

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****CIRCUIT BENCH AT JAMMU****OA No. 061/00029/2016****Pronounced on : 04.05.2018****Reserved on : 20.04.2018****CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

Shuban Lal Bhan age 63 years
S/o Shri Nand Lal Bhan
R/o H. No. 84/2A Shantipuram Muthi, Jammu

.....Applicant

BY ADVOCATE: None for the applicant**VERSUS**

1. Union of India through Comptroller and Auditor General of India, 9-Deendayal Upadhyay Marg, New Delhi.
2. Accountant General (A&E), J&K Srinagar Kashmir.
3. Vice Chancellor, Central University of Kashmir, Transit Campus, Sonawar near G.B. Panth Hospital, Jammu & Kashmir, Srinagar.

.....Respondents

BY ADVOCATE: Mr. Harshwardhan Gupta for respdts.**No. 1 &2****None for respdt. No. 3****ORDER****BY MRS. P. GOPINATH, MEMBER(A):-**

1. Applicant was working as Deputy Accountant General in the office of the Accountant General (A&E), J&K at Srinagar. Applicant was drawing Rs. 32,150/- in Pay Band

III of Rs. 15600-39100 with Grade Pay of Rs. 6600. While so working, the Central University of Kashmir requested the Accountant General to nominate a suitable officer in PB III with Grade Pay of Rs. 5400 for the post of Internal Audit Officer in PB III with Grade Pay of Rs. 7600. Applicant was sent on deputation to the Central University of Kashmir. Applicant attained the age of superannuation on 30.06.2012 while working in the University.

2. Applicant submits that his pension was to be processed treating him on deputation to the Central University of Kashmir which is managed and controlled by the Central Government. However, respondents are treating the service rendered by the petitioner in the University as Foreign Service. Prayer of the applicant is to quash the orders issued by the respondent No. 1 by which the pension of the applicant has been fixed in terms of Note 7 under Rule 33 of CCS (Pension) Rules, 1972, treating the deputation to the Central University of Kashmir as Foreign Service. Applicant also prays for treating his service in the Central University of Kashmir as deputation and fix pension accordingly.

3. Respondents No. 1 & 2 in the reply statement submit that the applicant proceeded on deputation on 31.05.2012 to Central University of Kashmir which is an autonomous body. Deputation to the Central University of Kashmir is termed as deputation on Foreign Service. The applicant attained the age of superannuation on 30.06.2012. The pensionary benefits to the applicant were authorized on the pay which he would have drawn in the answering

respondent office had he not proceeded on Foreign Service to the Central University of Kashmir. This was done as per Note 7 under Rule 33 of CCS (Pension) Rules, 1972, which is reproduced as below:-

“Pay drawn by a Government servant while on Foreign Service shall not be treated as emoluments, but the pay which he would have drawn under the Government had he not been on foreign service shall alone be treated as emoluments.”

4. The respondents aggressively argue that there is a clear distinction between serving on deputation and serving on Foreign Service. The Central University of Kashmir, being an autonomous body, persons deputed to work there are deputed on Foreign Service as the University is not empanelled by the Government of India for Central deputation.

5. The respondents also argue that the applicant retired in 2012 and his pension was fixed immediately and the applicant has slept over the matter for the last more than three years and is now agitating his cause. The applicant would argue that there is a continuous cause of action in the case of pension matters and hence law of limitation would not apply.

6. The respondents contest the argument of the applicant that the salary and other expenses of the Central University of Kashmir are met out of the Consolidated Fund of India. The respondent submits that as per Receipt and Payment Account of Central University of Kashmir (Annexure R-6), the University receives part funding from UGC grant and the University also generates indirect income from academic receipts, miscellaneous income,

deposits etc. Hence, the University is not fully funded by the Government of India. The University is a Government aided autonomous body.

7. The respondents produce Annexure R-7 which is an Employment Notification for appointment to the post of Internal Audit Officer which the applicant had applied for. In the conditions for appointment at Sr. No. 1, it is stated as follows:-

“The maximum age for appointment on deputation on Foreign Service basis shall be 56 years as on the last date of application.”

Hence, the applicant who had applied for the post on the basis of above notification, was well aware of this condition in the Employment Notification that the post would be treated as on deputation on Foreign Service. Having served in the organization i.e. Central University of Kashmir on above quoted condition, the applicant cannot now quote Note 7 under Rule 33 of CCS (Pension) Rules, 1972 which was not cited in the Employment Notice and argue that his pension has been fixed not according to the said rules, but incorrectly as if he was on Foreign Service.

8. Foreign Service in Service Law is defined under Instruction No. 7 below FR 9 means a service in which a Government Servant receives his pay, with the sanction of the Government from any source other than the Consolidated Fund of India. Foreign Service is also defined as the service rendered with the sanction of the Government under a non-Government employer. Applicant has produced no evidence that the Central University of Kashmir is a

Central Government employer, to which organization employees of Central Government are taken on deputation. On the other hand, as per para 4(f) of the OA, the applicant fulfils the conditions of Foreign Service, i.e. the University is not funded out of the Consolidated Fund of India, but by UGC and other fee income, and the University is not empanelled for deputation under the Central Deputation scheme of the Government of India, Department of Personnel & Training. Whereas Employment Notification dated 27.04.2015 treats the service of the applicant as Deputation on Foreign Service, applicant would lay emphasis on deputation and not on the words “deputation on Foreign Service” mentioned therein.

9. The respondent University submits that it is a Central Government autonomous body working under the administrative control of the Ministry of HRD. The University is funded by the HRD through the UGC. Thus, there is no direct funding of the University by the Government of India and the University gets its grant from the UGC a nodal authority to fund selected Universities. The University also makes a reference to the communication dated 30.03.2012 wherein they had requested the C&AG to spare the services of the applicant on deputation basis for a period of six months or till date he superannuates whichever is earlier.

10. The applicant has served in a difficult area of the country, Srinagar. The University is rendering yeoman service in providing education in the valley. Whereas it is admitted that the Employment Notification stated that the employment will be on deputation on

Foreign Service, it appears that the University has cleverly worded the Notification so as to include “deputation” which would not only attract persons for the job and also serve the purpose of audit work of the University. This may have been done to attract competent persons to execute the work of Audit of the University. In view of the special circumstances of the location of the University and the need to make education as instrument to foster peace, the applicant’s appointment be treated as deputation to a Central University and his pension be fixed accordingly. This order will not be cited as a precedent to be quoted in other cases.

11. With the above directions, OA is allowed. No costs.



(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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