

(69)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 220/88

XXXXXX

198

DATE OF DECISION 12. 4. '81

Shri Ramesh Appasaheb Batalji Petitioner

Advocate for the Petitioner(s)

Versus

Central Government (MES) Respondent

Min. of Defence.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.Y. Priolkar, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Na*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *N*

*J. Sheen**14/9/81*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No. 220/88.

Shri Ramesh Appasaheb Bataljee. ... Applicant.

V/s.

Central Government (MES)
 Ministry of Defence,
 Organisation Army H.Q.,
 F-N-C's Branch,
 New Delhi.

... Respondent.

Coram: Hon'ble Member(A), Shri M.Y.Priolkar,
 Hon'ble Member(J), Shri J.P.Sharma.

Appearances:-

JUDGMENT:-

(Per Shri J.P.Sharma, Member(J)) Dated: 12.4.91

The applicant who is working at present as Assistant Engineer, Pune Municipal Corporation was earlier in Central Government (MES), Ministry of Defence Organisation, Army Head Quarters E-N-C Branch, serving as Superintendent B/R Grade-II in Garrison Engineer (A.F.) Lohogaon, Pune - 32. The applicant while serving as such sent an application in pursuance of an advertisement for the post of Assistant Engineer in Pune Municipal Corporation through the Department, who forwarded it on 11.11.1983. The applicant was selected and he joined the Department on 6th November, 1984 but he had submitted a formal/tentative resignation application from the earlier service, and after that he was relieved from MES on 3rd October, 1984. The grievance of the applicant is that this service of the applicant which he rendered with the Central Government from 22nd November, 1971 till 31st October, 1984, has virtually qualified for retirement benefits being

more than 10 years and inspite of that representation he has not been granted pensionary benefits and was informed by the letter dt. 12th October, 1983 that since the applicant had tendered resignation from the MES before taking up the new appointment in Municipal Corporation, Pune, he was neither sent on deputation nor Municipal Corporation, Pune took the permission from MES before absorbing the applicant in their department, so under these circumstances the resignation entailed forfeiture of his past services. This was informed to the representation made by the applicant dt. 4.7.1987 and 30th July, 1987. The applicant therefore, filed the present application on 22nd March, 1988 for the grant of pro rota pensionary benefits for his services in MES for 12 years 11months and 8 days at laid down rates.

2. The respondents contested the application and in the reply stated that the petitioner was appointed as Superintendent Buildings and Roads in Gr.II on 22nd November, 1971. The applicant was promoted on 11th June, 1984 to Grade.I. The applicant requested the Department to forward the application to Pune Municipal Corporation and the Garrison Engineer (AF) forward the application on 22nd November, 1983. On 22nd November, 1983 the applicant has submitted a memorandum (Ex. '5') which is reproduced below:-

"I, MES No.158151 Shri R.A.Bataljee (Designation)
supdt B/R Gde.II (off) do hereby state that

in the event of my selection for the post of Assistant Engineer (Civil) in (Name of new office) Municipal Corporation, Shivaji Nagar Pune-5 applied for by me vide my application dated 22nd Nov 83, I may be permitted to retain my lien in my present appointment of Supdt B/R Gde-II in MES for a period of two years with effect from the date I am struck off the rolls of my parent department, in terms of letter No.25(58)60/Appte) Pt IV of 26 Apr 66 at the expiry of which (i.e. two years) I shall either revert to or resign from the appointment which I last held in my parent department, if I am not absorbed in the permanent establishment of the new office within that period of two years. I shall cease to have been in the parent department from the date of permanent appointment in the new office if the date of such permanent appointment is before expiry of two years.

2. I understand that since the transfer to the new office is not in public interests (a) my parent department office will not be liable to pay me retirement benefits or allow me to carry forward the leave earned by me in my parent department and (b) leave salary and pension contribution will be payable by my foreign employer or by myself.

3. I also undertake to abide by other conditions stipulated in G of I, M of D No.25(58)60/D(Appts) Pt IV dated 26th April 66 and amendments thereto, if any."

Since the applicant was selected he was relieved on the basis of his letter of resignation on 31st October, 1984. The applicant after his resignation and joining the Pune Municipal Corporation applied for Pension and Gratuity proportionately, but his request was rejected vide letter dt. 4.9.1985 (Ex. '3'). The applicant made further representation which was rejected by the letter dt. 12.10.1987 that the said letter has been impugned by the applicant (Ex.4). Regarding lien of the applicant after submission of resignation the respondent stated that the lien is applicable only when the absorption take place interse between Central/State Department/Officers/Autonomous Bodies. The applicant himself executed an undertaking on 22nd November, 1983 and he resigned from MES services before taking up the new appointment

at Pune Municipal Corporation. No permission was granted by the parent department (Central Government) for the absorption of the applicant in Pune Municipal Corporation nor any lien was granted to him. The resignation of the applicant was clear cut which had entailed him forfeiture of pensionary benefits as mentioned above. In view of this it is said that the application is without merit and is liable to be dismissed.

