

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 216/2006

This the 31st day of August, 2007

HON'BLE SHRI JUSTICE KHEM KARAN, VICE CHAIRMAN

Manohar Swarup Saxena aged about 75 years son of late Sri Mishri Lal R/o House No. 568 Ka/308-A behind District Jail, Krishnapalli, Alambagh Lucknow retired from the Post of Music Composer, Akashvani, Lucknow.

...Applicant

By Advocate: Shri R.P.Shukla

Versus

1. Union of India, through its Secretary, Ministry of Information and Broadcasting, Government of India, Central Secretariat, New Delhi.
2. The Director General Mahanideshalaya, Akashvani, All India Road, Prasar Bharti Bhawan, Sansad Marg, New Delhi.
3. The Station Director, Akashvani, All India Radio, 18, Vidhan Sabha Marg, Lucknow.
4. The Administrative Officer c/o Station Director, Akashvani, All India Radio, 18 Vidhan Sabha Marg, Lucknow.
5. The Executive Engineer, Irrigation Department, Central Design Director, Chief Engineer's office, Canal Bhawan, Lucknow.
6. The State of U.P., through its Secretary, Irrigation Department, Govt. of U.P., Civil Secretariat, Lucknow.

...Respondents.

By Advocate: Shri Vishal Chowdhary for Km. Asha Chowdhary

ORDER

BY HON'BLE SHRI JUSTICE KHEM KARAN, V.C.

Applicant, Manohar Swarup Saxena, who retired on 23.7.1990 from the service of Respondent No. 1 to 4, has prayed for the following reliefs:

- i) This Hon'ble Tribunal may kindly be pleased to quash the impugned order dated 2.1.2006 passed by the Opposite Party No.3 contained in Annexure No. 1 to this application.
- ii) This Hon'ble Tribunal may kindly be pleased to direct the respondents to settle the retrial and pensionary benefits to the



applicant on the basis of the total length of service rendered by him from 21.5.1955 till his date of superannuation i.e. 23.7.1990 and accordingly the pension and other benefit of the applicant may also be directed to be determined and pay him full pension regularly during his life time.

iii) This Hon'ble Tribunal may kindly be pleased to direct the respondents to make payment of entire arrears of account of final settlement of retrial benefits and pension benefit and terminal benefits of the applicant within aforesaid time of two weeks along with the interest @ 18% per annum payable from the date of superannuation till the date of actual payment and this amount may also be directed to be paid to the applicant within a period of two weeks.

iv) This Hon'ble Tribunal may also be pleased to pass such orders which may be deemed to be just and proper in the circumstances of the case.

v) To allow the original application with cost. The grounds for the reliefs are same as have been mentioned in para 5 hereinabove.

2. His case, in brief, is that, earlier to joining as Music Composer in Aakashwani, he was serving as temporary Tracer in the Department of Irrigation, Govt. of U.P. He started his career as Tracer from 21.5.1955. He alleges that while working as Tracer, he applied through proper channel for appointment on the post of Music Composer in All India Radio and after he was offered



appointment on the post of Music Composer. He tendered his resignation on 6.4.1976 from the post of Tracer, which the authorities accepted on the same date and thereafter, he joined Aakashwani w.e.f. 7.4.76. He goes on to say that in the beginning, the said joining dated 7.4.1976 was on contract basis as the police verification etc. for regular appointment on the post of Music Composer was under way. According to him, it was on 24.7.1976 that he joined as Music Composer on a regular basis. After he retired on 23.7.1990 from Aakashwani, he requested the authorities to add service rendered under the State Govt. to the service rendered in the All India Radio for purposes of pension etc. When the authorities took no clear cut decision on his request, he filed one O.A. No. 663/2001, which this Tribunal disposed of vide its order dated 4.2.2005, directing the authorities to decide his representation. It appears, in compliance of those directions dated 4.2.2005, the authority concerned passed impugned order dated 2.1.2006 (Annexure 1) saying that service rendered under the State Govt. could not be added to the qualifying service rendered in the Aakashwani mainly for two reasons, one, he did not apply through proper channel for the post of Music Composer and second there was a gap of about 3 months (w.e.f. 7.4.76 to 23.7.76).

