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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition 16/92

in
CA 740/90

Shri UTTAM KUMAR SARKAR

... Applicant

V/s

Union of India through the
Secretary, Min, of Urban
Development, New Delhi and 3 ors.

... Respondents.

CORAM : Hon'ble Ms Usha Savara Member (A)

Order on Review Petition No.16/92

Dated: 24-1-92

¶ Per Ms Usha Savara, Member (A) ¶

Review Petition No.16/92 has been filed in
O.A. No. 740/90 by the respondents i.e. Union of India
and others. It is pointed out that in the body of the
judgement the name of the applicant has been mentioned
as Shri V.K. Sarkar, whereas, the correct name of the
applicant is Shri U.K. Sarkar i.e. Shri Uttam Kumar
Sarkar.

On scrutiny of record, I find that
an error ^{in order} has ~~been~~ ⁱⁿ ~~made~~ ^{as} pointed out above. The
Review Application is allowed. The name of the applicant
will be corrected in the body of the judgement. The
correction will be made accordingly.

U. Savara
(USHA SAVARA)
MEMBER (A)

The relevant clauses- read as follows:

- (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.
- (2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government, where service qualifies.

These are the two clauses which are relevant for deciding this case. Clause (1) is clear, unambiguous in its **import**. Resignation entails forfeiture of past service unless ^{it} is allowed to be withdrawn. It is nobody's case that the resignation tendered by the applicant was ever withdrawn. He applied for the post of an Assistant in Mazagaon Docks Ltd., through proper channel and on selection, was relieved by the office. He sent his resignation letter on 23.7.1984 (Ex.2) giving one month's notice. This resignation was unconditional, and he did not even request that he may be allowed to retain his lien in the department. It was only on 18.2.1985 that the applicant made a request for being allowed to retain his lien for a period of two years or the date of his permanent absorption in MDL, whichever was earlier. It was also in this letter that the applicant made a claim to the effect that he had resigned only as "a technical formality". Since his resignation had already been accepted w.e.f. 3.9.1984, and he had left the Department after giving the resignation he was not allowed to retain lien in the Department.

11. Clause - 2 lays down conditions under which past service may not be forfeited. If resignation has been given to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies then the past service is not forfeited.

12. The applicant resigned to take up an appointment with MDL which is a Government of India undertaking,

in the Ministry of Urban Development. His appointment was through proper channel. However, he has not taken up an appointment in another Central Government Department. He has taken an appointment with an autonomous body, which has its own distinct entity, its own service rules, its own pay scales. But service in MDL does not qualify, and therefore this case is fully covered by clause (2) of Rule 26. For this reason alone, the applicant's claim for pensionary benefits could be rejected.

13. The learned counsel for the applicant had, during the course of arguments, drawn my attention to Appendix 18 of the Pension Rules. But Appendix 18 specifically covers cases of Govt. servants who have been permanently transferred to autonomous bodies. The Applicant's case is beyond the ambit of Appendix 18, For this reason, the argument of the learned counsel for the applicant has to be rejected.

14. It is clear from the above that the applicant's claim for grant of pro-rata pensionary benefits arose only on 11.12.87, when the competent authority relaxed the rule, took a lenient view, and granted him the said benefit.

14. Thereafter, the respondents paid the applicant on 26.2.88, 14.3.88, and 12.4.88. All these payments have been made within 6 months of passing of the order i.e. 11.12.87, so no interest can be claimed on these payments. But the leave encashment of Rs. 1081/- was only paid in April '89, therefore the applicant is entitled to interest at 12% on the sum of Rs. 1081/- for the period of delay beyond six months from 11.12.87.

15. In view of these facts, the respondents are directed to pay to the applicant interest at the rate of 12 % on Rs. 1081/- for the period of delay beyond 6 months from 11.12.87 till the date of payment.

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The respondents are directed to comply with this order within a period of two months from the day of communication of this order.

There will be no order as to costs.

U. Savara
(USHA SAVARA) 13.11.21.
MEMBER (A)

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