

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

DATE OF ORDER : 31/1/05

ORIGINAL APPLICATION NO. 225/2002

O.P. Srivastava son of Late Shri S.S. Srivastava
aged about 66 years, resident of 104-B, Tagore
Nagar, Ajmer Road, Jaipur.

....Applicant

versus

- 1 Union of India through the Secretary to
the Government of India , Ministry of
Personnel, Department of Personnel & Training,
North Block, New Delhi.
2. State of Rajasthan through the Secreary
to the Government, Department of Personnel, (A-
1), Government Secretariat, Jaipur.
3. State of Uttar Pradesh through its Chief
Secretary, Government of Uttar Pradesh, Lucknow.

.....Respondents

Ms. Ashish Joshi, Counsel for the applicant.
Mr. Arvind Gupta, Counsel for respondent No. 2.
None present for Respondents nos. 1 & 3.

ORDER

PER MR. A.K. BHANDARI

This OA has been filed u/s 19 of the
Administrative Tribunal's Act, 1985 to seek the
following reliefs:

"(i) By an appropriate order or
direction, the respondents may kindly be
directed to produce complete record
pertaining to the present case before
this Hon'ble Tribunal and after examining
the same, impugned order dated
19.1.2002 (Annexure A/1) may kindly be
quashed and set aside and the
respondents be further directed to count

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the previous service of the applicant rendered by him with the UP Government as Assistant Sales Tax Officer w.e.f. 3.1.1958 to 4.12.1960 for the purpose of pensionary benefits and his pension be revised accordingly

(ii) Or any other relief to which the applicant is entitled, please be granted with cost."

2. Brief facts as stated by the applicant are that he was appointed as Assistant Sales Tax Officer in the State Of Uttar pradesh on 3.1.1958 and soon after, he applied for Rajasthan Administrative Services through an application form which was duly forwarded by Government of UP although he had also sent an advance copy of the same to the RPSC so that his application form may not be rejected on account of delay in forwarding the same by the Government of UP. It is further stated that he was serving in the UP Government as Assistant Sales Tax Officer and correspondence received from RPSC was addressed to him by designation which clearly indicates that the respondents were well aware of the fact of his serving with the UP Government at the time of above application. Photocopy copy of letter of Registration bearing No. 938 as well as Roll No. and interview call letter issued by the RPSC are annexed herewith and marked as Annexures A/2, A/3 and A/4 respectively. After being selected in Rajasthan Administrative Service, the applicant resigned from the post of Assistant Sales Tax Officer, Government of UP on 4.12.1960 and joined as Rajasthan Administrative Service Officer on 5.12/1960. It is important to note that applicant received his salary from the UP Government for the period from 1.12.1960 to 4.12.1960 by Money Order which goes to prove that he had resigned from the service of the UP Government and his resignation was duly accepted. In the State Government of Rajasthan, the



applicant was promoted as IAS in the year 1991 and retired on 28.2.1993 on attaining the age of superannuation. After retirement of the applicant, his retirement benefits were not released on account of a pending departmental inquiry initiated against him vide charge sheet dated 23.5.1993. He was fully exonerated of the charges vide order dated 17.7.1993 and after exoneration, his pensionary benefits were released but he was not paid any interest on gratuity, leave encashment and commutation for the period of delay as is admissible under the rules. The applicant, therefore, preferred an OA No. 232/1999 for payment of 18% interest for the delayed payment of gratuity etc. In this OA, he also prayed for commutation of pension on the revised pension amount of Rs.7322/- from 1.1.1996 onwards. The Hon'ble Tribunal allowed the OA on 15.3.2001 and the respondents were directed to pay interest to the applicant @ 12% per annum on amounts of gratuity, leave encashment and commutation from 1.6.1993 till the date of actual payment. (Annexure A/6). The applicant has served for 32 years and 2 months as RAS and IAS Officer in the Government of Rajasthan and his pensionary / retiral benefits were reduced proportionately as his service in the Rajasthan Government was found less than 33 years. It is stressed that the respondents failed to count the service of the applicant rendered by him with the UP Government w.e.f. 3.1.1958 to 4.12.1960 while calculating the pensionary benefits. It is stated that a Circular was issued by Finance Department, Government of Rajasthan on 25.1.1984, according to which the proportionate pension under the Central Government and the State Government to the extent such service rendered under the rules of the respective government, will be shared by the Government concerned on the service share basis so that the Government servants are

