

(RESERVED)  
On 30.03.2015)

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH,  
LUCKNOW.

This the 23<sup>rd</sup> day of April, 2015.

**ORIGINAL APPLICATION NO. 443 OF 2009.**

**HON'BLE MR. NAVNEET KUMAR, MEMBER- J.**  
**HON'BLE MS. JAYATI CHANDRA, MEMBER- A.**

Ram Autar Gautam, aged about 64 years, son of Late Shri Bal Govind, resident of 568 Kha/439, Geetapalli, Alambagh, Lucknow (lastly working as Superintendent of Police, District Mau (Uttar Pradesh).

.....APPLICANT

Advocate for the applicant: Shri Prashant Kumar Singh.  
Shri Praveen Kumar

VERSUS

1. Union of India, through the Secretary, Ministry of Home Affairs, New Delhi.
2. Union of India through the Secretary, Ministry of Communication (Department of Telecommunication), New Delhi.
3. State of U.P. through the Principal Secretary, Home Department, Civil Secretariat, Lucknow.
4. Director General of Police, Uttar Pradesh, Lucknow.
5. Reserve Bank of India, through its Manager, Kanpur.
6. Bharat Sanchar Nigam Limited, New Delhi through its Chairman - Cum- Managing Director.
7. General Manager, Bharat Sanchar Nigam Limited, Telecom District Kanpur.

.....RESPONDENTS

Advocate for the respondents: Shri A.K. Chaturvedi  
Shri G.S. Sikarwar  
Shri K.K. Shukla

*J. Chandra*

**ORDER**

**BY HON'BLE MS. JAYATI CHANDRA, MEMBER- A.**

Through this Original Application filed under section 19 of Administrative Tribunals Act, 1985, the applicant seeks the following relief(s):-

- "i) issuing/passing of an order or direction setting the decision communicated by the respondent NO.3 vide letter dated 16.2.2009 (as contained in Annexure No.A-1 to this application), after summoning the original records.*
- (ii) issuing/passing of an order or direction to the Respondents to count the services rendered by the applicant from 11.01.1966 to 02.06.1975 in Posts and Telegraphs Department (later known as Posts and Telegraphs Department (later known as Telecommunication Department) and from 05.06.1975 to 13.03.1978 in the Reserve Bank of India for the purposes of pension, and to sanction full pension to the applicant with effect from 01.02.2005 onwards and pay the difference of arrears together with interest at the current market rate.*
- iii) issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- iv) allowing this original application with cost".*

2. The facts of the case are that applicant was initially appointed as Time Scale Clerk in the Post of Telegraph Department (Telecom Services), Govt. of India by O.M No. ESTT. -165 dated 27.01.1966 w.e.f. 11.01.1966 and he served there from 11.01.1966 to 02.06.1975. His

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services were confirmed w.e.f. 01.03.1970. The services of the applicant were without any interruption and also pensionable. The applicant submitted an application through proper channel to Reserve Bank of India and was duly appointed as Clerk-cum-Coin-Note Examiner Grade - II by Reserve Bank of India on 05.06.1975. This appointment was preceded by his resignation being accepted by D.E. Phones (A), Kanpur vide his order dated 3.6.1975 w.e.f. 02.06.1975. The resignation being effective from 02.06.1975. The applicant was selected for U.P. Police Service through the U.P. Public Service Commission and joined as Deputy Superintendent of Police on 15.03.1978. He was appointed to the Indian Police Service (I.P.S) by promotion w.e.f. 27.09.1992 and was allotted to 1992 batch. He attained the age of superannuation on 31.01.2005. Prior to his retirement, he submitted an application on 02.01.2005 to the Principal Secretary (Home), Government of U.P. Lucknow through the Director General of Police, U.P. and requested for counting of his former services i.e. from 11.01.1966 to 02.06.1975 (in Posts and Telegraph Department) and from 05.06.1975 to 13.03.1978 (in Reserve Bank of India) for the purposes of pensionery

