

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 384/2012

New Delhi this the 26th day of October, 2015

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P.K. Basu, Member (A)

Harendra Pal S/o Shri Babu Lal
R/o 11/162, Vasundhra
Ghaziabad (U.P.)

... Applicant

(Through Shri Yogesh Sharma, Advocate)

Versus

1. Delhi Development Authority
Through its Vice Chairman
Vikas Sadan, I.N.A.,
New Delhi
2. The Deputy Director (Personnel-I)
Delhi Development Authority
Vikas Sadan, New Delhi
3. The General Manager,
U.P. Sate Indl. Dev. Corpn. Ltd.
Kanpur

... Respondents

(Through Shri Manish Garg and Ms. Narita Yadav, Advocates)

ORDER

Mr. P.K. Basu, Member (A)

The applicant joined as Assistant Engineer (AE) (Civil) on 2.01.1989 against direct recruitment in Delhi Development Authority (DDA). He was earlier working in U.P. State Industrial Development Corporation (UPSIDC). He had tendered his resignation on 9.12.1988 in (UPSIDC), which was accepted with

effect from 13.12.1988 and his relieving order was issued on 2.01.1989.

2. At the time of joining DDA, the applicant had given an undertaking that he will not claim any benefit whatsoever regarding his seniority, promotion or pay fixation etc. arising out of his UPSIDC service. However, vide his letter dated 4.02.2008, the applicant prayed for counting of past service for pensionary benefits as well as for protection and upgradation under Assured Career Progression Scheme (ACPS), in response to DDA's circular No.3 dated 28.01.2008 by which applications were invited from the employees who fulfilled the following conditions:

- (a) That they have applied through proper channel;
- (b) The technical resignation is submitted by the officers in their parent department and joined the new department in continuity of the technical resignation; and
- (c) That their parent department pays the Leave Salary & Pension Contribution (LSPC) to DDA.

3. The DDA sent a requisition to the UPSIDC to verify the service period of the applicant in UPSIDC i.e. from 3.01.1984 to 2.01.1989 and to send his service record. It was also requested that the amount of leave salary and pension contribution along with interest may also be remitted to DDA for the period as per rules. Since the reply was not forthcoming, on 16.09.2010, the

UPSIDC was again requested to furnish the following information:

- (a) Whether Sh. Harender Pal had retained lien and technically resigned from UPSIDC Ltd.;
- (b) Whether his GPC was transferred to DDA;
- (c) Whether UPSIDC Ltd. is a Central Government Department or is/ was covered under CCS (Pension) Rules.

4. The UPSIDC vide letter dated 11.03.2011 replied as follows:

- (a) Sh. Harender Pal resigned vide his resignation letter dated 1.05.1984 which was accepted vide office order dated 21.12.1988;
- (b) The technical resignation is submitted by the officers in their parent department and joined the new department in continuity of the technical resignation; and
- (c) That their parent department pays the LPSC to DDA.

5. The respondent-DDA, therefore, concluded that the applicant had not tendered his technical resignation but simply resigned from his post mentioning that due to certain circumstances he was not in a position to serve in the Corporation. Secondly, the UPSIDC is not a government department but an undertaking of the U.P. State Government and is not a pensionable establishment. The employees of UPSIDC are governed by different set of rules e.g. Contributory Employees Provident Fund Rules. Further, the amount of

Provident Fund of the applicant was also admittedly finally settled and paid to the applicant on 5.02.1991. Therefore, the respondents held that since the applicant did not satisfy the three conditions laid down in DDA's circular dated 28.01.2008, he was not entitled to the benefit of counting of past service for pension etc. In this regard, the exact language of DDA's circular dated 28.01.2008 is reproduced below:

"Competent Authority, is please to consider the representations of the JEs/AEs to grant benefit of counting of past service for pensionary benefits as well as for up-gradation under ACP Scheme to those Junior Engineers/ Assistant Engineers, who were earlier borne on pensionable establishment/ worked in Central Govt./ State Govt. Departments/ Autonomous bodies prior to joining the services of Delhi Development Authority and applied through proper channel in DDA subject to fulfillment of the following conditions:

- 1) That they have applied through proper channel;
- 2) The technical resignation is submitted by the officers in their parent department and joined the new department in continuity of the technical resignation; and
- 3) That their parent department pays the LPSC to DDA.

6. The applicant is aggrieved by the impugned order dated 24.03.2011 whereby the respondents have rejected the claim of the applicants on the following grounds:

- (a) That Shri Harendra Pal had tendered his resignation dated 1.05.1984 in UPSIDC Ltd. on

personal reasons and not technical resignation for taking up appointment in DDA;

- (b) That the amount of Provident Fund was finally settled and paid to Shri Harendra Pal directly on 5.02.1991; and
- (c) The UPSIDC is not a Central Government office and is an Undertaking under UP State Government. It is not a pensionable establishment and the employees in the Corporation are governed by different set of service rules e.g. Contributory Employees Provident Fund Rules.

7. Being aggrieved by this order, the applicant has filed the instant OA praying for the following reliefs:

- (i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 24.03.2011 (A/1) and consequently, pass an order directing the respondents to count the past service of the applicant w.e.f. 3.01.1984 to 2.01.1989 rendered in UP State Industrial Development Corporation Ltd., Kanpur for the purpose of pay fixation, ACP benefits, seniority and pensionary benefits etc. as per rules, with all consequential benefits;
- (ii) That the Hon'ble Tribunal may further graciously be pleased to pass an order directing the respondents to refix the pay of the applicant w.e.f. 3.01.1989 by protecting the pay of the applicant which was being

drawn by him in his previous department, with all consequential benefits including the difference of pay and allowances with arrears and interest.

