

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

O.A. No. 1012/98

Dated this day 1 of April, 2000.

Coram: Hon'ble Shri B.N. Bahadur, Member (A)

Shri Vasant Bhikaji Ajwelkar  
Retired Superintendent, CIFE  
Joseph Patel Wadi,  
Belabhai's Chawl, 7 Bungalows,  
Yari Road, Andheri West  
Mumbai - 400 061.

(By Advocate Shri S.P. Kulkarni)

.... Applicant

Vs.

1. Union of India, Through  
Director, Central Institute of  
Fisheries Education (I.C.A.R.)  
C.I.F.E., Building, 1st floor,  
J.P. Road, Andheri West  
P.O. Mumbai 400 061.  
(By Advocate Shri V.G. Rege)

2. Senior Superintendent (R.M.S.)  
Mumbai Railways Mails Sorting  
Division, (Department of Posts)  
At P.O. Mumbai 400 001.

3. Post Master General,  
Mumbai Region, II floor  
Mumbai G.P.O. Building,  
Near C.S.T. P.O.  
Mumbai 400 001.

(By Advocate Shri V.S. Masurkar)

... Respondents

O R D E R

Per: B.N. Bahadur, Member (A)

This is an application made by Shri V.D. Ajwelkar seeking the relief in substance for the quashing of memorandum dated 26th July 1997, through which the request of applicant for counting his service rendered with Posts and Telegraph Department is rejected by the Central Institute of Fisheries Education (CIFE). The applicant had requested that this service should be counted

...2

as qualifying service under the relevant Pension Rules, for calculation of the retirement benefits due to him.

2. The facts of the case, in brief, are that the applicant joined service with the Postal Department on 24.10.1960 on temporary basis in Mumbai Sorting Division of respondent No.2, and was made permanent in July, 1965. Later, he was selected for a job in CIFE, where he joined in November 1967. Applicant avers that all this was with full permission of his earlier employer viz. respondent No.2/ 3. The applicant avers that his service in the Govt. Department should be taken into consideration as per Rules, and has the grievance that this period of service (24.10.1960) to 11.7.1967) has not been taken into account while calculating his Pensionary Benefits. Only his service in CIFE (of 28 years plus) has been taken into account. The applicant had made a representation in March 1997, which has been rejected by impugned order dated 26.7.1997, referred to above.

4. There are effectively two respondents in this case viz. CIFE, and the Govt. Department of Posts. Both have filed replies, separately. To take the reply of the Postal Department (viz. Respondents 2 and 3 first, it is seen that they have clearly accepted the fact of the service record and had taken the defence that eventhough the applicant served with them for almost 7 years, they have no liabilities now and it was for his present employers viz. CIFE, who were to make settlements of his dues their own. It is indicated that the CIFE has been informed suitably in this regard.

5. Respondent No.1 (CIFE) have stated in thier written reply that the applicant has accepted the Certificate of qualifying service and did not represent his matter till his retirement. The case cannot therefore, be reopened in terms of the Pension Rules. It is also averred that the Department of Posts, viz. Respondent No.2 has indicated in a reply to CIFE, that no records regarding the service of applicants pay bills, are available.

6. Another defence taken by the CIFE, (and in fact the one mainly relied upon by the ld. counsel for CIFE during arguments ) is that it is necessary that the Govt. Department from which the applicant comes should have discharged the Pensionary liability of one time payment prior to the absorption and that on receipt of such amounts the applicant can be given benefit of the service rendered with respondent No.2.

7. I have heard Ld. counsel on behalf of the applicant, Ld. counsel on behalf of Respondent No.1 and learned counsel on behalf of respondent No.2 and 3. The counsel for the applicant rested his case on the application made, and took me over the Rules, which entitle him to such payments. It was argued that Respondent No.1 was even now agreeing to meeting his liabilities provided Respondent No.2 and 3 agreed to provide the Pension contribution. He contended that in this situation, he was becoming a sufferer in view of differences between the two sides. He met the point of limitation by citing dates as per facts brought out in his application and M.P. for condonation.

8. The learned counsel for CIFE further took me over the Rules

an extract of which is filed in page 55 of the Paper Book, viz. extracts from Appendix 12 of CCS (Pension) Rules. He accordingly made the point that the Govt. Department from which the applicant has been absorbed had full responsibility for discharging the pension liability by a lumpsum one time payment of pro rata pensionary benefits accruable to the applicant as per provisions cited. He specifically made the point that his organisation was not running away from its due liability, but that it can only be discharged when the amounts due from Govt. were received. He accepted that all those in service in 1986 will be eligible to the benefits provided by Govt. policy. On this point he was reacting to the point made by learned counsel for respondent 2 and 3 to the effect that the policy made subsequent to the time the applicant left Govt. (1967) was not applicable to the applicant. 9. The learned counsel for the respondents 2 and 3 strenuously made the point alluded to in the ~~preceding~~ *preceding* paragraph, and thus contended that no benefits announced after 1985-86 would be made available to the applicant, and that only policy applicable in 1967 was applicable. He also made the point that the service of the applicant rendered with Govt. was for a period less than 10 years and hence an infirmity. Counsel took the support of the point made in sub rejoinder of respondent 2 dated 1.11.1999 to state that the Govt. Department had no liability in the entire matter.

