IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1059/97

4.2.99
Date of Decision:

Dr.D.V. Jayawant .. Applicant

Shri R.C.Kotiankar .. Advocate for Applicant

-versus-

Union of India & Ors. .. Respondent(s)

Shri R.R.Shetty .. Advocate for Respondent(s)

CORAM:

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

The Hon'ble

(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)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1059/97

Pronounced on this the 4th day of February 1999

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

Dr.Dattatray V.Jayawant,
C-1 Vishwakutir Co-op.Housing Society,
Vaidya Wadi, Shankar Ghanekar Marg,
Dadar (West), Bombay-400 028.

By Advocate Shri R.C.Kotiankar ... Applicant

V/S.

1. Union of India
through Secretary,
Government of India,
Department of Atomic Energy,
Anushakti Bhavan, CSM Marg,
Bombay 400 036.

2. Director,
Bhabha Atomic Research Centre,
Department of Atomic
Central Complex, Trombay,
Bombay 400 097.

By Advocate Shri R.R.Shetty ... Respondents

O R D E R

(Per: Shri D.S.Baweja, Member (A)

The applicant initially joined Atomic Energy Establishment, Trombay (now Bhabha Atomic Research Centre - BARC) on 1.10.1957. Thereafter he was promoted as Scientific Assistant (B). While working on this post, he resigned on 30.4.1967 for taking up a private employment. His resignation was accepted w.e.f. 1.5.1967. He was also permitted to take up employment subsequent to resignation as per letter dated 1.7.1967. While in private employment, the applicant was selected as Scientific Assistant(C)

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against direct recruitment and joined back BARC on 25.3.1968. The applicant made a representation claiming that he is entitled for addition to his service for pensionary benefits for the period he had worked earlier from 1.10.1957 till he resigned from the post in terms of Rule 30 of CCS(Pesnion) Rules 1972. The applicant states that he is also entitled for counting as qualifying service from 1.10.1957 to 30.4.1967. This representation was rejected by the respondents as per letters dated 13.5.1991 and 19.4.1994. Feeling aggrieved, the present application has been filed on 24.11.1997 for redressal of his grievance and seeking the following reliefs :- (a) to quash the orders rejecting the claim of the applicant dated 13.5.1991 and 19.4.1994. (b) to direct the re pondents to count his service from 1.10.1957 to 30.4.1967 as qualifying service for the purpose of pension and other retirement benefits. (c) to declare that the applicant is entitled for addition to his qualifying service under Rule 30 of CCS (Pension) Rules, 1972 and direct the respondents accordingly.

2. The applicant has sought the reliefs as stated above advancing the following grounds :- (a) the resignation of the applicant was accepted permitting him to join another appointment. In view of this, the resignation of the applicant from service was purely technical for taking up another job and as such the resignation cannot result in forfeiture of past service in BARC. (b) There is no specific indication in the service book of the applicant to the effect that the period of interruption between his two spells of service

in BARC shall not be treated as qualifying service towards pensionary benefit. In view of this, under the extant rules the interruption is to be treated as automatically condoned and the previous service will qualify for pensionary benefits. (c) Acceptance of fresh appointment does not operate as estoppel against the applicant for claiming the benefit of past service. (d) Under Rule 30 of CCS(Pesnion) Rules, 1972 the applicant is entitled for addition to his qualifying service as the applicant was appointed on the post where the age at the time of recruitment was more than 25 years and the job requirement was post-graduate research or specialist qualification or experience in scientific, technological or professional field.

3. The respondents have opposed the application through the written statement. At the out set, the respondents have opposed the application as not maintainable on two counts. Firstly, the applicant has claimed multiple reliefs in the same application. The applicant has sought the relief of counting of his entire period of past service from 1.10.1957 to 30.4.1967 towards pensionary and other retirement benefits and at the same time, he has also claimed addition to his service under Rule 30 of CCS (Pension) Rules. Secondly, the application is barred by limitation. The respondents therefore pray that on these two counts itself, the application deserves to be dismissed. On merits, the respondents submit that the case of the applicant is not covered under Rule 26 of CCS (Pesnion) Rules. The applicant had resigned to take up a job in a private organisation and therefore his resignation cannot be treated as technical resignation. The applicant joined back BARC