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allowed the benefit of counting their qualifying service both under the Central/State Government for grant of pension by the Government from where they eventually retire. Had the said service counted as per the Government Circular dated 25.1.1984, the applicant would have completed more than 33 years of service and his pensionary benefits should not have been reduced proportionately. Photocopy of Circular dated 25.1.1984 is filed as Annexure A/7. It is stated that on coming to know the said fact, the applicant immediately represented on 24.4.1998 and the Department of Personnel vide letter dated 15.10.1998 asked the applicant to send the relevant record of service after verification. However, no further steps were taken by them. The applicant, therefore, again represented on 24.10.2000 and in the result, Chief Secretary, Rajasthan vide his letter dated 13.11.2000 requested the Chief Secretary of UP Government to verify the service of the applicant from 3.1.1958 to 4.12.1960. Copies of these letter are submitted as Annexure A/8 and A/9 respectively. In response, the Chief Secretary of UP verified the service of the applicant. Vide letter dated 13.2.2001, the State Government of Rajasthan thereafter asked the UP Government vide its letter dated 19.4.2001 to send the relevant service record but the UP Government vide their letter dated 19.4.2001 showed their inability about the same because the service record of the applicant was not available. Thus inspite of verification of service record of the applicant, the State Government of Rajasthan have not taken further steps to grant pensionary benefits as eligible to the applicant by refusing the pension and finally vide letter dated 25.3.2001, the State Government of Rajasthan rejected the representation of the applicant on the ground that Application Form of RAS was not duly forwarded to RPSC by the



Government of Uttar Pradesh and, therefore, the said benefit cannot be granted to the applicant. Copy of letter dated 25.6.2001 is filed as Annexure A/13. It is further stated that if the application form was not forwarded by the UP Government, the same would have been rejected because candidates who do not apply through their appointing authority, their forms are rejected. That the respondents were fully aware of the fact tht applicant had served as Assistant Sales Tax Officer in UP Government as this fact is stated in the Application Form and if there was any doubt, the respondents could have verified this fact at the time of issuing Roll No. or at the time of interview but no such inquiry was done by the respondents. This clearly shows that the Applicaton Form of the applicant was complete in all respects. That once the service record of the applicant has been verified by the UP Government , he cannot be denied the said benefit only on the ground that the past service record of the applicant is not available. Therefore, this OA is filed.

3. In the grounds, arbitrariness on the part of the State Government of Rajasthan is alleged for not counting the previous service rendered by the applicant in the Government of UP and also for not applying the Circular dated 25.1.1984 in his case , according to which, respondents ought to have counted the previous service of the applicant for grant of pensionary benefits. Further once the service of the applicant has been verified by the UP Government, denying the pensionary benefits on the ground that service record of the applicant is not available is not justified. The respondents should have realised that had the UP Government not forwarded his application to the RPSC, the same would have been rejected. But because they were aware of the fact that applicant had been serving with the State Government of UP. The

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applicant cannot be denied the benefit of counting of his past service for grant of pensionary benefits.

4. The respondents have submitted a detailed reply. They have raised preliminary objection about limitation because cause of action arose on 28.2.1993 when applicant retired but this OA has been filed in the year 2002 after a lapse of nearly nine years. They have also raised preliminary objection about the maintainability of this OA on the basis that applicant filed OA No. 232/1999 which was decided by this Tribunal on 15.3.2001. In this OA, all the pensionary benefits were claimed by the applicant, ^{except for} but the claim of revision of pension after calculating his service from 3.1.1958 to 4.12.1960 as has been rendered by him with the State Government of UP. It is made clear that such prayer was not made by him deliberately in his earlier OA which amounts to abandonment of this prayer on his part. Therefore he had no right to raise this prayer in this OA. Therefore, such relief cannot be calimed at this stage by passing of long time and it is barred by principle of Order 2 Rule 2 of CPC.

