

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 852 of 2000.

Dated this Monday, the 31st day of December, 2001.

Dr. S. H. Patil,

Applicant.

Shri D. V. Gangal,

Advocate for the
Applicant.

VERSUS

Union of India & 3 Others,

Respondents.

Shri Suresh Kumar,

Advocate for the
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other Benches of the Tribunal ?

(iii) Library.

B. N. B.

31.12.01

(B. N. BAHADUR)
MEMBER (A).

os*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 862 of 2000.

Dated this Monday the 31st day of DECEMBER, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Dr. S. H. Patil,
Divisional Medical Officer,
Central Railway,
Kurduwadi
Residing at -
240, Railway Lines,
Solapur.

...

Applicant.

(By Advocate Shri D. V. Ganga)

VERSUS

1. Union of India through
The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi - 110 001.
2. The General Manager,
Central Railway,
Head Quarters Office,
Mumbai C.S.T.,
Mumbai - 400 001.
3. The Chief Medical Director,
Headquarters Office,
Central Railway,
Mumbai C.S.T.,
Mumbai - 400 001.
4. Chief Medical Superintendent,
Central Railway Hospital,
Solapur.

...

Respondents.

(By Advocate Shri Suresh Kumar).



... 2

O R D E R

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case comes up to the Tribunal challenging the order of the Respondents dated 30.08.2000 (Annexure A-1) and seeks a declaration from the Tribunal that the Voluntary Retirement sought by the Applicant has to be accorded sanction by the Railway Administration. Pensionary and other benefits consequential to such relief are also sought, as detailed in para 8 of the O.A. By an amendment, the Applicant has also prayed for quashing and setting aside the order dated 19.12.2000, through which the Respondents have taken the view that the Applicant, having completed merely 15 years and 7 months service on 10.04.2001, is not eligible for voluntary retirement.

2. The facts of the case, as brought out by the Applicant, are that, he was working as Chief Medical Officer in Khopoli Municipal Council from 22.09.1978 to 30.03.1985 i.e. for six years and six months. The Applicant contends that he resigned from service of the said Municipal Council, "on account of his desire to join the Railways." The Applicant states that he had given this reason in the application in view of his knowledge that certain posts of Assistant Medical Officers were vacant at the relevant time, with the Railways. He describes the circumstances of his action, and states that he applied for the post in Railways on 14.06.1985 and was appointed by the Railway Administration by its order dated 28.08.1985. Further details regarding rejection of his claims have been described in the

B.N.B.

...3

application, in detail. The grounds taken therein were argued by Learned Counsel on behalf of the Applicant, Shri D. V. Gangal, as recorded ahead.

3. The Respondents have filed a Written Statement in reply, making the point that the Applicant had applied for appointment as Assistant Medical Officer in the Railways only on 14.06.1985 i.e. after he resigned from Khopoli Municipal Council. It is contended by the Railway Administration in their reply statement that Applicant had not applied through proper channel for joining Railway service, and hence the stand is taken that he had not joined the Railway Administration with the permission of the Khopoli Municipal Council. This is contrary to rules. It is thus contended that the Applicant had not completed 20 years of qualifying service in the Railways and is, therefore, not entitled to apply under Rule 67 of Pension Rules for voluntary retirement. Rule 20 of Pension Rules is then set out in the reply statement and is depended upon for taking legal grounds. It is stated that Rule 21 is not applicable. Similarly, Applicant does not even fulfil the criteria laid down in Rule 28 of the aforesaid Pension Rules. These contentions on the basis of rules are expounded in the Written Statement. The Written Statement further attempts to meet the averments made in the O.A., parawise.

4. I have heard the Learned Counsel on both sides and have perused the papers in the case. Learned Counsel, Shri D. V. Gangal, who argued the case of the Applicant, stated that both

Mnb

... 4

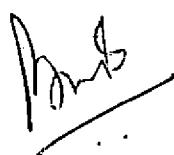
spells of service must be counted, namely - the first spell between 22.09.1978 and 30.03.1985 with the Khopoli Municipal Council and the second spell between 11.09.1985 to date with the Respondents. He made the point that it was clear from the document of Municipal Council at page 30 (Annexure A-5) that the resignation of the Applicant was approved vide resolution dated 09.09.1985 by Khopoli Municipal Council and that the Applicant joined the Railways just two days later.

5. These points were argued by the Learned Counsel and, indeed, also other side with reference to details given in the impugned order dated 30.08.2000. It was also argued by Shri Gangal that the Provident Fund amount was paid directly to the Railways, which showed that the intention of Respondents was to count the service with the Municipal Council. The preponderance of probability factor would thus weigh in favour of the applicant, and the intention of parties was not a relevant point, he argued. Learned Counsel took me over the grounds in the application and further made the point that Rule 28 of the Pension Rules, quoted by Respondents, did not govern the Applicant's case since he was neither a State Government employee nor a temporary employee. It was Shri Gangal's contention that instructions under Railway Servants (Pension) Manual vis-a-vis clarification at page 73 was relevant. He also sought support from the case law in the matter of B. G. Khandekar V/s. Union of India & Others [O.A. No. 770/96 decided by this Bench on 18.09.1997 (page 16)]



