

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 191 of 2003

Jabalpur, this the 3rd day of September, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman

Dr S.C. Dixit,
Research Officer (Medical)
Retired from RMRCT (ICMR),
Jabalpur, Resident of 349 Gautam
Nagar Opposite Allahabad Bank
Govindpura, Bhopal - 482 023

APPLICANT

(By Advocate - Shri M.P. Singh)

VERSUS

1. Union of India
Through the Principal Secretary
Ministry of Health and Family
Welfare, Nirman Bhawan,
New Delhi - 110 011
2. The Director General
Indian Council of Medical Research
Ansari Nagar, Post Box No. 4911
New Delhi - 110 029
3. The Director
Regional Medical Research Centre
for Tribals (Indian Council of
Medical Research), P.O. Garha
Nagpur Road, Jabalpur - 482 003

RESPONDENTS

(By Advocate - Shri Aditya Adhikari)

ORDER

By filing this OA, the applicant has sought the following main reliefs :-

"(a) to issue a writ in the nature of command or any other appropriate writ, order or directions, directing the respondents to count the applicant's former services rendered from 22.07.1970 to 21.02.1989 towards the last services of ICMR for pensionary and other retiral benefits;

(b) The Director General, ICMR, New Delhi may kindly be directed to complete the formalities of counting of applicant's former services including the formalities need to be completed by other departments or to get the formalities completed by his subordinate officers/ offices at the earliest so that the applicant's pensionary and other retiral benefits be released without further delay."

2. The brief facts of the case are that the applicant last served in the Regional Medical Research Centre (for short 'RMRC'), Jabalpur as Research Officer from 21.2.1989 to 31.12.2002 and retired on superannuation with effect from 31.12.2002. Prior to his selection as Research Officer the applicant served in the Army as Commissioned Officer from 22.7.1970 to 19.8.1975. On release from the Army, the applicant served as Assistant Director(Medical) with Govt.of India,Ministry of Labour from 7.11.1977 to 31.12.1979 and on being relieved therefrom the applicant served as Assistant Research Officer(Medical) with National Nutrition Monitoring Bureau (for short 'NNMB') of National Institute of Nutrition(ICMR), Hyderabad from 14.2.1983 to 20.2.1989. The applicant has contended that as per CCS(Pension)Rules, 1972 the services rendered with the department of Central Government of India, including autonomous body are to be ~~combined~~ ^{clubbed &} counted with the services rendered ^{by him in} with the last establishment ~~in the case of the applicant - RMRC, Jabalpur,~~ for pensionary and other connected retiral benefits but despite the repeated requests and reminders, the Director General, ICMR, New Delhi has not taken any action for counting of applicant's past and former services. Hence this O.A.

3. The respondents in their reply have stated that the applicant is not eligible for counting of past services rendered by him under various employers from time to time. They have admitted that the applicant retired from the post of Research Officer (Medical), RMRC, Jabalpur on 31.12.2002 on attaining the age of superannuation. They have also admitted that the applicant served the AMC on SSC on a non-regular basis. They have further admitted that the applicant served as Assistant Director(Medical), Govt. of India, Ministry of Labour and on resignation joined the NNMB project of NIN, Hyderabad. The respondents have contended that the applicant has rendered Military service as a Short Service Commissioned Officer on non-regular basis w.e.f. 22.7.1970 to 19.8.1975.

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Thereafter, he joined Civil service under Ministry of Labour during the period 7.11.1977 to 31.12.1979. As per Govt. of India, Min. of Finance OM dated 1.10.1964 non-regular military service counts for civil pension but the same does not help the applicant as no effort was made by him to get his services connected for the purpose of pension when he joined Ministry of Labour on temporary basis as per appointment letter dated 5.1.1978 (Annexure-A-3). The applicant after serving in the Ministry of Labour in a temporary capacity, resigned on 14.2.1980 (Annexure-A-4). There was a break in service of nearly three years before the applicant was granted appointment on a project of ICMR known as NNMB. The applicant joined NNMB on 14.2.1983. The terms of appointment of the applicant which were accepted by the applicant (Annexure-A-8) clearly stipulates that his appointment was temporary and for the duration of the research project. Clause 3 of the appointment order also provides that no pension, contributory provident fund benefits or gratuity is admissible. Thus, the services rendered by the applicant in Ministry of Labour cannot be counted for the purposes of pension for services rendered in NNMB as it was a non-pensionable post. Thereafter, the services rendered in RMRC is not countable in view of Govt. of India, Department of Personnel & Administrative Reforms letter dated 31.3.1982, The applicant's case of re-appointment was without sanction of the competent authority and there was a break in service and therefore, the case of the applicant falls under clause 3 of the above mentioned instruction and is, therefore, not eligible to count his entire services for pension. The employees who have changed employers with prior permission of previous employers without any break in service are only eligible for counting of such services for pension. The respondents have also furnished the details of ^{The period of} ~~applicant's~~ ^{which is} break in service as under:

