

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 710/92

Transfer Application No: ---

DATE OF DECISION: 5-8-1994

S.V.Badlani

Petitioner

Mr.S.Natarajan

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Mr.J.G.Savant

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri --

1. To be referred to the Reporter or not ? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R. Kolhatkar

(M.R.KOLHATKAR)
Member(A)

9

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 710/92

S.V.Badlani

.. Applicant

-versus-

Union of India & Ors.

.. Respondents

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

Appearances:

1. Mr.S.Natarajan
Counsel for the
Applicant.
2. Mr.J.G.Savant
counsel for the
Respondents.

ORAL JUDGMENT: Date: 5-8-94
(Per M.R.Kolhatkar, Member(A))

filed

In this application/u/s. 19 of the
Administrative Tribunals Act the facts are
as below :

The applicant was appointed as
Junior Refugee Officer under the Directorate
of Evacuation on 28-1-1948. He worked in
Durgapura Camp in Rajasthan upto 28-9-1948
i.e. to say about eight months when the work
of administrative control of the camp where
the applicant worked was transferred to
the then Jaipur state. It appears that the
entire expenditure was borne by the central
government on the running of the camp. This
position was not disputed but the relevant
order terminating the relief camp was not
available. However an analogous order in
relation to Kurukshetra camp has been
annexed at Annexure A-5 which recites that
"With the transfer of the control of the
Refugee Camp, Kurukshetra from the Government of

India to the East Punjab Government, the services of the following Gazetted Officers of the Camp, were placed at the disposal of the East Punjab Government, w.e.f. 8-8-1948" It appears that the applicant was retrenched w.e.f. 31-12-1949, after one year and three months of service. Thereafter the applicant was appointed as Asstt. Settlement Officer on 31-8-1956. He was retrenched on 22-5-1958. He was appointed as Assistant Director (Food) under the Ministry of Food & Agriculture on 23-3-1960 and superannuated on 31-12-1981. The issue calling for determination is counting of service rendered by the applicant while working as Junior Refugee Officer, Govt. of India from 28-1-1948 to 27-9-1948 and (8 months) / the period during which the camp was under the control of Jaipur State/Rajasthan viz. 28-9-1948 to 31-12-1949 (1 year 11 months 3 days) as qualifying service for pension.

2. At the time of hearing, it was brought to my notice that the period of employment from 28-1-48 to 27-9-1948 is being counted as ^{qualifying} service vide Food Department order dated January, 1994.

3. The contention of the applicant is that according to Govt. of India circular of Dept. of Personnel & A.R. No.3(20)/Pen.(A)/79 dated 31-3-1982 on the subject of counting of temporary service under the State/Central Governments it has been laid down as below:

"Those who having been retrenched from the service of Central/State Governments secured on their own employment under State/Central Governments either with or without interruption between the date of retrenchment and date of new appointment are

allowed the benefit of combined service under the State Government and the Central Government.

These orders come into force w.e.f. 31-3-82."

Since the applicant retired on 31-12-81 the same did not apply to him. The first contention of the applicant is that since the applicant retired only three months prior to the cut off date, the Govt. may be directed to make those orders applicable to him.

4. The second contention of the applicant is based on the definition of Service given in Pension Rules dealing with Rule 14 of Qualifying Service. Rule 14 reads as below :

"For the purposes of sub-rule(1), the expression "Service" means service under the Government and paid by that Government from the Consolidated Fund of India or a Local Fund administered by that Government but does not include service in a non pensionable establishment unless such service is treated as qualifying service by that Government."

According to the applicant since the expenditure on Durgapura camp was borne 100% from the consolidated Fund of India, therefore in terms of definition of Service he should be considered to have rendered qualifying service.

5. The third contention of the applicant is that he relies on Rule 28 of the CCS Pension Rules, 1972. The applicant in this connection states as below :

"Applicant states that once it is admitted that the applicant was in civil service from 28-1-1948 to 27-9-48, it is not explained as to why the period should not be counted as qualifying service under the above rules.

Similarly service rendered by the applicant during the period from 28-9-48 to 31-12-1949 under the Central Government by under the Administrative Control of the State Government ought to be considered as qualifying service under the above rules since the payment was made from the Consolidated Fund of India and at no time the applicant had given consent for transfer as a State Government employee."

