

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 290/2001

THIS THE 20th DAY OF SEPTEMBER, 2001

CORAM: SMT. SHANTA SHASTRY.

... MEMBER (A)

Shri Anand Gopal Khedkar,
Engineer 'SB' (Mech),
Tata Memorial Centre,
Dr. Ernest Berges Road,
Parel, Mumbai-400 012.

... Applicant

By Advocate Shri C.B. Kale.

Versus

1. Union of India through
The Chief Engineer,
Southern Command, Pune-411 001.
2. The Garrison Engineers,
Naval Armament Depot,
Karanja District,
Raigad - 400 704.
3. The Director,
Tata Memorial Centre,
Dr. Ernest Berges Road,
Parel, Mumbai-400 012. ... Respondents

By Advocate Shri R.K. Shetty.

ORDER

This is the case for counting of past service
for purpose of pension.

2. The applicant in this case was working in the
office of the Respondents No.1 and 2 as Superintendent
E/M Grade-II from 17.6.1971 to 18.5.1981. He had not
been made permanent but was declared as quasi permanent
on 17.6.1974. In response to an advertisement dated

31.3.1980, for recruitment to the post of Engineer (SB Mech) in the Tata Memorial Centre, (TMC for short) the applicant applied for the same and after being called for interview on 09.10.1980 he was selected. Prior to this, as per the conditions stipulated therein, the applicant made an application to Respondent No.2 on 15.4.1980 to give him no objection certificate. The applicant had stated in his application that he was to enroll his name in the employment exchange for better prospects. The NOC was issued to him on 02.4.80 accordingly. After being selected by TMC, he submitted his resignation on 26.2.1981 to Respondent No.1 through Respondent No.2 on the ground that he was expecting appointment in the Tata Memorial Centre for which NOC had been obtained by him earlier. Two days thereafter, according to the applicant, he changed his mind at the instance of some oral discussion with Respondent No.1 and submitted another resignation on 2.3.81 stating the reason for resignation as domestic difficulties. His resignation was not accepted immediately. He had to complete his work. He was relieved on 19.5.81. The applicant, thereafter joined the new organisation on 20.5.81. He was confirmed on 20.5.82 and also got promotions thereafter.

3. The pension cases of the employees are normally taken up two years prior to their retirement. The applicant, therefore, did not bother to think of any difficulties in regard to counting of his past service

h

in the MES for the purpose of pensionary benefits. He applied on 10.1.94 to the Chief Administrative Officer of the TMC. ^{for counting his previous service for pension.} The TMC after obtaining details about the applicant from Respondent No.2, informed the applicant that the services rendered by him in the Central Government could be counted towards pension provided the previous employer accepted the pensionary liability by paying lump sum as one time payment as prorata pension. Thereafter, some correspondence was exchanged between the Respondents 1, 2 and 3. Action was taken to verify the past services of the applicant and the applicant was informed by letter dated 4.3.98 that since the applicant had rendered less than 10 years of service he was not entitled for prorata pensionary benefits as per existing orders. It was further informed that NOC was obtained and resignation was tendered by him with effect from 19.5.81, it did not mean that proper permission had been taken. The applicant was also asked to produce any authority to support his stand that he had taken prior permission before applying for the job in TMC. The applicant has prayed that NOC which he obtained was for enrollment with employment exchange for betterment of his career, therefore, it was implied that the respondents had ^{been} ~~been~~ given prior intimation. This being so, merely on the technical ground that it was not a proper permission, the applicant should not be denied the benefit of counting his earlier service for pension etc. In fact, even when the Respondent No.3 had called the applicant for interview one of the conditions

