

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-451/2017

Reserved on : 31.07.2018.

Pronounced on : 08.08.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. N.C. Goel, 64 years
S/o Mr. Damodar Dass,
R/o G-1106, Amarpali Sapphire,
Sector-45, Noida-201301.

Presently posted at:
Pusa Institute of Technology,
Pusa, New Delhi.

.... Applicant

(through Sh. Sourabh Ahuja, Advocate)

Versus

1. Govt. of NCT of Delhi through
Its Chief Secretary,
Delhi Sachivalaya,
I.P. Estate, New Delhi-2.
2. Principal Secretary/Secretary,
Department of Training & Technical Education,
GNCT of Delhi,
Muni Maya Ram Marg,
Pitam Pura, Delhi-88.
3. Deputy Director (E-I),
Department of Training & Technical Education,
GNCT of Delhi,
Muni Maya Ram Marg,
Pitam Pura, Delhi-88.
4. Director,
Directorate of Education,
Old Secretariat,
Delhi-110054.

5. Deputy Director of Education (North),
Directorate of Education,
GNCT of Delhi,
Lancers Road, Delhi-54.
 6. The Principal,
Pusa Institute of Technology,
Directorate of Training & Technical Education,
GNCT of Delhi,
Pusa, New Delhi.
- Respondents

(through Sh. Vijay Pandita, Advocate)

ORDER

The current O.A. has been filed seeking the following relief:-

- “(a) Direct the respondents (DTTE, GNCT of Delhi) to count the previous/past service (w.e.f. 20.11.1980 to 30.06.1998) of the Applicant rendered by him in Directorate of Education, GNCT of Delhi, for the purposes of pensionary benefits in terms extant instructions/Rule 26(2) of CCS (Pension) Rules, 1972 and accord all the consequential benefits arising therefrom. And
- (b) Award cost in favor of the Applicant and against the respondents. And/or
- (c) Pass any further order, which this Hon’ble Tribunal may deem fit, just equitable in the facts and circumstances of the case.”

2. The applicant was appointed to the post of Trained Graduate Teacher (TGT) (Science) on temporary basis in Directorate of Education, on 20.11.1980. After completing his probation period, he was confirmed on the said post on 20.11.1982. Thereafter, the applicant was appointed to the post of Post Graduate Teacher (PGT) (Physics) in 1987 and confirmed by the respondents w.e.f. 20.11.1982.

3. The applicant states that Union Public Service Commission vide their Advertisement No. 2/1997 notified the post of Lecturer (Physics) in Directorate of Training and Technical Education, GNCT of Delhi in the pay scale of Rs.2200-4000. The applicant applied for the said post through proper channel and cleared the selection process. He states that he was selected as Lecturer (Physics) in GNCT of Delhi on 03.06.1998.

4. The applicant further avers that after his appointment order, he submitted his technical resignation (orally) to the respondents (Directorate of Education), which was accepted by them and the applicant was relieved w.e.f. 30.06.1998 to take up his new assignments. The lien of the applicant was retained for a period of 02 years for the post of PGT (Physics) in Directorate of Education. He also did not claim any pensionary benefits from his previous employer i.e. Directorate of Education.

5. The respondents vide their letter dated 07.07.1998 allowed the applicant to join the post of Lecturer (Physics) w.e.f. 30.06.1998 at Guru Nanak Dev Polytechnic, Sector-15, Rohini, Delhi. Here too, the applicant was confirmed after completing his probation period on 30.06.2000. The lien period of the applicant with his earlier employer lapsed on 30.06.2000 and his request for extension of his lien was not acceded to. The applicant states that since his technical

resignation, relieving, protection of lien etc. had been complied with, therefore, necessary benefits like pay fixation and counting of past service w.e.f. 20.11.1980 to 30.06.1998 ought to have been granted to him as per Rule-26(2) of CCS (Pension) Rules, 1972.

6. The applicant was informed by the respondents (Directorate of Education) that he had to submit his technical resignation in writing again. The applicant stated that his technical resignation (oral) had already been accepted. He was informed that it was mere formality and that he will get benefits of his past service for the purpose of pension and pay fixation in the new organization after submission of his technical resignation. Acting on these assurances, the applicant submitted his technical resignation on 30.06.2000, which was rejected by Directorate of Education on 08.06.2001. The applicant again submitted a representation requesting them to accept his technical resignation w.e.f. 30.06.1998 and to make a suitable entry in his service book for the purpose of counting of his past service in terms of CCS (Pension) Rules, 1972. There was no communication from Directorate of Education, which he inferred to mean that his technical resignation had been accepted by the Competent Authority w.e.f. 30.06.1998.

7. Since the applicant was to superannuate on 31.07.2017, he represented to respondent No.6 to send his service-book to

Directorate of Training and Technical Education (DTTE) Headquarters for counting of his past service for pensionary benefits under Rule-26(2) of CCS (Pension) Rules, 1972. The respondents (DTTE, GNCT of Dehi) desired that the duly accepted technical resignation by the competent authority qua the applicant be provided to them. It was made clear that if he is not able to procure the document, his past service shall not be counted for the purpose of pensionary benefits. Through an application filed under Right to Information Act, the applicant was informed on 09.05.2016 that record prior to 2005 has already been weeded out. The applicant made another representation dated 20.06.2016 to Deputy Director of Education (North), Directorate of Education asking for the same information. However, he was again informed that the records have been destroyed and nothing can be provided to him.

