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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No.748 of 2013

Reserved on : 11.11.2016
Pronounced on: 17.11.2016

Present:

The Hon'ble Mr. Justice V.C.Gupta, Judicial Member
The Hon'ble Ms. Jaya Das Gupta, Administrative Member

.....
TAPAN KUMAR MANDAL, Son of Late Rasamay Mandal, Aged about 61 years, by faith Hindu, by occupation retired service holder (IAS VR on 18.04.2011), earlier working as Principal Secretary, Government of NCT of Delhi, Residing at P.O. Taibichara, District: Nadia, West Bengal, PIN-741 126.
.....Applicant

-VERSUS-

1. THE UNION OF INDIA, Service through the Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi-110 001.
2. The Secretary, Department of Personnel & Training, Government of India, North Block, New Delhi-110 001.
3. The Chief Secretary, Government of NCT of Delhi, Delhi Secretariat, 5th Floor, A Wing, IP Estate, New Delhi-100 002.
4. The Principal Secretary, Social Welfare and Women & Child Development, Government of NCT of Delhi, GLNS Complex, near Feroz Shah Kotla Delhi Gate, New Delhi-100 002.
5. The Special Secretary (Services), Services-I Branch, Services Department Government of NCT of Delhi, Delhi Secretariat, 7th Level, IP Estate, New Delhi-100002.
6. The Director, Department of Social Welfare, Government of NCT of Delhi, GLNS Complex, near Feroz Shah Kotla Delhi Gate, New Delhi-100 002.
7. The Director (Services), Ministry of Home Affairs, Government of India, North Block, New Dehli-110 001.

.....Respondents

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Counsel for the Applicant :Mr. S.Samanta,
Ms.M.Roy
Advocate

Counsel for the Respondents: Mrs.R.Bose
Mr.M.K.Ghara
Advocate

ORDER

MS JAYA DAS GUPTA, AM:

The Applicant, Shri Tapan Kumar Mandal, has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"(a) An order be passed setting aside the impugned order dated 10/11.07.2013 in file No. 14023/28/1999, UTS-I being Annexure "A-8" hereto as well as the earlier order No. 10 (71)/2011-DSW/Estt/24701 dated 14.03.2013 being Annexure "A-2"hereto;

(b) Injunction do issue restraining the respondents authorities from acting in any manner or any further manner on the basis of the impugned order dated 10/11.07.2013 in File No. 14023/28/1999.UTS-I being Annexure "A-8"hereto as well as the earlier order No. 10 (71)/2011-DSW/Estt./24701 dated 14.03.2013 being Annexure "A-2"hereto;

(c) Direction do issue upon the respondent authorities directing them to release the pensionary benefits of the applicant in accordance with the PPO dated 10.08.2011 being part of Annexure "A-1"hereto ad further commanding them to act and proceed strictly in accordance with law;

(d) An order be passed declaring the communication under No. 14023/28/1999. UTS-I dated 26.04.2013 being part of Annexure "A-6"hereto as void ab initio and non est in the eye of law and not liable to be acted upon by quashing and setting aside the said communication;

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(e) Injunction do issue restraining the respondent authorities from acting in any manner or any further manner on the basis of the impugned communication under No. 14023/28/1999, UTS-I dated 26.04.2013 being part of Annexure "A-6" hereto;

(f) A direction do issue upon the respondents to produce and/or cause to be produced the entire records relating to the case and upon such production being made to render conscientious justice by passing necessary orders;

(g) Cost and costs incidental hereto;

(h) And/or to pass such other or further order or orders as to your Lordships may seem fit and proper."

2. The gist of the case, as per the submission of the Applicant, is that he is an IAS Officer of 1985 batch belonging to Union Territory Cadre. When he was posted in Guhawati he opted for deputation as General Manager, Handicrafts & Handlooms Exports Corporation of India Ltd, New Delhi under the Ministry of Textiles on Central deputation basis from 15.11.1999 to 29.10.2001. While he was holding this post on central deputation basis, he was selected for Civilian Component of United Nations Mission in Kosovo (Yugoslavia) and was granted permission by the Government of India for six months only for his assignment to United Nation. He joined there on 29.01.2000. After completion of first six months, he applied for leave to the Handicrafts and Handlooms Exports Corporation of India Ltd., New Delhi for a further period of six months. However, he was not intimated anything on the said leave

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application. Therefore, he continued with the United Nations Mission on the understanding and impression that under the DOP&T instructions (Consolidated Instructions on Foreign Assignment of Indian Experts) dated June 20, 1991, one can continue on foreign assignment with the United Nations for a maximum period of five years in the first 25 years of his/her service.