6. The applicant also relies on the case of N.B. Gorwane to which a reference ^{is} made in the file.

7. The applicant ^{further} relies O.M.No.38017(9)/Admn/SW/80 dated 15-1-81 which relates to transferred staff of the Custodian Organisation under various State Governments to the settlement organisation under the Govt. of India and making them eligible for pensionary benefits. The same is reproduced below:

"The undersigned is directed to say that consequent on the integration of the Custodian's Organisations under the various State Governments with the Settlement Organisation of the Department of Rehabilitation in 1955-1956 bulk of the staff of the Custodians' Organisations under the State Government was taken over by the Central Government was alongwith the work. The question of counting the service rendered by such staff (both gazetted and non-gazetted) of the erstwhile Custodians' Organisations

under the State Governments prior to their compulsory transfer to the Settlement Organisation of this Department, for the purpose of pension under the Central Government, had been under consideration for some time. Since the staff of the State Custodians' Organisations was transferred to the Central Service in public interest and they were not given any option to choose between the State service and the Central Service at the time of their transfer, it has now been decided in consultation with the Department of Personnel & Admn. Reforms and the Ministry of Finance that the service rendered by the employees of the erstwhile State Custodians' Organisations, who were compulsorily transferred to the Central Government in the public interest shall be reckoned as qualifying service for pension and other retirement benefits under the Central Government on the clear understanding that no terminal benefits were received by those employees from the State Governments in respect of their previous service in the State Government."

8. Mr. Savant, learned counsel for the respondents, first of all points out that so far as the period from 28-1-1948 to 27-9-1948 is concerned, the orders have already been issued and there is no difficulty about the inclusion of the same as qualifying service. He, however, opposes the counting of the period from 28-9-1948 to 31-12-1949 on the ground that this service was under the State Government of Rajasthan which has refused to bear the pensionary liability ~~of the~~ in respect of the

(14)

applicant. In this connection our attention is invited to the letter from the Govt. of Rajasthan, at Annexure R-3, in which it is mentioned that the Financial Rules of the State Government do not permit accepting pensionary liability in respect of a ^{temporary} employee. It was pointed out to us that these rules emphasise that the service does not qualify unless an officer ^{is} borne on a permanent establishment and ~~the~~ since the applicant was borne on temporary establishment and subsequently retrenched the question of bearing pensionary liability does not arise. We may ^{note that though} ~~also~~ the Rajasthan Government has been made party respondent viz. respondent No.3 they have not appeared. They have sent a reply dt. 13-11-92 which is reproduced below:

"Shri S.V.Badlani was a temporary Government servant during the period from 28-9-48 to 31-12-49, and his services were terminated on 31-12-49. The question of counting of temporary service rendered by him for purposes of pension cannot be allowed, as it is not covered under the rules. The Govt. of India was informed accordingly vide this department letter No.F 5(120)Reh.77 dated 23rd May, 1983(copy encl.).

There is no new ground in the application to reconsider the view earlier held by the State Govt."

9. Shri Savant submits that so far as his department is concerned it has taken up the matter with the Govt. of Rajasthan and in this connection he has invited our attention

to letter dated 27-5-1983, Annexure A-7 to the application. However, Govt. of Rajasthan not having accepted the liability in respect of the applicant and since the pension rules and financial rules in general are required to be interpreted strictly, he submits that it may not be possible nor it would be competent to the Tribunal to award the relief of counting the service during the period from 28-9-1948 to 31-12-1949 as qualifying service.