8. Thereafter, the applicant approached DTTE, GNCTD of Delhi and apprised them of the position and requested them to count his past service for the purpose of pensionary benefits since destruction of record, by way of weeding out etc. was not the fault of the applicant.

8.1 Inaction on part of the respondents made him file an OA-3215/2016 before the Principal Bench, Central Administrative Tribunal. The same was disposed of on 22.09.2016 directing the

respondent No.5 (Deputy Director of Education) i.e. his erstwhile employer) to consider the representation of the applicant and to pass a speaking and reasoned order. It was pointed out by the applicant by way of RA-262/2016 in OA-3215/2016 that the past service for the purpose of pensionary benefits has to be added by his present employer (DTTE) and not the earlier employer i.e. Directorate of Education. However, the Tribunal dismissed the review application on 28.11.2016 giving him liberty to make a fresh representation to the competent/correct authority. In view of the aforesaid order, the applicant preferred a representation to Principal Secretary, DTTE, GNCT of Delhi on 01.12.2016 apprising them of the entire situation, which it is averred, is still pending, hence the current OA has been filed.

9. In their counter, the respondents submit that the application is barred by limitation. They state that though the applicant joined the DTTE on 30.06.1998 but he filed his representation as late as 24.06.2016 i.e. after a lapse of 14 years and filed the O.A. only on 30.01.2017. The respondents have relied upon the decisions of Hon'ble Supreme Court in the case of **State of Punjab Vs. Gurdev Singh**, (1991) 4 SCC page 1, **UOI Vs. Ratan Chandra Samanta**, JT 1993(3)SC page 418, **Harish Uppal Vs. UOI**, JT 1994(3) page 126, **Ajay Walia Vs. State of Haryana & Ors.**, JT 1997(6)SC 592, **UOI Vs. M.K.**

Sarkar, (2010)2 SCC 59 and **D.C.S. Negi Vs. UOI & Ors.** praying for dismissal of the OA on grounds of delay and latches.

10. The respondents contend that the request of the applicant for counting of his past service after 16 years of service in the respondent department is full of deficiencies. They aver that when a government servant applies for a post in the same or another department, through proper channel, they are required to resign. There is no provision for tendering an **oral** resignation and the applicant has not provided any documentary proof to show that he submitted his technical resignation. In the absence of the said documents, it has to be logically inferred that the applicant never tendered his resignation as per rules/law.

11. During the course of hearing, the learned counsel for the applicant Sh. Sourabh Ahuja took the Bench through the facts of the case already available in the OA. He vociferously argued that the applicant is being harassed and denied his genuine claim and that if the respondents have weeded out the record pertaining to the relevant period (when the applicant worked with Directorate of Education), it is not his fault. He tried to reinforce the point that the technical resignation had been submitted by the applicant at the time of his entry into service with the new employer i.e. Directorate of Training and Technical Education.

12. The learned counsel for the respondents Sh. Vijay Pandita submitted that the O.A. needs to be dismissed both on merit and also because it is hit by delay and latches. He stated that the applicant himself has accepted that he had only tendered an **oral** resignation leaving no room for any ambiguity, hence the benefit of counting past service for the purpose of pensionary benefits cannot be granted to him.

13. I have gone through the facts of the case carefully and considered the rival submissions made by both sides. The applicant has relied upon the two judgments, namely, of the Hon'ble Supreme Court in the case of **UOI & Ors. Vs. Tarsem Singh**, 2008(6)SLR 440 of PB, CAT in the case of **N.C. Arora Vs. GNCTD & Ors.**, (OA-3858/2012) dated 30.10.2013. In my view, both the judgments are distinct from the facts of the present case and do not help the case of the applicant.

14. It is not disputed that a government employee is entitled to get his previous service counted for the purpose of pensionary benefits in terms of Rule-26(2) of CCS (Pension) Rules, 1972. However, there are specific guidelines, which have to be adhered to for this purpose. In O.M. No. 28020/1/2010-Estt.(C) dated 17.08.2016 issued by Ministry of Personnel, Public Grievance and Pensions (on technical resignation and lien), it is mentioned in para 2.1.2 that:-

"2.1.2 This benefit is also admissible to Government servants who have applied before joining the Government service and on that account the application was not routed through proper channel. The benefit of past service is allowed in such cases subject to the fulfillment of the following conditions:

(i) the Government servant should intimate the details of such application immediately on their joining;

(ii) the Government servant at the time of resignation should specifically make a request, indicating that he is resigning to take up another appointment under the Government for which he applied before joining the Government service;

(iii) the authority accepting the resignation should satisfy itself that had the employee been in service on the date of application for the post mentioned by the employee, his application would have been forwarded through proper channel."

However for the employee to earn the benefit of his past service, it is essential that a technical resignation from the earlier employer should be available with his current employer to process his case for grant of counting of his past service, for the purpose of pensionary benefits etc. It is not understood as to why the applicant chose to sleep over this requirement for nearly two decades.

15. It was pointed out by the learned counsel for the respondents Sh. Vijay Pandita that as per CCS (Pension) Rules, 1972, there is no provision for tendering technical resignation **orally** and that the applicant must provide proof to show that he had tendered the technical resignation by way of an application etc. There is no documentary proof whatsoever that this technical resignation was tendered, nor has it been found in his service record.

16. In view of the applicant's inability to show/prove that he actually submitted his technical resignation, which was duly received and accepted by the respondents, the relief claimed for by him cannot be granted. The O.A. is dismissed as being devoid of merit. No costs.

(Praveen Mahajan)
Member (A)

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