

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(T9)

O.A. No. 662/93
T.A. No.

199

DATE OF DECISION 6.3.1997

Dr. R. N. Sharma

Petitioner

Mr. S. R. Choursia

Advocate for the Petitioner (s)

Versus

U.O.I. & Ors.

Respondent

Mr. Manish Bhandari

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Ratan Prakash, Member (Judicial)

The Hon'ble Mr.

- ✓ 1. Whether Reporters of local papers may be allowed to see the Judgement? *Y/N*
- ✓ 2. To be referred to the Reporter or not? *Y/N*
- ✓ 3. Whether their Lordships wish to see the fair copy of the Judgement? *Y/N*
- 4. Whether it needs to be circulated to other Benches of the Tribunal?


(RATAN PRAKASH)
MEMBER (J)

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.NO.662/93

Date of order: 6.3.97.

Dr.F.N.Sharma S/o late Shri K.N.Sharma, resident of 104, Adarsh Nagar, Ajmer.

: Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Secretary, Railway Board, New Delhi.

: Respondents

Mr. S.R.Choursia, counsel for the applicant
Mr. Manish Bhandari, counsel for respondents

CORAM:

HON'BLE SHEI FATAH PRAKASH, MEMBER JUDICIAL

OR D E R
PER HON'BLE SHEI FATAH PRAKASH, MEMBER (JUDICIAL)

The applicant herein, Dr. F.N.Sharma has approached this Tribunal to quash and set-aside the order dated 8.6.1992 (Annex.A/1) and direct the respondents to count his service from 1.1.1951 to 31.12.1951 under the Central Government for pensionary benefits with a further prayer to settle and pay retiral dues including D.C.F.G., Pension including commutation with interest at the rate of 18% p.a. from the date of petition to the date of payment.

2. Facts relevant for disposal of this application in brief are that the applicant retired as Chief Medical Officer, Western Railway, Bombay w.e.f. 30.9.1986. It is the case of the applicant that before joining Railways he served at Safdarjung Annex Hospital, New Delhi from 1.1.1951 to 30.6.1951 and Irwin Hospital (now Lok Nayak Jai Prakash Narain Hospital) (in short 'LNNP' Hospital), New Delhi from 1.7.1951 to 31.12.1951. The grievance of the applicant is

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that although the Respondent Railways counted the period of service of one Dr. R.N.Gupta who served as Chief Hospital Superintendent, Northern Railway in the Irwin Hospital (now LNJP Hospital) and another Dr. M.L.Khorwal, Chief Medical Officer who worked from 16.12.1954 to 16.3.1958 in the LNJP Hospital for pensionary benefits, yet he has been denied the same benefits. He made a representation to the Railway Board vide his letter dated 16.6.1986 (Annex.A/5), but the Railway Board vide their impugned letter dated 18.6.92 have turned down his request in a routine and mechanical manner. Treating this action of the respondents as violative of the principles of natural justice, discriminatory and arbitrary, he has approached this Tribunal to claim the aforesaid reliefs.

3. The respondents have opposed this application by filing a written reply. The stand of the respondents has been that the cases of Dr. R.N.Gupta and Dr. M.L.Khorwal are distinguishable on facts. In order to count past services, the applicant has to fulfil certain conditions. The first is that the applicant after leaving the services from the Government Hospital should have immediately joined the Railway service; secondly that he should have been relieved from the job in the past services for the purpose of joining the Railway service and thirdly that there should not be abnormal gap between leaving the past services and in joining the Railway services. In this regard, the respondents have relied upon the Ministry of Railways letter dated 8.4.1976 (Annex.F/1). It has also been averred by the respondents that the applicant has not given the date of his appointment in the Railways Hospital to hide the

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**In The Central Administrative Tribunal
Jaipur Bench, Jaipur**

OA/TA/MP. No. 662/93/199

Dr. R.N. Sharma and others.

