

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 246/2005

This the 11th day of January, 2010

Hon'ble Ms.Sadhna Srivastava, Member (J)

Hon'ble Dr. A.K.Mishra, Member (A)

G. Paul r/o E-1584, Rajajipuram, Lucknow-226017 (presently Deputy Director, RDSO, formerly Assistant Design Engineer/Traction Installation Directorate, RDSO, Lucknow)

Applicant

By Advocate: Sri Chandra Shekhar

Versus

1. Union of India through Chairman, Railway Board, New Delhi.
2. The Director General, RDSO, Manak Nagar, Lucknow.

Respondents

By Advocate: Sri S.M.S.Saxena

ORDER

Hon'ble Dr. A.K. Mishra, Member (A)

This application has been filed challenging the order dated 23.3.2005 of respondent No.2 in which his request for counting his past service in Irrigation Department of U.P. Govt. , RDSO, Lucknow and U.P. Chalchitra Nigam for the period from 30.1.1971 to 31.1.1978 was rejected.

2. His prayer is to allow the benefit of the aforesaid past service for the purpose of his retiral benefits by quashing the impugned orders dated 23.3.2005 and the memorandum dated 6.7.2004.
3. The applicant joined Irrigation Department of U.P. State Govt. on 30.1.1971 and worked there as Junior Engineer upto 30.6.1976. He applied for a post of Junior Research Assistant (JRA) in the RDSO and was selected. He joined RDSO on 1.7.1976 and worked as JRA till 20.10.1976. He applied for the post of Assistant Engineer in U.P. Chalchitra Nigam through proper channel. On being selected, he resigned from RDSO on 20.10.1976 and joined U.P. Chalchitra Nigam on 2.11.1976 as Assistant Engineer.
4. After joining U.P.Chalchitra Nigam, the applicant sent an application for re-appointment in RDSO on 2.2.77. His request was accepted and a letter of appointment was issued on 25.3.77 asking him to join on or before 15.4.1977 on the condition that he will be treated as a fresh candidate, but the applicant did not join before the date fixed. After the termination of his service from U.P.Chalchitra Nigam, he made a fresh application to RDSO on 3.8.1978 for re-appointment. His application was again considered sympathetically and a fresh

letter of appointment was issued on 3.8.1978 stating clearly that he would be treated as a fresh entrant and the services earlier rendered by him in RDSO and thereafter would not be considered for any purpose. In acknowledgement of his agreement to these conditions, an undertaking was obtained from him and the applicant was allowed to join RDSO on 20.4.1979.

5. The applicant has been agitating time and again to grant him the benefit of his past service in the Irrigation Department of U.P. State Govt., RDSO and U.P.Chalchitra Nigam for the purpose of pensionary benefits.

6. He had filed O.A. No. 309/2004 which was disposed of on 24.12.2004 with a direction to the respondents authority to consider his representation and pass a reasoned and speaking order. The impugned memorandum dated 23.3.2005 has been passed in compliance of the said direction of this Tribunal. It has been stated that the applicant's services in U.P.Chalchitra Nigam which is a state undertaking do not qualify for pensionary benefits in terms of Railway Servants (Pension) Rules, 1993. The office memorandum dated 7.2.1986 relied on by the applicant does not cover public undertakings for the purpose of counting of service for pensionary benefits. Referring to Rule 41 (1)and (2) of Railway Servants (Pension) Rules,1993, it is stated that the resignation of a Railway Servant from his post would entail forfeiture of his past service. Such a forfeiture would not take place if the Railway Servant takes up with proper permission another appointment under the Govt. where the service qualifies for pension. Relying on Rule 41 , the respondents authorities came to the conclusion that his service in U.P.Chalchitra Nigam, a State Govt. undertaking could not be counted for pensionary benefits and since he had resigned to join a State Govt. undertaking , which is not a Govt. and where his service did not qualify for pension , the forfeiture of his past service , both in RDSO and U.P. Irrigation Department could not be saved. It is further stated that the applicant himself had accepted in writing that his appointment in RDSO on 21.4.1979 would be as a fresh candidate. In view of these considerations, his representation was rejected.