after being selected against the direct recruitment. In view of this, the respondents contend that the period of past service in BARC cannot be counted as qualifying service for pensionary benefits. As regards the claim of the applicant for addition to his service under Rule 30, the respondents submit that the same is not admissible as there was no specific provision in the Notification that the service or post is one which carries benefits under Rule 30. Further, for the post of Scientific Assistant (C), no requirement of post-graduate research or specialised qualification or experience in scientific, technical or professional field has been shown as essential requirement. The respondents, therefore, plead that even on merits, the applicant has no case and the OA. deserves to be dismissed.

4. The applicant has filed rejoinder in affidavit contraverting the contentions of the respondents in the written statement and reiterated his pleadings in the O.A. The applicant also alleged that some other Scientists in the same organisation, who were similarly placed, were given the benefit of counting five years of service under Rule 30 of C.C.S(Pension) Rules, 1972 and, therefore, denial of the same benefits to the applicant violates Articles 14 and 16 of the Constitution of India.

5. Heard the arguments of Shri R.C. Kotiankar, the Learned Counsel for the applicant and Shri R. R. Shetty, the Learned Counsel for the respondents. The material brought on record has also been carefully considered.

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6. The respondents have challenged the maintainability of the present O.A. on two grounds. Before going into the merits of the claim, these two grounds will be considered, to see if the contention of the respondents is sustainable. The first ground is that the application suffers from the vice of claiming plural reliefs and, therefore, not maintainable as per the provisions of Administrative Tribunals Act, 1985. The respondents have made this plea stating that the applicant has claimed counting of his entire period of past service from 01.10.1957 to 30.04.1967 and also at the same time, benefits of five years service under Rule 30 of C.C.S.(Pension) Rules, 1972. On carefully going through the averments in the O.A., I am not inclined to accept the contentions of the respondents. Though on the first reading it may give an impression that the applicant has sought two separate reliefs, but after carefull consideration, it becomes quite clear that the applicant has claim the said two reliefs, as pointed out by the respondents, as alternate reliefs. The applicant has made out a case that he is entitled either of the benefits for counting his past service, advancing arguments in support of the same. Therefore, the reliefs prayed for by the applicant are to be considered as an alternative and in my opinion, the same does not constitute plural remedies. In view of this, the objection of respondents has no substance.

7. The second ground for challenge is that the application is hit by limitation, as the cause of action arose in 1968 when the applicant was appointed back in a higher post. The applicant has strongly contested

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this submission of the respondents advancing two grounds. Firstly, the applicant submits that the O.A. has been already admitted after consideration of his application for condoning the delay in filing the O.A. and the respondents cannot take the plea of limitation now, at this stage of hearing. The applicant has cited two orders of the Tribunal in support of this contention. These orders are - V. Karuppan V/s. Union Of India & Others (1998(8) ATC 287 ) and Prem Ranjan Mohanty V/s. Union Of India & Others ( 1987(5) ATC 467 ). I have gone through both these orders and note that in both the cases, the petitions were originally filed in the High Court and subsequently, the cases were transfered to the Tribunal. In both the cases, the petitions had been admitted by the High Court and, therefore, the applicants took a plea that the contention of limitation and delay & laches cannot be raised before the Tribunal after the petitions had been admitted by the High Court. In the case of V. Karuppan, the Tribunal accepted the contention of the applicant because of the fact that respondents had not taken such a plea of limitation and delay and laches in the counter-reply filed. In the present case, the facts are different, as the respondents have taken the plea of limitation in the written reply. In the case of Prem Ranjan Mohanty, the Tribunal took a view that a petition admitted by a High Court cannot be challenged in a Tribunal on the plea of limitation and delay and laches. In my opinion, the present O.A. is not hit by limitation, as deliberated subsequently. In view of this, I am not expressing any opinion with regard to the agreement with what is held in these two orders and relied on by the applicant. As regards the second ground of the limitation raised by the respondents on the plea that the cause of action arose in 1968, the applicant has contested the same by stating that the

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counting of past service is concerned with the pension of the applicant and, therefore, it is a continuing cause of action. Even otherwise, the applicant argues that the claim of the applicant should not be dismissed on account of limitation, as the Hon'ble Supreme Court has held that liberal approach should be made in respect of cases where the applicant has a good chance of succeeding in his case. The applicant has cited several judgements to support his contention. These are not being referred to for a review, as I am of the opinion that the counting of past service, as claimed by the applicant, will affect his pension and, therefore, it is a continuing cause of action. The objection raised by the respondents about limitation is not therefore sustainable and accordingly, the matter is being gone into on merits.