6. Arguing the case on behalf of the Respondents, their Learned Counsel, Shri Suresh Kumar, made the point that the Applicant never applied through proper channel while in employment in the Khopoli Municipal Council. At the time he resigned, there was no offer to him from the Railways and as seen in the light of important dates i.e. 30.03.1985, 14.06.1986 and 28.08.1995. It was clear, Shri Suresh Kumar argued, that the resignation of the Applicant could not be considered a technical resignation made in order to join another service i.e. Railways. Hence, the normal law will apply, that on resignation, the earlier services are forfeited. He emphasized the point that the application for the job in Railways was made some 2.1/2 months after resignation Shri Suresh Kumar took me over the salient points of facts and grounds taken in the Written Statement. He stated that Rule 20 of the Railway Service (Pension) Rules clearly states the provisions for counting of service. It was argued that the Applicant had applied for counting of service on 01.12.1998 which is rejected through the impugned order. Rule 28 was relevant and the reasons for rejection have been set out in detail in the impugned order. Shri Suresh Kumar emphasised on Rule 28 and Rule 41 of the Railway Service (Pension) Rules. Re-emphasising the point that this was not a case of an application made through proper channel, it was argued that leaving of Khopoli Municipal Council and joining Railways were independent actions on the part of the Applicant.

7. Learned Counsel for Respondents depended on the following case law which was cited for interpretation of Rule 26



... 6

of C.C.S. (Pension) Rules, which it was contended was the same as Rule 28 of the Railway Service (Pension) Rules.

- (i) *W. C. Saroja V/s. Union of India.*
[1992 (2) ATJ 397].
- (ii) *Vinod Kumar V/s. Union of India*
[1998 (1) ATJ 477].

Learned Counsel for Respondents also made a point that 1993 Rules which were relevant, superseded all earlier rules and circulars.

8. Let me first recapitulate the crucial dates again. The Applicant worked for Khopoli Municipal Council from 22.09.1978 to 30.03.1985. He applied for the post in Railways on 14.06.1985 and joined the Railways on 11.09.1985. The matter obviously went to the Municipal Council which had passed the resolution dated 09.09.1985. A perusal of the Resolution at page 30 indicates that the Applicant was in service only till 30.03.1985. Thus, straight-away it could be said that the date of Resolution is not material because master-servant relation had obviously ended on 30.03.1985 in so far as the Municipal Council is concerned.

9. I have carefully seen the other documents which have been the basis of arguments on both sides also, including those filed by the Applicant with his rejoinder. It is clear that there is a reciprocal arrangement in the counting of service, as could be seen by the various circulars appended. The central point, however, is as laid down in Rule 28 of the Railway Service

Abu S

... 7

(Pension) Rules, 1993. The two salient aspects that have been considered are that the service should be either continuous or that the application should be made "through proper channel with proper permission of the administrative authorities concerned." In the present case, the question really that is to be determined is, whether the service with the Railways has come about as a result of proper application with permission of the Municipal Council authorities concerned. It was argued by Learned Counsel for Applicant that Rule 28 is not the relevant rule. The argument made by him was that the Applicant was neither a State Government employee nor a temporary employee. This argument is purely technical, in that, what has really happened is that the benefits given to State Government employees have been extended to Autonomous Bodies under the State/Central Government. It is an enlargement of a benefit and cannot be, even considered as a technically correct argument to say that he was neither a State Government employee nor a temporary employee. Hence, it has to be held at once that Rule 28 of the Railway Service (Pension) Rules is applicable to the facts and circumstances obtaining in the present case.

10. Now once we determine this point, it is to be seen as to whether the conditions in this rule are satisfied. As discussed briefly above, the date of resolution of the Municipal Council is irrelevant, as the Council itself has clearly stated that the Applicant has worked with the Municipal Council upto 30.03.1986. (It is not the contention of the Applicant either that he has



...8

worked till later). It is true that in the application made for resignation from the Municipal Council, the Applicant has stated the reason for leaving as one for "joining Railway service" (Annexure A-1 to rejoinder) and stated that he has applied through proper channel but this is a bald statement and has not even stated the post nor mentioned any further details. The statement could be stated to be bald especially in view of the fact that the application is made by him to the Railways some 2.1/2 months later. This point, as emphasized by the Counsel for Railways, has force. It cannot be concluded that this will constitute a permission to join a post with the Railways. Such a thing can occur normally if there is an offer from the Railways and the resignation is made consequent to such an offer. Here let alone the letter of offer, even an application has not been made for the post in the Railways and is, in fact, made some 2.1/2 months later i.e. after the cessation of service of the Applicant with the Khopoli Municipal Council. Hence, it would be straightforwardly concluded that the attempts now being made are an after-thought by relating the dates and depending on sundry facts like the argument that G.P.F. was sent by the Municipal Council to Railways. This fact, in isolation, cannot be a ground to get over the fact that no proper permission was taken nor was it a case of routing the application through Municipal Council. Thus, there was no continuity involving both as per rules, and hence the case of the Applicant is without merit.

11. The Applicant has sought to depend on the decision in O.A. No. 770/96 decided on 18.09.1997 by this Bench of the



...9

Tribunal. A copy of this order is available on file. There the main point to be decided was whether the service under the Zilla Parishad could be taken to be a service rendered in a local body. In fact, the question of discrimination between rural local bodies and urban local bodies were considered and the point decided that Zilla Parishad was a State Autonomous Body. It cannot be inferred that this judgement helps the case of the Applicant.

12. In view of the discussions made above, I am not convinced that the Applicant has been able to make out a case for the relief that he seeks. In the consequence, the O.A. fails and is hereby dismissed, with no order as to costs.



(B. N. BAHADUR)
MEMBER (A).

os*

31-12-01