5. While giving parawise reply also, objection about maintainability of this OA on the basis of limitation is raised because in para 3 of the OA, the applicant has stated that his application is within the prescribed limitation period as per Section 21 of Administrative Tribunal's Act and it is obviously a wrong statement.

6. In parawise reply, it is categorically





stated that applicant's Application Form was not forwarded by the State Government of UP to the RPSC, Ajmer. It is admitted that applicant had sent some communications from his office address and by virtue of this, RPSC was aware that he was working with the State Government of UP but this knowledge cannot be considered forwarding of the application form by UP Government in formal manner. Further he had joined the RAS on 5.12.1960 but while doing so, he had not disclosed that to whom he had submitted his resignation and whether his resignation was duly accepted by the UP Government. Since he had not taken prior permission from the UP Government before joining the Rajasthan Government, it cannot be stated that his resignation was duly accepted. That merely receiving salary by Money Order at office address, does not mean that he has been permitted to join RAS with the Rajasthan Government by the UP Government. The fact of his resignation has not been entered in his service record, he has not produce any such document before the State Government of Rajasthan or before the Tribunal alongwith this OA. It is once again reiterated that the grievance raised by the applicant in this OA regarding calculation of service rendered with UP Government for granting pensionary benefits for the period from 3.1.1958 to 4.12.1960 was very much in the knowledge of the applicant at the time of filing OA No. 232/99 but he deliberately did not include such prayer at that time and accordingly he is barred from doing so as it amounts to abuse of the process of law. The respondents have denied the applicability of Rajasthan Government Circular dated 25.1.1984 (Annexure A/7) in his case because the same were not applicable to his case, and the same concerned persons who are serving the State Government and want to join the Central Government with prior permission of the Appointing Authority and after accepting resignation by the Competent

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Authority. Therefore applicant cannot claim application of this rule. It is also clarified that Application Form of person who wants to join the service of another State Government should be sent through the concerned Competent Authority. Therefore, the application form of the applicant ought to have been forwarded by his department of the State Government of UP to the RPSC at Ajmer. That until and unless it is forwarded by the concerned department to the Service Commission, it is not recorded in his Service record nor it is mentioned in the Application Form. In the present case, it is clear from the Application Form of the applicant available with the RPSC that the same was directly sent by the applicant to RPSC without any reference to the UP Government. This can be clearly seen in prescribed column of Application Form, for this purpose, which is blank. Copy of the same is annexed as Annexure R/21. Therefore, for service period of the applicant w.e.f. 3.1.1958 to 4.12.1960, no benefit can be given to the applicant. Regarding representation submitted by the applicant, it is submitted that the same were received and correspondence with UP Government was also entertained, but the required information about service record was never received. Therefore, no benefit as claimed by the applicant can be given.

7. Allegations raised in the grounds are denied on the basis of above pleadings.

8.  The State Government of UP has also submitted a reply in the capacity of respondent No. 3. In it, it is stated that the applicant has not submitted any information or proof about his submission of application for recruitment to RAS through the proper channel in the Government of UP. They admit that the applicant had resigned from the service of State



Government of UP but it is asserted that Circular dated 25.1.1984 issued by the Rajasthan Government does not apply in this case as no agreement between the Rajasthan Government and UP Government existed to the effect that services of employees of either government should be counted for the purpose of pension and as such question of counting of period of service under the UP Government for the purpose of granting pensionary benefits does not apply to him.