8. Coming to the merits, first the claim of the applicant is addition of five years to his qualifying service for pensionary benefits under Rule 30 of C.C.S. (Pension) Rules, 1972 will be considered. The applicant has contended that he was appointed as a Scientific Assistant Grade 'C' on the basis of his specialist qualification i.e. possessing post-graduate degree by research in the field of technology viz. extraction of uranium. He has further contended that he was about 34 years of age at the time of recruitment and the age of recruitment was above 25 years, which is allowed only in respect of the posts for which post graduate specialist qualification is normally specified. The repondents on the other hand, have contested that the case of the applicant does not come under Rule 30 of the C.C.S.(Pension) Rules, 1972, as the provisions of this Rule are not complied with

by the applicant. The respondents have submitted that Rule 30 provides that concession under this Rule could be allowed only if the recruitment rules specifically provided that the service or post is one which carries the benefit of this rule. As per respondents, no such provision is made in the recruitment qualification. The respondents have further stated that as per the notification brought on record, no post-graduate research or specialised qualification or experience in scientific, technical or professional field has been specified. The applicant has relied upon the order of the Tribunal in the case of Ashok Mukerjee V/s. Union Of India & Others ( 1990 (13) ATC 395 ) while on the other hand, the respondents have placed reliance on the judgement of the Hon'ble Supreme Court in the case of Council of Scientific and Industrial Research, New Delhi & Another V/s. M.V. Sastry & Another ( 1997 SCC (L&S) 1821 ). On going through the notification brought on record as exhibit R-1 by the respondents, it is noted that the minimum qualification has been shown as M.Sc. and no mention has been made with regard to Post-graduate research or specialised qualification or experience in the scientific, technical or professional field. The notification also does not provide that the post carries the benefit of addition of service under Rule 30 of C.C.S. (Pension) Rules, 1972. Keeping in view the contents of the notification, I am inclined to agree with the submission of the respondents that the provisions of Rule 30 are not complied by the applicant. The applicant has contended in the rejoinder to the reply that Bbabha Atomic Research Centre has not notified the recruitment rules under Article 309 of the Constitution of India in respect of appointment/promotion to Technical and Scientific posts

and mere not mentioning of the benefits under Rule 30 in the notification, cannot deprive the applicant of the benefits. This argument of the applicant is not sustainable, as in the absence of any stipulated rules, if the recruitment is being done, then the executive instructions prevalent at that time will be applicable. In addition to this, the case of the applicant has to be examined with reference to what is provided in the Notification. The order in the case of Ashok Mukherjee relied upon by the applicant, has been gone into. On facts, this O.A. is different from the present O.A. In the case of Ashok Mukherjee, no specific provision was existing in the recruitment rules for addition to qualifying service as per Rule 30. However, it was provided in the recruitment rules that the conditions of service shall be mutatis-mutandis the same as those applicable to the officers' in similar Scientific Institutions or Organisations. The recruitment rules of sister Service Defence Research Development Service containing provision for addition of service. Based on this, the Tribunal came to the conclusion that even if the provision of Rule 30 being specifically mentioned in the recruitment rules but will apply to the Advance Quality Assurance Service, to which the applicant had been recruited. In the present case, the applicant has not brought out that the provision of benefits under Rule 30 was existing in the Recruitment Rules. If the applicant had demonstrated that provisions of such a rule was existing in the Recruitment Rules but the notification did not provide specifically for the same, then the case of the applicant could have been looked into from other angle. The issue of benefits under Rule 30 and compliance with the provisions of the Rule, has been gone into by the Hon'ble Supreme Court in the case of the Council of Scientific and Industrial Research, New Delhi, relied upon by the respondents.

