

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 476
L.A. No.

1992

DATE OF DECISION 16.10.92

S. Anirudhan Applicant (s)

Mr. C.P. Sudhakara Prasad Advocate for the Applicant (s)

Versus

The Union of India represented Respondent (s)
by Govt. of India, Ministry of Steel & Mines Deptt. of Mines
New Delhi and others

Mr. K.A. Cherian Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. Dharmadan, Judicial Member

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

Mr. N. Dharmadan, Judicial Member

Applicant is a Sr. Technical Assistant (Drawing Office) under the Geological Survey of India, GSI for short. He is aggrieved by the refusal of the respondents to grant him the benefit of past service in the Railway for the purpose of granting retirement benefits and fix his pension on his retirement.

2. According to the applicant, he was first appointed as Tracer in the Central Railway as per Annexure A-4 order dated 18.12.57. While he was working in the Central Railways, he submitted application for the post of Draftsman Grade-I in the GSI, Southern Regional Office, Hyderabad and that application was forwarded to the GSI with Annexure A-5 dated 16/24.8.63. He was called for interview and the CPO (Engineering) Central Railway, V.T. Bombay issued Annexure A-6 'No Objection Certificate'

so as to enable him to appear ^{for} the interview to be held on 16.9.63. After his selection to the post, he was appointed as Draftsman Grade-I as per Annexure A-7 order dated 31.1.64. He sought permission from the Chief Engineer (Construction) Central Railway to take up appointment as Draftsman Grade-I in the GSI. This was granted and he was relieved from Railway on 24.2.64. He joined duty as Draftsman Grade-I in the GSI at Hyderabad on 26.2.64. Annexure A-10 is the order of appointment. Applicant submitted Annexure R-1 representation dated 22.2.65 to the GSI to count his past service in the Railway for the purpose of service benefits in GSI. This was disposed of by Ext. R-II reply ⁴ which reads as follows:

"The appointment of Shri S. Anirudhan as Draftsman in Geological Survey of India has to be treated, for all intents and purposes, as a fresh appointment under the Govt. of India w.e.f. 26.2.64 and the question of condonation of one day's break to enable him to treat his previous service under Railway as continuous with the present one should not, therefore, arise."

~~Though~~ the applicant did not file any representation against Ext. R-II ~~xxxx~~ his date of continuous service was ~~xxxxxxxx~~ shown in the subsequent seniority list ~~Ann-A-11~~ as on 1.12.85 (applicant's commencement of continuous service was shown as 22.8.59) This being a mistake, the applicant submitted Annexure A-17 representation which was answered in the following manner by Annexure A-18 dated 8.4.86:

"The date of entry in Government service and in Geological Survey of India (Col. No. 2,6 7) have also been corrected as 18.12.57 and your office may please be corrected accordingly. However, the corrected copy of the seniority list is enclosed for ready reference. The official may be informed suitably."

The GSI has taken a decision that the applicant's continuous service in Government is from 18.12.57. Thereafter, a corrected seniority list Annexure A-11 was issued fixing applicant's continuous service of entry in Govt. service as 18.12.57. But so far as the pension benefits are concerned, the Director General has taken

the view that the applicant's appointment in the GSI ~~from~~ 26.2.64 alone will be taken into consideration. Communication issued in this behalf to the applicant are Annexure A-2 and A-3 dated 28.6.91 and 30.5.91 respectively.

3. In this application filed under section 19 of the Administrative Tribunals' Act, 1985, applicant is mainly challenging Annexures A-2 and A-3 and prays for a direction to count the service of the applicant from 18.12.57 to 31.10.92 as qualifying service for the purpose of granting of retirement benefits legally due to him.

4. Respondents have admitted the facts xxx stated by the applicant in the application but submitted that the claim of the applicant is belated. According to them, the applicant's request for condoning the break was rejected as per Annexure R-2 order dated 6.5.67. They further submitted that on careful examination of the applicant's claim by the competent authority it was found that the applicant's service in the GSI alone can be taken into consideration for the purpose of granting pensionary benefits. According to the respondents, the applicant ² should have approached the Central Railway for redressal of his grievance, if any, and not the GSI. It is an accepted principle that in cases involving seniority, counting of past service, change of date of birth etc. grievance should be submitted for redressal well in advance of the date of retirement and his request is belated and cannot be accepted.

5. Learned Counsel, Shri C.P. Sudhakar Prasad, appearing on behalf of the applicant submitted that, while the applicant was working in the Railway, he submitted his application for the post of Draftsman Grade-I through proper channel. It was ² with the permission of the Railway that he appeared for the interview and he was also granted necessary permission for resignation so as to enable him to join the new post. From

the facts and circumstances it is very clear that the applicant's new appointment in the GSI was with the full knowledge and permission of the Railways. In that view of the matter, there is no break in service and the applicant is entitled to the reliefs claimed in this Application.

6. In this connection, learned counsel brought to my notice Rule 26 of CCS(Pension) Rules. Relevant portion of the Rules is extracted below:

"Forfeiture of service on resignation:

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service
(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

(3) Interruption in service in a case falling under sub rule (2) due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.."

