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CENTRAL ADMINISTRATIVE TRIBUNAL ALIAHABAD BENCH.

O.A.No.77 of 1989.

G.I.PunvaniApplicant.

Versus

Union of India & 2 othersRespondents.

Hon'ble Mr.Justice U.C.Srivastava, V.C.

Hon'ble Mr.A.B.Gorthi, A.M.

(By Hon'ble Mr.A.B.Gorthi, A.M.)

In this application, the prayer of the applicant essentially is for the grant of pensionary benefits to him on his retirement from the service on 31.1.83. Amongst the other reliefs sought by him are his claims that he be deemed to be a permanent employee and that the period of his suspension from duty from 6.6.75 to 18.8.82 be treated as on duty.

2. The applicant who joined service under the Government of India in the Ministry of Rehabilitation on 6.3.48, was retrenched on 31.3.50. He then joined Rehabilitation Department of Uttar Pradesh on 16.11.50 and with its integration with the Ministry of Rehabilitation, became Managing Director, Acquired Evacuee Property with effect from 28.10.55. He was also commissioned ^{in U.K.} Territorial Army (T.A.) as a Second Lieutenant on 18.3.55. While he was embodied with the Territorial Army on being relieved by the Ministry of Rehabilitation with lien of his Civil post with effect from 11.2.60, his lien had to be terminated with effect from 1.5.61 as the post was abolished. He was, however, selected by the UPSC for the post of Assistant Controller of Imports & Exports, Ministry of Commerce which post he joined on 15.7.63 but was relieved on 13.8.63 to enable him to again

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join the Territorial Army. He remained in the Territorial Army till 31.3.69. Thus, he served in the Territorial Army during 1962 and 1965 operations against China and Pakistan respectively. On release from the Territorial Army, he resumed his Civil post of Asstt. Controller of Imports and Exports on 9.4.69 at Kanpur. The applicant was given ^{quasi-} permanent status with effect from 15.7.66 and thus became eligible for confirmation as a permanent employee with effect from 15.7.69 but he was denied the same. In a seniority list published as on 19.11.79, the applicant was shown as having been appointed on a 'regular basis' as Controller w.e.f. 15.7.63. It was, however, noted in the remarks column of the seniority list that the recommendations for his appointment in Grade III was kept in sealed cover.

3. A CBI enquiry started against the applicant and a few others of his department in 1971 for alleged violation of import policy in the issue of import licenses. In 1972, the applicant was transferred to Madras, but he did not join there on the ground of illness for which he took medical leave from 17.7.72 to 11.8.74. Thereafter, he reported for duty at Bombay as Controller of Imports and Exports. The CBI launched criminal prosecution against the applicant and his two associates. The applicant was suspended w.e.f. 5.6.75 although the others were not. The applicant approached the Lucknow Bench of the Allahabad High Court which vide its judgment dated 25.5.84 quashed the charges and criminal proceedings.

4. In the mean time, departmental disciplinary proceedings were instituted against the applicant

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on 16.4.80 and he was consequently awarded the penalty of compulsory retirement vide order dated 18.8.82. The applicant challenged the same before this Tribunal which found that there was no justification to hold the applicant guilty of the charges and accordingly set aside the penalty with the direction to the respondents to consider the petitioner to have continued in service till his age of superannuation vide its judgment dated 14.12.90. The date of birth of applicant being 19.1.25, he stood retired from service w.e.f. 31.1.83.

5. The stand taken by the respondents is somewhat perplexing. They contend that they have no official records from which they could either admit or deny the applicant's claim of past service under the Ministry of Rehabilitation. There does not seem to be any ~~dispute~~ department with regard to the service of the applicant in the Territorial Army as he was commissioned therein as a Second Lieutenant on 18.3.55 and was promoted as a Lieutenant on 18.3.58. It is also apparent that he continued to serve in the Territorial Army upto 14.7.63. It is also admitted that he joined as Assistant Controller of Imports & Exports on 15.7.63, that he was spared to again join the Territorial Army from 14.8.63 to 31.3.69.

6. As regards the claim of the applicant for equal treatment with released Army Officers in the matter of seniority, the respondents clarified that the instructions pertained only to released 'Emergency Commissioned Officers' but not to Territorial Army Officers. They have further contended that the suspension of the applicant, the departmental disciplinary proceedings etc. were all done bonafide and there was no question of any malice. On the

issue of grant of permanent status to the applicant, the respondents contended that his case was considered by the Departmental Promotion Committee but was not cleared from the vigilance angle, presumably because of the CBI enquiry and the subsequent criminal prosecution of the applicant. As regards the grant of pension, the respondents claim that the applicant is not entitled to pension because he was only a temporary employee and had not rendered 20 years of service. Moreover, he was compulsorily retired and hence he could not claim any pension.

