

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 591/98

Date of Decision: 17.6.99

Manohar Burde

Petitioner/s

Applicant in person

Advocate for the  
Petitioner/s.

v/s.

Union of India & Ors.

Respondent/s

Shri R.K.Shetty

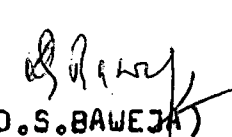
Advocate for the  
Respondent/s

CORAM:

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

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? ✓

  
(D.S.BAWEJA)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA.NO. 591/98

Dated this the 17th day of June, 1999.

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

Manohar Burde,  
Machine Tool Prototype  
Factory, Ambernath.  
Dist. Thane.

Applicant in person.

... Applicant

V/S.

1. Union of India  
through Secretary,  
Ministry of Personnel,  
Public Grievance & Pensions,  
Deptt. of Personnel & Training,  
New Delhi.
2. The Controller of Defence  
Accounts (Person) Draupadighat,  
Allahabad (U.P.) 211 014.
3. The Managing Director,  
National Bank for Agricultural  
& Rural Development, Worli,  
Bombay 400 018.
4. Director General of Ordnance  
Factories/Chairman Ordnance  
Factory Board, 10-A Auckland  
Road, Calcutta-700 001.
5. The General Manager,  
High Explosive Factory,  
Kirkee, Pune-411 003.

By Advocate Shri R.K.Shetty

... Respondents

ORDER

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

The applicant in this OA. has sought the relief of counting his previous service of working in Reserve Bank of India and National Bank for Agricultural & Rural Development before he joined Indian Ordnance Factory Service.



2. The applicant was initially appointed in Reserve Bank of India, Bombay (hereinafter called RBI) on 10.5.1977 and worked there upto 30.6.1983. Thereafter, the applicant was transferred in public interest to National Bank for Agriculture and Rural Development, Bombay (hereinafter called NABARD ) from 1.7.1983 and continued there till 17.2.1984. The applicant appeared in Civil Services Examination in 1982 and was selected in Indian Ordnance Factory Service. After tendering resignation from NABARD, he joined Indian Ordnance Factory service on 18.2.1984. On joining Indian Ordnance Factory service, the applicant made a request for counting his earlier spell of service rendered in RBI and NABARD towards his qualifying service for pensionary benefits for employment under Indian Ordnance Factory Service. The applicant has submitted that the General Manager, Rifle Factory, Ishapore where he was initially posted forwarded the relevant documents as per his letter dated 1.7.1988 to Controller of Defence Accounts (Pension) Allahabad, i.e. Respondent No. 2 for considering the case of the applicant for counting the past service for pensionary benefits. The applicant was subsequently transferred to Ordnance Factory, Bhandra and then to High Explosive Factory, Khadki, Pune. The applicant continued to pursue the matter and papers were again sent to Respondent No. 2 after furnishing clarifications with regard to status NABARD. The Respondent No. 5, General Manager, High Explosive Factory, Kirkee, Pune advised the applicant to deposit Rs.4,833 being the payment received by the applicant as Contributory Provident Fund. In view of

the fact that the respondents had accepted the claim of the applicant for counting his past service, the applicant deposited the said amount as per Cash Receipt dated 28.4.1992. The matter again thereafter remained in correspondence. As per letter dated 7.2.1994 from Respondent No. 5, the applicant was advised that the matter has been examined by Respondent No. 2, i.e. Controller of Defence Accounts (Pension) Allahabad and the claim of the applicant for counting his past service could not be allowed as more than 50% office expenditure with of the Chetriya Grameen Banks is not met/ from Cess or Central Govt. Grants and therefore such Banks cannot be treated as autonomous bodies. The applicant again made a representation against this order giving the details with regard to setting up of NABARD and bringing out that the view taken by the respondents was erroneous. The applicant, however, did not get any reply and therefore feeling aggrieved by this action of the respondents, he has filed this present OA. on 1.6.1998.

