

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 999 of 1996

Present : Hon'ble Dr. B.C. Sarma, Administrative Member.

Hon'ble Mr. D. Purkayastha, Judicial Member.

Sri Brij Murari Agarwal, son of Late Nand Kishore Agarwal, aged about 63 years, formerly working as Deputy Director, Central Glass and Ceramic Research Institute, Jadavpur, Calcutta-700 032, under the Ministry of Government of India and presently residing at Flat No. 104 Block B/2, Prantik Peerless Housing Estate, P.O. Sonarpur, 24-Parganas (South), P.S. Sonarpur, Calcutta-743 369.

...Applicant.

- v e r s u s -

1. The Union of India, service through the Secretary, to the Government of India, Ministry of Finance.
2. Union of India, service through the Secretary to the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pensions and Pensioners Welfare, New Delhi.
3. The Commissioner of Customs, Customs House.
4. The Director General, Council of Scientific & Industrial Research, Rafi Marg, New Delhi.
5. The Director, Central Glass and Ceramic Research Institute, Calcutta-700 032.

...Respondents

For the applicant : In person.

For the respondents : Ms. K. Banerjee, counsel
Ms. U. Bhattacharya, counsel.

Heard on 21.11.97 & 24.11.97

Order on 21/11/98

O R D E R

D. Purkayastha, JM

One Sri Brij Murari Agarwal, retired Dy. Director, Central Glass and Ceramic Research Institute, Jadavpur, Calcutta had approached this Tribunal for direction upon the respondents to count his past service rendered by him from 18.2.58 to 8.6.61 as chemist in the Chemical Laboratory Custom, Calcutta for the purpose of retiral benefits including pension to which he has become entitled upon his retirement on superannuation from 31.8.93 and also to issue direction upon the respondents to make payment of the interest of Rs.28,534/- for delayed payment of gratuity and leave encashment etc. as claimed by him. However, it be mentioned here that the applicant subsequently abandoned the 2nd relief as mentioned above.

2. The case of the applicant is in short that he was selected through interview for the post of Chemical Assistant Gr.II in the Central Board of Revenue Laboratory on 10.1.58 and thereafter he was appointed as Chemical Assistant Gr.II in the Chemical Laboratory of Custom House, Calcutta and he worked there upto 8.6.61. Thereafter he ~~was~~ succeeded for appointment as Senior Scientific Assistant at the Central Fuel Research Institute, under the council of Scientific and Industrial Research (C.S.I.R.). Accordingly he joined on 9.6.61 and the applicant applied for the said post through proper channel to which he was permitted. Subsequently the applicant was appointed as "Scientist-B" in the Central Glass and Ceramic Institute on 12.3.65 and he retired as Deputy Director Scientist F, Central Glass and Ceramic Research Institute on attaining the age of superannuation on 31.8.93. But it is found that despite his repeated representation~~y~~ made to the authorities, his past service from 18.2.58 to June 1961 as Chemical Assistant grade II, in the Custom Department was not taken into account for pension. It is stated that the applicant has been in continuous service in the Central Revenue Control Laboratory of Custom House, Calcutta as Chemical Assistant Gr.II from 18.2.58 to June 1961 and joined as Senior Scientific Asstt. in the C.F.R.I. on 9th June 1961. Thereby he is entitled to get benefit of such past service in Customs Deptt. for the purpose of pension etc.

3. The respondents did not file any reply in this case though the several adjournments were granted to the respondents for filing reply and no documents had been produced by the respondents despite direction issued from this Tribunal. The applicant appeared in person. And the case of the respondents is represented before us by Advocate^s Mrs. Kanika Banerjee and Mrs. U. Bhattacharya. The contention of the applicant is that he was in continuous service in C.S.I.R. since 9.6.61 and he was permanently absorbed in the organisation of C.S.I.R. on the basis of application through proper channel thereby he is entitled to get benefit of past service rendered in the Custom Department for the retiral benefit etc. but due to deprivation of such benefit he did not get full pension of 33 years qualifying service for the purpose of pension. Since the respondents did not produce any record nor filed any reply in this case, thereby we have no other alternative but to decide the case on the basis

2/11

of the application and records placed before us by the applicant in this case. Now the question comes whether the applicant is entitled to get benefit of such service for the purpose of pension.

4. We have gone through the records & submission of the ~~applicant~~ ^{both the parties}.

It is found that the applicant worked as Chemical Assistant Gr.II in the Custom House Laboratory, Calcutta from 18.2.58 to 8.6.61 his work and conduct during the period of his service was satisfactory. He left the job on his own accord, as he was selected for appointment in the Central Fuel Research Institute, Jealgora.

