

Central Administrative Tribunal
Principal Bench

OA No.2537/2014

Reserved on: 14.03.2017
Pronounced on:20.03.2017

Hon'ble Mrs. Jasmine Ahmed, Member (J)

Shri Umashankar Virat
S/o Shri Birkhe Ram, Aged 47 years
R/o A06, Vidyut Apartments,
Plot No.2, Sector 12, Dwarka,
New Delhi – 110 078.

...Applicant

(By Advocate: Shri S.K. Gupta)

Versus

1. Govt. Of NCT of Delhi and others
Through the Chief Secretary,
Govt. Of NCT of Delhi,
Delhi Secretariat, New Delhi.
2. The Chief Executive Officer,
Delhi Jal Board, Varunalaya Phase-II,
Karol Bagh, New Delhi-110005.
3. The Mamber (Financial)
Delhi Jal Board, Delhi Sarkar,
Varunalaya Phase-II, Karol Bagh,
New Delhi-110005.

...Respondents

(By Advocate: Sh. Rajeev Kumar)

O R D E R

By filing the instant Original Application under
Section 19 of the Administrative Tribunals Act, 1985, the
applicant has prayed for the following relief(s):-

- “(i) *Direct the Delhi Jal Board respondent to release the entire pensionary benefits amounting to Rs.16,74,059/- approximately with monthly pension of Rs.8157/- w.e.f. 05.03.2008 to the applicant for the qualifying*

service rendered by the applicant for the period from 21.01.1994 to 04.03.2008.

- (ii) Direct the Delhi Jal Board to pay interest @ 18% p.a. for the period of delay w.e.f. 05.09.2008 on the while amount of the pensionary benefits including the general provident funds;*
- (iii) Direct the Delhi Jal Board to release the monthly pension of Rs.8,157/- p.m. to the applicant for life.*
- (iv) Direct the respondents to protect and fix the pay of the applicant under FR 22 at Rs.6900/- as on 25.05.1999 for all purposes.*
- (v) Issue direction to respondent Delhi Jal Board to settle the counting of service on deputation beyond the period of five years in consultation with DOP&T; and*
- (vi) Pass such other order as may be deemed fit to this Hon'ble Tribunal."*

2. At the outset, learned counsel for the applicant submitted that he does not want to press relief no. (iv) with liberty to agitate the same in future. Accordingly, relief no.(iv) is deleted.

3. Brief factual matrix of the case is that the applicant was initially appointed to the post of Technical Assistant through UPSC in the Ministry of Science & Technology on 21.01.1994 and served there till 09.04.1997. On being selected to the post of Section Engineer in the Northern Railway through Railway Recruitment Board, Allahabad, the applicant submitted a technical resignation to the Ministry of Science & Technology on 09.04.1997, which was accepted on the same date, and the applicant joined

the new post of Section Engineer in Northern Railway on 10.04.1997. He served there upto 24.05.1999. Further, on being selected as Assistant Engineer through the Delhi Subordinate Services Selection Board [hereinafter referred to as DSSSB], the applicant again submitted a technical resignation vide notice dated 24.05.1999, which was accepted by the Northern Railway, where he was working. Consequent upon acceptance of resignation, the applicant joined Delhi Jal Board [hereinafter referred to as DJB] on 25.05.1999 as Assistant Engineer. The applicant was relieved on 11.09.2002 to join on deputation with Delhi Metro Railway Corporation [hereinafter referred to as DMRC] to the post of Assistant Engineer, where he joined on 12.09.2002 on deputation basis. He remained there from 12.09.2002 to 04.03.2008. His deputation period was extended from time to time by the competent authority in DJB since 12.09.2003 to 11.09.2009. Thereafter, the applicant applied for the post of Deputy General Manager/IRCON (a Central PSU) and his application was forwarded by DJB vide order dated 30/31.08.2006. It is the contention of the counsel for the applicant that the Assistant Commissioner (T), DJB asked the DRM/Delhi Northern Railway to pay prorated contribution of pension etc. in regard to applicant vide order dated 15/18.01.2008.