3. The respondents have filed a written statement contesting the claim of the applicant. The respondents submit that the rules regarding counting of service rendered outside the Central Government for pensionary benefits for service rendered under the Central Government are contained in O.M. dated 29.8.1984 issued by Department of Personnel & Administrative Reforms. These orders have been further consolidated and clarified in O.M. dated 13.9.1996. As per these rules, an employee of an autonomous body on permanent absorption

under the Central Government has an option of counting his past service in the autonomous body in Government provided such autonomous body is financed wholly or substantially from Cess or Central Govt. grants. In this O.M., it is further clarified that "substantially" means that more than 50% of the expenditure of the autonomous body is met through Cess or Central Govt. Grants. The respondents contend that NABARD and RBI organisations where the applicant <sup>had</sup> worked before joining Indian Ordnance Factory Service do not meet with the criterion as laid down in O.M. dated 29.8.1984 and <sup>thus not</sup> eligible for counting the past service as qualifying service under the Government. In view of this, the claim of the applicant had been rejected and advised to the applicant as per order dated 7.2.1994. The applicant had made a further representation with reference to the order dated 22.4.1992 and the matter was again examined in consultation with the Department of Pension and Pensioners' Welfare and the claim of the applicant for counting his past service was not found admissible. This decision was conveyed to the applicant as per order dated 4.4.1995. The respondents admit that initially the applicant was asked to deposit the Bank's share of Rs.4833/- in Contributory Provident Fund and the same had also been deposited by the applicant. However, after detailed examination, when it was found that the claim of the applicant is not admissible, the money deposited by the applicant had been refunded to him. In view of these submissions, the respondents plead that the relief prayed for by the applicant is not admissible and the OA. deserves to be dismissed.

4. The applicant has not filed any rejoinder reply to the written statement of the respondents.

5. Heard the arguments of the applicant in person and Shri R.K.Shetty on behalf of the respondents.

6. The basic facts involved in the issue under challenge through the present OA, are not in dispute. The applicant on joining Indian Ordnance Factory Service on 18.2.1984 is claiming the benefit of his previous service from 10.5.1977 to 30.6.1983 under RBI and from 1.7.1983 to 17.2.1984 under NABARD for pensionary benefits under the Government. The applicant has made the claim for counting the past service for pensionary benefits under the provisions of O.M. dated 29.8.1984 issued by the Department of Personnel and Administrative Reforms. The respondents also relying on the same O.M. dated 29.8.1984 have rejected the claim of the applicant and the reasons for rejection have been conveyed in the orders dated 7.2.1994 and 4.4.1995. The respondents have stated in these two orders that the Reserve Bank of India and NABARD are not the autonomous bodies as defined in Para 4 of O.M. dated 29.3.1984. The provisions made in Para 4 are reproduced here for ready reference :-

"4. "Central autonomous body" means body which is financed wholly or substantially from cess or Central Government grants. "Substantially" means that more than 50 per cent of the expenditure of the autonomous body is met through cess or Central Government grants. Autonomous body includes a Central statutory body or a Central University but does not include a public undertaking."

The applicant has contested the claim of the respondents and has made several averments to establish that RBI and NABARD are autonomous bodies and comply with the provisions made in Para 4 of O.M. dated 29.8.1984. Keeping the rival contentions in focus and the provisions in Para 4 as extracted above, the short question which requires consideration is whether the RBI and NABARD are autonomous bodies as defined in Para 4 of the O.M. dated 29.8.1984.

7. The applicant has advanced the following grounds in support of his contention that NABARD is a central autonomous body :- (a) NABARD is an autonomous body and was formed by an enactment of Parliament under the National Bank for Agriculture and Rural Development Act 1981. For this, he has placed reliance on letter dated 10.2.1992 from General Manager, Administration NABARD as well as the Act of 1981 which has been brought on record at page 39 of the paper-book. (b) O.M. dated 31.3.1987<sup>ers</sup> issued by Department of Pension and Pension/Welfare brought on record at Annexure.'A-5'. Taking the first ground, it is noted from the copy of the Act "The National Bank for Agriculture and Rural Development Act, 1981" brought on record that NABARD has been set up by an enactment of <sup>the</sup> Parliament. From the Act, <sup>initial</sup> it is noted that the entire/capital of the NABARD has been supplied by Govt. of India and RBI in equal proportion. The Act also provides for transferring the net profit to the Central Government and RBI equally and the accounts of NABARD after duly

