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O.A. No.060/00235/2014  
(Sushil Kumar v. UOI & Ors.)  
**CENTRAL ADMINISTRATIVE TRIBUNAL,  
CHANDIGARH BENCH**

O.A. No.060/00235/2014

Orders pronounced on: 22.5.2015

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &  
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

Sushil Kumar s/o Sh. Shiv Phool Bhandari, aged 38 years, R/o 122-Railway Colony No.1, Ferozepur Cantt, working as Divisional Engineer (HQ) Northern Railway, Ferozepur, under respondent no.2.

-Applicant

(By Advocate Shri Karnail Singh)

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.

2. Divisional Railway Manager, Northern Railway, Ferozepur.

(By Advocate Shri Yogesh Putney)

3. Secretary, Ministry of Personnel, Public Grievances and Pensions (DoPT) North Block, New Delhi.

**(By Advocate Shri Deepak Agnihotri)**

4. Secretary Public Works Department-I, State of Uttarakhand, Dehradun.

**(By Advocate-None)**

5. Secretary, Union Public Service Commission, Dholpur House, New Delhi.

**(By Advocate Shri B.B. Sharma)**

- Respondents

**ORDER**

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

Challenge in this Original Application is to an order dated 19.07.2013, vide which the claim of the applicant for granting benefit of earlier service rendered by him with the State of Uttarakhand for the purpose of pension and pensionary benefits has been rejected. The applicant has also sought quashing of para-9 of the policy issued by DoP&T in the year 2009 on the ground of discrimination and sought direction from this Tribunal to direct the respondents to count his previous service rendered with the State Government for the purpose of pension and pensionary benefits under the Railways.

2. The undisputed facts, which led to filing of the present Original Application, are that the applicant herein initially joined Uttaranchal Power Corporation Ltd., a State Government Undertaking, Dehradun as Assistant Engineer (Civil) on 28.06.2002, where he worked upto 15.03.2004 – the date when he was selected and appointed as Assistant Engineer (Group 'B') by the Public Service Commission where he joined on 16.03.2004. To have better career prospects in life the applicant applied pursuant to an advertisement issued by UPSC, notifying vacancies for Engineering Service Examination, 2007, where based upon his performance in the written test as well as in the interview he was offered appointment where he joined after tendering technical resignation on 15.03.2008. Since the post earlier held by him in State

Government was pensionable, therefore, he moved a representation to the Railway authorities for counting his previous service for pension and pensionary benefits and will be counted only for fixation of pay at the entry level. Hence the Original Application.

3. The respondents contested the claim of the applicant by taking a preliminary objection that the OA is barred by limitation as the applicant has impugned para-9 of the policy dated 08.09.2009 now in the year 2014. They also submitted that the earlier Railway Services (Pension) Rules, 1993 have since been amended by the new rules w.e.f. 01.01.2004 and as per the new rules a person who joins after the above date is not entitled to pension. Since the applicant joined in the year 2008, therefore, his case cannot be considered under the old pension scheme/rules.

4. The applicant has filed rejoinder, contradicting the averments made by the respondents in the written statement.

5. We have heard learned counsel for the respective parties.

6. Shri Karnail Singh, learned counsel appearing on behalf of the applicant submitted that since the applicant was holding a pensionable post before joining the Railways after tendering technical resignation, therefore his past service is to be counted for pension and pensionable benefits in the Railways and that cannot be washed away, as has been done by the impugned order. To buttress his submission he relied upon

a decision in the case of **Harbans Lal v. The State of Punjab and others**, 2012 (3) SCT 262.

7. Per contra, Shri Yogesh Putney, learned counsel appearing on behalf of respondents vehemently opposed the prayer on the ground that once the Railway Board had already revised pension scheme, which was made applicable with effect from 01/01/2004, under which the new recruits, who are offered appointment after that date are not entitled for pension then the claim of the applicant cannot be accepted. He also submitted that even otherwise the service rendered with the State Government cannot be counted in Railways in terms of Rule-3 of the Railway Services (Pension) Rules. He placed reliance upon the decision of the Hon'ble jurisdictional High Court in the case of **Jagtar Singh & another v. The State of Punjab and others**, 2013 (3) PLR 247 and prayed that the OA be dismissed.