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In this case, the notification issued for recruitment had only specified M.Sc. Degree in Chemistry, Physics or Chemical Engineering. Based on this notification, the Hon'ble Supreme Court has observed that mere M.Sc. degree in Chemistry, Physics or Chemical Engineering cannot be considered as Post-graduate Research qualification and, therefore, it is held that the notification did not call for the post -graduate research or specialised qualification, as laid down in Rule 30. As indicated above, in the present case also, the qualification laid down has only M.Sc. degree in Chemistry and, therefore, the interpretation of the applicant that the notification had called for post-graduate research qualification or specialised qualification or experience in scientific or technical field, is not sustainable. As regards the age, the Hon'ble Supreme Court has stated that the qualification and experience which is laid down in the notification are such that, normally candidates not more than the age of 25 years are recruited and, therefore, the second condition with regard to the age of recruitment is also not satisfied in the case of the petitioner. In the present case also, it is noted that no specific mention of the benefit of age is mentioned in the notification and, therefore, it cannot be taken that the provision of Rule 30 in respect of age had been also complied by the applicant. Keeping in view what is held by the Hon'ble Supreme Court, the claim of the applicant for addition of five years to his qualifying service for pensionary benefits cannot be allowed. As regards the plea of discrimination advanced

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by the applicant in the rejoinder to the reply, it is noted that except from making general statement, the applicant has not furnished any details in support of his contention. In the absence of any details with regard to the names of the officers, details of the notification and the orders issued for addition to service under Rule 30, the allegation of discrimination made by the applicant cannot be gone into.

9. With regard to the claim of the applicant for counting the entire period of his earlier service in B.A.R.C. as qualifying service for pensionary benefits, the respondents have submitted that the applicant is not entitled to this benefit in terms of provisions under Rule 26 of the C.C.S.(Pension) Rules, 1972. The respondents on the other hand, has argued that the interruption in service with B.A.R.C. was due to his resignation for taking employment in another organisation with proper permission and, therefore, his resignation was purely technical and, therefore, he is entitled for counting the entire period of his earlier service as qualifying service. He has also contended that there is no specific entry in the Service Book to the effect that the period of interruption between two spells of service with B.A.R.C. shall not be treated as qualifying service for pension and as per rules, in such circumstances, the interruption shall be treated as condoned automatically and the period of his earlier service will qualify for pensionary benefits. The Counsel for the applicant, during the arguments, relied upon several Orders/judgements

in support of his contention. These Orders/judgements are as under :-

(i) N.S. Padukone V/s. Union Of India & Others ( 1987 (5) ATC 559 ).

(ii) Shri Kirti Chandra V/s. Director General Health Services & Others.
( 1990 (1) CAT 633 )

(iii) N.I. George V/s. Chief Executive, Heavy Water Projects, Department of Atomic Energy, Bombay & Another.
( 1989 (9) ATC 744 ).

(iv) U.P. Awas Evam Vikas Parishad & Others Versus Rajendra Bahadur Srivastava & Another.
( 1995 Supp (4) Supreme Court Cases 76 ).

10. The above cited judgements are briefly reviewed to find out if the ratio what is held in these orders/Judgements is applicable to the case of the applicant in the present O.A. In the case of N.S. Padukone, the applicant while working in Railways, applied through the proper channel and after being selected, joined the State Government of Bombay. Subsequently, he applied again through proper channel and on being selected, joined the Central Police Training College, Government of India. The issue under dispute in this O.A. was counting of his past service for the purpose of pension. The past service in the Railways was not allowed to be counted for pensionary benefits under the plea that the applicant had resigned

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from the Railways at the time when pensionary scheme was not operative in the Railways. The Bench however did not accept the plea of the respondents and concluded that irrespective of the fact that the Pension Scheme was in operation under Railways or not, the applicant is entitled for counting of his past service for pensionary benefits. As could be seen from the facts, the present O.A. is distinguishable. In the case of the present O.A., the applicant had resigned and joined private organisation while in the case of N.S. Padukone, the resignation was for joining from one Government Department to another Government Department, which was covered as per rules.

