

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

~~RELOCATED TO NAGPUR~~

O.A.NO. 8/91
TR.A.NO.

199

DATE OF DECISION 27-4-94

P.N.Naik

Applicant(s)

Versus

Union of India

Respondent(s)

1. Whether it be referred to the Reporter or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

N.R.Kothikar

MEMBER (A)

VICE-CHAIRMAN

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mbm:

(11)

of the scheme namely 11-7-1979. He was continued in service through oversight until he was retired w.e.f. 31-7-1982.

2. The applicant states that he had made several representations and reply to the representation sent through the Union was received into on 26-6-1990 rejecting his request to take account of his service prior to the date of superannuation for the purpose of pension. Aggrieved by this letter, the applicant ~~fi~~ has filed this application on 3-1-1991 praying for a direction to the respondents to treat the service rendered by the applicant prior to 22-10-1980 and thereafter till 31-7-1982 in the Statutory canteen of the respondents for pensionary and other benefits and also to give consequential benefits.

3. The prayers of the applicant have been resisted by the respondents firstly on the point of limitation. According to them the name of the applicant was deleted from the list of regular employees by order dt. 19-5-83 and he had represented on 12-11-83 and he was also sent a negative reply on 13-12-1983. The reply sent to the Union only reiterated the earlier stand of the applicant and did not give a fresh cause of action to the applicant. So far as the main prayers of the applicant are concerned, it is contended that on merits also the applicant does not deserve any relief because, on the crucial cut off date, namely 22-10-1980, he had already superannuated and, therefore, he cannot claim the benefit of the service although through an administrative error he might have continued

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
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P.N.Naik

.. Applicant

-VERSUS-

Union of India & Ors.

.. Respondents

Coram: Hon'ble Shri M.R.Kolhatkar,
Member(A)

Appearances:

1. Mr.S.P.Kulkarni
Counsel for the
Applicant.
2. Mr.S.S.Karkera
Counsel for the
Respondents.

JUDGMENT: Date: 27-4-94
(Per M.R.Kolhatkar, Member(A))

The applicant was appointed as a Cook on 6-4-1966 in the statutory canteen of the Ordnance Factory, Ambarnath in the scale of Rs.72-1-85-2-95. He was shifted to statutory canteen attached to Machine Tool Prototype Factory, Ambarnath w.e.f. 1-8-74. Govt. of India, Ministry of Defence took a decision to treat the canteen employees as government servants w.e.f. 22-1-1980.

The applicant received an order on the said regularisation of canteen employees conferring the status as Govt. Servant w.e.f. 22-10-1980. Applicant's name appears at Sr.No.19 vide Ex.'D'. This order however was modified and the name of the applicant was deleted by subsequent order dated 19-5-1983 vide Ex.'E'. The applicant represented in connection with the deletion and he was informed that he attained the age of 60 years prior to the implementation

even after July, 1979 which is the date of superannuation. On 15-4-81 it is mentioned that his services were extended upto 31-7-82. On 31-7-82 it is stated that he retired from service on 31-7-82. We have therefore to hold ~~on~~ on a plain reading of the entry in the service book that although age of the superannuation of the applicant was 12-7-79, his services were validly extended upto 31-7-82 and therefore, he was in regular service of the statutory canteen as on the cut-off date.

6. We therefore dispose of the application by passing the following order :

O R D E R

Application allowed.

Respondents are directed to treat the service rendered by the applicant prior to 22-10-80 and thereafter till 31-7-82 in the statutory canteen of the respondents for pensionary benefits and ~~related~~ benefits, and should also be given other consequential financial benefits including arrears of pension after adjusting any CPF benefits which might have been drawn by the applicant.

5. We are not inclined to dispose of the application on the point of limitation especially when it is clear that inspite of previous representations, the Ministry did send a reply to the Union and moreover the Factory Order No.79 was issued in 1990. We, therefore, come to the question as to whether, although the applicant superannuated well prior to the cut off date, he was entitled to count his previous service. On this point, in our view the judgment of the Hon'ble Supreme Court in ~~Kanpur Suraksha~~ Karmachari Union vs. Union of India is conclusive. The Hon'ble Supreme Court negatived the plea of the Union of India that the service rendered by the workers in canteens established under S.46 of the Act on and after 22-10-1980 alone can be included in the qualifying service for pension. ~~and held that~~ ^{and held that} the period prior to 22-10-80 also should be counted for the purpose of pension. However, it can be argued that this would apply to the employees who were in service as on 22-10-1980. Since the applicant retired prior to 22-10-80, his services cannot be counted. Here, we have to keep in view the peculiar situation in which the applicant ~~through~~ no fault of his, continued in service upto 31-7-92. In fact, till the issue of order dt. 29-10-82 which subsequently came to be amended by order dt. 19-5-83, the department was under the bonafide belief that the applicant could get the benefit of government orders. We had directed the respondents to file a copy of the service book of the applicant which was produced before us. We found that in the service book the increments have been granted to the applicant

and got extension of his service for a longer period beyond the cut off date namely 22-10-80.

4. The contention of the applicant are that the cause of action accrued to him under Factory Order No.79 which stated that services rendered by the employees of the Statutory canteen prior to 22-10-80 shall be treated as qualified service for the purpose of pension but the benefit would be admissible to those who were in service as on 22-10-1980. The applicant states that the department having issued the order dated 29-10-1982, Ex. 'D', regularising his services is now estopped from deleting his name. The applicant also relies on the following judgments:

- (i) Kanpur Suraksha Karmachari Union vs. Union of India & Ors. (1988 II, I.L.N. 919) which is a Supreme Court Judgment.
- (ii) A.P.Dairy Development Co-op. Federation Ltd. vs. Shivadas Pillay & Ors. (1992 I CLR 302) which is a judgment of the High Court of Andhra Pradesh which followed the above Supreme Court judgment.
- (iii) Union of India vs. S.Dharmalingam SLJ-III 1994(1) 169

He also relies on D.S.Nakara's judgment (1983) 1 SCC 305 and

(2) C.N.Locanathan vs. U.O.I. (1989) 9 ATC 61 on the point of limitation.

In the circumstance ~~we are not~~ inclined to grant interest to the applicant on the arrears.

No order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

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