

Central Administrative Tribunal
Principal Bench
OA No.4076/2014

New Delhi, this the 14th day of August, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Angina, Venkata Narayana
Research Officer (WR), Age 40 years,
Room No.526-B,
Planning Commission,
Yojana Bhavan,
Parliament Street,
New Delhi-110001.

...Applicant

(By Advocate : Shri A.A. Kalebudde)

Versus

1. Union of India Through
Ministry of Personnel,
Public Grievances and Pension,
North Block, New Delhi-110001.
2. Border Road Organisation,
Director General Border Road,
Seema Sadak Bhawan,
Ring Road, Delhi Cantt.,
New Delhi-110010.
3. Planning Commission,
Yojana Bhavan,
Sansad Marg,
New Delhi-110001.

...Respondents

(By Advocate : Shri Rajinder Nischal)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

The applicant joined the service of the Border Road Organisation (for short, BRO), 2nd respondent herein, as Superintendent of Buildings and Roads, GDE-II on 28.08.1998. Since his application for outside employment was rejected vide letter dated 18.12.2006, the applicant directly applied to the Naval Dockyard, Mumbai, Ministry of Defence, for the post of Chargeman-II (Civil Works). He submitted his resignation on 14.03.2007 by citing domestic problems and the same was accepted and he was discharged from his duties by the BRO. Thereafter, he joined the Naval Dockyard, Mumbai as Chargeman-II on being appointed through order dated 20.03.2007.

2. The Planning Commission, 3rd respondent herein, wanted to appoint Research Officer (Water Supply). On a requisition made by it, the UPSC issued an advertisement in the year 2012 and the applicant responded to the same. He was selected and appointed as Research Officer (Water Supply) and he joined the post on 10.12.2012.

3. The applicant made a representation on 18.09.2013 to the 3rd respondent with a request to count his past service of eight years and eight months rendered by him in the 2nd respondent. However, the same was rejected through an order dated 25.09.2013. It was mentioned that since the application was not forwarded through proper channel, the service cannot be counted. In the subsequent correspondence that ensued, the applicant did not get any relief.

4. This OA is filed with a prayer to declare that the resignation submitted by the applicant to the 2nd respondent is a technical one in terms of Rule 26(2) of the CCS (Pension) Rules, 1972, and that he is entitled to count eight years and eight months service. Alternatively the applicant seeks a declaration to the effect that he is entitled for counting of his past service for other benefits such as experience and seniority.

5. The applicant contends that since the respondents No.2&3 are under the control and administration of the Central Government, the service rendered in the former deserves to be treated as in continuation of the service in

the latter also. According to him, the resignation was occasioned only in the context of accepting appointment in another department of the Government and thereby it should be treated as a technical one.

6. On behalf of the respondents separate counter affidavits are filed. It is stated that Rule 26 is very clear to the effect that the resignation in service would put an end to the past service and only exception there is that the resignation is submitted as a sequel to the offer of appointment in another Government service, where the application is filed through earlier employer. According to them, the 2nd respondent refused to forward not only the application, but the resignation was also not purely on technical grounds.

7. We heard Shri A.A. Kalebudde, learned counsel for applicant and Shri Rajinder Nischal, learned counsel for respondents.

8. The applicant initially joined the service of the 2nd respondent and after rendering eight years of service, submitted an application for selection and appointment

to the post of Chargeman-II, in the Naval Dockyard, Mumbai. He made an effort to seek the permission of the 2nd respondent to submit applications for other employments. Through an order dated 18.12.2006, the 2nd respondent did not accede to such a request, which reads as under :-

“1. Reference your application dated 29.11.2006.

2. It is intimated by HQ DGER under their letter No.12318/Deput Pol/DGBR/313/EG2 dated 9 May 2006 that keeping in view of large deficiency/reduction of man power in all categories and restriction imposed by the Govt. on recruitment, no individual of any category will be relieved on outside employment.

3. As such, your application is returned herewith unactioned.”

9. The applicant submitted his application to the Naval Dockyard directly, and was appointed on 20.03.2007.

10. In the year 2012, the applicant responded to the advertisement issued by the third respondent. It was a direct recruitment and he was treated on par with other candidates. When he made a request that his past service be treated as part of the one which he may render

in the Naval Dockyard, the 2nd respondent issued its reply on 08.12.2007 as under :-

“1. Reference your letter No.DYT/MPM/5206 dated 06 Nov 2007.

2. It is intimated that EX-GS-179843F BR II A Venkata Narayan of this Platoon has resigned from BRO service due to domestic problem as requested vide his application dated 14.03.2007 and he has been discharged accordingly. Hence, counting of former service of the individual may be disposed of by your dept/org if deemed fit.”

11. It is in this factual background that the claim of the applicant for extension of the benefit under Rule 26 of the CCS (Pension) Rules, 1972 needs to be examined.

Rule 26 reads as under :-

“26. Forfeiture of service on resignation

(1) 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.

(2) 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....”

12. The basic idea underlying Rule 26 is that resignation of an employee would result in forfeiture of service, and an exception is carved out under sub-rule (2). It is to the effect that the resignation shall not entail the forfeiture, in case it was submitted with a view to take up another employment but with “proper permission”. In the instant case, the applicant did not obtain permission either at the stage of submission of application or joining the new post with the 3rd respondent Organisation. Therefore, he cannot claim the benefit under sub-rule (2) of Rule 26. The claim of the applicant in this regard, therefore, deserves to be rejected.

13. The alternative prayer of the applicant is to enable him to count the service rendered between 1998 and 2006 in the 2nd respondent for the purpose of experience and seniority. There should not be any problem in counting the service for the purpose of experience, but it cannot be taken into account for the purpose of seniority. He became a member of service in the 3rd respondent organisation only on being appointed on direct recruitment basis. He cannot claim the benefit of service

earlier to that date, nor can he claim for seniority with reference to that period.

14. Therefore, the OA is allowed only to the limited extent of enabling the applicant to count the service rendered by him in the BRO, 2nd respondent herein, for the purpose of experience and by making it clear that he shall not be entitled to count that service for the purpose of pension, seniority or other similar benefits.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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