The case of N.I. George is also distinguishable on facts with the present case. In this case, the services of the applicant was terminated. However, subsequently after considering his representation, the concerned authority decided to take him back into service. The issue involved was, whether the past service before termination was to qualify for the purpose of pension. The Bench, after considering the rival contentions, has come to the conclusion that the case of termination of services and re-engagement is not covered under Rule 28(a) of the C.C.S. (Pension) Rules. Based on this finding, the relief was granted to the applicant by directing to count his past service. As pointed out earlier, in the present the interruption is not due to termination of service but due to resignation for taking employment with another organisation and Rule 28(a) covers this situation.

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In view of this, the ratio of what is held in this order is not of any help to the applicant's case.

11. The last judgement cited by the applicant is that of the Hon'ble Supreme Court in the case of U.P. Awas Evam Vikas Parishad & Others. This judgement also covers the case of the Petitioners whose services were terminated and subsequently, based on his representation, he was given a fresh appointment. The petitioner had challenged the matter before the High Court challenging his termination order after having accepted the fresh appointment. The Hon'ble High Court had allowed the relief by quashing the termination order. In the appeal, the Hon'ble Supreme Court has not upheld the order of the High Court. However, the relief of counting his past service for pensionary benefits was allowed. On going through the judgement, it is seen that the relief with regard to counting of past service has been allowed on the facts and circumstances of the case. Further this judgement also covers the case of termination of service and not of resignation and, therefore, does not apply to the case of the applicant in the present O.A.

12. After going through the judgements cited by the applicant in support of his contention for counting the entire period of past service for the purpose of pensionary benefits, it is concluded that none of the orders/judgements support the case of the applicant. Now looking at the rules cited by the respondents and also relied upon by the applicant, it is to be seen whether there is any merit in the relief claimed for. On referring to

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Rule 26, it is noted that in sub-rule (2), it is provided that resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, under the Government. In the present case, it is an admitted fact that the applicant had submitted his resignation for taking up a job in a private organisation. The applicant has argued that his resignation was not voluntary but was made under compelling circumstances, as the applicant had been transfered out of Bombay and he could not join the posting away from Bombay on account of the circumstances that he was pursuing higher studies at that time. This argument of the applicant is not sustainable. The circumstances under which an employee submits his resignation is of no consequence. The main issue involved is that the applicant has resigned from the post. If an employee resigns for taking employment in the outside organisation, it is quite clear from Rule 26(2) that the benefit of counting the past service will not be available. On going through the Government of India's Decisions No. 3 under Rule 26, it is provided that in case an employee resigns from service for taking up appointment in another Government organisation after his application has been forwarded through proper channel, then a specific mention shall be made in the order accepting his resignation that benefits under Rule 26(2) will be admissible. In the present case, the order accepting the resignation as brought on record by the applicant does not mention anything with regard to the admissibility of benefits under Rule 26(2). The applicant has also taken shelter

under Rule 28(a) stating that there is no entry in the Service Book with regard to interruption between two spells of service with the Bhabha Atomic Research Centre and, therefore, it is to be taken that the interruption has been automatically condoned and his pre-interruption service is to be treated as qualifying service. This argument of the applicant is not covered by the Rules. Clause (b) of Rule 28 clearly provides that clause (a) of Rule 28 is not applicable to interruption caused by resignation, dismissal, removal, etc. In the present case, the interruption between the two spells of service is on account of resignation, and therefore, the case of the applicant is not covered under Rule 28(a) as claimed. Keeping in view the provisions of the Rules, as discussed earlier, the claim of the applicant for counting the entire period of past service in B.A.R.C. is not sustainable. The applicant, during argument, also tried to place reliance on the Rules applicable to the Railway Service with regard to counting of the past service by condoning break in service on account of resignation. The applicant did not bring out as to how these rules are applicable to the case of the applicant, when he is governed by the specific rules provided in the C.C.S. (Pension) Rules, 1972. Therefore, placing reliance on the rules applicable to the Railway Servants is of no avail to the case of the applicant.

13. In the result of the above deliberations, I am not able to find any merit in the claim of the applicant. The O.A. therefore deserves to be dismissed and is accordingly dismissed with no order as to costs.

(D. S. BAWEJA)
MEMBER (A)

mrj/os*