Versus

Date of Order

Orders

6/3/97

Judgment Pronounced in the open
Court.

Mr. R. N. Sharma P.S.

true facts with a view to mislead the Tribunal. He did not make his application for appointment in the Railways through proper channel and has also not supplied the other details as to what he did in the period after he left his past services and joined the Railways. It has, therefore, been urged that this application deserves rejection.

4. I heard the learned counsel for the applicant and the respondents and have examined the record in detail.

5. The only point for determination in this application is whether the period from 1.1.1951 to 31.12.1951 during which the applicant is said to have worked at Safdarjung Hospital and LNJP Hospital, New Delhi has to be counted for pensionary benefits payable by the Respondents Railways?

6. In support of the arguments that the past services has to be counted for the purpose of calculating the pensionary benefits of the applicant by the Respondent Railways, the learned counsel for the applicant has mainly relied upon a Railway Board letter dated 13.11.1982 published at page 527 of the Railway Establishment Rules and Labour Laws, Eighteenth Edition: 1989-90, published by B.S. Mainee. This letter is reproduced as under:

In regard to the temporary employees who had rendered temporary service under the Central Govt./State Govt. prior to securing posts under the various State Govts./Central Govt. on their own volition in response to advertisement etc. and who are eventually confirmed in their new posts, it has been decided that proportionate pensionary liability in respect of temporary service rendered under the Central Govt. or State Govt. to the extent such service would have qualified for grant of pension under the rules of the respective Govt. will be shared by the Govt. concerned on a service share basis, so that Govt. servants are allowed the

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benefit of counting their qualifying service both under the Central and the State Govt. for grant of pension by the Govt. from where they eventually retire. The gratuity if any, received by the Govt. employee for temporary service under the Central or State Govt. will have to be refunded to the Govt. concerned. The aforesaid benefit may be allowed to those who are retrenched from service from Central/State Govt. and secured employment under State/Central Govt. on their own with or without interruption between the date of retirement/retrenchment and date of appointment. This benefit is also admissible to those who apply through proper channel for the other Govt. service."

On the basis of this letter, it is urged that ~~where~~ ^{the} there is interruption or not, a temporary service rendered under the Central Government prior to securing post under the Respondents Railways is to be counted for pensionary benefits.

6. As against this, it has been vehemently urged by the learned counsel for the respondents that as required under letter dated 28.4.1976 (Annex.P/1), the Accounts Officers are required to ensure the strict compliance of the Ministry of Finance OM's directions dated 28.2.1976 forwarded alongwith it. According to the learned counsel for the respondents para 4 of the procedure laid down in the aforesaid letter dated 28.2.1976 deals with breaks in service and provides that:

"4. Breaks in Service.

In the absence of a specific indication to the contrary in the service records, any interruption between two spells of service rendered under the Central Government including service paid out of Defence Services Estimates or Railways Estimates will be treated as automatically condoned and the pre-interruption service treated as qualifying service for pension, except where it is otherwise known that the interruption was caused by resignation, dismissal or removal from service or participation in strike. The period of interruption itself will under no circumstances be reckoned as qualifying service for pension."

80

On the basis of this provision, it has been urged by the learned counsel for the respondents that the applicant's case is distinguishable as the applicant has not supplied the necessary particulars. According to him, the applicant has not given out as to when did he join the Railway Hospital in the Western Railways. Secondly, he has not disclosed whether he was at all relieved from his past services to join the Railway service. Thirdly, he has not disclosed whether he joined the Railway service immediately after leaving his past service without any gap. If at all, it is held that as per the guidelines issued in the Railway Board's circular dated 13.11.1982 relied upon by the applicant, the gap between the two services has to be condoned, then it does not apply to the case of the applicant ^{since} ~~where~~ there has been a gap of almost eight years. Accordingly, it has been insisted that the application deserves rejection.

