

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

TA-13/2017

Reserved on : 05.12.2018.

Pronounced on : 20.12.2018.

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

Sh. Ashok D. Bhagat Singh,
S/o Sh. Daulat Rao Bhagat,
R/o 30, Gawande Layout Wardha
Road, Near Chhatarpati Chowk,
Nagpur, Maharashtra-440015.

.... Applicant

(through Sh. Yogesh Sharma with Sh. Abhijeet Singh, Advocate)

Versus

1. State (Govt. of NCT of Delhi)
through it's Secretary,
Health & Family Welfare,
9th Level, A-Wing,
I.P. Extn., Delhi Secretariat,
Delhi-110002.
 2. The Principal Secretary,
Department of Medical & Public Health,
GNCTD, Delhi Secretariat,
Delhi-110002.
 3. The Principal,
Maulana Azad Institute of Dental Sciences
GNCTD, MAMC Complex, B.S. Zafar Marg,
New Delhi-110002.
 4. Medical Superintendent
GNCTD, Deen Dayal Upadhyay Hospital
Hari Nagar, New Delhi-110064.
- Respondents

(through Ms. Sumedha Sharma, Advocate)

ORDER

This case was filed before the Hon'ble High Court of Delhi in WP(C)-7851/2015. Vide order dated 13.02.2017, Hon'ble High Court of Delhi transferred this case to Central Administrative Tribunal, Principal Bench, New Delhi and parties were directed to appear before the Registrar on 03.03.2017.

2. Through the medium of this T.A., the applicant has sought the following reliefs:-

“(a) direct the respondents to treat the appointment of applicant as a regular appointment and consequently count the entire services of applicant from 11.10.1985 to 14.10.2006 as a qualifying service for the purpose of granting pensionary benefits.

(b) direct the respondents to treat the resignation of applicant dated 14.10.2006 as a voluntarily retirement as, the applicant has already completed 20 years of qualifying service and consequently release all the retirement benefits of applicant w.e.f. 22.01.2007 with arrears and interest.”

3. Briefly stated, the facts of the current O.A. are that the applicant was appointed as Civil Assistant Surgeon through UPSC w.e.f. 11.10.1985 in the pay scale of Rs.650-1200/- + usual allowance against the vacant post. He applied for the post of Lecturer with respondent No.3 through proper channel on ad hoc basis. The applicant was relieved of his duties on 30.09.1991 and was directed to report to respondent No.3 to join his new assignment, as Lecturer on ad hoc basis for a period of six months. The applicant joined the post of Lecturer on 01.10.1991 in the pay scale of Rs. 2200-4000 plus

non practicing allowance at the prescribed rate with respondent No.3. The applicant was issued an order from Lt. Governor to continue his services again on six months on purely temporary and ad hoc basis. Thereafter, the applicant was selected as an Assistant Professor and joined as such on the post of Assistant Professor (ad hoc) on 06.07.1996 in the Dental Wing of Maulana Azad Medical College, New Delhi on purely temporary and ad hoc basis for a period of six months in the pay scale of Rs.3000-4500. On 01.07.1998, the applicant was interviewed for the post of Associate Professor in Maulana Azad Institute of Dental Sciences (MAIDS) and worked there from 1998 to 2004, again, on ad hoc basis. Thereafter, he was engaged as Professor with respondent No. 3 where he worked from 2004-2006.

4. The applicant states that on 18.01.1999 he had moved an application to respondent No.2 through proper channel regarding upgradation of the post of Dental Surgeon in the pay scale of Rs.3000-100-4500/-. The applicant submits that though he was on ad hoc basis with respondent No.3 but he continued to hold his lien with respondent No.4.

5. On 17.04.2006, the applicant applied for V.R.S. under Section-48A through proper channel to respondent No.2, on the ground that his wife was a psychiatric patient for the past six years and not

keeping good health. He requested that his case be considered expeditiously on humanitarian grounds and he be relieved at the earliest.

6. The applicant filed an application on 17.07.2006 to know the status of the V.R.S. application. The Govt. of NCT of Delhi informed the respondent No.3 that the case of the applicant is under consideration, and that the applicant should not be relieved till a final decision is taken in the matter. Pursuing his case, the applicant filed an RTI to the Public Information Officer on 21.08.2006, and was informed on 22.09.2006 that his case was not found fit for voluntary retirement under CCS (Pension) Rule 48. He was directed to join his duties immediately.

7. On 14.10.2006, the applicant moved an application to respondent No.2 through proper channel for resignation from the post of Professor (Oral Surgery). On 22.01.2007, the applicant was informed by respondent No.3 that his resignation has been duly accepted by the Chairman, MAIDS/Chief Secretary, GNCT of Delhi w.e.f. 14.10.2006.