7. At the outset it may be stated that consequent to the judgment of the Lucknow Bench of the Allahabad High Court quashing the criminal proceedings against the applicant and the judgment of the Tribunal setting aside his compulsory retirement, both the judgments having been pronounced on merits, there can be no dispute that firstly the period of suspension with effect from 5.6.75 will have to be treated as on duty and secondly the applicant will be deemed to have retired on attaining the age of superannuation on 31.1.83 and not on the date when he was compulsorily retired. As regards the denial of pension to the applicant, we are not convinced that he is not entitled for the same. In view of the ^{lack of} helplessness of the respondents either to affirm or to deny the applicant's statement of his previous service with the Ministry of Rehabilitation, the particulars thereof as given by the applicant in his affidavit will have to be accepted. There can be no denial of the fact that the applicant was commissioned in the Territorial Army on 18.3.55. The full period of his embodied service will have to be counted as a regular service

in Government of India. Thereafter, the applicant's service in the Central Trade Service under the Chief Controller of Imports & Exports from the date of his joining the service on 15.7.63 will also have to be treated as qualifying service for pension, mainly for the following reasons :-

- i) He was appointed as Controller on a 'regular basis' as can be seen from the seniority list published on 7.7.81. The respondents' contention that notwithstanding what was stated in the seniority list, he was a temporary servant, does not appear to reflect the correct position. Temporary service as defined in the Central Civil Services (Temporary Service) Rules, 1965, Rule 2(d), means 'the service of a temporary Government servant in a temporary post or officiating service in a permanent post, under the Government of India'. There could be no doubt that the post against which he was appointed in the Central Trade Service was a permanent post and that he was appointed not on a temporary basis but on a regular basis.
- ii) The respondents themselves contended that the case of the applicant was considered by the Departmental Promotion Committee for confirmation but was kept in a sealed cover because of the vigilance case. The said vigilance case against him having ultimately collapsed, there can be no impediment to give effect to the DPC recommendation. In any case, in view of the applicant's contention that there was nothing adverse in his confidential report and the respondents' omission to show that, apart from vigilance enquiry, there was anything adverse against the applicant, there can be no justification to deny the applicant the status of a confirmed permanent employee.*
- iii) Rule 13 of the Central Civil Services (Pension) Rules, 1972 lays down that 'qualifying service' of a Government servant shall commence from the date

he takes charge of the post to which he is first appointed either substantially or in officiating or in temporary capacity, provided that officiating or temporary service is followed without any interruption by substantive appointment in the same or another service or post. The term 'qualifying service' is defined in Rule 3(q) of the said Pension Rules as meaning 'service rendered while on duty or otherwise which shall be taken into account for the purpose of pension and gratuity admissible under these rules'. Rule 32 of the said Rules further provides for verification of qualifying service and accordingly it is for the various departments of the Government where the applicant had allegedly served, to carry out such verification under Sub-Rule (2) of Rule 32. In view of the observations made in the preceding sub-paragraph, that the applicant should have been confirmed as a permanent employee when the criminal/disciplinary proceedings had ended in his favour, the respondents are not justified in taking the technical plea, which is rather untenable, that the service rendered by the applicant in the Central Trade Service w.e.f. 15.7.63 to 31.1.83 does not come within the purview of 'qualifying service'.

iv) The period of suspension w.e.f. 5.6.75 which the respondents tried to show as not qualifying for pension, will have to be treated as service for the purpose of pension in view of the fact that both the criminal proceedings as well as the disciplinary proceeding against the applicant terminated in his favour.

¶ We may here advert to certain additional reliefs sought by the applicant. He claimed payment on account of 23 TA/DA bills for his journeys from Bombay to Lucknow in connection with the CBI case. He also claimed compensation for harassment and torture that he suffered on account of departmental disciplinary proceedings. As regards his T.A/DA bills, he should approach the authority concerned who will examine whether he is or is not entitled to

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claim the same as per rules. Hence we would not like to entertain this plea, more so, when we are not even sure of the genuineness of the claim. His claim for special compensation for harassment also deserves to be rejected outright as the record does not show that anyone concerned with the departmental enquiry had acted maliciously against him.

9. In view of the above, the respondents are hereby directed firstly to reckon the period of suspension of the applicant with effect from 5.6.75 towards his service and secondly to deem the applicant as having been confirmed as a permanent employee of the Central Trade Service from a date on which his junior was so confirmed. The respondents shall then take into consideration the details of the past service of the applicant under the Government of India in accordance with the Central Civil Services (Pension) Rules, 1972 and accordingly determine his pensionary benefits and pay the same to him together/interest ^{with} thereon at the rate of 10%. The respondents shall comply with the above orders within six months from the date of communication of this judgment.

10. The application is allowed in the above terms without any order as to costs.

Shanayya
MEMBER (A)

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VICE CHAIRMAN

Dated: February 4, 1992

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