3. The applicant is challenging this rejection dated 2.1.2006 mainly on the ground that it is not correct to say that the applicant did not apply through proper channel, for the post of Music

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Composer or there was any interruption in two services, one under the State Govt. and other in All India Radio.

4. The respondents No. 5 and 6, namely Executive Engineer, Irrigation and the Govt. of U.P. have filed reply contesting the claim. They say that the applicant did not apply through proper channel for the post of Music Composer in Aakashwani and so his claim for adding the service rendered under the Govt. of U.P. is not well founded. Respondent No. 1 to 4 have also filed reply supporting what has been said in the impugned order.

5. Applicant has filed Rejoinder saying that he applied through proper channel for the post of Music Composer in Aakashwani and he joined Aakashwani in the afternoon on 6.4.76 though on contract basis till he was regularly appointed as Music Composer on 24.7.76.

6. Vide order dated 22.7.2007, the Tribunal asked the respondents to place the personal file of the applicant that may be containing the application of the applicant for the post of Music Composer, joining letter etc. and also to produce Pay Roll register for the year 1976. They could not produce the personal file of the applicant, containing the application form for appointment on the post of Music Composer. According to them, there was no pay roll register for the year 1976. Again vide order dated 10.8.2007, the respondents were asked to produce the service record such as service book received from the Irrigation Department and maintained in Aakashwani. The two service books were placed before me for

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my perusal on 29.8.2007. These did not contain entries relating to the applying for the post of Music Composer or tendering of resignation dated 6.4.76 on account of appointment on the post of Music Composer in Aakashwani.

7. I have heard Sri R.P.Shukla appearing for the applicant and Sri Vishal Chowdhary holding brief of Km. Asha Chowdhary for the respondent No.1 to 4.

8. Payment of Pension to the servants of the Central Govt. is regulated by Central Civil Services (Pension) Rules, 1972. Rule 14(3) of the Rules of 1972 provides that in the case of a Government Servant belonging to a State Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under the State Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Govt. in an officiating or temporary capacity, as the case may be, shall qualify. Govt. of India's letter No. 3(2)/Pen (A)/79 dated 31st March, 1982 (reproduced on 34-35 of Swamy's Pension Compilation) Seventeenth Edition, 2005 says that service rendered under the State Govt. shall be added to ~~be~~^{the} qualifying service rendered under the Central Govt. only, if the employee applies through proper channel with prior permission of his employer for such appointment under the Central Govt. and tenders his resignation from the previous post so as to enable him to join the post under



the Central Govt. It says that the authority permitting the employee to join the new post shall make endorsement in the service book so that employee may have benefit of previous service under the Central Govt. This letter is of 1982. No doubt, it was not there when the applicant applied for the post of Music Composer and when he tendered his resignation on 6.4.1976, so necessary entries in his service book of the Department of Irrigation are not there.

9. Shri Shukla has vehemently argued that application of the applicant for appointment on the post of Music Composer, could have proved whether he applied through proper channel or not but respondents have not placed that application before the Tribunal. According to him letter dated 29.12.2000 (Annexure 4) written by Executive Engineer, Parikalp Bhawan, Alambagh, Lucknow to Director, Prasar Bharti, Broadcasting Corporation of India itself makes it clear that applicant's application for appointment on the post of Music Composer must be in the office of Aakashwani. He says that the respondents have intentionally withheld that application and so adverse inference should be drawn against them. He has also referred to letter dated 3.10.2003 (Annexure 6) written by Station Director to the Director General, All India Radio, so as to highlight that in absence of relevant records, the contention of applying through proper channel may be condoned in favour of the applicant. He says that the letter says that office has no objection, if the services rendered in