8. We have given our thoughtful consideration to the entire matter and perused the pleadings with the able assistance of the learned counsel appearing for the respective parties.

9. The solitary contention at the hands of the applicant, which is to be answered is whether the service rendered with the State Government before joining Railways by tendering technical resignation, can be counted for pension and pensionary benefits or not.

10. Before we answer the above, the relevant rule formation, which deals with the service is to be seen. Definition under Rule 3 (12) of the Railway Services (Pension) Rules, 1993 talks of 'Government', which means Central Government. The same reads as under:

"Government" means the Central Government;"

Even otherwise, if we go by the definition, as contained in CCS (Pension) Rules, 1972, that also talks of 'Government', which means Central Government. Rule 26 (2) of the CCS (Pension) Rules, 1972 reads as under:

"(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."

11. Combined reading of the above makes it clear that the service rendered with the Central Government is pensionable for pension and pensionary benefits if a person tenders technical resignation. In terms of Rule 26 (2) of CCS (CCA) Rules, 1972, which are otherwise not applicable to the employees of the Railways as they are having their separate rules. In the case in hand the applicant was an employee of Uttarakhand Government. Therefore the service rendered with the State Government counted with the Railways even if he had tendered technical resignation. Therefore, we find no fault with the impugned order. Perusal of the impugned order indicates that the respondents have

already re-fixed his pay based upon the pay he was getting while before joining new post under the Railways. Our view also stands fortified by the judgment of the Hon'ble jurisdictional High Court in the case of **Jagtar Singh** (supra). In that case the petitioner was working with the Central Government and was later on appointed with the Punjab Government where the Punjab Government refused to count his previous service for grant of pension and pensionary benefits. The matter went to the Hon'ble Jurisdictional High Court where the High Court in para-14 made the following observations while negating the submission made by the petitioner therein:

"14. It is the assertion of the counsel for the petitioners that the claim of the petitioners would be covered by clause (i) of this letter but I am afraid, the same is not correct in the light of the definition as provided in Rule 2.24 which defines 'Government' to mean 'Punjab Government in the C.WP. No.9064 of 2010 -13-administrative department'. Applying the said definition, clause (i) would be applicable to a Government employee, who had been working in same Punjab Government Department or a body incorporated or which is wholly or substantially owned and controlled by the Punjab Government, who joins some other post or department again under the Government of Punjab after submitting his resignation and was covered under the old pension scheme which was applicable on or before 31.12.2003. The claim of the petitioners has rightly been considered under clause (ii) of the letter dated 24.10.2008 which clearly is applicable to the case of the petitioners as they were working on or before 31.12.2003 in an Organization of the Central Government where they were governed by a pension scheme of the Central Government other than the provisions contained in the Punjab Civil Service Rules Vol.2. Petitioners would be entitled to get pensionary benefits/terminal benefits in respect of their previous service from their previous Department/Organization, if entitled to, under the Rules of the concerned Department/Organization. The claim of the petitioners, thus, cannot be accepted."

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12. Moreover, the applicant has not made any argument with regard to quashing of clause-9 of the circular. Even otherwise, being a policy matter it is the prerogative of the Government to fix the cut off date. The Court can interfere only when the applicant shows arbitrariness in the cut off date. Since the applicant has not made any such complaint, therefore, we are not recording and finding thereon.

13. In the light of the above, we find no reason to interfere with the order passed by the authorities. The OA, therefore, fails and is accordingly dismissed.

14. No costs.

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**(UDAY KUMAR VARMA)**  
**MEMBER (A)**

Place: Chandigarh  
Dated: 22.5.2015

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