audited are also to be sent to Central Govt. and RBI and Central Govt. will cause the same to be laid before each House of Parliament. Referring to these provisions in the Act, the applicant has made out a case that NABARD is an autonomous body and meets with the conditions in Para 4 as detailed above. On careful consideration of the provisions in the Act under reference and the condition laid down in Para 4 above, I am not inclined to accept the contention of the applicant. There is no doubt that NABARD has been set up by an enactment of Parliament and initial capital had been provided equally by Government of India and RBI. But para 4 makes specific provision with regard to the mobility<sup>of staff</sup> between the Government and the autonomous body and therefore the status of an organisation qualifying as autonomous body as defined in rules has to be determined based on the provisions as per the rules laid down. In Para 4, it is clearly mentioned that a central body qualifies as an autonomous body only if it is financed wholly or substantially from the cess or Central Govt. grants. The "substantially" has been quantified as more than 50 per cent of the expenditure of the autonomous body is met with by the cess or Central Government grants. On going through the Act under which NABARD has been set up, it is noted that it is nowhere provided that more than 50% expenditure of Bank is to be met with <sup>by</sup> the grants from Govt. of India. It may be that the initial capital had been made available by the Govt. of India and RBI but the criterion which has to be met with is that more than 50% of the expenditure is met with by the grants from the Govt. of India or by cess.

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Since this condition is not complied with, I am inclined to accept the stand of the respondents that NABARD is not an autonomous body as per the extant rules.

8. The applicant has relied upon the order of the Tribunal in case of K.Rama Rao vs. Plant Protection Advisor to GOI & Ors., 1993(1) SLJ 424 (Annexure!A-13') stating that the similar issue has been considered in this OA. and decided in favour of the applicant. I have carefully gone through this order and find that the same does not apply to the case of the applicant. In this case, the issue involved was with reference to the benefit of counting of past service in terms of the O.M. dated 29.8.1984. The claim of the applicant for counting the past service was not allowed by the Government on the plea that he was not confirmed at the time when he was selected under the Indian Council of Agricultural Research. The Bench has held while relying on the judgement of Hon'ble Supreme Court in case of R.L.Marwaha vs. Union of India & Ors. that the O.M. dated 29.8.1984 does not talk of any confirmation as a pre-condition for counting the past service in Central Government. As deliberated earlier, the issue involved here is not that <sup>of</sup> confirmation but is in regard to status of the autonomous body from where the applicant has joined the Government service. Therefore, this order does not come to the rescue of the applicant. The applicant has also relied upon the judgement of the Hon'ble Supreme Court in the case of Ramana Dayaram Shetty vs. The International Airport Authority of India & Ors., AIR 1979 SC 1628 stating that public sector undertaking in the form of autonomous body <sup>an</sup> is / instrumentality of Government to achieve the


objectives and policies of the Government and therefore "State" under Article 12 of the Constitution of India. A careful reading of this judgement brings out that the issue involved in this judgement is quite distinct from the matter under challenge in the present OA. The Hon'ble Supreme Court in this judgement has gone into the issue in respect of the status of Airport Authority with regard to its dealing with the evaluation and acceptance of the tenders. The Hon'ble Supreme Court has held that the Airport Authority of India is a "State" and therefore the Airport Authority was required to follow the procedure for dealing with the tenders as followed by the Government i.e. not act arbitrary in accepting the tenders. In the present case, the issue is not with regard to functions of the autonomous body but the admissibility of counting the past service of working in the autonomous body when an employee joins the Government service. This benefit is governed by the specific rules and therefore the claim of an employee has to be gone into in terms of the extant rules. The rules specifically lay down that staff of a Central autonomous body are entitled for counting past service under Government only if it is wholly or substantially financed from Cess or Central Govt. Grants and 'substantially' being more than 50% of expenditure. In view of this, the ratio of the cited judgement of the Hon'ble Supreme Court does not apply to the case of the applicant.

