

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH.

O.A.No.55/2002

December 6, 2004

CORAM : **HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN.**

N.N. Thakur S/o Late Sh.Pandit, Shreekant Thakur, aged about 65 years, R/o 37/150, Nirmalya Kutir, Shakti Path Shyam Vihar, Sheopur Sanganer, Jaipur.

.... Applicant

By : Mr.Rajendra Vaish, Advocate.

Versus

1. Kendriya Vidhyalya Sangathan, through its Commissioner, 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi-110016.
2. Asstt. Commissioner, Kendriya Vidyalaya Sangathan, Jaipur Region, Gandhi Nagar Marg, Banaj Nagar, Jaipur.

By : Mr.Hawa Singh, Proxy Counsel for Mr.V.S.Gurjar, Advocate.

3. State of Rajasthan through, Secretary Education, Govt. of Rajasthan, Secretariat, Jaipur.

By : None.

.... Respondents

O R D E R(oral)

KULDIP SINGH,VC

The applicant who retired from Kendriya Vidyalaya Sangathan, has filed this Original Application claiming pension for past service rendered with the Government of Rajasthan under the Central Civil Services (Pension) Rules, 1972, which has been denied to him despite various reminders. The facts as alleged by the applicant in brief are that he had initially joined service as Physical Education Teacher in the Government of Rajasthan (Education Department), vide letter dated 30.6.1959 (Annexure A-1). From State Service he came on deputation to

the respondent Kendriya Vidyalaya Sangathan (for short "KVS") from 10.11.1964, with the approval of the competent authority i.e. State Government of Rajasthan and ultimately he came to be absorbed vide order dated 12.4.1973 (Annexure A-5) as confirmed vide order dated 19th September, 1977 (Annexure A-6). He retired from service on attaining the age of superannuation on 31st of March 1997.

2. The respondents had verified the service of the applicant for pension vide communication, Annexure A-7, which also reflects the period for which the applicant remained on deputation under the respondent KVS. It is further stated that vide order dated 4.12.1986, respondents had invited options from the employees for counting their past services for pension and this date was subsequently extended upto 31st December, 1990 vide document, Annexure A-10. The applicant had also submitted his application / option vide representation-dated 8.2.1989 (Annexure A-11) which was dealt with as per communication, Annexure A-12. It is further stated that State of Rajasthan vide order dated 4th August 1991 (Annexure A-13) had also sent a demand draft for its pro-rata contribution towards pension etc.

3. Thereafter various correspondences were also exchanged between the State Government of Rajasthan and the respondent KVS wherein the fact of past service of the applicant rendered with the State Government of Rajasthan has been reiterated. There was a Contributory Provident Fund Scheme and as per Government of India Notification dated 1st May, 1987, all CPF beneficiary in service on Jan. 1, 1986 should be deemed to

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have come over to the pension scheme unless they specifically opt out to continue under the CPF Scheme. It is further stated that under sub-rule 2 of rule 26 of the CCS (Pension) Rules, 1972, service rendered in the previous employment is to be counted for pro-rata pension and it also provides that a resignation shall not entail forfeiture of past service. The applicant who had joined the respondent KVS with proper permission is entitled to count his past service for pension but the respondents have denied the same. Aggrieved by the action of the respondents the applicant has prayed for issuance of a direction to the respondents to count the past State Service of the applicant from 6.8.1958 to 30.4.1970 towards qualifying service for pension and respondents be directed to comply with the provisions of the CCS (Pension) Rules, 1972 and issue revised PPO accordingly.

4. Respondents are contesting the Original Application. They admit that the applicant has served the State Government of Rajasthan from 6th August 1958 to 30th April 1970, which also includes the period from 10th November 1964 to 30th April 1970, spent on deputation with the respondent KVS. It is further stated that the request of the applicant for counting of past service rendered with the Government of Rajasthan is pending consideration since some information as well as pro-rata pensionary contribution is required from the previous employer and on receipt of the same the case of the applicant shall be considered in accordance with the rules. It is stated that certain query has been raised with the Government of Rajasthan for which the information is not coming forward and even the pro-

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rata pensionary contribution for the period the applicant has rendered in State Service is due from the State of Rajasthan and thus, the O.A. should not be allowed.

5. Learned counsel for the applicant as well as respondents No.1 & 2 have been heard and record examined. None appeared for the Respondent No.3, State of Rajasthan, who is proceeded ex-parte.