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benefits. His application was forwarded to Government of U.P. vide letter dated 14.01.2005 by Director General of Police U.P. Lucknow. The applicant submitted a second application dated 05.07.2006 (Annexure A-5), which was again forwarded to Government of U.P. by letter dated 20.7.2006 but no decision was taken. The applicant submitted an application dated 18.08.2006 to the Additional financial Advisor, BSNL, Kanpur (being the successor body) to erstwhile Department of Posts and Telegraphs (also known as Telecommunication Department). The Director General of Police, U.P. Lucknow sought a copy of Service Book in original or its legible photocopy from General Manager, BSNL, Kanpur. However, B.S.N.L. informed the D.G.P that service book of the applicant was not traceable. This inter correspondence between the Government of U.P. through D.G.P and B.S.N.L carried on till 20.7.2007 BSNL informed the D.G.P by letter dated 22.09.2008 that the applicant had joined the department on 11.01.1966 and he was confirmed w.e.f. 01.03.1970 and his resignation was accepted w.e.f. 2.6.1975 (Annexure A-14). Despite the above, the State Government vide its letter dated 16.2.2009 sought information from Director General of

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Police under which provision the period of employment under RBI can be counted for pensionary purposes. By the same letter, the State Government also stated that the services of the applicant rendered in Indian Postal Department from 11.6.1966 to 2.06.1975 cannot be counted in the absence of service book and its verification.

3. Respondent Nos. 3 and 4 through their counter affidavit has confirmed the date of joining in the State Police Service and subsequently in the I.P.S. as also the date of retirement. They have further stated in their counter affidavit that for the first time the applicant preferred a representation dated 02.01.2005 requesting that the services rendered by the applicant in the Indian Post & Telegraph Department from 11.07.1966 to 02.06.1975 (09 years, 04 months and 22 days) and RBI from 05.06.1975 to 13.03.1978 (02 years, 09 months and 08 days) be added for pensionary benefits. This request of the applicant has not been accepted by the respondents as the service rendered by the applicant in the Reserve Bank of India is not pensionable and the applicant has also received the final payment of CPF from

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the Reserve Bank of India immediately after 13.03.1978 as admitted by the applicant. Thus his claim for counting the service rendered in the Reserve Bank of India has been rejected by letter dated 16.02.2009 (Annexure A-1). This the decision is also in keeping with O.M Nos. 10.07.1998 and 28.12.2001 (Annexure Nos. C-1 & C-2). The question of counting the service rendered in the Indian Post & Telegraph department is under consideration as through various letters, the copy of the service book or its reconstructed form has not yet been preceived from the BSNL. They have further raised the objection of the O.A. being barred by time as the claim for counting of the service rendered in Posts and Telegraphs Department has been raised for the first time in the year 2005 i.e. after 30 years of leaving the service of Posts & Telegraphs Department.

4. Respondent Nos. 6 and 7 have confirmed that the service book of the applicant is not available as the case is very old. The rest of the averments have been either denied by them or have been stated as not being relevant to them.

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5. Respondent No. 5 - Reserve Bank of India have stated that the application is not maintainable as the pension scheme was introduced for the first time by the Reserve Bank of India from November 1, 1990. This scheme covered the employees who retired from Bank's service on or after January 1, 1986. Further the Bank had decided vide Circular dated 10.4.1992 that past services rendered by the employees with the Central Government/State Government/Autonomous Bodies of Central Government/Nationalized Banks/State Bank of India and its associates may be counted as qualifying service for the purpose of pension under the R.B.I. Pension Regulations 1990. Subsequently, Government of India vide their Circular No. F. 4/8/98-IR dated February 05, 2002 had advised Chief Executives of Public Sector Banks under advice to R.B.I and other financial institutions that past service rendered in Banks/financial institutions cannot be counted as qualifying service under the Government for pension and vice-versa (Annexure A-2). Accordingly, Reserve Bank of India had withdrawn vide its Circular dated 24.4.2002 and 10.4.1992. Moreover, applicant resigned from the Bank service way

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back in 1978 and on the ground of his resignation. Hence the O.A. is liable to be dismissed.

