

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No:

291/01

Date of Decision: 6.5.2002

Suresh Yeshwant Deshpande

Applicant.

Shri S. V. Marne

Advocate for
Applicant.

Versus

Union of India & m.

Respondent(s)

Shri R. R. Shetty.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri.

Hon'ble Shri.

- (1) To be referred to the Reporter or not? No.
- (2) Whether it needs to be circulated to other Benches of the Tribunal? No.

Sum
(S. L. Jain)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.No. 291/01

THIS THE 6TH DAY OF MAY 2002

CORAM : Hon'ble SHRI S.L.Jain, MEMBER (J)

- 1) Shri Suresh Yeshwant Deshpande
Rtd. Teacher
Central Railway,
Daund.
R/at: 102/11, Defence Colony,
Swargate Society,
Daund,
Dist. Pune ... Applicant
(By Advocate Shri S.V. Marne)

VERSUS

- 1) The Union of India, Through
The General Manager
Central Railway,
Headquarters Office,
Mumbai CST
Mumbai 400 001
- 2) The Divisional Railway Manager
Solapur Division,
Central Railway,
Solapur.
- 3) The Secretary,
Department of Education,
State of Maharashtra,
Schivalaya,
Mumbai. ... Respondents.
(By Advocate Shri R.R. Shetty)

ORDER

Hon'ble Shri S.L.Jain, Member (J)

- 1) The applicant has impugned the order dated 12.3.2001 Annexure A-1 passed by DRM, Personnel Branch Solapur and seeks the consequential relief arising therefrom.
- 2) The applicant filed OA.377/2000 seeking directions to the respondents to count 12 years and six months service rendered by him as qualifying service for the purpose of pensionary benefits along with arrears ^{and} interest @ 18% per annum, which was disposed of vide order dated 11.1.2001 with the following directions:-

"In the result, OA. is disposed of with the direction to the respondents to pass the necessary orders in respect of applicant's claim regarding qualifying

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service within a period of not later than two months from the date of receipt of a copy of this order. The parties shall be at liberty to agitate the matter on merits if an occasion arises therefor. No order as to costs."

3) There after the respondents have rejected, the case of the applicant vide impugned order dated 12.3.2001.

Para 3 and 4 of the said order is as under:-

"In this connection, it is to advise you that the concept of counting of past service on mobility of employees from Central Government Departments to Central Autonomous bodies and vice-versa came into existence vide order issued under DP & AR's O.M. No.28.10.84-PO dated 29.8.84. The above orders were made applicable to the employees of state Autonomous bodies moving over to Central Government Department/Central Autonomous bodies and employees of State Government Departments to Central Autonomous bodies and vice-versa vide Department of Pension and Pensioners' Welfare O.M. No.28.10.84-P&PW/Vol.II dated the 7th February 1986 and subsequent orders issued on the dates various State Governments agreed to the reciprocal arrangement. Under the provisions of above orders, employees who were absorbed prior to 31.3.87 were required to exercise option for counting of past service within one year of absorption or within one year of the issue of orders as the case may.

Despite the clear instructions contained in the above orders, you have failed to exercise an option within a period of one year from the date of absorption in the Railways for counting of past service for pensionary benefits."

4) In addition to the above ground the respondents have further stated in para 1, para 15(a)(c)(d)(e) of their written Statement as under:-

"The Respondents further submit that the applicant has rendered services from 11.6.1962 to 14.06.1964 at the salve English Vidyalaya where after he joined Pratap Vidya Mandir at Supde from 15.6.1964 to 23.12.1966. Further he joined Jawahar Vidyalaya from 5.6.1967 to 09.06.1974 and Kanya Vidya Mandir from 10.06.1974 to 24.06.1975 where after he joined the Railways on 25.06.1975 and