3. We have heard the learned counsel of the parties at length and have gone through the record of the case. The contention of the learned counsel is that the resignation has been made technically by the applicant. In fact the applicant requested to be relieved to join the new appointment with Municipal Corporation, Pune, as Assistant Engineer and for which the respondents have accorded due permission. So in such a situation provisions of sub rule 2 of Rule 26 are attracted. Sub rule 2 of Rule 26 lays down".....A resignation shall not entail 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." The learned counsel has also referred to a judgment of the C.A.T. Principal Bench in the case of Kirti Chandra v. Director General Health Services and others reported in 1990(1)(CAT)SLJ 633. In this reported case the benefit of past service for pension was given to the applicant as he submitted his resignation for taking up

a new job in the Government. In this reported case the applicant rendered service in the State Government as Excise Inspector from 19-5-1948 for about two years and he was relieved from the post of Excise Inspector since his service was for a short duration so he was taken in the Central Secretariat his original parent department on 2-12-1950. The applicant therefore has prayed that his services since inception from 11-4-1940 to 7-4-1948 and from 19-5-1948 to 15-8-1948 be treated as qualifying service along with the service rendered by him in the Central Secretariat from 2-12-1950 until his retirement on superannuation on 30-6-1977. The case relied by the applicant, therefore, is not at all relevant to the present case.

4. The learned counsel for the applicant further argued that since the applicant has been permitted to go and join Municipal Corporation, Pune it would amount to a consent by the respondents to join the services with the Municipal Corporation, Pune and under the provisions of Rule 37 of CCS Pension Rules, 1972 the applicant is entitled to pensionary benefits. In such an event the date of appointment in the Municipal Corporation shall be deemed to be date of retirement of the applicant from the service of the respondents, i.e. Central Government. However, Rule 37 specifically lays down that permission has to be accorded for a post in or

under a body controlled or financed by the Government. The learned counsel for the applicant could not show that Municipal Corporation, Pune is as such controlled and owned by the Government of Maharashtra or Central Government.

5. The learned counsel has also referred to the modified pension rules of 1989 but that will also not help the applicant as thereto the pre-requisite the applicant should have been absorbed in a Corporation owned by the Government. The Rule 37 therefore is not applicable in the case of the applicant. The applicant voluntarily sought employment in the Municipal Corporation, ^{C.G.S. Pension Rules 1972} Pune, Under Rule 48(A), The applicant could have qualified for pensionary benefits on voluntary retirement after giving notice of not less than three months in writing to the Appointing Authority. In the present case the applicant had only put in 12 years of service and moreover the applicant himself on 22nd November, 1983 submitted memorandum (Ex.5), which has been referred to at page 2 of the judgment. There was no mistake in the mind of the applicant that the application shall not be forwarded unless he gives undertaking in the aforesaid memorandum. Exhibit 1 in the application submitted by the applicant which is dated 22nd November 1983. The memo at Ex.5 that is, undertaking, given by the applicant is also dated 22nd November 1983. Again on 22nd November 1983 the applicant has given an undertaking at Annexure 4 either he will ~~return to~~ the post of in MES or he will resign from the service. The resignation of the application was accepted.

on 31st October 1984. Thus, it is not the case whether the applicant only tendered the technical resignation, but the applicant knew very well that for all purposes he is loosing up his past service in MES to join the post of Assistant Engineer in the Municipal Corporation, Pune. On this action also the applicant can not know resile from the stand taken by him as early as in November 1983 or in 1984.

6. The Municipal Corporation, Pune is an Autonomous body but it cannot be equated with the Central Government undertakings. The Central Government had not taken any stand favourably with such of its employees who are absorbed in Autonomous bodies not controlled by the Central Government. The Department of Personnel and Administrative Reforms OM No.F-27(16)-PU/79 dated 27th September 1980 has taken a decision to grant prorata retirement benefits on permanent absorbtion in ESI Corporation. The Municipal Corporation, Pune is an Autonomous body which is not controlled or financed substantially by the Central Government. In view of this matter the applicant has no case.

7. The learned counsel for the applicant want to draw an analogy with this Central Government employees who have gone on deputation or on transfer to undertaking or Corporation controlled by or owned by the Central Government. This analogy cannot apply in the case of the applicant. The applicant was never on deputation or transferred but actually he has joined a new service under a new employer and so cannot be treated at par with this Central Government employees who initially goes on deputation but are absorbed subsequently in the deputed department.

8. In view of the above facts and the circumstances of the case we are of the opinion that the ~~applicant~~ ^{application} is devoid of merit and is dismissed leaving the parties to bear their own costs.

Comics
(J.P.SHARMA) 12/4/91

W.M.
(M.Y.PRIOLKAR)
M(A)