

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 4th day of January, 2011

Original Application No. 313/2007

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Dr. C.P.Acharya
s/o Shri Prabhu Lal Acharya,
retired Principal Grade-II and
Vice Principal, Kendriya Vidyalaya Kramank-3,
Jaipur r/o 24, Lions Colony,
Tonk Road, Jaipur

.. Applicant

(By Advocate: Shri Satyavrata Sharma)

Versus

1. Kendriya Vidyalaya Sangathan
through its Commissioner,
Kendriya Vidyalaya Sangathan (H.Q.),
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi.
2. Ayukat, Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi.
3. Assistant Commissioner
(Administrative and Finance),
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi.
4. Varistha Prasasnik Adhikari (Sthapana),
Kendriya Vidyalaya Sangathan,
18, Institutional Area, Shaheed Jeet Singh Marg,
New Delhi.

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5. Sahayak Ayukta,
Kendriya Vidyalaya Sangathan Regional Office,
92, Gandhi Nagar Marg,
Bajaj Nagar, Jaipur, Rajasthan
6. State of Rajasthan
through Secretary,
Education Department of Sanskrit Education,
Secretariat,
Govt. of Rajasthan,
Jaipur.

... Respondents

(By Advocate: Shri V.S.Gurjar)

ORDER (ORAL)

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

- (i) That this Hon'ble Tribunal may kindly be pleased to call for the entire relevant records of above case and may graciously be pleased to accept and allow the above original application of applicant and be further pleased to issue an order thereby quashing and setting aside the impugned orders/letters dated 17.5.2002 (Annexure-A/4) dated 6.4.2005 (Annexure-A/8), dt.26.5.2006, (Annexure-A/12) dt. 22.12.2006, (Annexure 1A/14) dated 18.1.2007, Annexure A/15 and letter dated 27.5.2005 and further issue an appropriate direction or order to respondents for counting the past services of the applicant rendered by him in the Government of Rajasthan since 1.10.1964 to 26.8.77, as continuous qualifying service for the purpose of pension and the recalculate and grant benefits to the applicant on the basis of 36 years 10 months qualifying service within such reasonable time as may be fixed by the Hon'ble Tribunal.
- (ii) Further pleased to issue a direction or order thereby direct to respondent to pay the interest at rate of 18% per annum on the due arrears of pension of applicant since 31.7.2001 to till its realization.
- (iii) Any other relief which Hon'ble Tribunal deems fit and proper may also be granted in favour of the applicant.

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- (iv) Original application of the applicant be allowed with imposing the cost on respondents.

2. Briefly stated, the case as projected by the applicant is that before joining the Kendriya Vidyalaya Sangathan (KVS) on 26.8.1977, he rendered service on the post of Teacher Gr.III and II in the Directorate of Sanskrit, Jaipur under the Department of Sanskrit Education, Government of Rajasthan w.e.f. 1.10.64 to 3.12.1971. Thereafter, the applicant applied for the post of Lecturer in Sanskrit in the B.S.F. Academy (Boys School), Tekanpur, Gwalior through proper channel with the prior permission of the competent authority and he was relieved on 3.12.1971. It is case of the applicant that his lien was retained by the Government of Rajasthan, though he was relieved for the purpose of joining B.S.F. Academy. The applicant joined the B.S.F. Academy (Boys school) on 9.12.71 and served upto 23.8.77. The applicant retired from the post of Vice-Principal, Kendriya Vidyalaya No.3, Jaipur on 31.7.2001. The grievance of the applicant is regarding counting of service rendered by him in the Government of Rajasthan from 1.10.64 to 23.8.77. It is further stated that the applicant has submitted necessary documents on 4.1.1989 to the respondents through proper channel which application was forwarded by the Principal, KV No.1 Jaipur to the KV Regional Office, Jaipur vide letter dated 7.1.1989 (Ann.A/1). According to the applicant, the service rendered for the aforesaid period has to be counted in terms of order 29.7.1986 as there is reciprocal arrangement for counting the past services of an employee moving from Govt. of Rajasthan to Central Govt. or vice-versa. It is further

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averred that the respondents neither published any proforma for submitting the option for counting of past service of an employee nor invited any option in this regard by determining a cut off date. Still the applicant filed all the information and documents vide application dated 4.1.1989. The applicant has placed on record order dated 29.7.1986 as Ann.A/2. Thereafter the applicant made a representation which was forwarded vide letter dated 21.12.2001 but the same was rejected vide impugned order dated 17.5.2002 (Ann.A/4) on the ground that request of the applicant for counting of service w.e.f. 1.10.64 to 3.12.71 and 9.12.71 to 22.8.77 cannot be acceded to as per the extant rules since the applicant has not exercised option for counting of his past service within the prescribed time limit i.e. 31.12.1990. It is case of the applicant that only photocopy of the order dated 17.5.2002 was served upon him vide order dated 22.6.2004. The applicant has also placed on record copy of the letter dated 15.7.2004 (Ann.A/6) whereby it is mentioned that the applicant has already opted for counting of service vide his letter dated 4.1.89 followed by reminder dated 7.2.2005 (Ann.A/7). The applicant has also placed on record further representation dated 14.4.2005 (Ann.A/9) and dated 20.4.2006 (Ann.A/10). However, vide impugned order dated 22.12.2006 (Ann.A/1) the applicant was informed that decision taken vide letter dated 17.5.2002, 6.4.2005, 27.5.2005 and 26.5.2006 required no further reconsideration. It is on the basis of these facts, the applicant has filed this OA thereby praying for the aforesaid reliefs.