- "a. 31st December 1979 to 14.2.1983-approximately 3 years and two months.
- b. 14th February 1983 to 20.2.1989-approximately 6 years on account of joining a non-pensionable project post.
- c. Dies non due to unauthorised absence w.e.f. 21.12.1993 to 31.7.2000-approximately six years.

3.1 The respondents have further contended that the applicant is also not entitled for any past service benefits as the applicant had resigned ^{from} service without proper permission to take up a new appointment. Rule 26(2) of the Central Civil Services (Pension) Rules also disqualifies the applicant from entitlement to any benefits of counting ^{his} services. The applicant's total service after deducting breaks in service is just 7 years, 2 months and 27 days which falls short of qualifying service of 10 years and thus no pension is admissible to the applicant.

4. I have heard the learned counsel of both the parties. I find that the applicant has rendered military service as a Short Service Commissioner Officer from 22.7.1970 to 19.8.1975. He has been paid terminal benefits from the Army. The applicant himself has accepted in Annexure-A-11 that he has drawn gratuity as per Army rules after release from the Army. He has not refunded the terminal benefits received from the Army and, therefore, not opted for counting of Army service for civil pension. Therefore, there is no question of counting of Army service for pension.

5. As regards the counting of service rendered by the applicant in the Labour Ministry from 7.11.1977 to 31.12.1979, the benefit of counting of this service is also not admissible to him in terms of the provisions of Rule 26(2) *ibid.* as he has not applied through proper channel and sought permission from the previous employer to join the NNMB project in 1983. Therefore, this service also cannot be counted for the purpose of pension.

6. As regards the service rendered by the applicant in the NNMB project of NIN(ICMR), Hyderabad from 14.2.1983 to 20.2.1989, the respondents have stated that this service can not be counted for the purpose of pension as it was a non-pensionable post. However, ~~I~~ find that the respondents themselves have allowed counting of the services rendered in the NNMB project for the purpose of pension to certain persons as mentioned by the applicant in Annexures-A-14 to A-16. In the case of Dr.G.N.V.Brahmam, Research Officer, NIN, Hyderabad the Director General, ICMR has allowed counting of his period of service from 24.2.1974 to 31.8.1983 in NNMB project, for vide order dated 3/4.9.1992 (Annexure-A-14); the purpose of pension, in the case of Miss N.Madhuri, Senior Nursing Attendant, the Director General, ICMR ^{had} sanctioned the counting of service for the period from 31.3.1973 to 13.8.1985 under the NNMB, for the purpose of pension, vide order dated (Annexure-A-15) 8/9.11.1992; and in the cases of Sh.Md.Hameed, Lab Attendant (w.e.f.1.10.1992) and Sh.Syed Iqbal, Sr.Driver (w.e.f.3.11.1992), the Director General, ICMR permitted counting of service in the NNMB for pensionary benefits vide order dated 21/25.5.1993 (Annexure-A-16). The applicant has stated that he had applied through proper channel while he was working in the NNMB against the open advertisement for the post of Research Officer in RMRC. This contention of the applicant has not been denied by the respondents. Therefore, in terms of Rule 26(2) ibid the services rendered by the applicant in the NNMB from 14.2.1983 to 20.2.1989 is countable towards pension as the respondent no.2 has allowed the same benefit to other similarly placed persons as mentioned above.

7. In the result, ~~I~~ allow this OA partly with a direction to the respondents to count the services of the applicant in NNMB for the purpose of pensionary benefits and consider his case for grant of retiral benefits in accordance with law and rules, within a period of three months from the date of communication of this order. No costs.


(M.P.Singh)
Vice Chairman