

OA.No.170/00056/2018/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00056/2018

DATED THIS THE 17th DAY OF DECEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

Shri K.S.Bharamappa
 Age: 63 years
 Occ: Ex Master Gazetted
 House No.1821/66
 1st Main, 6th Cross
 S.S.Layout, 'A' Block
 (Near Ashakiran Trust)
 Davanagere-577 004.

....Applicant

(By Advocate M/s.Chinmayi Assts.)

Vs.

1. Government of India
 Dte Gen of Mil Trg/MT-7
 General Staff Branch
 Integrated HW of MoD
 DHO PO
 New Delhi-110011.
2. The Deputy Chief of the Army Staff
 Directorate General of Military Trg. (MT-15(a))
 General Staff Branch
 Army Headquarters
 DHQ PO
 New Delhi-110011.
3. The Principal
 Rashtriya Military School
 Belagavi-590 009.

...Respondents

(By Advocate Sri K.Dilip Kumar)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- a) Declare that orders passed by the Respondent No.1 in Order*

No.53306/Pro-Rata/KSB/MS/GS/MT-7 dtd.19.4.2017 vide Annexure-A15 and No.53306/Pro-Rata/KSB/MS/GS/MT-7 dtd.07.06.2017 vide Annexure-A16 as illegal and void.

b) Declare that the applicant is entitled for pro-rata pensioner benefits by issuing consequential direction to the respondents to accord the benefit of pro-rata pensionary benefits to the applicant by considering his past service in the 3rd respondent school i.e., Rashtriya Military School, Belgaum.

2. The case of the applicant is that he joined the Belgaum Military School, Belgaum as an Assistant Master (Biology) w.e.f. 18.2.1981(Annexure-A1). After working for 7 years, he was promoted as Offg. Master (Gaz) in Biology w.e.f. 14.5.1988(Annexure-A2). The applicant applied for the post of Principal in Navodaya Vidyalaya Samithi(NVS) by taking permission from the 2nd respondent and sent the same through proper channel dtd.7.1.1995(Annexure-A3). In response to the same, the applicant received an interview letter dtd.18.7.1995(Annexure-A4) from NVS and he was appointed as Principal on direct recruitment basis on 14.9.1995(Annexure-A5). After the appointment as the Principal, the applicant sent a letter dtd.2.11.1995(Annexure-A6) through proper channel to the 2nd respondent seeking permission to take up the new appointment w.e.f.30.11.1995 and to relieve him from the present service. The applicant submits that even though the above letter is sent from the applicant giving resignation and asking permission for taking up the new appointment as principal, the 3rd respondent on the advice of the 2nd respondent asked a fresh resignation letter from the applicant and obtained the same by dictating the terms of the resignation letter on 22.11.1995(Annexure-A8). Thereafter, the 2nd respondent accorded sanction for acceptance of resignation of the applicant on 13.12.1995(Annexure-A9). Thereafter, the 2nd respondent issued a relieving order on 20.12.1995(Annexure-A10) relieving the applicant from the post of Master (Gazetted) in Biology in Belgaum Military School, Belgaum w.e.f.

20.12.1995 and he was directed to report to the Deputy Director, Regional Office, NVS, Pune Region, Pune. On the same day, the 3rd respondent issued movement order directing the applicant to report for duty at Jawahar Navodaya Vidyalaya Samiti, Gadhi (At/PO), Gohrain Tq. Beed(Dist) (Maharashtra). It was also directed him that he should not discuss the official matters with un-authorised person enroute. The basic pay, date of next increment, his GPF A/c Number and the leaves to his credit up to 2.12.1995 were shown in the movement order (Annexure-A11). After joining as the Principal in NVS, the applicant sent a letter dtd.4.3.1996(Annexure-A12) to the 3rd respondent requesting him for counting of his former service for the pensionary benefits on re-employment. The applicant retired on 30.4.2014 after serving the NVS for a period of 18 years and 4 months. At the time of settlement of his pensionary benefits, he came to know that the 3rd respondent has not sent the necessary information of his past service for obtaining the pensionary benefits. Therefore, he sent a letter dtd.8.3.2017(Annexure-A13) to the 3rd respondent requesting him to do the needful to speed up the matter to get the pensionary benefits. In response to the same, the 3rd respondent sent a reply dtd.31.1.2017(Annexure-A14) stating that his letter is forwarded for further action. In response to the request of the applicant, the 1st respondent intimated through a letter dtd.19.4.2017(Annexure-A15) stating that the applicant has resigned the post of Master Gazetted, RMS Belgaum on 22.11.1995, but he has not sought proper permission to join NVS. The provisions of Rule 37 are not applicable to him, hence he is not eligible for pro-rata pension. The 2nd respondent issued one more intimation letter dtd.7.6.2017(Annexure-A16) to the applicant declining him to give pro-rata pensionary benefits.

