

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 112/96
T.A. No.

~~188~~

DATE OF DECISION 19.8.98

Jawahar Lal Jain .. Petitioner

V.D. Vyas .. Advocate for the Petitioner(s)

Versus

Union of India & ~~Ans.~~ .. Respondents

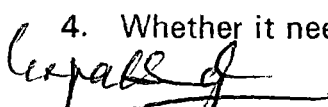
Mr. Arun Bhansali .. Advocate for the Respondent(s)

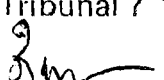
CORAM :

The Hon'ble Mr. A.K. Misra, Judl. Member

The Hon'ble Mr. Gopal Singh, Adm. Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(GOPAL SINGH)
Adm. Member


(A.K. MISRA)
Judl. Member

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH: JODHPUR.

O.A. No.112/96

Date of Order: 19.8.1998

Jawahar Lal Jain s/o Late Shri C.L. Jain, r/o H-2/48 RAPP Township, Post Office Vikramnagar Via: Kota (Rajasthan), presently working as Administrative Officer-II in the Administration Section of Rajasthan Atomic Power Station, Post Office, Anushakti, Rawatbhata, Distt: Chittorgarh.

... Applicant

VERSUS

1. Union of India through the Secretary, Department of Atomic Energy (D.A.E.), C S M Marg, Bombay.
2. Project Director, Rajasthan Atomic Power Station, Post Office Anushakti, Via: Kota (Rajasthan) - 323303.

... Respondents

Mr. V.D. Vyas, Counsel for the applicant.

Mr. Arun Bhansali, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member

O R D E R

Per Hon'ble Mr. Gopal Singh

Applicant, Jawahar Lal Jain, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for issuing a direction to the respondents to treat the past services of the applicant from 17.6.1964 for all purposes including grant of Pensions, Gratuity and allotment of residential accommodation etc.

Gopal Singh

2. Applicant's case is that he was initially appointed as Steno-Typist in the Soil Conservation Research Demonstration and Training Centre at Kota, (for short, SCRC), under Indian Council of Agriculture Research, (for short, ICAR), of Ministry of Food and Agriculture, Government of India w.e.f. 17.6.1964. The applicant was substantively appointed to the post of Steno-Typist w.e.f. 17.6.1966. That in response to an advertisement by Heavy Water Projects, Department of Atomic Energy, Government of India, Bombay, the applicant applied for the post of Stenographer (Senior) through proper channel, in the year 1970. Consequent upon his selection the applicant was relieved vide letter dated 25.2.1971 (Annx. A/4) by SCRC of ICAR, Kota to report for duty in the Heavy Water Projects, Kota.

Initially the applicant was treated as on deputation to Heavy Water Projects, Kota and his lien was retained by his parent department upto 31.3.1974. It is the case of the applicant that on an assurance that his past service would be counted for pensionary purpose from the present employer (Heavy Water Projects, Department of Atomic Energy) the applicant resigned his earlier post under ICAR and got absorbed in the Heavy Water Projects, Department of Atomic Energy. Now the present employer is not agreeing to count the past service of the applicant rendered under the ICAR for the purpose of pensionary benefits on the plea that the parent department of the applicant has not agreed to extend the benefit of past service to the applicant. Despite several representations the applicant's case has not been considered either by the present employer or the former employer. Though the present employer is convinced of the fact that the applicant should be given the benefit of the past service for purpose of pension.

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3. Notices were issued to the respondents and they have filed their reply. In their reply, the respondents have stated that the applicant had joined the department as a fresh candidate and as such he cannot be given the benefit of his past service with his former employer. Secondly they had denied this benefit on the ground that the former employer of the applicant has not agreed to this benefit to be given to the applicant.

4. We have heard the learned counsel for the parties and perused the records of the case carefully.

5. The appointment order dated 15.6.1964 (Annx. A/1) appointing the applicant as Steno-Typist in the SCRC, Kota inter alia stipulates the following terms and conditions of the applicant.

- (i) His application for better post will be forwarded elsewhere only once in a year. No application will be forwarded during the period of probation i.e. two years.
- (ii) He shall abide by all the rules to the Central Government Servants.

The appointment of the applicant in the Heavy Water Projects, Department of Atomic Energy vide order dated 29.3.1971 (Annx. A/5) also stipulates the following conditions:

- (i) In all other matters he will be governed by rules and regulations as applicable to the Central Government Servants of similar nature.

It would be seen from the above that the applicant had the status of the central government employee in his former department as also in the present department. The learned counsel for the applicant has also brought to our notice Rule 26 of CCS (Pension Rules) providing for forfeiture of service on resignation.