14

mentioned in the call letter was "please note that permission from your present employer to appear for interview is necessary, in case, you are now serving in the Central Government, State Government or Public Authority. It is not possible to interview you if this permission is not brought." According to the applicant since he had brought the NOC and the Respondent No.3 had after accepting the same ~~had~~^{had} interviewed him and selected him, it had to be construed that it was proper permission. The applicant has also cited the judgment of the Tribunal in OA No.1908/93 decided by the Principal Bench. In this case, the Tribunal allowed the OA concluding that the applicant therein had submitted his resignation to take up another appointment with the implied permission of the competent authority and nothing will turn upon the entry in the service book upon which reliance has been placed by the Air Officer Commanding in his communication dated 19.5.93. It was held that the past services rendered by the applicant are not liable to be forfeited. The applicant had submitted his resignation with a view to accept an appointment in the Indian Air Force with proper permission withⁱⁿ the meaning of sub rule 2 of Rule 26 of the CCS (Pension) rules 1972." The applicant, therefore, feels that in his case too the past services should be counted for purpose of pension by treating the NOC as proper prior permission.

16

4. The respondents have resisted the claim of the applicant. According to the respondents, the resignation letter given by the applicant clearly states that he is seeking to resign from service for domestic reasons. It is not for taking up a fresh appointment with due permission as has to be done under Rule 37 of the CCS (Pension) Rules. The case of the applicant is, therefore, covered under Rule 26 of CCS (Pension) Rules, wherein it is clearly laid down that resignation leads to forfeiture of past services. Therefore, the question of counting the applicant's past services for purpose of pensionary benefits does not arise. The learned counsel for the respondents has also taken the plea of limitation that the cause of action arose in May, 1981 when the applicant had resigned and joined with TMC and the applicant approached this Tribunal now in the year 2001. Moreover this Tribunal has no jurisdiction in matters relating to 3 years prior to 1.11.1985 when the Tribunal was established.

5. The respondents have also submitted that no objection certificate was issued to the applicant for purpose of registering his name in the employment exchange and not to enable him to seek appointment with TMC without prior permission. Further, the applicant was only quasi permanent and not a regular employee. Therefore also his services cannot be treated as pensionable service since he would not have been entitled to pension even otherwise. There is no

12

question of counting of past services for purpose of pension. The applicant's service in the department also fell short of the period of 10 years. In view of this position, the applicant's claim cannot be entertained.

6. I have heard both the learned counsel for the applicant as well as the respondents. It is seen that before obtaining employment with TMC, the only intimation that the applicant seems to have given to the respondents is that he wanted to enroll himself in the employment exchange for better prospects. He had not intimated or taken prior permission of the authorities concerned before applying for the job in the TMC. As per rules it was necessary. Not only he had not obtained the prior permission, he resigned and in his resignation letter he indicated that he was to join the TMC. However, he had withdrawn this resignation letter and gave another letter on 2.3.81 which only talked about domestic difficulties. The applicant did this on oral enquiry with the concerned authority. He could not establish that he had actually tendered his first resignation. The respondents state that they did not receive the first resignation.

7. The applicant has no case and he has not shown any material to establish that the respondents had given him prior permission to apply for the job in the TMC. That apart, the applicant's past service with the respondents 1 and 2 is also not pensionable as it is of

16

less than 10 years. He was only quasi permanent. Thus, he is not eligible to get pension at all. Therefore, the question of counting his past service for purpose of pension does not arise. The applicant has referred to the judgment of Principal Bench in OA No.1908/93 in the case of R.R. Singh. I have perused the judgment and find that the facts in that case are slightly different. In that case, the applicant had submitted his application through competent authority and his application was forwarded by the authority and on the basis of the said application, he was appointed in the Air Force. Further, the Medical Officer, Rural Health Training Centre, Jamnagar District had issued a certificate that the applicant had resigned from the post of Sanitary Inspector and that officer will have no objection if he gets employment else where. In the present case, the applicant has not given any application to be forwarded through the proper authority, nor has he taken any prior permission, except for the NOC to enroll in the employment exchange without for better prospects. Therefore, in my considered view, the application fails and is dismissed accordingly. No costs.

Shanta F

(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan