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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/00794/2014

Date of decision: 04.11.2015.

Coram: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)

Harcharan Singh Paul S/o Sadhu Ram Paul, Ex.-Supdt. E/M Grade-I, resident of H.No.1150, Urban Estate, Phase-I, Jalandhar-144002, Punjab.

-APPLICANT

By Advocate: Shri Prateek Pandit

VERSUS

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Principal Controller of Defence Accounts (Pensions), Draupadi Dhat, Allahabad, Uttar Pradesh.
3. Chief Engineer, HQ Western Command, Chandimandir-134107.

-RESPONDENTS

(By Advocate Shri Sanjay Goyal)

ORDER

Mr. Sanjeev Kaushik, Member (J):

By means of the present Original Application applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, seeking invalidation of orders dated 19.10.2012 (Annexure A-7) and 10.01.2013 (Annexure A-8), whereby his request for counting his past service with the Military Engineering Service towards grant of pension and pensionary benefits has been rejected solely on the ground that he has simply resigned from service without completing the age of superannuation in the earlier department.

2. The facts, which led to the filing of the present Original Application, are that the applicant initially joined Military Engineering Service (MES, for short) on 10.08.1971 and he continued there till 11.12.1981, rendering more than 10 years and 4 months of service. When he was with the MES he applied for the post of Small Scale Industries Officer with the Punjab National Bank (PNB, for short). He submitted his application through proper channel on 11.12.1980 after getting no objection certificate from his earlier employer, MES. On being selected by the PNB he submitted his resignation on 03.12.1981, which was duly accepted by the respondents and he was discharged vide discharge certificate dated 10.12.1981. He retired on attaining the age of superannuation. Since he resigned from MES by submitting a technical resignation, enabling him to join the new post in PNB, therefore, he submitted a detailed representation to the respondents for

counting his past service towards qualifying service. The said representation was rejected by the impugned orders dated 19.10.2012 as well as 10.01.2013. Aggrieved against the above decision applicant submitted another representation on 11.04.2013 to respondent no.1, requesting therein to consider his request in terms of Rule-37 of the CCS (Pension) Rules, 1972 (1972 Rules, for short). Hence the Original Application.

3. Shri Prateek Pandit, learned counsel appearing for the applicant vehemently argued that the action of the respondents in rejecting his request for counting his past service with MES towards qualifying service is totally illegal, arbitrary and against the rule formation. Thus, the impugned orders are liable to be set aside and a direction be issued to the respondents to grant benefit of past service. To substantiate his argument, he submitted that in terms of Rule 26 (2) of the 1972 Rules since the applicant has submitted a technical resignation to join new post with the prior approval of the earlier employer then that will not entail his past service on resignation. He then submitted that even otherwise as per Rule 37 of the 1972 Rules his service is liable to be counted. Thus also the decision of the respondents is bad in law.

4. The respondents contested the claim of the applicant by filing detailed written statement wherein they submitted that since the applicant has resigned from MES to join PNB and his resignation was duly accepted by the headquarter, therefore he cannot claim that he is entitled for grant of benefit of past

service. They also relied upon Rule 18 of the 1972 Rules. Shri Sanjay, learned counsel appearing for the respondents vehemently argued that in terms of Rule 26 of the 1972 Rules applicant cannot claim the benefit of earlier service once he has resigned from the earlier post.

5. We have given our thoughtful consideration to the entire matter and have perused the pleadings available on record with the able assistance of the learned counsel appearing for the applicant.

6. The solitary contention at the hands of the applicant, which is to be adjudicated by us, is whether the service rendered by him with the MES (Govt. of India) before joining PNB by submitting resignation can be counted for pensionary benefits or not?

7. Rule 26 of the 1972 Rules, which deals with forfeiture of service on resignation reads as under:

"26. Forfeiture of service on resignation

Footnote : 1. Substituted by G.I., M.F., Notification No. F. 6 (12)-E. V (A)/72, dated the 7th April, 1977.

(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.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:-

(i)	that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation ;
(ii)	that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper ;
(iii)	that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days ;
(iv)	that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.

¹[(7) A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government.]”

8. Perusal of sub-rule (2) of Rule 26 makes it clear that a resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another department, whether temporary or permanent, under the Government where service qualifies.

9. Government has also been defined under 1972 Rules under the definition clause as the Central Government. Thus the employer of applicant PNB cannot be termed as Central Government and these Rules are not applicable to them. Thus applicant has no case.

10. Even the second limb of argument raised at the hands of the applicant is also devoid of merit. Rule 37 of the 1972 Rules is applicable where a person is absorbed under a Corporation or Company. In the present case applicant has not been absorbed on transfer or otherwise. He was appointed after a positive act of selection in PNB. Thus also this Rule is also not applicable. Accordingly the OA is dismissed being devoid of merit. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(UDAY KUMAR VARMA)
MEMBER (A)

Chandigarh

Dated: .04.11.2015.

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