5. It is a case of the applicant that he applied through proper channel for the post of SSA in C.F.R.I under Council of Scientific and Industrial Research and he was permitted accordingly. Thereby his past service from 18.2.58 to 8.6.61 should be counted for the purpose of pension. In the absence of the written statement and records from the side of the respondents, we have no other alternative but to accept the contention of the applicant that he applied through proper channel for the post of SSA and he was released by the Department after his appointment. It is also found from the memo No. S.23-74/611 dated 8.6.61, that the applicant was released from the Department of Custom in order to join in the new post. A Govt. servant quitting service on resignation will not be entitled to any benefit etc. But in this case, it is found that the applicant has been released from the parent department on being selected for the post of SSA without obtaining any resignation from him. So a Govt. servant who is appointed for the post in a Central / Public Sector Enterprise/Central Autonomous Body through proper channel will be released only after obtaining or accepting resignation from the Govt. service if he is a temporary Govt. servant because of the fact that the temporary Govt. servant under the service jurisprudence has no right to maintain lien with the parent department on appointment in another Department. But we find that there is no law or rule that retention of lien is necessary or pre-requisite conditions to become entitled to retirement benefits when the Govt. servant joins in another Deptt. under the Central Govt. or Public Sector Enterprise on selection. Even in case of resignation from parent service with the approval of the parent Deptt. for the purpose of joining to a new post in the Central Govt.

or Central Autonomous Body, the past service cannot be forfeited for the purpose of pension. ~~in~~ ⁱⁿ view of the instructions contained in page 254 of Swamy's Hand Book of 1996 where it is stated that a Govt. servant who is selected for a post in a Public Sector Enterprise/Central Autonomous Body will be released only after obtaining and accepting his resignation from Govt. service. Such resignation will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such a case, Govt. servant shall be deemed to have been retired from service from the date of such resignation and he will be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him, from his parent organisation.

Here the applicant applied through proper channel and he was selected and thereafter he was released by the authority in order to join in the post as SSA under the Central Govt. though it is stated in the letter of release that he left the job on his own accord. In view of the aforesaid circumstances, it cannot be said that his past service of the in the Customs Department cannot be counted for the purpose of pension. We are of the view that since the applicant applied through proper channel and he was selected for the post applied for and subsequently released by the department in order to join his new post thereby his past service in the Customs Department cannot be said to be dead-wood for the purpose of granting pension.

6. In view of the aforesaid circumstances, we find that the applicant made several representations to the authorities but the respondents did not consider his case till date. No negative or affirmative reply in respect of the claim of the applicant for counting past service from 18.2.58 to 8.6.61 for retiral benefits has been made by the respondents. Thereby we are of the view that respondents arbitrarily denied the benefit of past service from 18.2.58 to 8.6.61 rendered by the applicant in the Customs Department without having any valid reason whatsoever. And thereby it is a case of deprival of rightful claim of the applicant in respect of pension on superannuation and respondents wrongfully declined to take into account the entire period of service from 18.2.58 to 8.6.61.

7. Regarding the question of limitation, we find that the applicant is being paid less amount of pension in every month due to wrongful denial of qualifying service rendered by him in Customs Deptt. for getting full pension in this case. So the cause of action of the applicant is being arisen every month when he gets less payment for wrongful denial of qualifying service for the period from 18.2.58 to 8.6.61 for the purpose of retiral benefits. So the application cannot be said to be barred by limitation in this case.

8. In view of the aforesaid circumstances, we hold that the applicant's past service from 18.2.58 to 8.6.61 shall be taken into account for the purpose of pension or retiral benefits. And respondents are directed to make payment of all retiral benefits on the basis of the fixation of pay after taking into account the period of service from 18.2.58 to 8.6.61 as rendered by the applicant as Chemist in the Customs Department. And all retiral benefits on the basis of re-fixation should be paid to the applicant within three months from the date of communication of this order. If the retiral benefits, as ordered, today is not paid within the period mentioned in this order, applicant shall be entitled to get interest at the rate of Rs.12% per annum on the amount from the date of retirement from service.

9. With this observation and direction we dispose the application accordingly awarding no costs.

(D. Purkayastha)
M e m b e r (J)

(B.C. Sarma)
M e m b e r (A)

21/1/98

~~At the time of~~ After passing of the judgment, the applicant mentioned that he should be granted liberty to file a separate application in respect of interest, as claimed in the original application in sub-para (d) of the reliefs sought, which was abandoned by him at the time of hearing. ~~p.t.o.~~