

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 986 OF 1997.

25-2-99

Date of Decision:

Vinayak Vishnu Thorwade,

Applicant.

Shri M.S. Ramamurthy,

Advocate for
Applicant.

Versus

Union Of India & Another,

Respondent(s)

Shri M.I. Sethna alongwith
Shri V. D. Vadhavkar,

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. D. S. Baweja, Member (A).

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

D. S. Baweja
(D. S. BAWEJA)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 986/97.

Dated the 25th day of February, 1999.

CORAM : HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Vinayak Vishnu Thorwade,
Fitter,
India Government Mint,
Shahid Bhagatsingh Marg,
Fort,
Bombay - 400 001.

Residing at -

Central Railway Colony,
R.B.I. Bldg. No. 248/13,
Parel,
Mumbai - 400 013.

... Applicant

(By Advocate Shri M.S. Ramamurthy)

VERSUS

1. Union Of India through
The Secretary,
Ministry of Finance,
Department of Economic Affairs,
Government of India,
North Block,
New Delhi - 110 011.

2. The General Manager,
India Government Mint,
Shahid Bhagatsingh Marg,
Fort, Mumbai - 400 001.

... Respondents.

(By Advocate Shri M.I. Sethna
alongwith Shri V. D. Vadhavkar).


: ORDER :

[PER.: SHRI D. S. BAWEJA, MEMBER (A)]

The services of the applicant while working
as a Fitter in India Government Mint, Mumbai, were
terminated as per order dated 30.05.1981. The applicant


filed O.A. No. 545/88 challenging this termination order. This O.A. was disposed of as per order dated 02.03.1993 with the directions that the applicant shall be given a fresh appointment by relaxing the age as a special case. In pursuance of this direction, the applicant has been given a fresh appointment under order dated 17.04.1993 as Tradesman Grade-IV (Fitter) in the scale of Rs. 800-1150. The present application has been filed by the applicant claiming that his period of service from 01.06.1974 till 30.05.1981 and further upto 17.04.1993 should count as qualifying service for pensionary benefits. In addition, the applicant has also made a prayer that respondents be directed to grant the applicant basic pay of Rs. 900/- plus allowances in the higher grade of Tradesman Grade-II or III from the due date with all consequential benefits.

2. The main argument of the applicant in seeking the relief is that, counting his services from 17.04.1993 as fresh appointment will not make him eligible for pension and this will cause considerable hardship. Further, since he has been given an appointment back in the same service, his previous service is entitled to be considered for pensionary benefits. It is further contended by the applicant that the order dated 02.03.1993 in O.A. No. 545/88 had only made a provision that back-wages would not be admissible and this clearly shows that applicant shall be entitled for counting his previous service for other purposes except back wages.



3. The respondents have filed the written statement and have opposed the application. The respondents submit that the application filed is totally misconceived and not maintainable. The respondents further submit that the applicant was given a fresh appointment from 26.05.1993 as per Order No. 69 of 26.05.1993 and not on 17.04.1993, as claimed by the applicant. The main contention of the respondents is that the applicant has been given a fresh appointment in compliance of the directions in order dated 02.03.1993 and this order does not provide for any other benefits with regard to counting of previous service for pensionary benefits.

4. The applicant has not filed any rejoinder reply. Heard the arguments of Shri M.S. Ramamurthy, the Learned Counsel for the applicant and Shri M.I. Sethna alongwith Shri V. D. Vadhavkar, the Learned Counsel for the respondents. On careful consideration of the averments made by the applicant in the O.A., it is noted that the applicant has not cited any rules under which he seeks the relief of counting his previous service from 01.06.1974 till the date of termination of service i.e. 30.05.1981 and of the subsequent period thereafter till the date of fresh appointment on 26.05.1993 (date of appointment being 26.05.1993 and not 17.04.1993 as mentioned by the applicant). The applicant has sought relief on two grounds. Firstly, that since the applicant has been absorbed back in the same service and in the same post, he is entitled for counting his previous service for pensionary benefits. This contention of the applicant



is not sustainable. The applicant could be entitled for the benefit of past service only as per the extant rules. In the absence of any rules cited by the applicant, this contention of the applicant does not merit consideration. The second ground and which was the main thrust of the arguments of the Learned Counsel for the applicant during hearing is that the Tribunal in its order dated 02.03.1993 in O.A. No. 545/88 has intended that the previous service of the applicant will count for certain purposes, though not for the purpose of back-wages, which has been specifically ordered. It is, therefore, the view of the applicant that his past service, even on fresh appointment survives and he is entitled for counting the same service for the purpose of pensionary benefits. The Counsel for the respondents, on the other hand strongly contested this interpretation of the order of the Tribunal dated 02.03.1993. The Learned Counsel for the respondents while referring to para 4 of this order stated that the termination order had ^{not} been quashed by the Tribunal and a direction was given for fresh appointment out of compassion on the consideration of extreme hardship. It was further stated that the direction has to be read in context of the observations made by the Tribunal in para 4. The respondents contend that the order of the Tribunal does not show the intention that though the back wages have been dis-allowed for the earlier period, but the earlier period could count for other purposes.