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Irrigation Department are also computed for purposes of pensionary benefits. Shri Shukla has also referred to another letter dated 13.9.2005 (Annexure 7) where it is stated that application of Sri Saxena for appointment on the post of Music Composer was sent through proper channel. Learned Counsel says that it is not believable that a person who has put in more than 21 years of service in Irrigation Department, will apply for the post of Music Composer in Aakashwani without permission of the authority concerned and thereby loose the entire service so rendered in the Irrigation Department. He says that circumstance that the applicant tendered his resignation on 6.4.76 and the authority concerned accepted the same without delay also supports the circumstance that applicant applied through proper channel. On the other hand, learned counsel for the respondents No. 1 to 4 has argued that had the applicant applied through proper channel or with the permission of the Department of Irrigation, Govt. of U.P., there would have been no necessity of police verification. He says the fact that police verification was done, itself reveals that applicant had directly applied for the post of Music Composer.

10. I have considered the respective submissions. No doubt, application of the applicant for appointment on the post of Music Composer could have thrown sufficient light on the point as to whether the same was routed through the Department of Irrigation, Govt. of U.P. or the same was given directly to the

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authorities of Aakashwani. Normally , such application form is kept in the personal file of the employee concerned. Unfortunately, the respondent could not place the same for perusal of the Tribunal. Had the same been done, the controversy could have been settled without any discussion. I fail to understand as to how in absence of that application form, respondents can say that applicant did not apply through proper channel. Circumstances go in favour of the applicant . He had put in more than 21 years of service under the State Govt. He would not have washed off those 21 years by not applying through proper channel. If he had not applied through proper channel, then where was the occasion for Respondents No.1 to 4 to have the service book of Irrigation Department. The fact that applicant's service book of the Department of Irrigation was sent to Aakashwani and the same has been produced by respondent No. 1 to 4 also supports applicant's contention that he applied through proper channel. So the contention of the respondents that the applicant did not apply through proper channel does not appear to be well-founded. Rejection of his claim on that ground is not justified.

11. The second main point is as to whether there was interruption in two services, one rendered under the State Govt. and the other under the Central Govt. Applicant has come with clear cut case that he gave joining report in Aakashwani in the afternoon of 6.4.76 and was allowed to work on contract basis from 7.4.76 to 23.7.76. He has asserted in so many words that



he was paid wages for this period from 7.4.76 to 23.7.76 and entries were made in pay roll register. Unfortunately, the respondents could not produce any pay roll register for the year 1976 though they admit that the applicant worked on contractual basis from 4.7.76 to 23.7.76 (see para 8 of reply of respondent No. 1 to 4). If it was so there, there should have been some proof of the fact that he was paid wages or honorarium for this period. Even that record was not produced. It appears to me that respondents No. 1 to 4 have, for reasons best known to them, avoided to produce pay roll register for the year 1976 and had the same been produced before the Tribunal, the same would have proved that the applicant worked from 7.4.76 to 23.7.76 in Aakashwani on contract basis.

12. I am of the view that it cannot be said that there was any interruption in between the services rendered in the Irrigation Department and in the Aakashwani, so the rejection of the applicant's claim on the ground that there was a gap of about 3 months in between the tendering of resignation form the post of Tracer and joining Aakashwani does not appear to be well-founded.

13. I am of the view that applicant is entitled to the benefit of service rendered as Tracer in the Department of Irrigation, Govt. of U.P. for purposes of pension. This service deserves to be added to the qualifying service rendered under the respondent No.

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1 to 4. Rejection dated 2.1.2006 is not factually and legally justified.

14. So, the impugned order dated 2.1.2006 (Annexure 1) is quashed with a direction to the respondents No.1 to 4 to settle/ revise his retrial benefits ^{of applicant} as per rules by adding the service from 21.5.55 to 6.4.76 as Tracer in the Irrigation Department, Govt. of U.P., to the service rendered under the Respondents No.1 to 4 and pay arrears etc. within a period of 3 months from the date, a certified copy of this order is produced before them, failing which, they shall be liable to pay interest @ 12% per annum from the expiry of period of three months. The O.A. stands disposed of accordingly but with no orders as to costs.

31.8.07
Vice Chairman

HLS/-