

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

OA NO.895 of 1999

Mumbai this the 15th day of June, 2001.

Hon'ble Mrs. Shanta Shastry, Member (Admnv)
Hon'ble Mr. Shanker Raju, Member (Judicial)

Dr. Nand Kishore Porwal,
S/o Sh. G.R. Porwal,
Scientific Officer (F),
Radiochemistry Division,
B.A.R.C. Mumbai-400 085,
R/o 8A, Badrinath,
Anushakti Nagar,
Mumbai-400 094.

-Applicant

(By Advocate Shri R.C. Kotiankar)

-Versus-

1. Union of India through
the Secretary to the Govt. of India,
Department of Atomic Energy,
Anushakti Bhavan,
C.S.M. Marg, Mumbai.
2. The Contrtoller,
Central Complex B.A.R.C.
Mumbai.
3. Head, Personnel Division,
Central Complex, B.A.R.C.,
Mumbai.
4. Ministry of Personnel, Public Grievances
and Pensions through the Secretary,
Department of Pension and Pensioners' Welfare,
3rd Floor, Loknayak Bhawan,
Khan Market, New Delhi.
5. The Secretary,
Deptt. of Personnel and Trining,
under Ministry of Personnel, Public Grievances
and Pensions, Govt. of India,
New Delhi.

-Respondents

(By Advocate Shri R.K. Shetty)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant, a retired Group 'A' officer, has assailed an order passed by the respondents on 9.12.98, wherein the office letter dated 16.3.94, whereby the past service of the

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applicant w.e.f. 24.5.72 to 12.8.75 has been treated as qualifying service for pension under CCS (Pension) Rules, 1972 by condoning the break of five days on review has been cancelled. The applicant in this OA has sought a direction to treat the service rendered by him of three years two months and 20 days in the Post and Telegraph Department as qualifying service and also counting of training period as qualifying service as well.

2. The applicant has worked w.e.f. 24.5.72 to 12.8.75 in the department of Post and Telegraph. He applied for Bhabha Atomic Research Centre (for short, BARC) through proper channel from his previous department P&T. On selection the applicant had joined training w.e.f. 17.5.75 to 31.7.76 and was appointed as Scientific Officer. He ^{had} written a letter on 2.9.82 to BARC to count his past service and it was decided that the same is to be done after the applicant is confirmed as Scientific Officer. Vide letter dated 16.3.94 the past service was reckoned as qualifying service by condoning the delay. The applicant states that suddenly without affording a reasonable opportunity to him on 9.12.98 the previous order was cancelled, without stating any reasons. The applicant has filed his written arguments which were taken on record, wherein it is stated that the reply affidavit filed on behalf of Union of India is not filed by an authorized signatory, as ~~as~~ per the Govt. of India Authorization of Officer for Verification and Pleadings and other documents to be filed in the Central Administrative Tribunal Rules, 1996, only Secretary, Additional Secretary/Director/Deputy Secretary/Under Secretary to Govt. of India or Desk Officer are competent to file the same. BARC is an office subordinate to Department of Atomic

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Energy (for short DAE) and as such Head, Personnel Division, BARC is not competent to file affidavits. The applicant has placed reliance on N.L. Parihar v. Union of India & Others, reported in 1996 (34) ATC 237 to propogate his plea. The grievance of the applicant is that certain documents were not allowed to be inspected by the applicant which denies him a reasonable opportunity. It is also contended that though the Scientists are initially described as trainees but they are recruited against regular posts following the regular procedure, as the vacancies are advertised. The incumbents are screened by the DPC and are paid TA for written test and interview. It is contended that an incumbent has to execute a bond that after completion of the training that he will serve DAE for a minimum period of three years and they are paid monthly stipend equivalent to minimum of the scale of pay of the post against which he was selected. The other facilities are also provided to him and this training period is to be treated as duty for the purpose of seniority, promotion, allotment of Govt. accommodation etc. In this background it is contended that initially the appointment of the applicant was for regular appointment to DAE and he was required to undergo training prior to formal assumption of charge of the post. Therefore, the applicant resigned his post in the P&T to take up regular appointment in DAE and as such under Rule 21 (2) of the CCS (Pension) Rules, 1972 as also under FR 9 (6)(a) and FR 19 his past service is to be reckoned as qualifying service for the purpose of pensionary benefits. As regards the resignation, it is contended that forfeiture of past service entails only when the resignation is voluntary but it does not apply to a case where the Govt. servant takes up another post with the Govt.

