

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. NO. 304 / 2001

Hon'ble Mr. R.K. Upadhyaya, Administrative Member :-

For consideration please.

*Incealor*

(J.K. KAUSHIK)  
JUDICIAL MEMBER

28/04/2003

I agree.  
*(Signature)*  
28/4/03

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 304 of 2001

Jabalpur this the 29<sup>th</sup> day of April 2003

Hon'ble Shri R.K. Upadhyaya -- Administrative Member.  
Hon'ble Shri J.K. Kaushik -- Judicial Member.

O.P. Trivedi, S/o. Shri Chhotelal,  
Aged 60 years (about),  
occupation - Retired Post Graduate  
Teacher from Kendriya Vidyalaya  
No. 1, Gwalior, R/o. Arjun Nagar,  
Balwant Nagar, Gwalior-2 (M.P.).

... Applicant

(By Advocate - Shri M. Rao)

V e r s u s

1. Kendriya Vidhyalaya Sangathan,  
Through The Commissioner,  
Kendriya Vidhyalay Sangathan,  
18, Industrial Area, Shahid Jit  
Singh Marg, New Delhi - 16.
2. Education Officer,  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area, Shaheed  
Jeet Singh Marg, New Delhi-110016.
3. State of M.P.,  
Through - The Secretary to the  
Govt. of M.P. School Education  
Department, Vallabh Bhawan,  
Bhopal (M.P.).

... Respondents

(By Advocate - Shri P.N. Kelkar)

O R D E R

By J.K. Kaushik, Judicial Member :-

Shri O.P. Trivedi has assailed the order dated 04/08/2000 (Annexure A/23) by which his request for counting for the purpose of pensionary benefits, his past service/ rendered in the Education Department, Government of Madhya Pradesh during the period from 09/12/1959 to 07/03/1980 has been denied. Inter'alia he has prayed for counting his said service as qualifying service for the pensionary benefits.

2. The factual matrix of the case of the applicant runs at a very narrow compass. The applicant was employed

on the post of Lower Division Teacher in the Madhya Pradesh State Education Department vide order dated 03/12/1959. He was confirmed on that post. He was also promoted as Graduate Teacher in the year 1963 followed by confirmation thereof and was last posted at Morar, District Gwalior in the state of Madhya Pradesh. He got an opportunity for advancement and applied for the post of Post Graduate Teacher through proper channel in the year 1979, for which he was selected and appointed on temporary basis posted at Air Force Station, K.V. No. 1, Jodhpur (Rajasthan). He immediately joined on 10/03/1980 and was subjected to transfer to Gwalior in September 1984.

3. The further facts of the case are that he was confirmed and given subsequent appointment on the post of Post Graduate Teacher with effect from 01/03/1984 vide communication dated 06/01/1994 (Annexure A/9). Soon thereafter he submitted an application dated 18/02/1994 requesting the competent authority to count his past service from 09/12/1959 to 07/03/1980 rendered in the State of Madhya Pradesh, for the purpose of pensionary benefits. But no decision was taken and there has been lots of communication and correspondence on the matter between various higher authorities. Certain information was called from the applicant. Finally the applicant's case was turned down vide impugned order dated 04/08/2000 (Annexure A/23) on the ground that the applicant has failed to exercise his option within the stipulated time. The applicant also made certain correspondence thereafter and has averred certain relevant provisions relating to his case.

4. The original application has been filed on multiple grounds and has submitted that his case is fully covered under the policy of the Government.

5. The respondents have filed a detailed counter reply and have taken two preliminary objections by placing heavy reliance of Annexure R/1 and Annexure R/2 and have submitted that the applicant is not entitled to the relief as claimed by him through this application. The main limb of their defence is that the applicant was required to give his option on or before 31/12/1990 as to whether he wish to get his earlier services with other institutions counted for the purpose of pensionary benefits by the K.V.S., but he did not express his option as per the said circular letters, hence is not entitled for the benefit of counting the past services. It is also been submitted that the applicant has not disclosed as to what happened to the pro-rata retiral benefits regarding his services with the Madhya Pradesh state Government. The authorities which he has quoted in support of his claim does not support his case. Therefore the applicant is not entitled to any relief and the original application deserves to be dismissed with costs.

6. We have heard the learned counsel for the parties at a considerable length and have carefully considered the pleadings and the records of the case.

7. The learned counsel for the applicant has mainly racked his claim on the order of confirmation which was passed vide letter dated 31/12/1993. His main plank of argument is that the applicant for the first time acquired the vested right to holding the post in the K.V.S. on issuance of this order, whereby he was appointed on substantive basis and before this date he could not have opted for counting of his previous service. His date of substantive appointment is shown as 01/08/1984 but this position was communicated to him only vide order dated 31/12/1993. He has submitted that as per the very orders on which the respondents

have based their defence provided that one is required to give the option within a period of one year from the date of joining/absorption which ever is later. The word absorption contextually would include the appointment and since he was de jure appointed only vide communication dated 31/12/1993, he could<sup>have</sup> submitted his option within the period of one year thereafter and which he did on 18/02/1994. Thus his option was well within time.

