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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 770/96

Date of Decision: 18.9.97

B.G.Khandekar

Applicant.

Shri D.V.Gangal

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.R.Shetty.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. M.R.Kolhatkar, Member(A).

Hon'ble Shri.

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to x
other Ben ches of the Tribunal?

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A).

order reads as below :

" The above proposal has been re-examined in the light of instructions circulated vide CPO BB's L.NO.HPB.655.R. dt. 22.5.92 to all DRMs and others.

- 01) The instructions circulated are in respect of staff transferred from State Governments to Central Government Service/Railways, whereas the above one is not a transfer case, the employee resigned the temporary post in State Government and joined Railways. Hence these rules are not applicable in this case.
- 02) The question of sharing on a reciprocal basis in respect of those temp. employees who had rendered service under one Govt. before securing posts under the other Govt. and get confirmed in new posts, it has been decided vide L.No. F(E)III.82.XN.PN-1.3 dt. 13.11.82 in consultation with State Govts, that proportionately/Liability (pensionary) in respect of Temp. service rendered, to the extent such service would have qualified for grant of pension, under the rules of respective, Govt. on a service share basis. So that the Govt. servants are allowed the benefit of counting their qualifying service both under the Central Govt and State Govt. from where they eventually retire. The gratuity if any received from such previous temp. service, will however have to be refunded by him to the Govt. concerned. As the Educational Officer, Zilla Parishad, Solapur vide his Lr. No.ZPS. EDO.Pry. Est.4.177 dt.14.2.95 had advised that there was no provision for payment of DCRG/Leave Salary etc., to Shri B.G.Khandekar, Asstt. Teacher, who had given resignation with effect from 22.08.75 even though he had completed 20 years Service, the question of considering his previous service does not arise.

The proposal is not acceptable."

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2. The contention of the applicant is that the ^{is} dispute / in respect of the period from 20.8.1955 to 29.8.1975, the service was under the Local Board till 1962 or so and thereafter the service was under Zilla Parishad. According to the Railway Services (Pension) Rules, 1993, Rule 28 provides that the Government Servants can be allowed the benefit of counting their qualifying service both under the Central Government and the State Governments for grant of pension by the Government from where they retire : Provided that the gratuity, if any, received by the Government employee for temporary service under the Central or State Government shall be refunded by him to that Government concerned.

3. The respondents have, however, disputed the claim of the applicant on the ground that the service under Zilla Parishad is not a service under the State Government. In this connection, reference is made to the letter ^{No.28(10)84-P&PW-Vol.II.} / dt. 7.2.1986 from the Ministry of Personnel to the Chief Secretary, Government of Maharashtra which refers to the State Government having accepted the proposal for counting of service for pension on reciprocal basis. This applies to service under State Government and ^{Bodies.} service under State Autonomous / The contention of the respondents (Railways) is that the service under Zilla Parishad is not a service ~~either~~ under State Government or State Autonomous Body.

4. The respondents have further relied on the Judgment of this Tribunal in Mrs. Nalini K. Athavale V/s. Union of India & Ors. [O.A. No. 710/87] in which this Tribunal held that there is a distinction in law between Zilla Parishad and State Government. The Judgment is dt. 25.8.1992 and the letter dt. 7.7.1992 was not before the Tribunal at that time. It was in this context, that this Tribunal directed the State Government viz. R-3 and R-4 to clarify as to what is meant by "State Autonomous Body" in respect of which Central Government has accepted pension liability on reciprocal basis and in particular whether State Autonomous Body includes not only Public Sector Undertakings and the non-profit making autonomous organisations but also covers the "Local Bodies" like "Municipalities" and "Zilla Parishads". The Railways were also directed to file an affidavit, because the applicant had contended that some employees viz. S/Shri P.T. Shimpi, A.A. Khan and P.G. Mahimkar who were employees of Municipal ^{Bodies} _{by Railways} were allowed ^{with} to count their service as qualifying service. In accordance _{the} above directions the Railways have stated that these employees were working in Municipal Service and therefore, the case is distinguishable and in view of ^{case of} Mrs. Nalini K. Athavale the applicant cannot be given any relief.