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The applicant has submitted an application to BARC through proper channel and was relieved from P&T upon furnishing a bond to serve for a minimum period of five years. Placing reliance on OM dated 31.3.82 it is contended that the same applies where the resignation is for the purpose of selection to another post under the Govt. The applicant has placed a reliance on a decision of this Tribunal in N.I. George v. Deptt. of Atomic Energy, reported in 1989 (9) ATC 744. The applicant placed reliance on Rule 28 (a) of Pension Rules ibid to contend that in absence of a specific indication to the contrary in the service book, an interruption between two spells shall be treated as automatically condoned and the pre-interruption service treated as qualifying service. The applicant also cited an example of Railways where the same procedure was adopted. It is lastly contended that the action of the respondents is in violation of Articles 14, 16, 19 and 31 of the Constitution of India, as neither an opportunity was afforded to the applicant nor reasons have been given in the order and in case of services, for example, IAS, IFS, IPS the period of training is reckoned towards the pension but the same is not done in the case of the applicant without any justification.

3. The respondents rebutted the contentions of the applicant and stated that the reply affidavit is filed by the competent authority in view of the SRO issued on 14.2.90, wherein BARC has been figuring and one of the competent authority to present/place written statements in any court, inter alia, includes Head, Personnel Division. As such the objection of the applicant is not tenable. The respondents in their reply contended that the

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OM dated 22.12.83 as well as 22.12.86, which permit, pre-training period to be counted as qualifying service is only applicable to Group 'C' and 'D' employees and would not apply to Group 'A' and 'B' employees. It is further contended that the applicant has tendered resignation not with a view to join a post or take up employment but he has been sent for training as an apprentice and after successful completion of the training is to be given charge of the post and appointed. Referring to Rule 26 (2) of the Pension Rules *ibid*, it is contended that resignation entails forfeiture of past service if it is not taken up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. There was a break in service before taking up training w.e.f. 13.8.75 to 16.8.75 and the training imparted in BARC was not part of service and hence, his pre-training service in P&T cannot be counted as duty. As per Rule 22 of the CCS (Pension) Rules, 1972 this period is not to be treated as qualifying service. It is stated in the year 1994 due to erroneous communication his pre-training was counted for pension under the Pension Rules *ibid*. This has been done due to over sight and as such the applicant cannot claim any right on a bonafide mistake of the Government. According to the respondents DP&T did not agree with the proposal to count training of the applicant as it was not forming part of the service. Referring to the conditions of service it is stated that on completion of training successfully a person is offered appointment and is liable to be discharged during the period of training without notice. The same is treated as a fresh appointment. The resignation of the applicant was not technical. The applicant joined BARC training course as a trainee and was

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neither holding a status of temporary or permanent employee. It is stated that the applicant was a trainee ^{on} ~~for~~ a fixed ^{stipend} time and has not joined as an employee of the BARC. The applicant was made entitled for a regular scale only on 31.7.76 on completion of the training successfully. As regards the discrimination, it is contended that there is no precedent where pre-training service has been counted as alleged by the applicant. As such there is no discrimination. Rule 28 of the Pension Rules *ibid* would not apply in the case of the applicant as there had been a gap of one year during the training period, it is not counted as qualifying service and due to this interruption in this service between the two spells of civil services rendered by the applicant the same cannot be treated as qualifying service as per rule 22 (c) *ibid*.