8. The applicant relies on the judgment of the Hon'ble High Court in W.P. (C) No.1023/1990, **R.N. Dhawan Vs. DDA and others** dated 7.02.2006 where the petitioner was granted all the benefits of past service including pay protection.

9. The applicant states that he had filed OA 319/2010 and vide order dated 17.08.2010, the Tribunal directed the respondents to take a decision in the matter within three months. When the decision was not taken, Contempt Petition No.243/2011 in OA 319/2010 was filed and after the respondents passed the impugned order dated 24.03.2011, the Tribunal disposed of the said Contempt Petition. The applicant further argues that the respondents passed the impugned order dated 24.03.2011 totally on wrong facts as in the impugned order it has been projected that the resignation dated 1.05.1984 was accepted vide order dated 21.12.1988 and resignation dated 1.05.1984 was tendered on personal reasons and not technical resignation, which are totally wrong. It is submitted that the applicant was appointed in UPSIDC on 3.1.1984 and immediately thereafter, the applicant was also selected in ONGC, for which the applicant tendered his resignation but the same was not accepted by the UPSIDC. It is submitted that for joining in DDA, on 9.12.1988 the applicant submitted his technical resignation in the Department of UP State Industrial Development Corporation

Ltd., Kanpur and the same was accepted vide order dated 21.12.1988 w.e.f. 13.12.1988, but the applicant was finally relieved from the UP State Industrial Development Corporation Ltd. on 02.01.1989 and the applicant joined in DDA Department on the post of Assistant Engineer (Civil) on 2.01.1989, and therefore, it is totally wrong to say that applicant tendered his resignation on 1.5.84 on personal reasons and same has been accepted on 21.12.1988 and, therefore, the impugned order is totally illegal, arbitrary and based on wrong facts.

10. The respondents state that the reply of the UPSIDC makes it clear that this was not a technical resignation. Moreover, UPSIDC did not have a pensionable service. Thirdly, while joining DDA, the applicant had given an undertaking that he will not claim any benefit whatsoever regarding his seniority, promotion or pay fixation etc. The respondents further relied on the order of this Tribunal dated 8.08.2011 in OA 1262/2010, **Shri Ripu Daman Gupta Vs. Union of India and others**. In this case, the applicant who originally belonged to Faridabad Municipal Corporation, applied for the post of Junior Engineer (Civil) in DDA and was appointed as such on 18.08.1981 after he gave technical resignation. Here also the whole case was based on Circular No.3 dated 28.01.2008 and the OA was dismissed. Para 8 of the order reads as follows:

"8. Perusal of above shows applicant was not in a pensionable establishment so he does not fulfill the main condition of Circular dated 28.01.2008, therefore, naturally he cannot derive any benefit under the above circular. No other provision has been shown by the applicant on the basis of which

his past services can be counted in DDA, therefore, we find no merit in the case. The OA is accordingly dismissed. No costs.”

The respondents, therefore, state that in this case as well, since service in UPSIDC was not pensionable, the applicant does not satisfy the conditions stipulated in aforementioned Circular dated 28.01.2008.

11. Learned counsel for the respondents also drew our attention to clarificatory OM dated 18.07.2011 of the DoP&T, which pertains to ACPS, with specific reference to clarification No.43, which is quoted below:

43. Whether service rendered in an autonomous body/ statutory body/ State Government prior to appointment in Central Government as a direct recruit prior to appointment in the Central Government will be counted while computing regular service for the purpose of grant of financial upgradations under the ACP Scheme?	ACP Scheme is applicable to Central Government Civilian employees and for the purpose of financial upgradations under the ACP Scheme, only the regular service rendered after regular appointment in a Central Government civilian post is to be counted. Therefore, service rendered in an autonomous body/ statutory body/ State Government is not to be counted for the purpose. Correspondingly, promotions earned in these bodies prior to appointment in the Central Government are also to be ignored. The clarification in reply to point of doubt no.4 to 6 in DoP&T O.M. dated 10.2.2000 providing for counting of past service in another organization in the same grade is only in relation to past service in a civilian post held in the Central Government.
---	--

12. It is argued that when service rendered in an autonomous body/ statutory body/ State Government is not to be counted for the purpose of ACP and past service in another organization in the same grade is only in relation to past service in a civilian post held in the Central Government, there is no question of counting that for the purpose of pension in the instant case.

13. We have heard learned counsel for the parties and gone through the pleadings available on record.

14. The judgment of the Hon'ble High Court in R.N. Dhawan (supra) related to the case of Tracer in the Indian Railways. Later the petitioner therein moved to DDA on being appointed to the post of Junior Engineer after applying for the post through proper channel. Similar is the situation in OA 1732/2011 cited by the applicant in his written statement as in that case also the applicant moved from CPWD to DDA. Also, in OA No.3951/2013 cited by the applicant, the applicants were State Government employees. Moreover, the issue was about counting of State Service for ACP benefits. In OA 2747/2011 again the applicants were State Government employees. Therefore, the facts of these cases are not identical as in the instant case the applicant was not working in a government department but he was working in a Corporation namely UPSIDC. This case has to be strictly decided in terms of Circular dated 28.01.2008. Clearly the applicant's case is not covered by this Circular as his service in UPSIDC was not pensionable, which is a primary requirement in the said Circular. Secondly, he has already been paid the Provident Fund benefits. Lastly, he resigned on personal reasons and it was not technical resignation, for taking up appointment in DDA. Moreover, the order of this Tribunal in Ripu Daman Gupta (supra) is squarely applicable in this case.

15. The applicant in his written submissions has also argued that Ministry of Finance vide OM dated 9.10.1986 have

dispensed with LSPC between Central and State Governments. However, as the OM shows it is not applicable for Public Sector Undertakings but only Government to Government.

16. In view of above discussion, we find no merit in this OA and it is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/dkm/