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3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have taken objection that the present OA is barred by limitation under Section 20 read with Section 21 of the Administrative Tribunals Act, 1985. It is stated that the applicant superannuated on 31.7.2001 whereas the present OA has been filed after six years of his retirement. On merit, it is stated that the applicant has failed to exercise his option for counting his past service in response to KVS Letter No.F.18 (Misc.)/P5/87-88/KV5 (P&I) dated 22.10.1990, as such, on the basis of service rendered by him in the KVS w.e.f. 26.8.1977 to 31.7.2001 the applicant has been paid pro-rata pension/service gratuity and claim of the applicant is not sustainable. It is further stated that the applicant was in service when the circular was issued, as such, he should have exercised option upto 31.12.1990. The respondents in para-9 of the preliminary submissions have categorically stated that the OA is not only barred by statutory period of limitation but the cause of action, if any, in reference to which the controversy is being raised dates back to 30 years ago. It is further stated that claim of pension cannot be sustained without first getting the alleged past service counted allegedly under the Education Department of Govt. of Rajasthan, as such, the OA suffers with the vice of seeking plural remedies and therefore requires rejection in view of the mandate of Rule 10 of the Administrative Tribunals (Procedure) Rules, 1993.

4. It may be stated that initially the applicant has not impleaded State of Rajasthan as party and subsequently MA

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No.290/2009 was moved for impleading State of Rajasthan as party. The said MA was allowed vide order dated 6.11.2009 and amended cause title was taken on record. It may be stated here that the applicant has only impleaded the State of Rajasthan as respondent No.6 without making any averment in the OA. The respondent No.6 has not filed any reply. It may also be stated here that the applicant has also moved Misc. Application No.200/2007 for condonation of delay. In the MA for condonation of delay in para-1 the applicant has stated that the order dated 17.5.2002 (Ann.A/4) was not served to the applicant in original and further it was not addressed to the applicant. The applicant was only communicated on 28.6.2004. The applicant has also sought condonation of delay on the ground that decision on his representation was communicated to the applicant subsequently on 6.4.1005, 27.5.2005 and 22.12.2006, as such, the present OA is within limitation.

5. The respondents have filed reply. In the reply, the respondents have stated that the applicant cannot trace the cause of action with reference to any communication made by official respondents in response to legal notice or any other correspondence made by the applicant or on behalf of the applicant. It is further stated that copy of the letter dated 17.5.2002 (Ann.A/4) was communicated to the applicant on 28.6.2004, as such, the applicant was aware of the factual and actual state of affairs since June, 2004. The respondents have also stated that one of the condition for counting the service is that the previous employer has to undertaken the pro-rata pension liability in terms of OM dated 29.8.1984 and 7.2.1986 as per

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the conditions stipulated in the memorandum. As such, in the absence of any contribution made by the State of Rajasthan, no relief can be granted to the applicant.

6. We have heard the learned counsel for the parties and gone through the material placed on record.

7. We are of the view that the present OA cannot be sustained for more than one reason. Firstly, the applicant wants counting of his past service rendered by him in Govt. of Rajasthan from 1.10.64 to 23.8.1977 for pensionary purposes. As per own showing of the applicant, the applicant has rendered service under the State of Rajasthan only w.e.f. 1.10.64 to 3.12.1971. Thereafter the applicant rendered service as Lecturer in Sanskrit in the B.S.F. Academy (Boys School), Tekanpur, Gwalior from 9.12.1971 to 23.8.1977. Admittedly, the service rendered by the applicant in B.S.F. Academy, Tekanpur cannot be said to be service rendered under the State Government. As already stated above, in terms of OM issued by the Govt. of India, counting of service of the employees of Central Govt. and central autonomous body seeking absorption in autonomous body under the State Govt. and vice-versa has to be taken only if the pro-rata contribution of pensionary benefits is made by the previous employer. In the present case, the applicant has not made any averment in the OA whether the State Govt. was willing to take liability in regard to the service rendered by the applicant on the post of Lecturer in the B.S.F. Academy, Tekanpur w.e.f. 9.12.71 to 23.8.1977 as admittedly, the applicant has not rendered service under the Govt. of Rajasthan during this period.

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Simply, because the applicant was retaining his lien cannot be said that the service rendered by the applicant was the service rendered under the State of Rajasthan and the State of Rajasthan was bound to bear the pension liability of the applicant in respect of the aforementioned service so as to include the period for the purpose of counting of service in terms of the OM dated 29.8.84 and 7.2.1986. Further, the applicant has also not pleaded in the OA that the State of Rajasthan is willing to contribute towards the pension liability in respect of the service rendered by him w.e.f. 1.10.64 to 3.12.1971. In the absence of such pleading in the OA, the applicant is not entitled to any relief even on merit.