4. The applicant in his rejoinder has re-iterated his pleas taken in the OA.

5. We have heard the learned counsel for both the parties and considered the rival contentions of the parties. The plea of the applicant that the respondents have not considered the case of the applicant and issued order on 16.3.94 by counting his past service and condoning the break are estopped from cancelling the same subsequently to the detriment of the applicant without according him any opportunity or observing the principles of natural justice is concerned, the same would be of no avail to him. In fact the decision taken by the respondents on 16.3.94 was due to inadvertance and erroneous and was due to over sight that the pre-training service has been counted towards qualifying

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service. The aforesaid decision of the respondents was contrary to the rules and as such was rectified vide order dated 9.12.98, whereby the order has been cancelled. Though the order cancelling the previous order is not speaking but from the reply filed by the respondents we are of the confirmed view that the same has been taken on the basis that the rules do not permit counting of such past service which cannot be found fault with. In our view a bonafide mistake of the Government can be rectified later on and an employee cannot be allowed to claim a right over the mistake of the Government. The applicant has to independently establish his right of counting of qualifying service in accordance with the rules on the subject.

6. As regards the contention of the applicant that while working in P&T department he applied for the post of Scientific Officer through proper channel and on filling up the form he joined pre-appointment training in BARC and was accorded all the benefits, including the minimum of the scale of the post which amounts to joining of a regular service on resignation from the post within the Government and would not entail forfeiture of past service under Rule 26 of the Rules *ibid*. The resort of the applicant by placing reliance on Rule 22 *ibid* to contend that the pre-appointment training counts as a qualifying service and on the basis of the OM dated 22.12.83 is not legally tenable as the OM only applies to Group 'C' and 'D' employees and would have no application on Group 'A' employees. Rule 26 (2) provides that a resignation shall not entail forfeiture of past service if it is submitted to take up with proper permission another appointment whether temporary or permanent under the Government where service

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qualifies. We find that the applicant has joined pre-appointment training not against a regular post but on a stipend and not on a regular pay scale, as an apprentice. Neither the post was temporary nor permanent and the applicant has to be put on duty by appointment after successfully passing the training course. The appointment is dependent on suitability and performance during the course and the applicant is liable to be discharged from the training school at any time without notice. FR 9 (6) (a) also provides that the apprentice would not be construed as holding any post. There was no guarantee of service to the applicant and was sent only on a contract. The applicant, in our view, has not joined any Government service ^{he} but a training course which qualifies the applicant for being appointed to a regular post. As such the conditions laid down under FR 26 (2) of Pension Rules are not met with. The pre-training service of the applicant as such is to forfeit and would not be reckoned ^{he} for the purpose of qualifying service.

7. As regards the contention of the applicant regarding discrimination meted out to him by putting the example of IAS, IFS and IPS where the training period is included for the purpose of qualifying service is concerned, the applicant cannot have any parity with those officers. In these services an incumbent is to be under probation with a regular pay scale and against a regular post whereas in the case of the applicant he has been treated as an apprentice on training with a monthly stipend and his further appointment is dependent on satisfactory completion of the training course and performance. As such being unequal the applicant and the officers from IFS, IPS, IAS etc, cannot be

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treated equally and there is no discrimination under Articles 14 and 16 of the Constitution of India. This contention of the applicant does not hold any water. In case of other employees working in BARC who have decided to opt for this training for enhancement of their prospects and acquiring job in the department of Atomic Energy it is pre-requisite for them to first resign from their jobs and join the training and in the event of their being qualified the higher job is treated as a fresh appointment and the service rendered in the BARC is not counted as qualifying service for the purpose of pension. The same corollary applies to the case of the applicant and as such he is not meted out any hostile treatment. The applicant has only joined BARC after resigning from P&T as a trainee on a fixed stipend and was subsequently appointed to a scale against a regular post on 31.7.76 after successfully completing the training, as such since the pre-training is not a part of Government service the same has^{he} not been treated as a qualifying service and as such the resignation cannot be treated as technical resignation in view of the provisions of Rule 26 (2) of the Pension Rules *ibid*. The grievance of the applicant that the action of the respondents by cancelling the earlier order after four years would make no difference as a bonafide mistake can be rectified at any time by the Government, which was the result of an inadvertance and is against the statutory provisions of law.

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8. Having regard to the discussion made above and the reasons recorded we are of the confirmed view that the applicant is not legally entitled to count his prior service in P&T as qualifying service towards pension. The OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member(J)

Shanta F

(Smt. Shanta Shastry)
Member(A)

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