The applicant submitted his technical resignation on being selected to the post of DGM/ICRON, which was accepted by DJB vide order No.67 dated 21.02.2008. Counsel for the applicant drew my attention to page no.30 and stated that a sum of Rs.37,918/- was paid by the Northern Railway as pension contribution for the period from 21.01.1994 to 24.05.1999 through three cheques which were deposited in DJB Treasury on 01.11.2010 vide challan No.154. It is the contention of the counsel for the applicant that DJB has approved and counted his past service for pensionary purposes i.e. from 21.01.1994 to 09.04.1997 - the period he served with the Ministry of Science & Technology and also from 10.04.1997 to 24.05.1999 the period he served in the Northern Railways. Counsel for the applicant further stated that the applicant requested the Executive Engineer (Civil), DJB for payment of pensionary benefits on 01.04.2011 as IRCON does not have any pension scheme similar to CCS Pension Scheme. It is further contended that the applicant also deposited a sum of Rs.29.534/- on 13.03.2013 as he was asked informally by DJB that FSC amount was not paid. The applicant states that the amount was paid by him for getting expedited the process of sanction of his pensionary benefits. He also stated that

the amount was deposited by DJB in its treasury vide challan no.147 dated 19.03.2013.

4. Counsel for the applicant states that the applicant vide DJB letter dated 27.02.2014 has received only a sum of Rs.2,64,268/- on account of pension contribution, leave salary contribution out of the total approximate amount of Rs.16,74,059/- towards gratuity, commutation of pension, encashment of leave excluding provident fund etc. for the qualifying period of service of 14 years. He also contended that besides the monthly pension of the applicant of Rs.8157/- is also pending with the DJB. The DJB has further denied payment towards pensionary benefits which is causing hardship to the applicant. By not getting the pensionary benefits, as per the service rendered by him, he submitted a representation dated 01.04.2014 to the Chief Executive Officer, DJB seeking pensionary benefits, but the DJB has not responded to that which resulted in filing of the instant Original Application.

5. Counsel for the applicant in this regard tried to show that though the applicant has joined various departments but every time he applied through proper channel and joined one department to another with proper permission of the DJB. Counsel for the applicant further stated that even

there has not been a single day break in joining one department to another. Counsel for the applicant drew my attention to page 37, which is an Office Order No.67 dated 21.02.2008 written by the DJB, which reads as under:-

“Consequent upon the selection of Shri Uma Shankar Virat s/o Shri Birkhe Ram Virat, Assistant Engineer (Civil) (working on deputation with DMRC) as Dy. General Manager in IRCON International Limited, CEO vide his orders dated 18.02.08 has accepted technical resignation of Shri Uma Shankar Virat from the post of Assistant Engineer (Civil) with immediate effect subject to the following terms and conditions. Further, Shri Uma Shankar Virat is also allowed to retain lien initially for a period of one year on the post of Assistant Engineer (Civil):-

- 1. That nothing is due against him.*
- 2. That he shall be relieved by DMRC after clearing dues if any under intimation to the Delhi Jal Board.”*

6. Counsel for the applicant states that pursuant to the above letter, DMRC relieved the applicant vide Office Order No.DP/627/2008 dated 04.03.2008. At this juncture, the applicant's counsel states that as DMRC relieved the applicant pursuant to DJB letter dated 04.03.2008 for joining IRCON, the journey of the applicant with DJB ended on 04.03.2008. Hence, for all purposes, the services of the applicant shall be counted till 04.03.2008 with DJB, which comes to 14 years and the same entitles him for getting pension and pensionary benefits including the monthly pension.

7. Counsel for the applicant states that as the respondents have released only an a sum of Rs.2,64,268/- to the applicant, he, therefore, submitted a representation dated 01.04.2014 (Annexure A-18) stating therein that he has accepted the above amount under protest and requested for releasing all the pensionary benefits taking into account his 14 years qualified service w.e.f. 21.01.1994 to 04.03.2008 without any further delay.