9. The applicant has submitted rejoinder denying the contentions of the State Government of Rajasthan and reiterated that he had submitted two Application Forms, one duly forwarded by the UP Government which State Government of Rajasthan is unable to trace out and ^{that they are} are relying on the other Application Form, which he had submitted directly. He had sent the Application Form directly so that his application form may not be rejected on account of delay in forwarding the same by the Government of UP. Replying to the preliminary objections, the applicant has stated that his cause of action arose after he has received the payment of interest, which was allowed in OA No. 232/1999 on 15.3.2001 and in any case, he has submitted many representations to the State Government for the pensionary benefits and the cause of action arose after rejection of his representation on 16.1.2002. Therefore, the OA is within limitation. He has also denied the preliminary objection regarding mis-use of legal process by not coming with the present prayer in the earlier OA. It is stated that this objection is false in the bare facts of this OA, which in the sense are self explanatory. He has also stated that once the Rajasthan Government and RPSC have admitted on the basis of correspondence that he had worked for the State Government of UP and now they are estopping the

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period of service rendered by him with UP Government w.e.f. 3.1.1958 to 4.12.1960 is wrong. That if he had not resigned from the State Government of UP, that Government would not have paid him the arrear of salary which proves that he had resigned to join All India RAS and after acceptance of resignation, which is specific prior permission from the Appointing Authority before joining the service of State Government of Rajasthan.

10. In the course of deliberation of this case, Respondent No. 2 was directed vide order dated 12.10.2004 that since the short question involved in this is whether the applicant while making application in Rajasthan Administrative Services had applied through proper channel after due intimation to the Department or not, accordingly, the Respondent No. 2 was directed to submit the original record. Accordingly, Respondent No. 2 was submitted an affidavit to the effect that as per record, the application form (examination) submitted by the applicant to the RPSC, copy of which has already been filed as Annexure R-2-1 is only the form available with the RPSC. It is further stated that this application form was directly sent to the RPSC and was not forwarded by the forwarding authority with the concerned department of State Government of UP. It is clearly reflected from the column prescribed for this purpose at Page No. 59, internal page No. 6, which is left blank. Thus mandatory requirement was not fulfilled and the applicant is not entitled for any relief. The original record has also been produced. On perusal of internal page 6 of applicant's form, these facts stated in the above affidavit are found true. On internal page 6 of the form under Para 25 i.e., the declaration is to be signed by the applicant. Below this declaration, there is column about forwarding an application by the employer, in the

case of candidates already in service either under Government or private agencies. The space meant for forwarding/Controlling Officer in the applicant's form is found as blank and unsigned.

11. After perusal of this record, parties were heard. Counsel for the applicant reiterated the plea of his having sent two Application Forms ; one directly to the RPSC and another through proper channel by the Government of UP and that form now produced is one he had sent directly and the one forwarded by UP Government is being withheld by the respondents, ^{the} Counsel for the respondents on the other hand submitted that as per service record of the applicant and record of the RPSC, only one form which was directly sent by the applicant with space meant for signature of the forwarding officer being blank was received by the State Government.

12. After careful consideration of ^{am} ^{vk} the pleadings and perusal of above record, I have left with no doubt that even though the applicant had worked with the UP Government before joining the RAS, his Application form for appearing in the examination for RAS to RPSC was not forwarded by the UP Government, which is apparent from ^{vt} the pleadings and the original record. I have no reason to doubt the statement under Oath of Affidavit filed by the respondents that one and only one application form was received by with the RPSC. There is nothing on record to prompt me to disbelieve this contention. As per rules, his service with UP Government could be counted for giving pensionary benefits, which should have enabled the applicant to draw full pension, only if the application for joining RAS was forwarded by the Government of UP which applicant has failed to prove, and such benefit cannot be given to him in absence of such forwarding by the UP Government. Thus the

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contention of the applicant in this OA that he should be given the benefit of service with UP Government for the purpose of pensionary benefits cannot be sustained and in the result claim made by him cannot be granted.

13. With these observations, the OA is dismissed with no order as to costs.


(A.K. BHANDARI)

MEMBER (A)

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