Rule (2) indicates that the resignation of the concerned employee from the original employment will not entail ~~xxx~~⁴ any forfeiture of past service if it is made with the proper permission of the employer. In such cases, the employee cannot be denied the benefit of counting of his past service and it is the duty of the new employer to condone the break and interruption of service caused on account of the resignation from the earlier service to join the new service. In other words, when such a permission is established it appears to be automatic and that continuity of service accrues⁴ in favour of the Govt. employee and denial of the same amounts denial of legal right.

7. In the instant case, materials produced by the applicant are sufficient to arrive at a conclusion that it is only after proper permission and knowledge of the Railway that he has resigned from Railway service and joined the service of GSI. Hence, the case of the applicant for ~~counting~~⁴ service for pensionary benefits comes within Rule 26(2) and ~~and~~^{continuity} cannot be denied.

8. It is also brought to my notice ~~a~~⁴ Govt. of India instruction No. F.3(6)-EV(A)/71 dated 4.12.71 and dated 20.5.72, issued in connection with the interpretation of Rule 26(2)

of the CCS (Pension) Rules. It reads as follows:

"Under Article 418(b) of CSRs(Rule 26(2) of CCS (Pension) Rules 1972) resignation of an appointment to take up with proper permission another appointment whether permanent or temporary, service in which counts in full or in part, is not resignation from public service. A question has been raised whether in such cases a separate sanction should be issued indicating that resignation has been accepted under the above provisions, in order to enable the Accounts Officer to regulate the consequential benefits in the matter of pay fixation, carry forward of leave, pension etc. The matter has been considered in consultation with the C&AG and it has been decided that ~~in cases of above type~~ the order accepting the resignation should clearly indicate that the employee is resigning to join another appointment with proper permission and that the benefits under CSR 418(b) Rule 26(2) will be admissible to him. The contents of the above order should also be noted in the service books of the individuals concerned under proper attestation. The issue of any separate sanction has not been considered necessary.

An entry may be made in the service book of the government servant concerned under proper attestation as laid down above in past cases also where it has been decided to allow the benefits of CSR 418(b)."

It shows that the stand of the Government is that an order accepting resignation of a Government employee for taking another employment should have permission. If such a permission is ~~approved~~, a separate sanction is not necessary for establishing the right of the concerned government employee to regulate the consequential benefits. But there should be an entry in the Service Book of the Government servant concerned with proper attestation so as to give him the benefit of continuity in service under Rule 26(2).

8. In order to verify whether such entry has been made in the Service Book, I directed the Government counsel to produce the Service Book of the applicant. Accordingly, he was kind enough to produce the Service Book of the applicant. In the Service Book, there is no entry with regard to the applicant's earlier service in the Railway but a copy of Annexure A-13 produced by the applicant, a letter issued by the GSI in relaxation of age of the applicant in connection with the employment as Draftsman

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Grade-I, is in the file. It reads as follows:

"With reference to the correspondence resting with your letter No. 677/S(N)51/1/61/62/16(SR) dated 20.8.64 I am directed to say that the Government of India are pleased to accord ex post facto approval for relaxation of the prescribed age limit of 25 years in respect of Shri S. Anirudhan whose date of birth is 20-10.1934 appointed as Draftsman Grade-I in the GSI on 26th February, 1964 in view of his services in the Central Railway from 18.12.57 to 24.2.64."

Even though there is no endorsement in the Service Book of the applicant as indicated in the Govt. O.M. dated 4.12.70, the letter Annexure A-13 kept in the Service Book of the applicant shows that the Government was fully aware of the fact that the applicant has prior service in the Railway and it was also taken in to account while relaxing the upper age limit and GSI accepted continuity of service in Annx.11 and Annx.-16 seniority list as corrected by Annx. A-18. These three documents clearly establish that the applicant's continuous service was recognised by the GSI. If the GSI recognised the applicant's service for seniority from 18.12.57 for the purpose of service benefits there is no legal justification on the part of the GSI to deny the same for pensionary benefits as well to the applicant. This different stand taken by the GSI for seniority and pension cannot be accepted.

9. It is an admitted fact that the applicant has prior service in the Railway from 18.12.57 and that service is also pensionable. The benefit of pensionary service rendered by the applicant cannot be denied to him on a technical ground of delay and break which appear to be the only reason given in the reply. However, the subsequent conduct of the authorities of GSI in recognising the service of the applicant in the Railway for the purpose of seniority which also holds good for the purpose of granting pensionary benefits clarifies beyond any doubt


that there is no break in service to deny the applicant pension counting his service from 18.12.57. There is absolutely no delay in this case from the date of Annexure A-2 and A-3 and I am not inclined to reject this application reckoning delay from the date of R-2 which has been actually superseded by Annexure A-11, A-16 and A-18.

Moreover, the application was admitted on 27.3.92 after hearing the SCGSC. No objection regarding limitation was taken at the admission stage. Under these circumstances, it is not fair and proper to dismiss this application on the plea of delay and latches raised by the Government Counsel.

10. In the result, I hold that the applicant is entitled to relief. Accordingly, I quash Annexure A-2 and A-3 and direct the respondents to count the prior service of the applicant in the Central Railway from 18.12.57 to 24.2.64 as qualifying service for grant of retirement and other benefits legally due to the applicant on his retirement on 31.10.92.

11. The application is accordingly allowed.

12. There will be no order as to costs.

 16.10.92

(N. Dharmadan)
Judicial Member
16.10.92

kmm