9. The applicant has placed strong reliance on the O.M. dated 31.3.1987 at Annexure. 'A-5'. During the hearing, the applicant brought to my notice <sup>the</sup> Note 2 at the end of O.M. wherein it is stated that the Nationalised Banks including RBI are to be treated as Central Autonomous Bodies. On carefully going through this Note, it is observed that the contents of this Note are based on the O.Ms. dated 14.5.1986, 3.4.1987 and 10.11.1987 of the Department of Pension and Pensioners Welfare. On going through these O.Ms. dated 14.5.1986, 3.4.1987 and 10.11.1987 in Swamy's Annual, it is noted that the interpretation made by the applicant is not tenable. O.M. dated 31.3.1987 lays down the rules with regard to permanent transfer of Central Government servants to Central bodies. For giving benefits of this O.M. to those of the Government servants who are absorbed in the Nationalised Banks and Reserve Bank of India and other financial institutions as detailed in Note 2 referred to above, these organisations have been treated as Central autonomous bodies. As brought out in the O.Ms. dated 14.5.1986 and 10.11.1987, such of the Government servants absorbed in the organisations mentioned in Note 2 are entitled only for getting the option of receiving pro-rata retirement benefits. Such staff are however, not entitled for counting the past service under the Government. The main intention being that on absorption of Government staff in such organisations, the Government servant does not lose <sup>and</sup> the benefit of his past service, therefore, these organisations have been treated as autonomous bodies only for the limited purpose of giving the option to

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the Government servants of the pro-rata retirement benefits. These organisations do not qualify as Central autonomous bodies meeting with the stipulations as laid down in Para 4 of O.M. dated 29.8.1984 as per which the case of the applicant is covered. In fact, from the O.M. 30.5.1995, brought on record by the respondents at Annexure. 'R-2', it is noted that the matter has been clarified with reference to the stipulations made in O.Ms. dated 14.5.1986 and 10.11.1987. After careful consideration of the relevant O.Ms. as referred to above, I am unable to subscribe to the interpretation of the applicant made in respect of the O.M. dated 31.3.1987.

10. In the result of the above deliberations, the OA. is devoid of merit and the same is dismissed accordingly. No order as to costs.

  
(D.S. BAWEJA)  
MEMBER (A)

mrj.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

R.P.NO. 29/99 in OA.NO. 591/98

Dated this the 25<sup>th</sup> day of August 1999.

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

Manohar Burde  
R/o. Qtr.No.E/2,  
Ordnance Factory Estate,  
Ambernath. Dist. Thane.

... Applicant

V/S.

Union of India & Ors.

... Respondents

Tribunal's Order

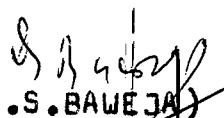
(Per: Shri D.S.Baweja, Member (A))

This Review Application has been filed by the applicant seeking review of the order dated 17.6.1999 in OA.NO. 591/98.

2. As held by Hon'ble Supreme Court in catena of judgements, the power of review may be exercised on discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of person seeking review or could not be produced by him at the time when the order was passed. It may be exercised when some mistake or error apparent on the fact of the record is found. But the power of review cannot be exercised on the ground that the decision was erroneous on merits. A review by no means can be an appeal in disguise.

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3. In the light of the above para-meters laid down by Hon'ble Supreme Court for exercising power of review, the grounds advanced in the review application seeking a review of the order dated 17.6.1999 have been carefully considered. The applicant has sought review of the order mainly on the contention that the provisions of the various O.Ms. cited by the applicant, viz. 8.4.1976, 29.8.1984 and 12.9.1985 issued by Department of Personnel & A.R., Deptt. of Pension & Pensioners' Welfare and Ministry of Finance have not been properly appreciated in the order and the same requires to be <sup>re</sup>considered. The main thrust of the averments made is that the interpretation made by the applicant of the various O.Ms. should be accepted and based on the same, the applicant deserves to be granted the relief prayed for. The provisions of these O.Ms. have been already considered in the order. The applicant has <sup>not</sup> brought out <sup>any</sup> new facts. The applicant has <sup>also</sup> not pointed out any error apparent on the fact of the record. In fact, the present review application is more of an appeal bringing out in the review application that the order is erroneous on merits. Keeping in view the para-meters laid down by the Hon'ble Supreme Court, such a review application which seeks matter to be reconsidered on merits is not maintainable.

4. In the result of the above, there is no merit in the review application and the same is dismissed accordingly.

  
(D.S. BAWEJA)  
MEMBER (A)