

**Central Administrative Tribunal
Lucknow Bench Lucknow**

**Original Application No.300/2006
This, the 23rd day of January 2009**

HON'BLE MR. M. KANTHAIAH, MEMBER (J)

Abdul Rasheed aged about years S/o Shri Abdul Khalik resident of 271 PB Bhitari Peer Batwan, Barabanki.

Applicant.

By Advocate:- Shri Indu Lai.

Versus

1. Union of India through the General Manager, NRE Rly, Gorakhpur.
2. Divisional Rly Manager, NE Rly, Lucknow Jn.
3. Senior Divisional Personnel Officer, NE Rly, Lucknow Ju.
4. Senior Divisional Accounts Officer, NE Rly, Lucknow Junction.
5. Adhishashi Adhikari, Nagar Palika, Nawab Ganj, Barabanki.

... Respondents.

By Advocate:- Shri N.K. Agrawal.

ORDER

BY MR. M. KANTHAIAH, MEMBER (J)

The applicant has filed Original application with a prayed to issue direction to the Respondent No.1 to 4 for counting of service rendered by the applicant from 21.2.1969 to 07.09.1983 of Nagar Palika, Barabanki under Respondent No.5 for fixing his pension and for



granting others terminal benefits on the ground that the respondent authorities did not count his earlier service in Nagar Palika, Barabanki (Resp-5) for fixation of his pension, stating that after obtaining permission from the Nagar Palika, Barabanki, he joined in the railway service.

2. The respondents have filed Counter Affidavit, denying the claim of the applicant stating that the applicant is not entitled for counting of service rendered in the Nagar Palika, Barabanki for counting of his pensionary benefits by the railways. They have also further stated that the Nagar Palika has given reply stating that the services of the applicant was not pensionable at that time and further, under Rule 14 (III) of the Railway Pension Rules, 1993, the applicant is not entitled for counting his past services of Nagar Palika, Barabanki for grant of pensionary benefits. It is also not in dispute that the appointment of the applicant in the railway department was on compassionate ground because of the death of his father and the same was fresh appointment without any allotment of his earlier service of Nagar Palika. It is also not the case of the applicant that his services of Nagar Palika had been transferred to the railways, while appointing him on compassionate ground..

3. The applicant has filed Rejoinder Affidavit, denying he stand taken by the respondents and also reiterated his pleas in the OA.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.



6. The admitted facts of the case are that the applicant was appointed as Clerk on 21.2.1969 in Nagar Palika, Barabanki (Respondent No.5) and thereafter, promoted on the post of Light Inspector w.e.f. 14.09.1979 and worked there up to 7.09.1983. When he was working in Nagar Palika, Barabanki, he made an application for his appointment as clerk in the office of Respondents No.2 on compassionate ground on 25.10.1982 and thereafter, he was appointed as clerk w.e.f. 08.09.1983 vide order Dt. 20./29.08.1983 (Ann.-A-5). Thereafter, the applicant worked in the office of Respondent No.1 to 4 in various capacities till the age of superannuation on 31.07.2005, while working as Officer Superintendent-II. Thereafter, the railway authorities have fixed the pension of the applicant at Rs.3485/- per month taking on the basis of his services w.e.f. 08.09.1983 to 31.07.2005. Thereafter, the applicant made representation to the respondent authorities to count his service in Nagar Palika, Barabanki from 21.02.1969 to 07.09.1983 for fixation of his pension and other retiral benefits.

7. It is also no dispute fact that the State Government introduce the pension scheme in Nagar Palika vide Notification No. 3898/11-6-1984-217/129 Dt. 01.10.1984 (Ann.-2), which came into effect after the applicant left the services of Nagar Palika. It is also the claim of the applicant that the respondent authorities have extended the benefits of counting of service of some of his officer namely H.S. Srivastava and S.N. Mathur and some other whereas, in his case the

department has discriminated for extension of such benefits and relied on Memorandum Dt. 18.10.1994 (Ann.-A-9).

