

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

12.02.2013

OA No. 443/2011

Mr. P.N. Jatti, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Heard learned counsel for the parties.

The OA is disposed of by a separate order.

Anil Kumar

(Anil Kumar)
Member (A)

ahq

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 443/2011

Jaipur, the 12th day of February, 2013

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Mr. Mukesh Kumar Verma son of Shri Mewa Ram Verma, by cast Verma, aged about 35 years, resident of Shri Rise- Villa 8A, Ashok Nagar, Niwaru Road, Jhotwara, Jaipur.

... Applicant

(By Advocate : Mr. P.N. Jatti)

Versus

1. Union of India through the Secretary to the Government of India, Department of Posts, Dak Bhawan, Sansad Marg, new Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Senior Superintendent Railway Mail Service, Opp. All India Radio Station, M.I. Road, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

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

- "(i) That by a suitable writ/order of the direction the impugned order dated 22.09.2010/30.09.2010 be quashed and set aside.
- (ii) That by a suitable writ/order of the direction the respondents be directed to allow the Gratuity and pension to the applicant with effect from 25.01.2006 with all consequential benefits.
- (iii) Any other relief which the Hon'ble Bench deems fit."

2. Brief facts, as stated by the learned counsel for the applicant, are that the applicant has been working with the respondent department with effect from 11.10.1995 to

Anil Kumar

19.10.2005. Thereafter, he was selected in the Punjab National Bank. Therefore, the applicant submitted an application to the competent authority to relieve him to join Punjab National Bank (Annexure A/3). The applicant was relieved by the respondents vide their order dated 18.10.2005 (Annexure A/4) with effect from 19.10.2005.

3. Since the applicant served the department for more than ten years, therefore, he submitted representations to the respondents for payment of gratuity and pension as per rules (Annexures A/5 to A/7). However, the respondents have rejected the representations of the applicant vide their order dated 22.09.2010, which was communicated to the applicant by the respondents vide letter dated 30.10.2010 (Annexure A/1). Learned counsel for the applicant argued that since the order dated 22.09.2010, rejecting the request of the applicant for grant of gratuity and pension is against the rules, therefore, this order be quashed and set aside and the applicant be allowed gratuity and pension as per his entitlement.

4. On the contrary, learned counsel for the respondents in Para No. 5.6 of the reply admitted that the applicant had served with the respondents for more than ten years but he resigned from service with effect from 19.10.2005 unconditionally, therefore, as per the provisions under 4(i), 6(6) of appendix 7 of the CCS (Pension) Rules, 1972, he is not entitled for pensionary benefits. The relevant rule is reproduced as under:-

Anil Kumar

"4(i) Resignation from Govt. service with a view to secure employment in a Central Public enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases the government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organization"

"6. The terminal benefits, etc., enumerated in Para-1 above will be admissible to all Central Government servants, who secure appointments in Central Public enterprises with proper permission. A Government servant selected for appointment in an enterprise on the basis of an application submitted by him before joining the government service will be deemed to have applied with proper permission for the purpose of these orders."

5. He further submitted that the applicant applied for 'NOC' to appear in interview of Punjab National Bank. The respondents vide letter dated 08.08.2005 (Annexure R/4) asked the applicant to explain why he has not sought for approval for sending his application for employment. The learned counsel for the respondents submitted that the applicant did not submit any reply to this letter.

6. The learned counsel for the respondents further submitted that the applicant applied for 'Experience Certificate'. The respondents asked reason as to why he is asking for 'Experience Certificate'. In reply to the same, the applicant vide his letter dated 09.08.2005 (Annexure R/5) stated that he wanted the 'Experience Certificate' due to some personal matter. Learned counsel for the respondents submitted that even while asking for 'Experience Certificate', the applicant did

Anil Kumar

not disclose that it was required to be submitted in Punjab National Bank.