He filed a representation on or about September 28, 2005 to the Establishment Officer, DOP&T, Government of India for regularization of the period of foreign assignment or allowing him to resign from the IAS. It is alleged that he made some more representation but till December, 2007 he was not communicated anything on the said representations.

He eventually joined back the service on 24.12.2007 terminating his contract with the United Nations. Thereafter, he had applied for voluntary retirement which was accepted by the Government and consequently, he retired from service voluntarily w.e.f. 18.04.2011.

It has been stated that he made pension contribution for the period from 29.1.2000 to 31.12.2002 which was received in the Government Account.

It is his submission that he received a communication on or about 31.03.2013 from the Deputy Director (Admn.I), Department of Social Welfare, Government of National Capital Territory of Delhi

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addressed to the Pay & Accounts Officer, Government of NCT of Delhi whereby and where under he came to know that there had been a purported direction by the Ministry of Home Affairs, Government of India to revise the pensionary benefits of the applicant, as the period from 28.07.2000 to 23.12.2007 was "unapproved period of service" and accordingly, direction was issued in the said letter to recover an amount of Rs. 6,61,899/- from the Commuted value of pension and Rs.40,411/- from the DCRG of the Applicant.

It is his contention that his original PPO dated 10.08.2011 would show that his period of net qualifying service is 20 year, 02 months 9 days and there was no ground to decrease the period of his qualifying service.

Accordingly, he had approached this Bench in OA No. 202 of 2013 which was disposed of on 02.04.2013 with direction to the applicant to represent against the order dated 14.03.2013 proposing revision and recovery, before the appropriate authority within two weeks and the authority was directed to dispose of the representation by a reasoned and speaking order within three months and till such time no effect was to be given to the order dated 14.03.2013 and the applicant shall be entitled to receive his due payments in accordance with law. The Respondents, as per direction of this Tribunal considered and rejected the representation of the

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Applicant. Upon such rejection, the applicant has approached this Bench in the present OA for redressal of his grievance.

3. Per contra, it is the contention of the Respondents that such revision of the qualifying service for pension has been made as per the direction of the ACC (Cabinet Committee on Appointments) and there is absolutely nothing wrong for such revision of his pension based on the reduced period of qualifying service. Hence the Respondents have prayed that this OA lacks merit and the same should be dismissed.

4. Heard both. Consulted the records.

5. The main contention of the applicant, in this OA, is whether revision of his qualifying service for pension is as per Rules. The initial PPO dated 10.08.2011 issued to the Applicant, was as per his statement on the net qualifying service of 20 year, 02 months 9 days. This qualifying service accordingly was arrived in the following manner:

1	Gross service	25 years, 05 months 11 days
2	Less non verified	05 years 03 months 02 days
3	Net qualifying service	20 years 02 months 09 days

Annexure-R/2 which is extracted below would show that this figure was arrived at on an undertaking given by the Applicant himself by the Govt. of NCT of Delhi that his net qualifying service is 20 years 02 months 09 days. The order at Annexure-R/2 is a communication dated 23.03.2011 from Shri Kailash Chandra, Spl.

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Secretary (Services) to Shri Baldev Raj, Under Secretary (UTS.I),
 Govt. of India, Ministry of Home Affairs, New Delhi. The letter dated
 23.03.2011 is extracted below:

"No.F.8/23/2010/S.I./1623

23/03/2011

To
 Shri Baldev Raj
 Under Secretary (UTS.I)
 Govt. of India,
 Ministry of Home Affairs,
 North Block, New Delhi.

Sub: Application for pre-mature retirement from
 service in respect of Shri Tapan Mandal, IAS (AGMU:85).

