respondents' contention is that applicant is entitled to count his past service rendered in his parent department at the time of normal retirement from EPF Organization and the period of service rendered in the EPF Organization from 25.03.2000 to 26.03.2002 will be counted for the pensionary benefits to be finalized by the EPF Organization inasmuch as the applicant has not rendered service during the period in question, i.e., the lien period, in the parent department. Further, since the applicant did not have minimum qualifying pensionable service of 10 years in the parent department, he is not entitled for pro rata retirement benefits. The Respondents admit that due to inadvertence the actual reasons for rejecting the applicant's claim could not be properly explained in their letter dated 31.08.2009. Respondent No.2 wanted to inform the applicant in their letter dated 31.08.2009 that had the applicant gone on deputation, the aforesaid period would have been deemed as service rendered in his parent department. Since the applicant is a direct recruit in the EPF Organization, he cannot be treated as a deputationist

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and his case cannot be covered under the provisions of Rule 37 of CCS (Pension) Rules as he has not rendered minimum 10 years of qualifying service under his parent department. Hence, his claim for payment of pro rata pension is not justified.

6. Respondents further submit that the clarification given by the EPF Organization is not in consonance with the provisions of the DoPT O.M. No. 28-10/84-Pension Unit dated 29.08.1984 as this memorandum is regarding mobility of personnel between Central Government Department and Autonomous Bodies and counting of service for the purpose of pension.

7. Respondent Nos. 3 and 4, in their counter, have also pointed out that applicant in his reply dated 20.01.2006 clearly mentioned that the aforesaid period, i.e., 25.03.2000 to 26.03.2002 may kindly be treated as deputation. In the counter, they submit that "pro rata benefits are required to be worked out up to the date on which the technical resignation of the office is accepted by the previous Department. For this reason the applicant has no claim. The applicant himself requested to treat the aforesaid period as deputation. Hence the question of illegality does not arise. It is further submitted that as per demand raised by Office of Accountant General, Orissa, this

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Office forwarded a Banker's cheque amounting to Rs. 26,031/- (Rupees twenty-six thousand thirty-one) only vide this office letter No. OR/GA-I/SRO/Misc./2005/894 dated 31/7/2008, towards payment of pension and leave salary contribution in respect of Shri Kashinath Sahoo. The AG Office, Orissa vide its letter dated 20/10/2009 refunded the Leave Salary Contribution and Pension Contribution amounting to Rs. 26,031/- vide Cheque No. 167666 dated 16/10/2009 in respect of Shri Kashinath Sahoo, Ex-Clerk on deputation as in the opinion of their Head Office his selection was not made on the basis of Foreign Service Term and Condition".

8. Having heard Ld. Counsel for either side, perused the materials placed on record and also the written note of argument filed by the Ld. Counsel for the applicant, a copy of which was also received by the Ld. Additional Standing Counsel on behalf of the Respondents. I have also gone through the orders of this Tribunal dated 03.10.2007 rendered in O.A. No. 959/05, filed along with written note of argument. The facts of the present case ^{are} however distinguishable from the case cited by the Ld. Counsel for the applicant inasmuch as the applicant in that O.A. had joined the EPF Organization after technical resignation from the DAVP whereas the facts are

otherwise in the present case. Even in that case no conclusion has been reached in para 14 of this Tribunal's order regarding grant of pro rata pensionary benefits as would be evident from the observation below:

"...if the pro rata pensionary benefits is found admissible to the applicant then the same shall be paid to the applicant within a period of 30 days from the date when such decision would be taken."

Thus the decision to determine whether pro rata pensionary benefits were admissible or not was left to the decision makers.

9. During the hearing, both sides stuck to their respective stand under pleadings. The Ld. Counsel for the applicant reiterated his claim for prorata pension from the parent department on the ground that the leave salary and pension contribution remitted by his present employer was accepted by the parent department and the applicant was on probation for two years after which he was confirmed in the new organization. Therefore, the Respondents cannot back track from discharging their commitment as the lien was maintained by them for the relevant period and hence, this period if added to the actual service rendered by the applicant in

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the parent organization, it would be more than 10 years' qualifying service for the purpose of pension. On the other hand, the Ld. Counsel for the Respondents emphasized that as required under Rule 37(3) of the CCS Pension Rules, the applicant would have been entitled to receive prorata retirement benefits had he rendered 10 years of regular service under the Central Government but the applicant had not rendered service in the parent department, i.e. under the Central Government during the period from 25.03.2000 to 26.03.2002. He, as a matter of fact, rendered service in the EPF Organization.

For better appreciation of the case in the factual matrix as delineated above, it is necessary to quote Rule 37(3) of the CCS (Pension) Rules 1972, which reads as under:

“Where there is a pension scheme in a body controlled or financed by the Central Government in which a Government servant is absorbed, he shall be entitled to exercise option either to count the service rendered under the Central Government in that body for pension or to receive pro rata retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.”

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10. The above provision is unambiguous to the effect that prorata service benefits are available only for the service rendered under the Central Government in accordance with the orders issued by the Central Government. In the present case, the applicant having been relieved from the Central Government has joined an autonomous body like the EPFO on his own volition and rendered service physically in that organization since the date of his joining notwithstanding the fact that he had retained his lien in the post of clerk in the parent department under the Govt. of India. The retention of lien was only to cater to a particular situation that if the employee decides to revert from new organization to his parent organization his rights to that extent are protected. Lien is only a protective mechanism to meet certain eventualities. But it cannot be said that he renders service in the parent department even after relinquishing the post in the parent department. As a matter of fact, from the date of joining in the new organization, the grade, scale of pay etc. of the applicant no longer remain the same as it was prior to his joining the new organization. The concept of retaining lien is to avoid certain contingencies which the employee may face during the transitional period. It cannot be stretched to mean that the employee has worked in the post

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while he was actually physically doing the job in a different organization during the relevant period. It is discernible from the sequence of events in the present case that confusion was created at both ends, i.e. by the Respondents Organization and also at the end of the applicant. It is clearly a case where the applicant has joined the new organization by a fresh appointment and neither any transfer nor deputation from the parent department was involved. The mistake committed by either side whether inadvertently or due to lack of application of mind cannot bestow on the applicant a right, which is not supported by law. Hence, the claim of the applicant to make him eligible for prorata pension benefits on the ground that he has more than 10 years of service in the parent department is not sustainable in the eyes of law.


11. I would also like to add that the logic of the applicant that he should be deemed to have rendered service in the parent organization in the lien period because the new organization has remitted leave salary and pension contribution does not hold water in view of the fact that the applicant has asserted that he was never on deputation; nor was he transferred from the parent department to the new organization where he got absorbed. It is his own case that he joined being selected

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through UPSC against an open advertisement. Thus the logic of the applicant flounders. Applicant has miserably failed to make out a case in his favour.

12. Accordingly, the O.A. fails being devoid of merit and is dismissed. No costs.


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

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