10. We have considered the rival contention of the parties and we are conscious that the financial rules are to be interpreted strictly. This Tribunal is, however, also required to see that in view of Articles 14 and 16 of the Constitution of India employees are not treated arbitrarily in the matter of pensionary benefits in which there is a trend towards progressive liberalisation. It is true that the staff of a scheme or project which is 100% centrally assisted does not become central establishment by virtue of central government bearing 100% expenditure thereon and applicant's reliance on Rule 14 or Rule 28 of CCS(Pension) Rules, 1972 is of no avail. We have the example of centrally sponsored schemes in which the staff is appointed by the state government subject to the central government bearing 100% expenditure during the plan period and the liability being taken over by the State Government after the termination of plan period. We must remember however that this concept of the centrally assisted scheme

is a recent development and in 1948-49, when India's Constitution was not adopted and the matter was one of the emergency like that of refugee rehabilitation nice distinctions between state establishment 100% financed by the state government and a central establishment whose expenditure is borne out of the consolidated fund of India might not have been kept in view at the time of transfer of the control of camps to the state governments. The possibility of different state governments adopting a different policy in respect of such establishments in the matter of willingness to bear pensionary liability cannot also be ruled out. Moreover the office memorandum dated 15-1-81 in relation to custodians' organisation indicates that the central government accepted the pensionary liability in respect of staff transferred from state government to the central government on the ground that the staff are not given any option between the state service and central service and the transfer was in public interest. The central government, therefore, decided to accept the pensionary liability. The only condition indicated by the O.M. is that no terminal benefits should have been received by the employees from the state government. There is no recital that the pensionary liability in respect of service put in the Custodians' organisation prior to transfer to the central government was agreed to be borne by the state

governments. There is no reason why applicant should not be treated similarly.

11. We must also keep in mind that only recently the central government agreed to accept the period from 28-1-48 to 27-9-48 as qualifying service. This appears to help the case of the applicant because his subsequent service under Rajasthan Government was in continuation of his earlier central government service and as mentioned by us in earlier paragraph it could be invidious for the central government to deny the benefit of the service rendered in continuation to the applicant as violation of the guarantee of equality under Article 14 and 16 of the Constitution.

12. At this stage Shri Savant suggested that as State Government of Rajasthan is party respondent to this O.A., the Tribunal may direct payment of pension liability by the Rajasthan Government subject to which the Central Government could be asked to count the period in question as qualifying service. We have considered this suggestion but we consider it desirable that the direction ~~-----~~ should be primarily addressed to the central government and the central government may take up this matter of sharing pensionary liability with the state government of Rajasthan in the light of reasoning in the judgment. We, therefore, dispose of this O.A. by passing the following order :

18

O R D E R

Respondents No.1,2 and 4 are directed to count the service of the applicant from 28-9-1948 to 31-12-1949 as qualifying service for the purpose of pensionary benefits and refix the pension of the applicant on this basis. So far as the arrears are concerned the same will be restricted to one year prior to filing of this application. In the circumstance we do not consider it fit and proper to award interest. No order as to costs.

M

M/R Kolhatkar

(M.R. KOLHATKAR)
Member(A)

19

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

R.P. No. 8/95 in O.A. 710/92

S.V. Badlani ... Applicant

Vs.

Union of India & Ors. ... Respondents

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

ORDER ON REVIEW BY CIRCULATION

DATED : 20.1.95

(Per : Shri.M.R.Kolhatkar, Member (A))

In this R.P the original applicant has prayed for review of the order dated 5.8.1994 on the point that ^{though the} relief of counting service for purposes of pension was granted to the applicant ^{to} we had restricted the arrears ^{to} one year prior to filing of the application. Also we considered it fit and proper not to award interest. The original applicant has prayed for review of this part of the order. According to him, the direction of the Tribunal in regard to payment of arrears was neither sought by the applicant nor by respondent ^{is} and is not proper. and ^{is} liable to confuse the respondents. So far as the interest is concerned, refusal to award interest without assigning any reason ^{with} reference to the facts and circumstances of the case, is an error of law apparent on the fact of the record and therefore the same needs to be reviewed.

2. We have considered the grounds for review. Our orders were passed after due consideration of all facts and circumstances of the case. The award of interest is entirely within the discretion of the Tribunal. Restriction of arrears to one year prior to the date of filing of the application was also considered to be proper by us in the facts and circumstances of the case, especially because the right of of the applicant to count service for that period was in terms of Guarantee of Equality under section 14 and 16 of the Constitution and was not self-evident from the Rules. Under the circumstances, no grounds for review have been made out in terms of Order 47/^{Rule} of CPC and this review petition is rejected.¹

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

J*