8. It is the main case of the applicant that he is entitled for counting of his past service rendered in Nagar Palika from 21.2.1969 to 07.09.1983 for counting his service in railway department while fixing his pension and other pensionary benefits. The respondents have opposed the claim of the applicant stating that applicant was not entitled for any pension from railways while, the applicant was in the service of Nagar Palika as there was no pension scheme at that time and the same was introduced on 01.10.1984 by the Nagar Palika and as such, the same is not at all helpful to the applicant for counting his past service by the railway authorities.

9. It is the case of the applicant that while, he was in Nagar Palika from 21.2.1969 to 07.09.1983, he made representation to the railway authorities for his appointment on compassionate ground by treating his earlier service into consideration. It is also an undisputed fact that while the applicant was working in Nagar Palika during the period 21.2.1969 to 07.09.1983, there was no pension scheme for the employees of Nagar Palika but subsequently, the State Government introduced the pension scheme in Nagar Palika employees vide Government Notification No. 3898/11-6-1984-217/129 Dt. 01.10.1984. From this, it is clear that the extension of pensionary benefits to the employees of Nagar Palika was extended by the State Government after the applicant joined in the services of railway department. When there was no pension scheme while he was

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working in the Nagar Palika and further, without transferring of his services of Nagar Palika to railway department while, giving him appointment on compassionate ground Dt. 08.09.1983, it is not at all open to the applicant to seek extension of his past services rendered in Nagar Palika for counting it by the railway department for the purposes of fixation of pension and other pensionary benefits. The applicant is justified in seeking reliefs, if he is entitled for pensionary benefits from Nagar Palika, while he was working there from 21.2.1969 to 07.09.1983 or if his appointment in railway department was by way of transferring from Nagar Palika department but none of those circumstances are prevailing in the present case and as such, applicant is not justified in seeking such relief.

10. The learned counsel for the applicant relied on the following decisions:-

1. **[(2006) 3 UPLBEC 2547] Ujagar vs. Chairman/ Executive Officer, Nagar Palika Parishad, Shikohabad, District Firozabad and others** stating that the pension scheme was extended to the Nagar Palika employees but the said judgment is not helpful to the applicant to say that the pension scheme, which came into effect on 01.10.1984, applicable to the employees who left the services of Nagar Palika even to retired employees of Nagar Palika before it came into existence and as such, the same is not applicable to the present case.

2. **[2007 (113) FLR 1156] (Patna High Court) between Shyam Kishore Singh vs. State of Bihar & Others** "Pension-

Pensionary benefits issue-When being considered, the past services have to be reckoned with and to be tagged with total period of pensionable service-No reason to exclude the service period from 1966 to 1983 from pensionary benefits".

3. Central Administrative Tribunal (Mumbai Bench)

O.A.No.2013/2001 Dt. 05.03.2003 Dr. Anant Devidas Adawadkar Vs. Union of India & Others "Central Civil Services (Pension) Rules, 1972- Rule 26 (2)- Pensionary Benefits-past Service—Applicant had submitted his application through proper channel and got the necessary sanction for previous department/ State Govt. for joining the Central Govt.—Merely because the certificates issued by the previous department do not specifically mention that he had resigned to take up new department cannot be a ground to deny the counting of the past service rendered by him in that department—Direction given accordingly".

4. Punjab And Haryana High Court 1995 (4) SLR page 116

Darshan Singh Vs. State of Punjab and Others.

In all the above cases past service of previous departments were pensionary but no such circumstances are prevailing in the instant case. As such, they are not helpful to the fact of this case.

11. It is also the case of the Respondent No.1 to 4 that under Rule 4 (III) of Railway Pension Rules, 1993 past services of the applicant in Nagar Palika was not counted for the pensionary benefits in the railways stating that the applicant while working in Nagar Palika, it was a non-pensionable post. It is not in dispute that when, the

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applicant working in Nagar Palika there was no pensionary benefits to his post and as such, there is no justification in the claim of the applicant to count his past services rendered in Nagar Palika (Respondent No.5) for counting his service and pension or other pensionary benefits from Respondent No. 1 to 4 (Railway department).

12. In view of the above circumstances, there are no merits in the claim of the applicant and as such, OA is liable for dismissal.

In the result, OA is dismissed. No order as to costs.


(M. KANTHAIAH)
MEMBER (J)

23.01.2008

amit/.