

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

22.4.2009

OA 300/2006

None present for applicant.
Mr.V.S.Gurjar, counsel for respondents.

Heard learned counsel for the respondents.
The OA stands disposed of by a separate order.


(B.L.KHATRI)
MEMBER (A)


(M.L.CHAUHAN)
MEMBER (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 22nd day of April, 2009

ORIGINAL APPLICATION NO.300/2006

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

Murlidhar Sharma
S/o Shri Bhagirath Mal Sharma,
R/o Behind Panchayat Samiti,
Near Post Office Chidawa,
Jhunjhunu (Raj.).

... Applicant

(By Advocate : None)

Versus

1. Kendriya Vidyalaya Sangathan
Through its Commissioner,
18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi.
2. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Jaipur Region, Gandhi Nagar Marg,
Bajaj Nagar, Jaipur.

... Respondents

(By Advocate : Shri V.S.Gurjar)

ORDER (ORAL)

PER HON'BLE MR.M.L.CHAUHAN

The applicant has filed this OA thereby praying for the following relief :

"By an appropriate order or direction the respondent be directed to release appropriate order by counting the past services of the applicant prior to 1969 in the Schools of Rajasthan before joining the Kendriya Vidyalaya as qualifying service for pension.

By an appropriate order or direction the respondent be directed to comply to the provisions of CCS Pension Rules, 1972 and order for PPO and GPO in favour of the applicant including the past services of the Schools of Rajasthan.

By an appropriate order or direction the respondents may be directed to compute the services and add five years service as qualifying service for pension in accordance with Rule 30 of the CCS Pension Rules 1972 and revise the pension pay order and pension accordingly."

2. As can be seen from the prayer clause, grievance of the applicant is that the service rendered by him prior to 1969 should be counted for the purpose of qualifying service.

3. Notice of this OA was given to the respondents. Besides taking preliminary objection regarding maintainability of the OA on the ground of limitation in view of the mandate of Section-20 read with Section-21 of the Administrative Tribunals Act, 1985, the respondents have also contested the claim of the applicant on merit. On merit, it has been stated that prior to joining of the applicant in Kendriya Vidyalaya in July, 1974, he had rendered service in substantive capacity with Saharia Senior Secondary School, Kaladera, Jaipur, as Assistant Teacher w.e.f. 22.9.55 to 14.12.66. It is further stated that the said school is a private school receiving aid from the State Government. Thus, the respondents have categorically stated that mere fact of receipt of grant from the State Government will not make the said school/Institute a State Government school.

4. Learned counsel for the respondents has also produced a copy of the circular No.F.19-20/2005-IFD dated 22.2.2006 [which is taken on record], whereby instructions/clarifications have been issued by the Government of India regarding grant of pensionary benefits and counting of past services etc. In para 1(iii) of the said circular it is categorically stated the service rendered in a Public Sector Undertaking and or in a

10

Private Institution will not be counted for the purpose of pension. It is also considered necessary to quote para 4(vi) of the reply filed by the respondents, wherein the respondents have taken such a stand, which thus reads as under :

“(vi) That the contents of sub-paragraph (vi) of paragraph 4 of the original application are not disputed to the extent facts being matters of record. However, it will not be out of place to mention here that in the matter of counting of past service Kendriya Vidyalaya Sangathan takes approval from the concerned nodal Ministry in order to give opportunity to the employees of Kendriya Vidyalaya Sangathan to opt for counting of past service which they rendered in State Governments Department/ State Autonomous bodies/Central Govt./Central Autonomous bodies. Kendriya Vidyalaya Sangathan from time to time issued number of circulars with the concurrence of the Ministry giving opportunities to employees to exercise option for counting of past service vide circular dated 6.11.89 and 22.10.90 etc., be that as it may, mere exercise of option for counting of past service cannot be taken to be the fulfillment of all conditions. The counting of past service is subject to the conditions laid down in Govt. of India, Deptt. Of Personnel and AR office memorandum No.F.28-10-84/Pension Unit dated 29.8.84. The case of the applicant is also governed by order No.F.9-3/99-2000/KVS (Audit) dated 17.11.1999 and as per this circular the service rendered in privately managed institutions cannot be treated at par with the service rendered in Central or State Govt./Autonomous bodies. Even though the said institution in which the applicant was working was receiving grants in aid from the State Govt. concerned the fact cannot be denied that it is a privately managed institution which cannot be treated at par with the Govt. institutions as far as pensionary benefits are concerned. Therefore, the services rendered by the applicant in privately managed institution cannot be equated with the services rendered in the Govt. institution. In this case the question of percentage of grant in aid from the concerned State Govt. does not arise at all. Therefore, the claim of the applicant for counting of alleged past service is thoroughly misconceived, misleading and without any factual foundation, hence, the original application is without any substance and therefore merits rejection at the very threshold.”