8. The applicant submits that thereafter he made several requests to the respondents for his pensionary rights. Respondent No.3 vide letter dated 27.11.2013 informed the applicant that his case has been re-examined but request for pension cannot be acceded to

as there is no change in the rule. Again, on 29.01.2014, the applicant sent an RTI to respondent No.3 but received an unsatisfactory and vague reply on 05.02.2014.

9. The respondents, without disputing the facts of the case, in their reply (to the amended OA) submit that the applicant had submitted VRS application under Rule-48-A of CCS (Pension) Rules, 1972. The Competent Authority rejected the request of voluntary retirement of the applicant. Vide letter dated 14.10.2006, the applicant resigned from the said post by giving one month notice, which was accepted by the respondents on 14.10.2006.

9.1 It is further stated that as per Rule-26(1) of the CCS (Pension) Rules, 1972, resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service. The applicant in OA is not entitled for pension as he had resigned from government service.

10. During the course of hearing, the learned counsel for the applicant Sh. Yogesh Sharma drew my attention to the order dated 13.02.2017 of Hon'ble High Court of Delhi in WP(C)-7851/2015 (**Ashok D. Bhagat Singh Vs. State (Govt. NCT of Delhi) & Ors.**).

11. The learned counsel stated that case of the applicant was transferred to CAT by the Hon'ble High Court on the ground that

Maulana Azad Institute of Dental Sciences (MAIDS) is not an independent authority but it is an employee of Government of National Capital Territory of Delhi (GNCTD). Hence, the entire service of the applicant from 11.10.1985 to 14.10.2006 needs to be treated as a continuous qualifying service for the purpose of grant of pensionary benefits. The learned counsel also relied upon the judgment of Central Administrative Tribunal, Principal Bench in OA-604/2014 with OA-238/2015 dated 23.05.2017 wherein it has been held that period of ad hoc/contractual service can be counted towards qualifying service for purposes of pension under Rule 13 of CCS (Pension) Rules subject to compliance of Rule 17 of the said Rules.

12. Per contra, the learned counsel for the respondents Ms. Sumedha Sharma forcefully argued that the applicant had resigned from service and thus could not be considered for pensionary benefits as per law. He had been relieved from his duties from respondent No.4 (Deen Dayal Upadhyay Hospital) and joined respondent No.3 (MAIDS) as Lecturer on ad hoc basis on 17.06.1991. The appointment of the applicant kept getting renewed on ad hoc/contractual basis in the MAIDS till he applied for his voluntary retirement in 2006. Ms. Sharma emphasized that the applicant had joined the respondent No. 3 of his own volition knowing fully well that the said post was ad hoc. If the applicant was not satisfied with the

assignment he could have left the respondents organization. Ms. Sharma submitted that as per Rule-26(1) of CCS (Pension) Rules, 1972 resignation from service or a post, unless it is allowed to be withdrawn in the public interest, entails forfeiture of past service. Hence, the claim of the applicant to treat his entire service from 1985 to 2006 as qualifying service for the purpose of pensionary benefits is totally devoid of merit.

13. I have gone through the facts of the case carefully and considered the rival submissions made by both sides.

14. The facts of the case are not in dispute. It is a fact that the application submitted by the applicant was not found fit for voluntary retirement under Rule-48A of CCS (Pension) Rules due to which the applicant was directed to rejoin his duties. However, the request of the applicant for resignation from the post of Professor (Oral Surgery), which he was holding on ad hoc/contract basis was duly accepted by respondent No. 3 on 14.10.2006.

15. I am in agreement with the respondents that the period between 1985 till 2006 cannot be considered as regular service. Thereafter, he served on an ad hoc/contractual basis till 2006 when he resigned from service. The applicant was a regular employee of DDU Hospital only from 1985 till 30.09.1991. Hence, he cannot claim the benefit of service from 1985 to 2006, which would be available

only to regular employees. Since he resigned from service, his past service rendered stood forfeited in terms of Rule-26(1) of CCS (Pension) Rules, 1972. As such, the applicant cannot be granted the benefit of his past service. The plea of the applicant that he retained his lien, with respondent No. 4, is not supported by any supporting documents on record.

16. In view of these facts, I concur with the decision of the respondent No.3 that only those Government servants, who are allowed to retire under Rule-48 and 48A of CCS (Pension) Rules, 1972 are entitled for pension, which is not case herein. The relief sought for by the applicant is devoid of merit. O.A. is accordingly dismissed. No costs.

(Praveen Mahajan)
Member (A)

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