7. The learned counsel for the respondents drew my attention to resignation letter submitted by the applicant dated 13.10.2005 (Annexure R/7). This is an unconditional resignation letter addressed to Senior Superintendent, RMS JP Division, Jaipur. A perusal of this letter shows that the applicant has not mentioned that he is resigning from service to join Punjab National Bank. Therefore, the contention of the applicant that he requested the respondents to be relieved to join Punjab National Bank is totally wrong & misconceived. This unconditional resignation letter was accepted by the respondent department vide their letter dated 18.10.2005 (Annexure R/9). Therefore, the learned counsel for the respondents argued that since the applicant has not applied through proper channel and he submitted an unconditional resignation letter, therefore, he is not entitled for terminal benefits including pension and gratuity. He also referred to Rule 26 (1) of CCS (Pension) Rules, 1972, which is quoted below:-

"26 Forfeiture of service on resignation

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service."

Thus he argued that the OA has no merit and it should be dismissed with costs.

Anil Kumar

8. Heard the learned counsel for the parties and perused the relevant documents on record. It is not disputed between the parties that the applicant has rendered more than ten years of service with the respondent department. The short controversy involved in this case is as to whether the applicant applied through proper channel for employment in Punjab National Bank or not and whether he is entitled for retirement benefits, ^{like} pension & gratuity. The learned counsel for the respondents has categorically stated that the applicant had not applied through proper channel. The learned counsel for the applicant could not show any document to prove that the applicant applied for employment in Punjab National Bank through proper channel. He submitted a request to the respondent that a 'NOC' be issued to him to appear in interview of Punjab National Bank to be held on 16.08.2005. The respondents vide their letter dated 08.08.2005 (Annexure R/4) asked the applicant to explain why he has not sought for approval for sending his application for employment. The applicant did not submit any reply to this letter. This also shows that the applicant did not apply for employment in Punjab National Bank through proper channel. Similarly when the applicant asked for 'Experience Certificate', he informed the department vide his letter dated 09.08.2005 that he required 'Experience Certificate' due to some personal matter (Annexure R/5). This also shows that the applicant did not disclose to the respondents that he required 'Experience Certificate' to be submitted in Punjab National Bank.

Anil Kumar,

9. A bare perusal of his resignation letter dated 13.10.2005 (Annexure R/7) shows that it is an unconditional resignation from service with effect from 19.10.2005 FN. In this resignation letter, the applicant has nowhere mentioned that he submitted his resignation to join Punjab National Bank. Thus, even in this resignation letter, he did not mention the fact that he is resigning from the respondent department to join the Punjab National Bank. His unconditional resignation was accepted by the respondents vide their letter dated 18.10.2005 (Annexure R/9).

10. The Rule 26 (1) and 26(2) of CCS (Pension) Rules, 1972 are quoted as follows:-

"26 Forfeiture of service on resignation

- (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service."
- (2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."

In the present OA, the applicant has not applied through proper channel or with proper permission from the respondents for appointment in Punjab National Bank. Therefore, the provisions of Rule 26(2) of CCS (Pension) Rules, 1972 would not apply in this case. On the contrary, in the case of the applicant, Rule 26(1) of the CCS (Pension) Rules, 1972 would apply. Rule 26(1) of the CCS (Pension) Rules, 1972 provides for forfeiture of service on resignation that is a Government

Anil Kumar

servant will not be entitled for pension, gratuity and terminal benefits. Since the applicant tendered unconditional resignation from service, therefore, he is not entitled for pension and other terminal benefits from the respondents.

11. A similar controversy has been decided by this Bench of the Tribunal in the case of **Dr. L.M. Bhandari vs. Union of India & Others** [OA No. 43/2011 with MA No. 37/2011 decided on 05.02.2013]. In that OA also, this Tribunal has held that the applicant was not entitled for pension and other terminal benefits from the respondents since the applicant in that case has also not applied for employment in Hindustan Zinc Limited through proper channel and had resigned on personal grounds from service. The facts of OA No. 43/2011 [Dr. L.M. Bhandari vs. Union of India & Others] are quite similar to the facts of present OA. Therefore, the view taken by this Tribunal in this OA No. 43/2011 with MA No. 37/2011 decided on 05.02.2013 [Dr. L.M. Bhandari vs. Union of India & Others] would apply in the present OA *also*. *Anil Kumar*

12. Thus in my opinion, the applicant is not entitled for any relief in the present OA.

13. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

Anil Kumar,
(Anil Kumar)
Member (A)