Sir,

Please refer to Ministry's letter no.14046/7/2011-UTS.I dated 23rd February, 2011 on the subject noted above and find enclosed the following documents in respect of Shri Tapan Mandal, IAS for processing his voluntary retirement case:

- (i) Vigilance Clearance issued by Directorate of Vigilance of this Government vide letter No.F.99/IAS/2011/DOV/2060/452 dated 18.03.2011.
- (ii) Certificate of verification of service in Form 24 (Rule - 32) furnished by Social Welfare Deptt. Of this Government vide letter No. F.10(71)/2011/DSW/Estt./ Per.File/28711 dated 21.3.2011 alongwith photocopy of relevant pages of the Service Card/Service-Book of the officer as well as undertaking by Shri Mandal regarding the period pertaining to UN Assignment from 29.1.2000 to 31.12.2002 to be counted as qualifying service and period from 1.1.2003 to 17.12.2007 not to be counted as qualifying service.
- (iii) No-dues certificate issued by the Social Welfare Deptt. Of this Government vide letter No. F.10(71)/2011/DSW/Estt./Per.File/26491 dated 21st February, 2011.



Besides, please find enclosed letter No. 79-452/2008-PW dated 9.3.2011 of the Assistant Secretary (Perl.), Andaman & Nicobar Administration furnishing the service verification certificate for the period 27.12.2007 to 11.10.2010 and No Dues Certificate in respect of Shri Mandal. Further, service for the period 15.11.1999 to 28.1.2000 in respect of the officer has also been verified by Handicrafts & Handlooms Exports Corporation of India Ltd. Vide letter No. HHEC/CO/P&A/2010-11 dated 14.3.2011 (copy enclosed).

The above documents in respect of Shri Mandal to process his voluntary retirement case are being forwarded with the approval of the Chief Secretary.

This is for information and further necessary action.

Yours faithfully,

Sd/-
(KAILASH CHANDRA)
SPL. SECRETARY (SERVICES)"

The above communication shows that an undertaking has been given by Shri Mandal, the applicant himself regarding the period pertaining to UN assignment from 29.01.2000 to 31.12.2002 to be counted as qualifying service and the period from 01.01.2003 to 17.12.2007 not to be counted as qualifying service.

6. We fail to understand on what basis the applicant has given such undertaking, unilaterally, as it is very clear from the pleadings and that he received no extension of UN assignment beyond the first six months which came to an end on 28.07.2000. Being a senior officer of superior service, the applicant should not have made averments as under, in this application:

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"4 (A)(f)However, your applicant was not intimated anything on the said leave application of your applicant and continued with the United Nations Mission on the understanding and permission that under the DOP&T Instructions (Consolidated Instructions on Foreign Assignment of Indian Experts, in short CIFA dated June 20, 1991 one can continue on foreign assignment with the United nations for a maximum period of five years in the first 25 years of his/her service."

Even if we agree this his averment that there is DOP&T instruction to the above extent, why he did not revert back to Government of India after five years?. He came back only on and around 24.12.2007, having joined his UN assignment on 29.01.2000. However, no extension of his stay at UN was ever accorded as per the DOP&T order. He also unilaterally cannot claim that since he made pension contribution from 29.1.2000 to 31.12.2002 such service should be counted as qualifying service. Such contribution was made on his own volition as his approved stay remained restricted from 29.1.2000 to 28.07.2000.

Based on his undertaking PPO was issued counting his service from 29.01.2000 to 31.12.2002, as detailed below, as qualifying service towards pension which was reflected in the initial unrevised PPO dated 10.08.2011.

1	Gross service	25 years 05 months 11 days
2	Less non verified	05 years 03 months 02 days
3	Net qualifying service	20 years 02 months 09 days

7. However, in Annexure-R/1 dated 30th October, 2009 which is an Office Memorandum issued by the Under Secretary to

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Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, New Delhi to the Under Secretary, UTS - Desk, Ministry of Home Affairs, North Block, New Delhi will state why his period of qualifying service was reduced from what he stated in his undertaking:

"No. 12/62/2005-FA(UN)
Government of India
Ministry of Personnel, Public Grievances & Pension
Department of Personnel & Training

North Block, New Delhi, the 30th October, 2009

OFFICE MEMORANDUM

Subject:- Deputation of Sh. T.K. Mandal, IAS(AGMUT:85) on foreign assignment as Civil Affairs Officer with the UN Mission in Kosovo (UNMIK)-reg.