7. I have given anxious thought to the arguments of the learned counsel for the parties. Although none of the learned counsel for the parties have been able to place the latest statutory rules/guidelines in the matter with regard to the controversy under examination but Railway Service Pension Rules, 1993 have come into operation w.e.f. 3.12.1993. Rule 27 and 28 of the aforesaid Pension Rules, 1993 are relevant to deal with the controversy raised in this OA. Rule 27 provides for counting of service rendered under the Central Government (in a Civil Ministry or Department or as a Civilian employee under the Ministry of Defence including Ordinance Factories) or a State Government by a person transferred and permanently absorbed.

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on the railway. Rule 28 provides for counting of temporary service under the State and Central Government and allocation of pensionary liability. Sub Rule (2) of this Rule 28 is relevant which is reproduced as under:-

(2) The Government servants eligible to claim the benefits of combined service in accordance with sub-rule(1) shall be of the following categories:-

(a) those who have been retrenched from the service of the Central Government but have secured on their own, employment under a State or the Central Government either with or without interruption between the date of retrenchment and date of new appointment;

(b) those who while holding temporary posts under the Central Government or a State Government apply for posts under the Central Government or a State Government through proper channel with proper permission of the administrative authority concerned;

Provided that where an employee is required for administrative reasons, for satisfying a technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons or to satisfy a technical requirement to join, with proper permission the new posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to get his benefit at the time of retirement."

Sub-clause (b) of sub-rule (2) expressly lays down that those holding temporary posts under the Central Government or a State Government shall apply for posts under the Central Government or a State Government through proper channel with proper permission of the administrative authority concerned. Vide the proviso under sub-clause (b) of sub-rule (2) they are further required to join the new post with proper permission. Evidently in the instant case, the applicant has failed to substantiate as to when actually he applied for appointment as Chief Medical

88

Officer in the Respondent Railways. ~~If at all he has~~ applied whether through proper channel and proper permission of the administrative authority concerned in the past services. He has also failed to place on record any permission from the administrative authority for his permission to join the post of Chief Medical Officer with the Respondents Railways. By way of rejoinder, he has tried to give the particulars about the period spent between 1953 to 1959 before he ~~alleged~~ to have joined the Indian Railways as Divisional Medical Officer in January, 1960. Even on the basis of above information he has failed to substantiate as to when actually he joined the Respondent Railways. It appears that he left his past services at his own volition without informing anyone and without obtaining prior permission of the administrative authority of the past services. Annexure A/2 dated 26.6.1953; a certificate produced by the applicant merely gives out that the applicant worked as a Resident House Surgeon in the Irwin and Safdarjung Annexe Hospital, New Delhi for a period of 12 months. This certificate seems to have been obtained by the applicant in order to pursue his studies in Royal College of Surgeons, England as there is a reference in the said certificate that Irwin Hospital is a recognised Hospital for Post Graduate qualifications in India and for the fellowship of Royal College of Surgeons, England and the Resident House Job in this hospital may be taken equivalent of pre-registration internship required by the General Medical Council of Great Britain. This certificate cannot, therefore, be a proper proof that the applicant applied to the Respondent Railways through proper channel and was relieved in due course to join the Respondents

Railways and further that his services have to be counted for pensionary benefits on securing a job with the Respondent Railways. Moreover, from the version given by the respondents, it is clear that the named Dr. P.N.Gupta and Dr. M.L.Khorwal submitted their applications through proper channel before being appointed in the Railways. There has been no gap whatsoever between the date of their being relieved from the past services and joining the new services, whereas, in the case of the applicant, there has been a gap of 8 years and that too without proper explanation so as to justify the condonation of the period between the past services rendered in New Delhi and on joining the Respondent Railways in the year 1960.

8. For all the aforesaid reasons, the issue raised in this OA has to be answered in the negative. Accordingly, the OA has no merit and is hereby dismissed with no order as to costs.

Ratan Prakash

(RATAN PRAKASH)
MEMBER JUDICIAL