C. P. Singh

6. It would be relevant to examine various rules/regulations in regard to absorption and counting of past service in such cases. Relevant rules are extracted below:

Under Rule 26 of CCS Pension Rules - Forfeiture of service on resignation:

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

Government of India's decisions (1) under Rule 26 of CCS Pension Rules

(1) When resignation a technical formality and when it subsists - A Government servant intending to apply for a post or posts outside his parent office/department under the Government of India should have his application forwarded through the competent authority under whom he was serving at the time of applying for the post. Such an authority should either forward the application or withhold it according as the exigencies of public service may indicate but it should not forward the application conditionally, for example, that in the event of the applicant coming out successful, he will be required to resign his post before taking up the new one. Once the application has been forwarded unconditionally and the person concerned is offered the post applied for, he should be relieved of his duties to join the new post as a matter of course and the question of his resigning the post held by him in such circumstances should not arise. Accordingly the amended article is intended to cover the cases where even though the applications were forwarded by the competent authority, the applicant had been asked for one reason or the other to resign his post before taking up the new one. The above position holds good whether the Government servant held the post in permanent or temporary capacity, before resigning the post.

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It has been decided that in cases where Government servants apply for posts in the same or other department through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a 'technical formality'. The pay in such cases may be fixed under FR 27.

According to M.H.A., O.M. No.60/37/63-Ests.(A) dated the 14th July, 1967, permanent/quasi-permanent Central Government servant appointed under another Central Government department has to resign from his parent department unless he reverts to that Department within a

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period of two years (three years in exceptional cases) of his appointment in the other department. The Government of India have been considering whether this resignation should entail forfeiture of past service for purpose of leave and pension of the Government servant concerned. It has been decided that such a resignation should be deemed to be resignation within the meaning of Article 418 (b) of CSRs (Rule 26 (2) for pension. As a consequence of this decision, continuity of service benefit should be allowed in the matter of leave also.

Appendix 12 of CCS (Pension) Rules

Transfer of Central Government servants to Central Autonomous Bodies and vice versa and of employees of Central Autonomous Body to another Central Autonomous Body (Government of India, Dept. of Personnel & A.R., O.M. No.28-10/84-Pension Unit, dated the 29th August, 1984)

As per existing orders, service rendered outside Central Government does not count for pension in Central Government except in the case of scientific employees of autonomous bodies financed or controlled by the Government who on permanent absorption under the Central Government are allowed to count their previous service for pension subject to certain conditions. In respect of personnel other than scientific employees, who are permanent in Central Government, in the event of their subsequent permanent absorption in public sector undertakings or any autonomous body, proportionate retirement benefits for the service rendered in Government till the date of permanent absorption are allowed as per rules in force at the time of absorption. No such benefit is allowed to temporary employees going over to autonomous body or undertaking.

2. A number of Central autonomous/statutory bodies have also introduced pension scheme for their employees on the lines of the pension scheme available to the Central Government employees. It has, therefore, been urged by such autonomous/statutory bodies that the service rendered by their employees under the Central Government or other autonomous bodies before joining the autonomous body may be allowed to be counted in combination with service in the autonomous body, for the purpose of pension, subject to certain conditions. Similar provisions for employees of autonomous body going over to Central Government have also been urged. In other words, the suggestion is that the benefit of pension based on combined service should be introduced.

3. This matter has been considered carefully and the President has now been pleased to decide that the case of Central Government employees going over to a Central autonomous body or vice versa and employees of the Central autonomous body moving to another Central autonomous body may be regulated as per the following provisions:-

(a) In case of Autonomous bodies where Pension Scheme is in operation-

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(i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employees of the autonomous bodies who are permanently absorbed under the Central Government.

The Government/autonomous body will discharge its pension liability by paying in lump sum as a one-time payment, the pro rata pension/service gratuity/terminal gratuity and retirement gratuity for the service up to the date of absorption in the autonomous body/Government, as the case may be. Lump sum amount of the pro rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time.

(NOTE - Various Ministries/Department of the Government of India may accept pension liability in all these cases where Central Government employees move to Central autonomous bodies with proper permission and discharge the same in the prescribed manner. For this purpose 'proper permission' means that Government servant applies for the post in autonomous body through 'proper channel' and he resigns with due intimation that he is doing so to take up assignment in autonomous body or the Government servant is relieved of his duties by the Government Department/Office to take up assignment in an autonomous body. Pension liability may also be accepted in past cases provided the Government servant took up the assignment in autonomous body with proper permission. The Ministry of Defence, etc., may please issue specific directions to their Financial Advisers to advise the autonomous/statutory bodies under their administrative control to make the above provisions in their rules and regulations. In case where any practice other than that mentioned above is presently being followed, the same may be revised in accordance with these decisions and they may also provide for acceptance of pension liability for the past service.