The undersigned is directed to refer to the Ministry of Home Affairs O.M. no. 14020/1/2001-UTS.I, dated 14-07-2008 on the subject cited above and to say that as per DOP&T records, Sh. T.K. Mandal, IAS (AGMUT:85) had overstayed on his deputation with the UN Mission in Kosovo(UNMIK) from 28-07-2000 to 23-12-2007, without approval of the Competent Authority.

2. The Appointments Committee of the Cabinet (ACC) has considered the issue regarding overstaying of officers on deputation to the UNMIK and has directed that the period of overstaying will be treated as unapproved. The ACC has further directed that where the officers reported back within three months of direction to report back, no further action to be taken, but in cases where the officers overstayed beyond this limit, appropriate proceedings be drawn up. As per DOP&T records Sh. T.K. Mandal was asked to report back from deputation to the UNMIK on completion of his approved tenure up to 27-07-2000 vide DOPT letter no. 30/1/2000-FAS/Vol.IV, dated 18-10-2004 (copy enclosed).

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3. It is, therefore, requested to take necessary action in the matter as per the directions of the ACC and furnish an Action Taken Report (ATR) to this Department.

(G. Srinivasan)
Under Secretary to the Government of India"

Accordingly, the Respondents had furnished the qualifying service as follows:

"CALCULATION OF TOTAL QUALIFYING SERVICE AS PER VERIFICATION CHART

GROSS QUALIFYING SERVICE				YEAR	MONTH	DAYS	
W.E.F. 20.9.1985 TO 17.4.2011				25	06	28	
LESS SERVICE NOT VERIFIED/ APPROVED							
Sr. No.	From	To	TOTAL PERIOD				
			Year	Month	Days		
2.	15.8.1987	1.9.1987	0	0	18		
4.	20.5.1992	3.6.1992	0	0	15		
5.	4.6.1992	30.6.1992	0	0	27		
11.	1.10.1996	23.10.1996	0	0	23		
12.	24.10.1996	30.10.1996	0	0	07		
17.	6.11.1999	14.11.1999	0	0	09		
20.	28.7.2000	23.12.2007	7 (4)	4 (11)	27 (23)		
Total			7 (4)	4 (11)	126 (122)		
ORSAY			7	8	09		
TOTAL QUALIFYING SERVICE				07	08	06	
				17	10	22	

8. We also find from the above OM dated 30.10.2009 that direction was issued to draw up appropriate disciplinary proceedings against the Applicant but it is his good fortune that such proceedings were not drawn up presumably because he had already voluntarily retired. Therefore, we find no reason to interfere with the impugned order which is quoted herein below:

"F.No.14023/28/1999.UTS-I
Government of India,

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Ministry of Home Affairs

North Block, New Delhi-01
Dated: 10th/11th July, 2013

ORDER

WHEREAS Shri. Tapan Kumar Mandal, Retd. IAS (AGMU:85) proceeded on foreign assignment to UNMIK for a period of six months w.e.f. 28.01.2000 while he was on Central deputation with the Ministry of Textiles and his approved tenure on foreign assignment expired on 27.07.2000.

2. AND WHEREAS this Ministry vide letter dated 10.08.2005 informed Shri Tapan Kumar Mandal that Govt. of India has not approved his continuation in foreign assignment beyond 27.07.2000 and directed Shri Mandal to report back to the cadre. Shri Mandal joined back in the cadre only on 24.12.2007.

3. AND WHEREAS DoP&T vide their O.M. dated 30.10.2009 informed this Ministry that as per DoP&T records, Shri Mandal had overstayed on this deputation with UNMIK from 28.07.2000 to 23.12.2007 without approval of the Competent Authority. Appointments Committee of the Cabinet (ACC) has considered the issue regarding overstaying of officers on deputation to the UNMIK and has directed that the period of overstaying will be treated as unapproved. The ACC has further directed that where the officers reported back within three months of directions to report back, no further action to be taken, but in cases where the officers overstayed beyond this limit, appropriate proceedings be drawn up. As per DoP&T records Shri T.K. Mandal was asked to report back from deputation to the UNMIK on completion of his approved tenure up to 27.07.2000 vide DoP&T letter dated 18.10.2004 and this Ministry's direction to Shri Mandal vide letter dated 10.08.2005.