8. Per contra, learned counsel for the respondents opposed the contention of the counsel for the applicant and stated that the applicant is not entitled to get any pensionary benefits over and above the amount already paid to him as the applicant has not retired but he resigned from service. Counsel for the respondents also stated that the length of qualifying service of the applicant with DJB is only from 25.05.1999 to 11.09.2012 i.e. 3 years 3 months and 16 days. Counsel for the respondents also stated that the pensionary benefits were calculated by the DJB and accordingly taking into account the total service rendered by the applicant, a sum of Rs.2,64,268/- has already been paid to him. He further submits that since the applicant did not meet the condition of qualifying service meant for pensionary benefits, his prayer cannot be granted by the

DJB and, therefore, the instant OA deserves to be dismissed.

9. Heard rival contentions of the parties and perused the pleadings and documents on record.

10. It is undisputed that whenever the applicant changed his place of work/duty having been gone on deputation, he has done that through proper channel and with proper permission of his parent department. It is also undisputed that there is not a single day break in joining one department or the other and, hence, the same amounts to be in continuity. It is also seen that the applicant has tendered technical resignation on every occasion, as and when he wishes to change the department, which has also been accepted by his parent department before his joining to borrowing department. It is also seen that though the applicant was allowed to join DMRC initially for a period of one year, which continued beyond that period and ultimately the applicant requested the DJB to accept his technical resignation to join ICRON, which was accepted by the DJB vide Office Order No.67 dated 21.02.2008 retaining the lien of the applicant for a period of one year, and the DMRC was requested to relieve the applicant. Pursuant to the above Office Order dated 21.02.2008

issued by the DJB, the DMRC relieved the applicant vide order dated 04.03.2008 to join IRCON. This clearly depicts and shows that the applicant for all purposes was an employee of DJB and on that count also the applicant has completed the qualifying service of more than 14 years from 21.01.1994 to 04.03.2008.

11. In this regard, counsel for the applicant drew my attention to Rule 26 of the CCS (Pension) Rules which speaks about forfeiture of service on resignation. Rule 26(2) of the Rules *ibid* reads as under:-

“26(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.”

Counsel for the applicant also states that Rule 26(8) of the Rules, which speaks about release of government servants for appointment in Central Public Enterprises, reads as under:-

“26 (8) Release of Government servants for appointment in Central Public Enterprises. - A Government servant who has been selected for a post in a Central Public Enterprise/Central Autonomous Body may be released only after obtaining and accepting his resignation from the Government service. Resignation from Government 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.”

12. Counsel for the applicant states that as the applicant has tendered technical resignation, which has admittedly been accepted by the DJB allowing him to join a PSU i.e. IRCON, he is wholly entitled and eligible to receive pension and pensionary benefits under Rule 26(8) of the Rules *ibid*. Counsel for the applicant also relied on Appendix-VII of CCS (Pension) Rules, Rule 4(i) whereof deals with pensionary benefits and categorically provides as under:-

“Pensionary benefits

4(i) Resignation from Government 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.”

13. In view of the above provisions, I am of the considered opinion that the contention of the counsel for the respondents to the effect that the applicant is not entitled for pension or pensionary benefits as he has tendered resignation does not hold good and the same is accordingly rejected.

14. In the facts and circumstances of the case, I find merit in the OA and the same is accordingly allowed. The

respondents are directed to re-calculate the pensionary benefits of the applicant including the admissible monthly pension by taking into account his entire service rendered from 21.01.1994 to 04.03.2008, which comes to more than 14 years qualifying service, and release the same to the applicant with arrears thereto, within a period of three months from the date of receipt of certified copy of this order. The respondents are further directed to pay interest @ 6% p.a. on the entire payment to be paid to the applicant within the aforesaid period of three months.

(Mrs. Jasmine Ahmed)
Member (J)

/AhujA/