6. As regards the fact that the applicant has served with the State Government of Rajasthan from where he came on deputation with the respondent KVS and subsequently absorbed is not disputed. The only hurdle is that the State of Rajasthan has not given the pro-rata contribution to the respondent KVS and that has been ^{made by} ~~made~~ a ground by the respondent KVS not to release ^{period of} ~~to~~ the pension and other benefits for the State service ^{of} ~~of~~ ^{applicant} ~~also~~. It has been stated on behalf of the applicant that he is entitled to the benefits of past service, as it is not his fault if the earlier employer has not given the pro-rata contribution to the KVS. In support of this, learned counsel for the applicant has referred to a judgement in the case of Prof. Dr. R.R.Sharma (Retd.) Vs. Post Graduate Institute of Medical Education & Research, Chandigarh, reported as 2001(1) SCT, Page 565 (Punjab & Haryana High Court). In that case the issue was related to combination of qualifying service rendered in different States and Institutions of Central Government etc. It has been held by the Hon'ble High Court that in case a Government servant of a State is transferred to service to which Central Civil Services Rules apply, the continuous service rendered under the State Government in an officiating or temporary capacity shall

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 qualify and will be entitled to full pension if he retires after completing more than 33 years total/combined qualifying service in all along with full gratuity. It is the duty of the last employer to effectively take up the matter with the earlier employers for their contribution towards his pension. Retiree cannot be denied full pension either for want of qualifying service or for non-contribution of earlier employers. Petitioner in that case was denied full pension by the PGI without taking any effective steps for recovery of contribution from other States ^{ie tw in} earlier employers of the petitioner. The petitioner was held entitled to 12% interest on the arrears of pension with Rs.10,000/- as costs to be released within three months by the PGI which will be at liberty to recover contribution of from the other States.

7. Learned counsel for the applicant has also referred to a judgement given in O.A.No.3/2000 decided on 8.1.2001 (Hari Raj Swaroop Sharma Vs. K.V.S. etc.) delivered by this very Bench of the Tribunal. In that case also the applicant had a grievance that his past service rendered in the State Government of M.P. was not being counted for the purpose of pensionary benefits. The respondents had denied the benefit on the ground that the State of M.P. had not contributed their share of pro-rata pension and thus, the respondent KVS was not in a position to count the past service. After considering the issue the Bench observed that when the Pension Rules have been adopted by the KVS, whatever be the decision of the Government of India with reference to these rules, such decision shall be applicable and in this context a reference has been made to Decision No.4 under rule 14 (5) of the CCS (Pension) Rules, 1972 and after

referring the same the Court negated the contention of the respondents and directed to release the pension of the applicant therein taking into consideration the past service rendered by the applicant in the State of M.P. and the writ petition filed against this decision before the High Court of Jaipur was also dismissed. The case of the applicant is fully covered by these decisions. The only difference in present case is that applicant herein belongs to State of Rajasthan whereas in the ^uearlier case of Hari Raj Swaroop Sharma (supra), the applicant belonged to State of M.P. The learned counsel for the applicant had also submitted that the period of the applicant for which he had served the KVS on deputation prior to his absorption for that period even the contribution of pension is also not required and even if that period is counted even then also the applicant completes 33 years of service and he is entitled to full pension as per the CCS (Pension) Rules, 1972. So, at least that should be counted. On the contrary, the learned counsel for the respondents simply reiterated the stand taken by the KVS in the reply that unless the contribution from the State of Rajasthan comes, they would not be in a position to release the pension and other benefits for past service.

8. The position under the law as crystallized by Hon'ble High Court of Punjab & Haryana in the case of B.R.Sharma (supra) is that it is the duty of the last employer to effectively take up the matter with the earlier employer so that the retiree is not denied the full pension on account of non-contribution of the earlier employer. That judgement is binding on this Court and keeping in view the law laid down by the Hon'ble High Court,

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I find that it is the duty of the KVS respondents to count the past service of the applicant even though the contribution is not coming forward from the State Government of Rajasthan. The KVS may take effective steps to recover their part of the contribution of their own, but the employee i.e. applicant cannot be made to suffer on account of non contribution of the earlier employer.

9. In view of this, the present O.A. is allowed. The respondents are directed to release the appropriate pension to the applicant, by counting his past service rendered with the State Government of Rajasthan, and issue the revised PPO, within a period of three months from the date of receipt of copy of this order. No order as to costs. The respondent KVS is free to recover the amount of proportionate liability from the State of Rajasthan, Respondent No.3. *also advised as per law*

[Signature]
(KULDIP SINGH)
Vice Chairman

HC*

December 6, 2004.