

**CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, INDORE**

O.A.NO.715/2000

Friday, this the 21st day of February, 03

**Hon'ble Shri Justice N.N. Singh, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)**

Rampratap Sharma s/o Ramgopal Sharma
Music Teacher
R/o 120, South Toda, Ganpati Mandir, Juni Indore
Indore (MP)

...Applicant

(By Advocate: Shri Ashish Chobey for Shri Anil Trivedi)

Versus

1. Commissioner, KVS
Jawahar Lal Nehru
New Mehrauli Road, New Delhi-1
2. Assistant Commissioner
K.V.S., Bhopal (MP)
3. Principal
Central School
C.I.S.F., Badwaha
Khargon (MP)

... Respondents

(By Advocate: Shri Vivek Saran)

O R D E R (ORAL)

Shri Govindan S. Tampi:

Heard the learned counsel for both the applicant and the respondents

2. The applicant, who was working as Music Teacher in K.V.S., had submitted his resignation on 31.3.1983 indicating that the same would come into effect from 30.6.1983. On 4.5.1983, he intimated the respondents that he

decides to withdraw the resignation, but by which time, the Principal of the School, where he was working, had intimated that on 23.4.1983 the resignation had been accepted by the competent authority and the same cannot be withdrawn. The applicant's representation against the same did not meet with any success. The Writ Petition filed by the applicant before the High Court was disposed of remanding the matter to the applicant for filing a representation to the respondents. On the basis of the said representation, he was reinstated in duty but this was done as late as on 23.12.1988, which meant that five years had gone by in the interregnum. At the time of his retirement, subsequently, it was found that he did not have the qualifying service for grant of benefits and, therefore, the applicant has come up with the request that the period between 1983-88 should also be included in this pensionable service as the acceptance of resignation was in spite of his withdrawal.

3. The learned proxy counsel for applicant states that the action of the respondents to refuse him the benefit of the inclusion of his five years period in the pensionable service was illegal and illogical, as it is on record that he had, soon after his offer of voluntary retirement, expressed his desire to withdraw the same but could not do so, as in the meanwhile, the resignation had been accepted by the competent authority. On the other hand, learned counsel for the respondents points out that the above period cannot be treated as qualifying service for the purpose of pensionary benefits in terms of Rule 26 of CCS (Pension) Rules, 1972. There was no ground for accepting the plea made by the applicant, pleads he.

4. On consideration of the matter, we find that the stand taken by the respondents, placing reliance on Rule 26 of CCS (Pension) Rules, has considerable merit. In this case, the applicant, who had given his resignation in March, 1983, which was to be effective from June, 1983, had sought permission to withdraw the same on 4.5.1983, but in the meanwhile, he was advised that his resignation had been accepted on 23.4.1983. Therefore, this is a case where the applicant was prevented from withdrawing his resignation letter and returning to service. On the basis of the order passed by the respondents accepting his representation of 16.12.1988, he was reinstated. This means that his intention to return to the Department, after withdrawing his letter for retirement, was always manifest, but could not achieve the same and only after approaching the Tribunal and filing repeated representations, he did succeed in returning to the Department. Therefore, the responsibility of the absence from the Department between the date of his voluntary retirement and re-appointment cannot be fully laid at the door of the applicant so as to deny him the benefit of pensionable service. This was an unfortunate case of acceptance of applicant's resignation though he had come up for withdrawing the same before the date on which the resignation was to take effect from in terms of his letter.

5. In the above circumstances, we feel that the interest of justice would be adequately met by disposing of this OA, advising the applicant to file within a period of two months from the date of receipt of a copy of this order, a fresh representation indicating all the facts and circumstances of the case along with a copy of his OA and this order. Thereafter, the respondents shall

consider the representation on the specific reference to all the points raised therein and pass a reasoned and speaking order within a period of two months from the date of receipt of the representation from the applicant.

6. With the above directions, OA is disposed of. No costs.

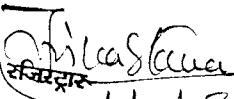
(Govindan S. Tampi)
Member (A)

/sumi/


(N.N. Singh)
Vice Chairman (J)

प्रांकन सं. ओ/न्या
परिवर्तनी विभाग, अधिकारी
जबलपुर, दि.....
(1) राधाकृष्णन, अधिकारी
(2) अमित शर्मा, अधिकारी
(3) रमेश कुमार, अधिकारी
(4) विजय कुमार, अधिकारी
सूचना देव आवश्यक घोटाला
.....

..... 1) Travec (i), Ade-IND
..... 2) Sharant, Ade-IND


अधिकारी
Tilak Chandra
6/8/03

Issued
On 6-3-03
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