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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA No.584/1996 & MA No.490/96

Date of order: 5.10.1998

Nirmal Kumar Jain aged about 35 years, son of Shri Daya Chand Jain, resident of Plot No.14, Patel Nagar, 22-Godowns, Near Ram Mandir, Jaipur. At present posted as Assistant Executive Engineer (Electrical) Airports Authority of India, Jaipur Airport, Jaipur

.. Applicant

Versus

1. Union of India through the Senior Deputy Director General (Engineering), Department of Telecommunication, Sanchar Bhawan, near Parliament Street, New Delhi.
2. The Chief General Manager (Telephones), Near Government Hostel, Jaipur.
3. The Supdt. Engineer (Electrical), Telecom Electrical Circle, C-54, Priya Darshini Marg, Tilak Nagar, Jaipur
4. The Accounts Officer (Telecom Accts.), Office of Chief General Manager, Telecom, Chitrangan Marg, C-Cheme, Jaipur.

.. Respondents

Mr. R.N.Mathur, counsel for the applicant

Mr. M.Rafiq, Counsel for respondents

CORAM:

Hon'ble Mr. Ratan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. Ratan Prakash, Judicial Member

The applicant herein Shri Nirmal Kumar Jain has impugned the order dated 15.7.1993 (Ann.A1) with a further prayer to release him all pensionary benefits including pension with interest at the rate of 24% per annum.

2. The facts relevant for disposal of this application in brief are that he has initially joined the respondent Indian Posts and Telegraphs
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Department, Civil Wing as Junior Engineer (Electrical) on 10.7.80 and served upto 8.4.1991. He applied for recruitment to the post of Assistant Executive Engineer (Electrical) in the National Airports Authority of India without sending his application through the respondent Department of Telecommunications. He was called to appear in an interview by the National Airports Authority on 3.8.90. He sought to issue him No Objection Certificate from his parent Department on 5.7.1989. Though this application was forward to the Superintending Enginner of the respondent Department yet he did not receive any response and left with no option attended the interview with the National Airports Authority of India on 3.8.90 without obtaining a NOC from the respondent Telecommunications Department. He was eventually given appointment on the post of Assistant Executive Engineer (Electrical) by the National Airports Authority (for short NAA) by an order dated 12.12.90. On receipt of the order of appointment he immediately submitted his resignation to the Superintending Engineering Telecommunications, Ahmedabad on 26.12.1990. Vide order dated 4.4.91 (Ann.A10) respondent No.3, the Superintending Engineer accepted the resignation of the applicant to be effective from the date of his relieving by the Executive Engineer (Electrical), Jaipur. Thereafter, he was relieved from the office of Executive Engineer (Electrical), Jaipur vide order dated 8.4.91 (Ann.A11). Having completed 10 years of service in the parent Department of Telecommunications, he sought that this period of service rendered in his parent Department should be computed as the qualifying service for the purpose of pension. His request was rejected by the impugned order as at Ann.A1 dated 15/17th July, 1993. His repeated representations having gone futile he has now approached this Tribunal to claim the aforesaid relief.

3. The respondents have opposed this application by filing a written reply to which the applicant has also filed a rejoinder.




4. The stand of the respondents has been that the applicant was a temporary employee till he submitted his resignation which was accepted ultimately by them w.e.f. 4.4.1991. It has also been averred that he having not sent his application to the National Airports Authority through the respondent Department and was not given any permission to appear in the interview, his period of temporary service with the respondent Department cannot be computed for the purpose of pension, more so when his resignation has been duly accepted w.e.f. 4.4.1991.

5. I heard the learned counsel for the parties and examined the record in great detail.

6. It is undisputed that the applicant did not send his application for recruitment in the National Airports Authority through proper channel and obtaining proper permission from the respondent Department. He has also not been given any permission by the respondent Department to appear in the interview conducted by the National Airports Authority. After receipt of the appointment order from the NAA, he tendered his resignation to enable him to join services with the National Airports Authority, which was duly accepted by the respondent Department vide their order dated 4.4.1991 (Ann.A10). This order reads as under:

"The resignation tendered by Shri N.K.Jain, Junior Engineer (E), Telecom Electrical Division, Jaipur vide letter dated 26-12-90 is hereby accepted with effect from the date he is relieved by the Executive Engineer (E), Jaipur."