5. We have heard learned counsel for the respondents. None has appeared on behalf of the applicant today. It may be stated here that when the matter was listed on 6.1.2009, this Tribunal passed the following order :

“In this case vide order dated 13.10.2008 this Tribunal observed that none was present on behalf of the applicant on 25.4.2008, 30.5.2008 and 5.8.2008 and even today. After observing these facts the matter was adjourned with a clear understanding that no further adjournment will be granted on the next date of hearing i.e. on 12.11.2008. On 12.11.2008 the learned counsel for the applicant appeared and sought adjournment which was granted. Even today none has appeared on behalf of the applicant. From the material placed on record and as observed above, it is evident that the applicant is not interested in pursuing the matter. Let

60

a copy of this order be sent to the applicant either to present on the next date of hearing or to make alternative arrangement failing which the matter will be decided on the basis of the material placed on record.

Let the matter be listed on 13.2.2009."

6. Thereafter, one Shri Manoj Bajaj put in appearance on behalf of the applicant on 13.2.2009. As can be seen from the proceedings of the next date i.e. 24.3.2009, none appeared on behalf of the applicant. Even today, none has appeared on his behalf. Thus, we have proceeded to decide the matter in terms of the provisions contained in Rule-15 of the Central Administrative Tribunal (Procedure) Rules, 1987.

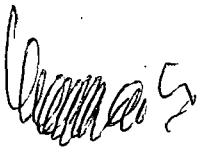
7. The matter on this point is no longer res-integra. The same point has already been considered by this Tribunal in the case of M.L.Sharma v. Kendriya Vidyalaya Sangathan & Ors. [OA No.302/2004], decided on 6.10.2005. At this stage, it will be useful to quote para 7 of the said judgement, which thus reads as under :

"7. I have considered the submissions made by the learned counsel for the applicant and I do not find any merit on either of these submissions. It is admitted case between the parties that the services rendered by the applicant w.e.f. 21.12.64 to 24.7.1978 was rendered in a privately managed school namely Gandhi Multipurpose Sr. secondary School, Gulabpura. The service rendered by the applicant in its capacity as Commerce Teacher Gr. II for the aforesaid period was not rendered on a pensionable post. The applicant was entitled for the benefit of Contributory Provident Fund and in fact his CPF Account No. was 49352, PO, Gulabpura. Thus, according to me, the services rendered by the applicant on a non-pensionable post cannot be counted as qualifying service for the purpose of pensionary benefits. At this stage, it will be useful to quota decision of the Division Bench of Punjab and Haryana High Court in the case of Ranjeet Singh Grewal and ors. vs. State of Punjab and ors., 2003. (2) SLR 541. That was a case where the petitioners therein were appointed as Coaches in the Sports Parishad on various dates in the year 1970-71. The Sports Parishad was an autonomous body. There was no provision for grant of pension to the employees of the Sports Parishad. The petitioners filed Writ Petition thereby claiming to add on the services rendered in the Sports Parishad to be counted as services rendered in the State of Punjab for computation of pension. The Hon'ble High Court held that the services rendered by the petitioners from 1970-71 to 1.4.1981 was rendered on a non-pensionable post. Therefore, they have been rightly denied the benefit of services rendered between 1970-71 to 1.4.1981. Thus, in view of lad laid down by the Hon'ble High Court in Ranjeet Singh Grewal case (supra), the applicant is not entitled for any relief even if it is held that the service rendered by the applicant in the privately managed school was to be treated as service rendered in the capacity of service in an

autonomous body under the Government of Rajasthan. That apart, even for arguments sake, it is assumed that the services rendered by the applicant in the said privately managed school was rendered in the autonomous body then the further conditions which are necessary to entitle the applicant for counting the past service as qualifying service for pension is that he should not have received the terminal benefits from his previous service and he has sought his appointed in KVS with the consent of the organization under which he was serving earlier or he has secured employment directly with prior permission of the administrative authority concerned. These facts could have been clarified by the management of the Gandhi Sr. Secondary School, Gulabpura which the applicant has failed to implead despite the objections raised by the respondents in the reply. As such, on this count also the applicant is not entitled to any relief."

8. The ratio laid down by this Tribunal in the case of M.L.Sharma (supra) is squarely applicable in the facts and circumstances of the present case.
9. Accordingly, the OA stands dismissed with no order as to costs.


(B.L.KHATRI)
MEMBER (A)


(M.L.CHAUHAN)
MEMBER (J)

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