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continued in the Railways until superannuation on 31.12.1998. The various certificates for the service rendered by the applicant in Salve English Vidyalaya, Pratap Vidya Manidir Supde, Jawahar Vidyalaya and Danya Vidya Mandir do not indicate as to whether the applicant was appointed there on regular basis. Therefore the presumption has to be to the contrary. It is pertinent to note here that only regular service rendered by a person can be counted for the purpose of Pension. Since the applicant has been unable to show that the service rendered by him was regular the question of counting the said service for the purpose of payment of Pension does not arise. Further, the Respondents submit that the service rendered by the applicant at Pratap Vidya Mandir was from 15.6.64 to 2.12.66 where after there was a six months break after which he joined Jawahar Vidyalaya from 5.6.1967. Since the service in question between Pratap Vidya Mandir and Jawahar Vidyalaya was not continuous the question of counting the service rendered by the applicant prior to joining the Jawahar Vidyalaya simply does not arise even on merits since there is a clear break in service. Further the Respondents submit that the applicant had to resign his job after due permission to take up the next appointment and none of the certificates produced by the applicant show that he had resigned Salve English Vidyalaya to join Pratap Vidya Manadir, resigned from Pratap Vidya Mandir to join Jawahar Vidyalaya, resigned from Jawahar Vidyalaya to Kanya Vidya Manadir with due or prior permission from appropriate authority and through proper channel. Since the applicant is unable to produce the proof he has failed to make out a case for counting of services rendered by him prior to joining the Railway."

5) The learned counsel for the applicant relied on A.I.R. 1978 S.C.851 Mahidra Singh Gill and another V/s The Chief Election Commissioner New Delhi which lays down the proposition as under:-

"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may, by the time it comes

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to court on account of a challenge, get validated by additional grounds later brought out."

6. On the basis of the said Authority the applicant's counsel argued that any additional ground raised by the respondents in their Written Statement need not to be examined, considered while deciding the OA. and the only point to be decided is that is contained in the impugned order and none else.

7. The learned counsel for the applicant relied on Annexure Ex. A/13 Para 3(B) (ii) which is as under:

" An employee of an autonomous body on permanent absorption under the Central Government will have the option either to receive CPF benefits which have accrued to him from the autonomous body and start his service afresh in Government or choose to count service rendered in that body as qualifying service for pension in Government by foregoing employer's share of Contributory Provident Fund contributions with interest thereon, which will be paid to the concerned Government Department by the autonomous body. The option shall be exercised within one year from the date of absorption. If an option is exercised within stipulated period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final."

8. The respondents have relied while passing the impugned order^{O.M.} dated 29.8.1984 (Annexure II) page 41 . On perusal of the same (O.M.) makes it clear that it relates to Mobility of personnel between Central Government Departments and Autonomous Bodies Counting of service for pension. The applicant's case is not covered by the said O.M., for the reason that the applicant has neither claimed any service rendered by him in Central Government before joining the Railways nor any service in any Autonomous Bodies before joining the Central Department. The said O.M. is applicable to the said categories of employees.

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9. The applicant has placed on record the letter dated 18.6.1999 (Annexure A-9) in which office letter No. HPB/702-W/KWB/MM dated 12.1.1995, wherein copy of this office letter No. HPB/6875-R dated 22.5.1992 is mentioned and the case of the applicant was directed to be dealt with accordingly. I am not expressing any opinion regarding the merit of the letters referred above. It is suffice to state that the respondents have erred in applying the said OM dated 28.10.1984 in the present case.

10. The ground raised by the respondents which are mentioned in para 4 of this order may be taken into consideration while deciding the case of the applicant. The order paassed by the respondents, by the O.M. applied, the respondents erred, as such not inaccordance with law. Keeping the facts based on record that the applicant was an employee of recognised aided school prior to joining Railway service, the claim of the applicant deserves to be examined and decided.

11. In the result the impugned order dated 12.3.2001 Annexure A1 is quashed and set aside. The matter shall go to the respondents with a direction to decide the case of the applicant as per extended Rules, instructions and law on the subject aplicable, within a period of three months from the date of receipt of copu of this order. No costs.

NS

Order Judgment despatched
to
16/6/02
NS

(S.L.Jain)
Member(J)