(G.I., Dept. of Pension and Pensioners' Welfare, O.M. No.28/10/84-Pension Unit - Volume I, dated the 12th September, 1985.)

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(c) Absorption of employees of one Central Autonomous Body in another Central Autonomous Body:

The above procedure will be followed mutatis mutandis in respect of employees going from one autonomous body to another.

Cooper Singh

4. "Central autonomous body" means body which is financed wholly or substantially from cess or Central Government grants. "Substantially" means that more than 50 per cent of the expenditure of the autonomous body is met through cess or Central Government grants. Autonomous body includes a Central statutory body or a Central University but does not include a public undertaking.

Only such service which qualifies for pension under the relevant rules of Government/Autonomous body shall be taken into account for this purpose.

x x x x x

5. (2) Where no terminal benefits for the previous service have been received, the previous service in such cases will be counted as qualifying service for pension only if the previous employer accepts pension liability for the service in accordance with the principles laid down in this Office Memorandum. In no case pension contribution/liability shall be accepted from the employee concerned.

6. These orders will be applicable only where the transfer of the employee from one organisation to another was/is with the consent of the organisation under which he was serving earlier, including cases where the individual had secured employment directly on his own volition provided he had applied through proper channel/with proper permission of the administrative authority concerned.

7. (These orders will take effect from the date of issue, viz., 29th August, 1984. The benefits under these orders should also be extended to all those who had retired prior to the issue of these orders and who are otherwise eligible for the benefit of counting of service thereunder. The arrears of pension, if any, which become due to the concerned pensioners, would be disbursed to them with effect from 29.8.1984 only and that they would not be entitled to get any relief in respect of the period prior to 29.8.1984.)

8. The provisions contained in the Ministry of Finance, Office Memorandum No. 26(18)E. V (B)/75, dated the 8th April, 1976 (Order (3) in Section II) and O.M. No. 25(1)-E. V/83, dated the 8th September, 1983 (Section IV) or any other orders shall, in so far as it provides for any of the matters contained in this Office Memorandum, cease to operate.

9. The Ministry of Education and Culture, etc., are requested to advise the autonomous/statutory bodies under their administrative control, with specific directions to the Financial Advisers concerned, to ensure to make necessary provisions in their Rules and Regulations/Articles of Association in accordance with the provisions contained in this Office Memorandum. In cases where any practice otherwise than enumerated above is presently being followed the same may be revised in accordance with the provisions of this Office Memorandum so that uniformity is maintained in such matters in all the organisations.

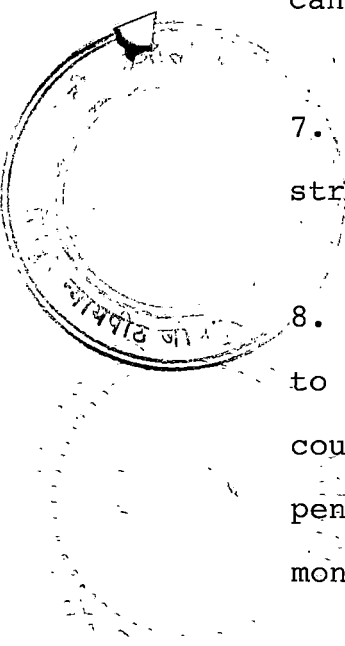
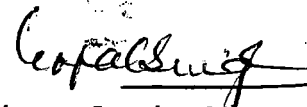
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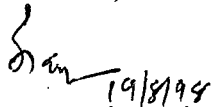
A perusal of the above provisions would reveal that the applicant is entitled to count his previous service rendered under the ICAR for the purpose of pensionary benefits. It may be mentioned that the applicant has already been permitted to carry forward his leave from his former employer. The service book of the applicant duly verified by the former employer has also been sent to the present employer. The learned counsel for the respondents could not show us any rules/regulations under which the past service in the circumstances of the applicant cannot be counted for the pensionary benefits.

7. In the result we find that the application has much strength and deserves to be allowed.

8. The O.A. is accordingly ~~xxxxx~~ allowed with the direction to the respondents to consider the case of the applicant for counting his past service under the former employer for pensionary benefits, as per rules, within a period of three months from the date of issue of this order.

9. Parties are left to bear their own costs.



(Gopal Singh)
Administrative Member


(A.K. Misra)
Judicial Member

Aviator/

Recd. Gftr
25/10/98

R/c
~~Parassey~~ Jan 20. 44as.
25/10/98

Part II and III destroyed
in my presence on 30.3.2001
under the supervision of
section officer () as per
order dated 28.2.2001

Section officer (Record)