8. Be that as it may, since we are of the view that the present OA is hopelessly time barred and the applicant is raising grievance in respect of the period w.e.f. 1.10.64 to 23.8.1977 by filing OA after a lapse of 30 years without explaining the delay, as such, in terms of the provisions contained under Section 21 of the Administrative Tribunals Act, such a delay cannot be condoned at this stage for the reasons stated hereinafter. Admittedly, the grievance of the applicant is regarding counting of his service w.e.f. 1.10.64 to 23.8.1977 rendered under the State of Rajasthan and B.S.F. Academy, Tekenpur. The cause of action arose in favour of the applicant in the year 1984 and 1986 when the KVS has adopted the circular of the Govt. regarding counting of service for the purpose of pension of employees of the Central Govt. and central autonomous bodies seeking absorption in autonomous bodies under the State Govt. and vice-versa. Admittedly, the application

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was filed by the applicant only on 22nd August, 2007 after a lapse of about 20 years. Not only that, the applicant was informed about rejection of his claim for counting of service vide letter dated 17.5.2002 (Ann.A/4). Not only that, copy of the letter dated 17.5.2002 was also made available to the applicant subsequently vide letter dated 28.6.2004. The contention raised by the applicant in the MA for condonation of delay that copy of letter dated 17.5.2002 was not served to the applicant in original and only photocopy of the said letter was received by him vide letter dated 28.6.2004 is no ground to condone the delay. Facts remain that the applicant was in any case aware about the letter Ann.A/4 in 2004. The OA was filed in August, 2007 i.e. after the statutory period of one year prescribed under Section 21 of the Administrative Tribunals Act. Thus, we are of the view that the applicant has not shown any sufficient cause for condoning the delay. Filing of repeated representations will not condone the delay in filing the OA. Thus, according to us, the applicant has neither made out any case for condonation of delay nor he has pleaded in the OA that he fulfill the condition subject to which the service rendered under the State of Rajasthan and B.S.F. Academy can be counted without fulfilling the requisite condition and simply on the basis of the letter dated 29.7.1986 (Ann.A/2) which show that there is a reciprocal arrangement between State of Rajasthan and KVS.

9. That apart, the applicant has also not impleaded the authorities under whom the B.S.F. Academy was functioning and

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whether there was reciprocal arrangement for counting of service between the aforesaid authorities and the KVS.

10. The applicant has placed reliance upon the decision of this Tribunal in TA No.3/2000 Hari Raj Swaroop Sharma vs. KVS which decision was affirmed by the Apex Court. We fail to understand how the applicant can take assistance from this judgment. The applicant therein before his appointment in KVS has served under the Govt. of Madhya Pradesh. The State of MP has transferred the General Provident Fund of the applicant which he was contributing under the State of Madhya Pradesh to the KVS. It was under these circumstances, this Tribunal held that in terms of KVS letter dated 1.9.1983, the applicant would be entitled to pension for the service rendered by him under the State of Madhya Pradesh. As already stated above, in this case, neither the applicant has rendered entire service under the State of Rajasthan nor the applicant has made averments in the OA that the previous employer i.e. State of Rajasthan or the B.S.F. authorities have transferred entire Provident Fund amount which he was contributed with the previous employer to the KVS in terms of letter dated 1.9.1983. As such, the applicant cannot take assistance from the judgment of this Tribunal as approved by the Hon'ble Apex Court when the Apex Court did not find any ground to interfere with the judgment and dismissed the Civil Appeal filed by the KVS.

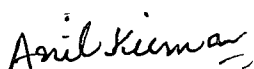
11. At this stage, it will be useful to quote case of C.Jacob vs. Director of Geology and Mining, (2008) 2 SCC (L&S) 961 whereby the Apex Court held that the Tribunal should not give direction in

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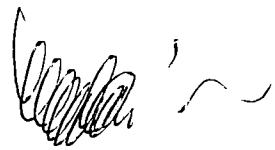
respect of stale claim and cause of action will be taken to have arisen from the original order and not when the representation of the application is rejected by the authorities subsequently. As already stated above, the applicant is raising the issue about counting of service w.e.f. 1.10.64 to 23.8.77 after a lapse of about 30 years and in any case after a lapse of more than 20 years when the scheme of counting of past service was adopted by the KVS that too after six years after his retirement. Thus, in terms of the law laid down by the Apex Court in the case of C.Jacob (supra), the stale claim of the applicant cannot be entertained.

12. Thus, viewing the matter from any angle, we are of the view that the OA is liable to be dismissed, which is accordingly dismissed with no order as to costs.

13. In view of dismissal of OA, no order is required to be passed in MA No.200/2007, which stands disposed of accordingly.



(ANIL KUMAR)
Admv. Member



(M.L. CHAUHAN)
Judl. Member

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