Bob

10. I have carefully considered all papers in the case and the arguments made before me by the learned three counsels.

11. In the first place, I must deal with the issue relating to the limitation. It is indeed a recurring cause of action in nature. Even otherwise, from the relevant dates as cited, it is clear that the delay would indeed be of an order less than 4 months as pointed out by applicant in his M.P. seeking condonation of delay of 3 months and 20 days. Even if this was to be considered a case of technical delay there are adequate grounds for such a minor delay being condoned. This delay is hereby condoned.

11. On an analysis of the merits of the case it is clear that there is no controversy about the applicant having worked with the respondent No.2/ 3 and respondent No.2 in his affidavit clearly gives the specific dates of entry, confirmation and the date on which the applicant left to join CIFE. There is also no controversy about facts relating to proper procedure being followed by the applicant for selection for CIFE. Even details of Last Pay drawn have been admitted. The point made by CIFE about there being no entries available in Service Book about past service is therefore, flimsy. Now, the facts being admittedly without controversy, the defence of the two respondents would have to be interpreted as per Rules.

12. It must be stated here that in his arguments before us the learned counsel for CIFE had, in fact, stated that his Organisation was not running away from making enhanced payments

*MS*

by counting the Govt. Service, but was only waiting for the Govt. (Department of Posts) to pay Govt. contribution. In fact, it is clear from the papers before us in this case, and as was even clearer during arguments, that this has turned out to be a veriatable case between respondent no.1 on the one hand and respondent No.2/3 on the other. This is indeed

13. Our attention can now be turned to relevant extracts of Appendix 12 of the CCS (Pension) Rules which has been brought to notice of the Tribunal. In fact, this rule is depended upon very clearly by the Respondent No.1 in his affidavit dated 22nd September, 1999 to make the point regarding the liability of Respondent 2/3 regarding the one time payment. The provisions in this appendix which are relevant are appended at page 53 of the Paper Book. They come under the heading "Transfer of Central Govt. Servants to Central Autonomous Bodies and vice versa..... as seen from the Book. The relevant portion is extracted below:

"2. A number of Central autonomous/statutory bodies have also introduced pension scheme for their employees on the lines of the pension scheme available to the Central Government employees. It has, therefore, been urged by such autonomous/statutory bodies that the service rendered by their employees under the Central Government or other autonomous bodies before joining the autonomous body may be allowed to be counted in combination with service in the autonomous body, for the purpose of pension, subject to certain conditions. Similar Government have also been urged. In other words, the suggestion is that, the benefit of pension based on combined service should be introduced.

3. This matter has been considered carefully and the President has now been pleased to decide

*bb*

that the cases of Central Government employees going over to a Central autonomous body or vice versa and employees of the Central autonomous body moving to another Central autonomous body may be regulated as per the following provisions:-

(a) *In case of Autonomous bodies where Pension Scheme is in operation-*

(i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employees of the autonomous bodies who are permanently absorbed under the Central Government.

The Government/autonomous body will discharge its pension liability by paying in lumpsum as a one time payment, the pro rata pension/service gratuity/terminal gratuity and retirement gratuity for the service up to the date of absorption in the autonomous body/Government, as the case may be. Lumpsum amount of the pro rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time."

14. A careful reading of the above extracted rules will conclusively show that all requirements which have been laid down for the counting of Service as claimed by the applicant in this ~~0~~ have been met. For instance, ~~double~~ there is no controversy raised about applicant going to CIFE after proper permission/ procedures; also that he had been confirmed, admittedly by the Govt. (Department of Posts) where he was working. No blemish or any kind of infirmity has been raised which will disentitle

Ans

him from getting this service counted. The instructions quoted above clearly stipulate that the service rendered under Govt. shall be allowed to be counted towards pension under the autonomous body.

15. It is also stated in these instructions that one time payment will be paid by Govt. as described above. In fact, as admitted during arguments the ld. counsel for CIFE stated that modification in pensionary benefit was only being held back as no lumpsum payment had been received from Govt. When the amount is clearly due and when this kind of position results after so many years, one cannot help agreeing with the point made by learned Counsel for applicant that the applicant has been really suffering in view of a dispute by an autonomous body under the Govt. and the Govt. itself. This is indeed unfortunate. So much time had already lapsed without the two sides without being not able to resolve the dispute, it will not be in the best interests of justice to allow further time to CIFE to retrieve amounts it are due to is from Govt. They are free to negotiate it with the Govt., but will have to settle the dues case of the applicant as per Rules viz. by including the Service rendered by him in the Govt. towards providing him the pensionary benefits. Any further delay will be unjust to applicant.

16. The defence taken by the respondent No.2 & 3 to the effect that the Rules and instructions issued after 1967 are not applicable to applicant's case is clearly not tenable. Nowhere

in the appendix 12 has this been stipulated. Other arguments made in the written statements or during oral arguments are clearly not tenable. No specific pleas has been taken in regard to the instructions contained in the appendix 12 etc. of CCS (Pension) Rules nor any other rule or case laws cited by the Govt.

17. In view of the discussions above, it is clear that the applicant has a very good case and would justifiably be eligible to the counting of service rendered by him with the Department of Posts Govt. of India. The rejection of this request through Memorandum dated 26th July, 1997 is clearly invalid and is hereby declared as such.

18. In the consequence, the impugned Memorandum issued by Respondent No.1, dated 26th July, 1997 is hereby held invalid. The respondent No. 1 is directed to refix pensionary benefits as per Rules by counting the service rendered by applicant with Department of Posts Govt. of India and pay, to the applicant, the balance dues for which the applicant is accordingly eligible. This Order may be implemented within a period of three months from the date of receipt of a copy of the Order. No orders as to costs.



(B.N. Bahadur) 13/11/2000

Member (A)