4. AND WHEREAS Shri Mandal did not revert to the cadre within three months of the direction, hence his period from 28.07.2000 to 23.12.2007 has been treated as unapproved.

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5. AND WHEREAS after taking Vigilance clearance, no-dues certificate and Service verification certificate after deducting the unapproved service period from 1.1.2003 to 17.12.2007 from GNCTD, Shri Tapan Kumar Mandal has taken voluntary retirement from service w.e.f. 18.4.2011 (AN).

6. AND WHEREAS since the Appointment Committee of the Cabinet (ACC) has decided the period of his overstay from 28.07.2000 to 23.12.2007 with UN Mission in Kosovo as unapproved period, this Ministry vide letter dated 30.12.2011 directed GNCTD to take necessary action such as revision in pensionary benefits, taking into account the period from 28.7.2000 to 23.12.2007 as unapproved period of service.

7. AND WHEREAS in the meantime, representations dated 12.03.2013, 25.04.2013 and 17.05.2013 received from Shri Tapan Kumar Mandal in connection with his overstaying on foreign assignment to UN Mission in Kosovo (UNMIK) for the period from 28.7.2000 to 23.12.2007.

8. AND WHEREAS Shri Mandal has stated in the representation that he came to know that MHA intends to revise his pension. He has requested to give attention to the following points before arriving at any decision in this respect:-

(i) He obtained due permission and joined UNMIK on 29.01.2000, initially for six months. While processing to UNMIK, he was on Central deputation with the Ministry of Textiles.

(ii) After completion of the first six months, he applied for leave to Ministry of Textiles but not intimated anything on his application and continued with UNMIK with the impression that one can continue on foreign assignment with the UN for a maximum period of 5 years.

(iii) He sent a representation to DoP&T on 28.09.2005 for regularization of the period of foreign assignment or allowing to resign from service. However, he was never intimated anything and also not called back thereafter to join back in service.

(iv) On 13.06.2007, he gave a letter to this Ministry indicating his intention to join back in the

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cadre. Even by December 2007 there was no decision on the letter.

(v) He joined back on 24.12.2007 terminating his contract with UN that was upto 30.06.2008.

(vi) He applied for VRS which was approved w.e.f. 18.04.2011.

(vii) His pension was fixed on 10.08.2011.

(viii) Till the date of fixing his pension and even till today, he has not received any information as regards to his foreign deputation or the present contention of reversion of pension.

9. AND WHEREAS in the representation, Shri Mandal has requested to review the standpoint of MHA and not to revise the pension in any manner.

10. AND WHEREAS this Ministry had elaborately examined and considered his view points for not reviewing the pension but did not find any merit as Shri Tapan Kumar Mandal himself has admitted in para 8(ii) that he was under impression that he could continue with UNMIK for a maximum period of five years but he entered in to agreement with UNMIK for a period upto 30.06.2008.

11. AND WHEREAS Shri Mandal was allowed for foreign assignment with UNIMIK for a period of 6 months only w.e.f. 28.01.2000 to 27.07.2000 and thereafter he was not allowed to continue and therefore he was bound to join back in the cadre.

12. NOW THEREFORE the representations of Shri Tapan Kumar Mandal dated 12th March 2013, 25th April, 2013 and 17th May 2013 are rejected with the approval of Hon'ble Union Home Minister as period of service from 28.07.2000 to 23.12.2007 is unapproved.

Sd/-
(S.K. Jain)
Director (Services)
Ph. 23092436"

9. As the original PPO dated 10.08.2011 which was issued on the basis of the undertaking furnished by the applicant and the order of recovery is of March, 2013 i.e. within a period of less than

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five years, we do not find any reason to interfere with the order of recovery.

10. The OA lacks merit. Hence this OA stands dismissed.

There is no order as to costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C.Gupta)
Member (Judl.)

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