None of the document which has been filed by the applicant alongwith this OA, discloses that he sent his application for appointment in NAA through proper channel after permission or that he was ever given a No Objection Certificate by the respondent Telecommunications Department to appear in the interview before the National Airports Authority or for that matter to join his services there. In his application dated 26.12.1990 (Ann.A9) he has simply asked to be relieved from his present



post of Junior Engineer which he was holding with immediate effect to allow him to join the National Airports Authority and also mentioning therein that if it is not possible then this application be treated as one month notice and accept his technical resignation from the post of Junior Engineer (Electrical). The respondent Department in its order dated 8.4.1991 (Ann.All) has clearly indicated that consequent upon the acceptance of his resignation letter he is being relieved of his duties as Junior Engineer, Electrical Section at Balotra w.e.f. 4.4.1991. In view of above, it cannot be said that there has ever been a continuity of service of the applicant in his parent Department with his new employer i.e. National Airports Authority. By virtue of Rule (4) of Section 1 of Appendix 12 of the CCS (Pension) Rules, 1972, pensionary benefits are available only to those employees who resign from Government service with a view to secure employment in Central Public Undertaking after obtaining proper permission (emphasis given); which the applicant does not fulfil. Moreover the applicant being a holder of quasi-permanent only before he sought resignation from the respondent Department of Telecommunications and left it on 4.4.1991, it cannot be said that after efflux of his period of probation, he became permanent by the lapse of time. He, therefore, is not entitled to the benefits which may be available to a permanent Government servant also who joins a new organisation. Besides this, Sub-rule 2 of Rule 26 of the CCS (Pension) Rules, 1972 specifically lays down that:

" A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."

6. Therefore, even if for arguments' sake it is taken that the applicant has become permanent in the respondent Department of Telecommunications before his resignation was accepted (though the conclusion has been otherwise), it is incumbent upon such a Government servant to sent his application through the competent authority. In this

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regard decision No.1 of the Government of India specifically lays down that :

"A Government servant intending to apply for a post or posts outside his parent office/department under the Government of India should have his application forwarded through the competent authority under whom he was serving at the time of applying for the post....."

The claim of getting pro-rata pension benefits with the respondent Department is also not tenable in view of Rule 3 Section 3(b)(i) of Section 5 of appendix 12 and Rule 3 of Section 3 and Rule 2(b) (ii) of Section IV of appendix 12 of the CCS (Pension) Rules, 1972 as the applicant was not a permanent status holder with the respondent Department and has sought resignation on his own after receipt of the appointment from the National Airports Authority.

7. In other words, even for a permanent employee it is mandatory not only to send his application for employment outside the Government through proper channel but also to obtain prior permission for it from the competent authority under whom he is serving at that time. In the case of the applicant the competent authority has been the Superintending Engineer (Electrical). He admittedly did not give any permission to the applicant to apply or to join the National Airports Authority. In fact the applicant did not send his application through the competent authority. The applicant, therefore, cannot take any advantage of his own lapse, more so when he has independently sought an employment with an outside organisation. It is only after getting the appointment letter from the National Airports Authority, that he has sought resignation on his own accord, which resignation was duly accepted by the respondent Telecommunications Department without indicating anywhere in it that the applicant would get any benefit of his past services in the respondent Department.

8. For all the aforesaid reasons, I do not find any illegality or irregularity or fault in the impugned order Ann.A1 dated 15th July, 1993 issued by the respondent Department and the OA, therefore, stands rejected with no order as to costs. There being no objection on behalf of the respondents, MA No.490/96 also stands disposed of accordingly.



(Ratan Prakash)

Judicial Member