8. On the other hand the learned counsel for the respondents has strenuously opposed the contention of the learned counsel for the applicant and has submitted that the period of one year shall be reckoned from the date of joining and at the most it could be extended to 31/12/1990 as envisaged in Annexure R/2 and that was the maximum relaxation which the applicant could have availed of but the applicant has submitted his option at a much belated stage i.e. in the year 1994. In this view of the matter such belated option has not been acted upon. He has also faintly argued that nothing is known about his previous service as regards whether any benefit was paid to him or not and till that position is clear otherwise also the applicant cannot get any such benefit. Further the learned counsel for the respondent has placed strong reliance on the decision of the Hon'ble Supreme Court in the case of Devdutta<sup>and others</sup>/Vs. State of M.P. and others reported at 1991 Supp (2) SCC 553 and has drawn our attention to para 8 of the judgment.

9. We have considered the rival contentions raised on behalf of the parties. To appreciate the controversy involved it would be necessary to extract the relevant portion of the basic circular dated 06/11/1989 (Annexure R/1). The last six lines of para 1 are relevant and are reproduced as under :

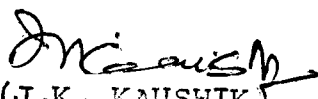
"The matter has been examined in consultation with the Department of Pension & Pensioner's Welfare who have clarified that the option is to be exercised by the concerned employee within a period of one year from the date the concerned State Govt. accepted the reciprocal arrangements or the date of joining/absorption of the employee in the K.V.S., which ever is later."

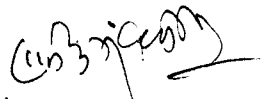
The perusal of the aforesaid circular makes it evident that the option is to be submitted within a period of one year from the date of the concerned State Government accepts the reciprocal arrangements or the date of joining/absorption of the employee in K.V.S. which ever is later. In the present case admittedly the applicant got right to hold the substantive post only on 31/12/1993 even though it was from retrospective date and earlier to the said communication the applicant could not have submitted any option. Since he even did not know whether at all he will be enjoying the permanent and substantive status or not. It is admitted position that after this order i.e. 31/12/1993 (Annexure A/9) the applicant has submitted his option on 18/02/1994 well within the period of one year as before the requirement of the law. Thus with no manner of doubt we hold that the applicant exercised his option well within the time and if that be so natural consequences of the same would in-escapeably follow. This would lead us to the conclusion that the applicant would be entitled for counting his past service rendered by him in the State of Madhya Pradesh during the period from 09/12/1959 to 07/03/1980, ~~XXXXXX~~ as qualifying service for the pensionary benefits.

10. As regards the <sup>next</sup> /submission of the learned counsel for the respondents that nothing is known about the State Government's stand or as to whether any benefit has been extended to him or as to what happened <sup>to</sup> /is fate. With respect we regret that such arguments has been led by the learned counsel who also represents the State Government and the

notices were duly accepted by him on behalf of the State Government. However the same is not relevant for the purpose of controversy involved in this case. As regards the authority relied upon by the learned counsel of the respondents we have gone through it and find that the same is distinguishable on facts. It has been provided that in case of absorption by transfer one loses his lien in the previous Department. In that case, ~~xxxx~~ it was a case of absorption of surplus employees and that too from one Department to another Department of the State Government of Madhya Pradesh. Further the matter was regarding assignment of the seniority vis-a-vis other employees already in the Department and also certain confirmed employees. Thus in our considered opinion the case of Devdutta and others (supra) is of no help to the respondents.

11. In the premises the original applicant has much force and **merits** acceptance. The impugned order dated 04/08/2000 (Annexure A/23) is hereby quashed. The respondent No. 1 and 2 are directed to count the past service of the applicant rendered in Education Department of Madhya Pradesh during the period from 09/12/1959 to 07/03/1980 for the purpose of qualifying service for grant of pensionary benefits and allow all consequential benefits. The applicant shall be entitled to the interest on the amount of difference which would become payable as a result of this order ~~xxxxxxx~~ ~~xxxxxxx~~ as admissible to the General Provident Fund from time to time. This direction shall be complied within a period of three months from the date of receipt of the copy of this order. However in the facts and circumstances of this case the parties are directed to bear their own costs.

  
(J.K. KAUSHIK)  
Judicial Member

  
(R.K. UPADHYAYA)  
Administrative Member

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

परिचालित आयोचित:-

- (1) सचिव, पञ्च प्रशासनिक कार्य विभाग, जबलपुर
- (2) ज्येष्ठ सचिव, पञ्च प्रशासनिक कार्य विभाग, जबलपुर M. Rao, Adv. BWH
- (3) प्रमुख, पञ्च प्रशासनिक कार्य विभाग, जबलपुर PN Kelkar, Adv. BWH
- (4) सचिव, पञ्च प्रशासनिक कार्य विभाग, जबलपुर

सूचना एवं आवश्यक दस्तावेज:-

Subu Sharma  
21/5/03

Issd.  
5/5/03