7. At the time of hearing, the learned counsel for the applicant submits that the consent of the applicant was unfairly taken and the agreement between him and the RDSO could not stand the test of a proper contract. He relied on the judgment of the Supreme Court in the case of *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and others reported in AIR 1991 Supreme Court, 101* to contend that the relationship between an employee and the Govt. is not that of a contract between an employer and employee in the private sector. Here the service conditions are governed by statutes and

rules formulated for the purpose. Therefore, any unfair terms meted out to an employee at the time of his distress could not pass the test of judicial scrutiny. Such unfair terms would be violative of Articles 14 and 16 of the Constitution.

8. The learned counsel for the respondents on the other hand cited *Vidyavardhaka Sangha and another Vs. Y.D. Deshpande and others reported in (2007) 2 Supreme Court cases (L&S) 320*, in which a view was taken that the employee having accepted the terms and conditions stipulated in the appointment letter could not be permitted to turn around and challenge the same terms and conditions. The learned counsel submits that the facts of the present case are squarely covered by the ratio of this judgment of the Supreme Court. He also cited *State of Karnataka Vs. C.K. Pattamashetty and Another reported at 2004 Supreme Court Cases (L&S) 910* to buttress his argument that terms of appointment of an employee would be the guiding factor in determining his service conditions.

9. The Supreme Court dealt with the subject of forfeiture of past service consequent of resignation of service in the case of *Union of India and others Vs. Braj Nandan Singh (Civil Appeal No. 4406 of 2005* reported in 2006 (1) S.C. Services Law Judgments page 21, in which it was decided that once the past service was forfeited on account of resignation, there was no qualifying service left for grant of pension to the employee.

10. Counsel for respondents drew our attention to the provisions of Rule 41 (1)(2) of the Railway Servants (Pension) Rules, 1993. These are extracted below:-

"41. Forfeiture of service on resignation:- (1) Resignation by a railway servants from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority shall lead to forfeiture of his past service.
(2) A resignation shall not lead to 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 for pension."

11. Admittedly, the applicant resigned his post from RDSO in order to take up an appointment under U.P.Chalchitra Nigam which is not a Govt. where his service did not qualify for pension. In the circumstances, his past service in RDSO could not be saved.

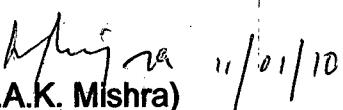
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12. He also drew our attention to paragraph 7 of the Railway Board's letter No. E(NG)1/90/RG1/1 dated 29.1.1991 which is reproduced below:-

"7. A person who had resigned may be re-employed in rare cases but the re-employment should be in the post or in the channel of promotion in which the person was serving previously. The person concerned should be specifically warned at the time of re-employment that the appointment is entirely a fresh one and that he is not entitled to any benefits or privileges of his past service. Therefore, such persons should not be asked to refund settlement dues."

13. The request of the applicant for re-appointment was considered in terms of this circular of the Railway Board and he was treated as a fresh entrant. Therefore, he could not be given any benefit in respect of his past service. It has been brought out clearly that not only once, the applicant was offered twice re-appointment on sympathetic consideration, subject to the condition that he would be treated as a fresh candidate. He has also accepted the terms and conditions of his appointment order. Therefore, it does not lie with him to turn around subsequently and claim benefits which run counter to the terms and conditions of his appointment. The settled law is very clear on the subject.

14. Under the circumstances, we are unable to appreciate the claim of the applicant. O.A. is accordingly dismissed without any order as to costs.


(Dr. A.K. Mishra) 11/01/10

Member (A)

HLS/-


(Ms. Sadhna Srivastava)

Member (J)