3. The applicant contended on the ground that he has submitted resignation

letter requesting the respondents to give him permission to take up the Principal post in NVS. But in spite of granting permission and relieving the applicant from duty to take up the new appointment as Principal, the 3rd respondent on the advice of the 2nd respondent asked a fresh resignation letter from the applicant. As per the whims and fancies of the respondents, the applicant has submitted second resignation letter. Thereafter, 2nd respondent issued a relieving order on 20.12.1995 relieving the applicant from the post of Master(Gazetted) in Biology in Belgaum Military School to report to the Deputy Director, Regional Office, NVS, Pune Region, Pune which clearly shows that the 2nd respondent accorded permission to the applicant to join as Principal in NVS. On the same day, a movement order was also issued by the 3rd respondent stating that the applicant is relieved from Military School, Belgaum and directed him to report for duty at Jawahar Navodaya Vidyalaya Samiti, Gadhi(At/PO), Gohrain (Tq.), Beed(Dist.) (Maharashtra). It was also directed him that he should not discuss the official matters with un-authorised person enroute. If permission is not granted to the applicant for joining the new post, the respondents would not have directed him to report for duty at Jawahar NVS and his basic pay, other emoluments and the details regarding the leave would not have stated in the movement/relieving order. Since the applicant applied through proper channel and he took the new post in service, the respondents accorded permission to him to take up the new post. The applicant requested the 3rd respondent on 4.3.1996 itself to count his former service for pensionary benefits on re-employment. But the respondents have not taken note of the same. The applicant retired on 30.4.2014. At the time of settlement of his pensionary benefits, he came to know that the 3rd respondent has not sent the necessary information of his past service for obtaining the pensionary benefits. Therefore, he sent a letter dtd.8.3.2017 to the 3rd

respondent requesting him to do the needful to speed up the matter to get the pensionary benefits. In response to the same, the 1st respondent sent a letter to the applicant intimating that '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'. It further states that the applicant has not sought proper permission to join NVS and hence, the provisions of Rule 37 are not applicable to him and he is not eligible for pro-rata pension. The 2nd respondent has also issued a letter declining the applicant to give pro-rata pensionary benefits. The applicant submits that with the prior permission of the respondents only, he joined the new post of Principal and hence his past service should be counted which enable him for pro-rata pensionary benefits.

4. The respondents have filed their reply statement wherein they submit that the applicant while submitting his resignation did not mention the word 'technical resignation' anywhere in the application. Moreover, as per para 2 of Annexure-A6, the application was recommended vide school letter dtd.7.1.1995(Annexure-A3), while no such mention is there in the letter. The applicant had not received any sanction letter from 2nd respondent regarding permission to join NVS. On the contention of the applicant that he sent a letter on 4.3.1996 regarding counting of his former service, the respondents submit that the applicant remained silent afterwards and started correspondence after 21 years.
5. We have heard the Learned Counsel for the parties. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA and the reply statements.

6. We have gone through the main contentions of the applicant and reply of the respondents in detail. In this case as seen from Annexure-A3, the application for the post of Principal at Navodaya Vidyalaya Samiti(NVS) was forwarded from the Principal, Belgaum School to the 2nd respondent on 07.01.1995 and it is apparent that the same had also been forwarded since the applicant was selected and appointment order was also issued. The applicant vide Annexure-A6 letter dtd.2.11.1995 had requested permission to take up the appointment and to be relieved from the present post. In that letter dtd.2.11.1995, the applicant had also informed that necessary counting of former service application etc., will be routed through his new employer. Vide Annexure-A7 letter dtd.22.11.1995, the 3rd respondent school had also forwarded the resignation of the applicant for necessary action at the end of respondent No.2. Vide Annexure-A9, the same has also been accepted and the applicant has been allowed to be relieved. After having done all these, the respondents now cannot claim that his joining the NVS was without any permission as stated in their reply at para-11. The applicant had also sent a letter dtd.04.03.1996 vide Annexure-A12 to the 3rd respondent requesting for forwarding the documents to count the service for pensionary benefits in the present appointment. The only mistake of the applicant seems to be that he did not follow up with the staff of the school for ensuring that whatever papers are necessary are forwarded for counting his service. However, this does not mean that he is not entitled for the same. As already noted, he had applied for the post with all proper approvals and was also relieved after securing the appointment with the full knowledge of the respondents. He is therefore, eligible for counting his service with the 3rd respondent for the purpose of pensionary and other benefits. The respondents are directed to take necessary action in this regard within a period of two(2) months from the date

OA.No.170/00056/2018/CAT/Bangalore Bench
of receipt of copy of this order.

7. The OA is allowed with the aforesaid direction. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00056/2018

Annexure-A1: Appointment letter of the applicant dtd.9.2.1981

Annexure-A2: Order of promotion of the applicant dtd.18.1.1988

Annexure-A3: Covering letter of respondent No.3 with the application dd.7.1.1995

Annexure-A4: Call letter for interview dtd.18.7.1995

Annexure-A5: Appointment letter of the applicant as Principal dtd.14.9.1995
Annexure-A6: The resignation letter of the applicant dtd.2.11.1995
Annexure-A7: Letter from respondent No.3 to respondent No.2 dtd.22.11.1995
Annexure-A8: The 2nd resignation letter of the applicant dtd.22.11.1995
Annexure-A9: The sanction acceptance of resignation dtd.13.12.1995
Annexure-A10: Relieving order dtd.20.12.1995
Annexure-A11: Movement/relieving order dtd.20.12.1995
Annexure-A12: Letter of request from applicant to send the service documents
Annexure-A13: Letter from applicant to respondent No.3 for pro-rata pension
dtd.08.03.2017
Annexure-A14: The intimation by the respondent No.3 rejecting his claim
dtd.31.3.2017
Annexure-A15: The intimation by the respondent No.3 rejecting his claim
dtd.19.4.2017
Annexure-A16: The intimation by the 2nd respondent declining pro-rata pensionary
benefits

Annexures with reply statement:

-NIL-