5. Respondents No. 3 and 4 (State Government) have not clarified the point directly. They have stated that the Service Rules contained in the Maharashtra Civil Service Rules and State Government Orders

in respect of State Government employees are made applicable to the employees of Zilla Parishad, so far as their service conditions and regulations are concerned. It is also submitted that under section 83 100% expenditure on account of pay and allowances is borne by the State Government. It is stated that the term State Autonomous Body has nowhere been defined. Finally, it is clarified that the case of the applicant will have to be decided by R-1 and R-2 in the light of the Government of India letter dt. 13.7.1992. I have already referred to this letter.

6. Let me consider the contentions of R-1 and R-2 for opposing the prayer of the applicant. First of all, it is contended that Urban Local Bodies i.e. Municipal Councils are a distinct category and the Railway Administration can take service rendered in Urban Local Bodies as qualifying service, but not the service rendered in Rural Local Bodies i.e. Zilla Parishad, especially in the context of the decision in Mrs. Nalini K. Athavale's case. Mrs. Nalini K. Athavale's Judgment, ^{however} was rendered without noticing Government of India letter dt. 13.7.1992. Secondly, Mrs. Nalini K. Athavale's case also did not take into account the specific provisions of the Railway Services (Pension) Rules, 1993 which probably were not brought to their notice. I am of the view, that the Railway Administration cannot practise discrimination as between employees of Rural Local Bodies and Urban Local Bodies and if service rendered in the Urban Local

Bodies is counted as qualified service there is no reason as to why service rendered in Rural Local Bodies i.e. Zilla Parishad ^{cannot} also be counted as qualified service. The action of the Railway Administration is therefore discriminatory and hit by the provisions under Article 14 of the Constitution and on this ground alone, is required to be interfered with. Let me ^{also} consider the contention of the counsel for the respondents that the applicant is not entitled for counting the qualifying service because the proviso ^{Rule 28 of} to the Railway Services (Pension) Rules, 1993 is not fulfilled, inasmuch as he had availed of some benefits from the previous employer. No doubt, the applicant has been paid P.F. dues to him [of ^{the order} which Rs. 3000/- and odd,] but this is his own contribution. The proviso to Rule 28 of the Railway Services (Pension) Rules states that gratuity, if any, received by the Government employee is to be refunded by him. But, in this case, the amount received by him is not on account of gratuity but on account of his own ^{P.F.} contribution. Therefore, the proviso to Rule 28 does not affect his case. I have also considered the impugned memorandum dt. 22.3.1995. It is surprising to note that this reply refers to letter dt. 30.12.1982 and talks of proportionate liability to be borne by State Government in respect of service rendered under the State Government. The Accounts Department of the Railways appears to be unaware of the subsequent developments by which a general liberalisation in the Pension Rules is brought about and the same is

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incorporated in Rule 28 of the Railway Services (Pension) Rules and the same is given effect to in relation to Government of Maharashtra by letter dt. 13.7.1992. Thus, the communication dt. 22.3.1995 is entirely illegal.

7. Most importantly, considering the averments made by the State Government ^{and} keeping in view the fact that the service rules of the State Government are applicable to Zilla Parishad employees and 100% Establishment Grants are given to Zilla Parishads, I am inclined to hold that for the purposes of letter dt. 13.7.1992 the employees of Zilla Parishads are required to be held as employees of Autonomous Bodies in respect of which State Government has accepted reciprocal liability.

8. In this connection, I also take note of the Supreme Court Judgment in Union of India V/s. R.C.Jain (1981(2) SC 854) in which the question of Local Authorities was discussed at length. The Judgment was cited with approval in Housing Board, Haryana V/s. HAB Employees Union (1995(6) SCALE 139) and it was held that Housing Board was not a local authority. It appears to me that there is no dispute that Zilla Parishad is a local authority but that by itself is not sufficient also to hold that it is a State Autonomous Body within the meaning of Government of India's letter dt. 13.7.1992 in respect of which reciprocal arrangements are entered into between the Government of India and the State Government of Maharashtra.

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9. I am therefore of the view that the O.A. succeeds. The impugned letter is hereby quashed and set aside. The Respondent Nos. 1 and 2 are directed to count the services rendered by the applicant under local School Board and Zilla Parishad till he joined Railway Service as qualifying service for the purposes of pension and re-fix the pension of the applicant on that basis and pay arrears of pension from 1.9.1995. There will be no orders as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A).

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