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5. I have carefully gone through the order dated 02.03.1993 and considered the rival contentions and inclined to endorse the stand of the respondents. The direction given in para 5 of the order dated 02.03.1993 have to be seen in the light of the observations made in para 4, based on which the order for fresh appointment has been made. The Tribunal has not quashed the termination order. A direction has been given for giving fresh appointment on compassionate ground to mitigate the hardship which the applicant was undergoing. In this context, it cannot be said that the intention of the Tribunal was that, only back-wages should be denied and the applicant will be entitled for other benefits with regard to his previous service. Keeping this observation in view, I am unable to uphold the contention of the applicant that he is entitled for counting the previous service from the date of joining till the date of termination of service and thereafter till the date of fresh appointment as qualifying service for the purpose of pensionary benefits.

6. During the arguments, the Learned Counsel for the applicant relied upon the judgement of the Hon'ble Supreme Court in the case of U.P. Awam Vikas Parishad & Others V/s. Rajendra Bahadur Srivastava and Another [1995 Supp (4) SCC 76] and order dated 02.12.1988 in O.A. No. 85 of 1988 [N.I. George V/s. Chief Executive, Heavy Water Projects, Department of Atomic Energy, Bombay and Another] - 1989 (9) ATC 744. These cited authorities will be briefly reviewed to identify whether what is held in these authorities comes to the rescue of the applicant in seeking the relief through this application.

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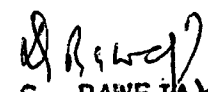
7. In the case of the judgement of Hon'ble Supreme Court in U.P. Awas Evam Vikas Parishad & Others, it is noted that the services of the petitioner were terminated on payment of notice period. Subsequently, however, a fresh appointment was given to him on his consent that he will not claim the benefit of past service. After joining duty, the petitioner challenged the legality of his termination order before the Hon'ble High Court. The Hon'ble High Court allowed the petition of the applicant and quashed the termination order on the consideration that the applicant had shown remarkable qualities in discharging his duties and which had been commended by a Senior Officers. However, the Hon'ble Supreme Court in the appeal did not uphold the decision of the High Court and quashed the order of the High Court stating that the relief granting quashing of termination order and consequential benefits was illegal. However, while quashing the decision of the Hon'ble High Court, the Hon'ble Supreme Court has laid down that the petitioner i.e. the respondent in the appeal, is entitled to computation of the period from the date of his initial appointment for the purpose of pensionary benefits only. On carefully going through this judgement it is noted that the relief of counting the past service for the purpose of pensionary benefits has been allowed by the Hon'ble Supreme Court ^{while} quashing the judgement of the Hon'ble High Court on the facts and circumstances of the case and no law has been laid down that the past service in the case of fresh appointment is to be taken into consideration for pensionary benefits.

It is my considered opinion that the ratio of this judgement is not applicable to the case of the applicant in the present O.A.

8. On going through the order of the Tribunal in the case of ^{Shri} N.I. George, it is noted that on facts and circumstances, this case is distinguishable from the present O.A. Here also, the services of the applicant had been terminated by giving three months notice to him as per service conditions. However, subsequently on his representation, he was taken back on duty as a fresh entrant and he was advised that his past service would not count for any purpose. The applicant had challenged that he is entitled for counting his previous service under Rule 28 of the C.C.S.(Pension) Rules. The Tribunal in this order has examined the claim of the applicant in terms of the rules provided in C.C.S. (Pension) Rules. As stated earlier, the applicant has not cited any rules in the O.A. based on which he has made a claim for counting his past service. His claim for counting his past service, as brought out earlier, is entirely based on the order of the Tribunal dated 02.03.1993, ^{which} according to the applicant, had only denied the back-wages and did not envisage denial of any other benefits with regard to his past service. The Tribunal in this order, ^{of Shri N.I. George} while interpreting the Rule 28(b) has come to the conclusion that Rule 28(b) applies only to the cases of interruption of service on account of resignation, dismissal or removal or for participation in a strike and does not cover the situation of termination of services.

Further, referring to the ^{provisions} ~~of the~~ in Rule 28(a) the Tribunal has observed that the Service Book of the applicant does not indicate any specific entry ^{with} that/his appointment as a new entrant, his past service will not qualify for pensionary benefits. Therefore, in the absence of any such entry, the applicant was entitled for counting his past service under Rule 28(a). As brought out earlier, in the present case, the facts and circumstances are entirely different. The applicant has been re-appointed after he had challenged his termination order in terms of the direction of the Tribunal in its order dated 02.03.1993. The Tribunal has given a specific order for re-appointment on considerations of compassion, as the applicant was in extreme hardship and therefore, his re-appointment is to be ^{governed} ~~by~~ by the order of the Tribunal. Since I have already recorded my findings with regard to the contention of the applicant that the order of the Tribunal indicates an intention that only back-wages are denied but does not have any effect on his past service for other purpose, I am of the view that the ratio of this order does not cover the case of the applicant. As regards the relief of grant of pay of Rs. 900/- in the higher grade, the applicant ^{as the same} did not press for the same/had been allowed.

9. In the result of the above deliberations, I find no merit in the O.A. and the same is dismissed accordingly. No order as to costs.


(D. S. BAWEJA)
MEMBER (A).