6. The applicant has filed rejoinder reply reiterating the more or less the same thing.

7. We have heard counsels for the parties and perused the records.

8. As the respondent Nos. 3 and 4 have raised the technical ground of limitation, the same is being dealt with first. The applicant has prayed for counting of his past service rendered from 11.01.1966 to 02.06.1975 in Posts and Telegraphs Department (succeeded by BSNL) and from 05.06.1975 to 13.03.1978 rendered in the Reserve Bank of India for the first time through his representation dated 02.01.2005. The applicant by his own averment has been continuously been striving for better career prospects. He initially joined the Department of Telecommunication then resigned from this service on being selected in the Reserve Bank of India and then again resigned his service from Reserve Bank of India to join U.P. Police. When a person looks at

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the career prospects open to him and takes a decision to resign from one service for sake of joining another, he certainly looks into all aspect of service in terms of (a) immediate level of salary (b) the mid term and long term prospect of advancement both financially and in terms of other service conditionalities (c) The nature of service i.e, whether it is permanent, adhoc, regular etc. and (d) the terminal benefits such as pension etc. No doubt the applicant had look into all these aspects when he choose to resign from the Department of Telecommunication's (Government of India) permanent and pensionable job in favour of accepting a job with the Reserve Bank of India which at that time had no pension scheme. Subsequently, he moved into the State Police service. It is at the time of joining the State Police Service in the year 1978 that he should have clarified and obtained commensurate orders for counting/not counting of his past services in both or one of the department immediately on joining such services. The applicant never bothered to attain an order in his favour from the competent authority on his first joining in the U.P. State Police Service in 1978. The cause of action, that is counting of the past services arose from the day he

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joined services. The section 21 of the C.A.T. Act fixes a maximum period of one year for the purpose of approaching this Tribunal from the date of arising of the cause of action. Hon'ble Supreme Court in catena of judgments have stated that no prayer can be accepted without looking into the causes of delays beyond the stipulated periods. Therefore, on the ground of delay this O.A. is liable to be dismissed. It is further seen that applicant has given a certificate in para 3 of the O.A. to the following effect:-

**“3. Limitation:-**

*The applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985. However, if the Hon'ble Tribunal comes to the conclusion that the original application has been filed beyond the time prescribed under section 21 (1) of the Administrative Tribunals Act, 1985, the applicant prays that the delay in filing the original application may kindly be condoned in the interest of justice keeping in view the peculiar facts and circumstances of the case”.*

We fail to understand what were/are the peculiar facts of circumstances of the case, in the absence of any prayer for condoning the delay.

*J. Chandel*

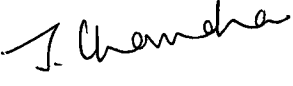
9. Coming to the merits of the case, the applicant by his own averments has stated that his resignation offer was accepted by the District Engineer Phones (A) Kanpur Telephone District Kanpur vide his letter NO. JT-2007 (ER) dated 03.06.1975 w.e.f. 02.06.1975 (Annexure A-2). The said acceptance letter does not give any condition that his services will be counted in future by any future pension - paying employer. Infact the applicant had given his resignation so that he could be appointed by the Reserve Bank of India against a post which did not have the facilities of paying any pension. The applicant has sought the extension of DOPT & AR OM NO. 28-10/84 - Pension unit dated 29.08.1984 and Government Order of even no. dated 07.02.1986. However, these Government Orders lay down the counting of past services with regard to persons who are working in government departments (State & Central) and get absorbed in PSUs (State & Central) and vice versa. The case of the applicant is separate and distinct in that he resigned from Department of Telecommunication (now B.S.N.L.) and joined the Reserve Bank of India and then resigned from Reserve Bank of India. The applicant has not produced any

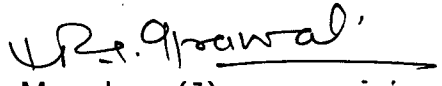
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Government Order or statute to establish that such resignations were technical in nature and the transition from one employment to another was in the nature of 'absorption' by the later body.

10. In view of the above discussion, relief as prayed for in relief No. 8 (ii) cannot be granted. Relief No. 8 (i) also becomes merged with relief No. 8 (ii). O.A. is dismissed.

No costs.

  
Member (A)

  
Member (J)

Manish/-