

**CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH, HYDERABAD.**

O.A.1258/2013

Dated this Tuesday the 9th day of July, 2019

**Coram: Dr.Bhagwan Sahai, Member (Administrative)
R.N. Singh, Member (Judicial).**

J. Chandrasekhara Rao,
S/o J. Kumara Swamy,
Occ: Chemist & Metallurgist,
Lallaguda Workshops,
South Central Railway,
Secunderabad. .. Applicant.

(By Advocate Shri K.R.K.V. Prasad).

Versus

1. Union of India represented by
The Secretary (Estt.),
Ministry of Railways,
Rail Bhavan, Railway Board,
New Delhi.
2. The Secretary,
Ordnance Factory Board,
Shahid Khudiram Bose Road,
Kolkatta.
3. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
4. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
5. The Chief Personnel Officer,
Rail Wheel Factory,
Yelahanka, Bangalore.

6. The Senior General Manager,
Metal & Steel Factory,
Ishapore, Nawabganj (Post),
24-Parganas (North),
West Bengal - 743 144.

7. The RITES Ltd.,
Corporate Office,
RITES Bhavan,
Gurgaon, Haryana.

.. Respondents.

(By Advocates K. Rajitha for R-2 and R-6,
Vijaya Sagi for R-3,R-4 and R-5 and
T. Hanumantha Reddy for R-1).

Order (Oral)

Per : Dr.Bhagwan Sahai, Member (A) .

This O.A. was filed by Shri J. Chandrasekhara Rao, Chemist & Metallurgist, Lalaguda Workshops, South Central Railway, Secunderabad on 09.10.2013 under Section 19 of the Administrative Tribunals Act, 1985. He is seeking relief in terms of setting aside of letter dated 03.08.2012 of Chief Personnel Officer, Rail Wheel Factory, Bengaluru with reference to Metal & Steel Factory letter No.1059/8/Estt.(Pen) dated 22.10.2009 by which request of the applicant for counting his past service rendered with the Metal & Steel Factory, Ishapore, West Bengal and service rendered with RITES was rejected. He has also sought direction to the respondents to grant him benefit of his past service from 03.05.1998 to 25.03.2009 by treating his

resignation from the Metal & Steel Factory, Ishapore as technical resignation and to grant him consequential benefits.

2. Facts of the case:

2(a). The applicant has stated that he was appointed on 03.05.1998 as Chargeman Grade-II (pay scale of Rs.5000-8000, as per 5th CPC) with Metal & Steel Factory, Ishapore, under administrative control of Ministry of Defence, Government of India. Based on his selection held on 19.12.2006, vide order dated 21.04.2007 he joined as Assistant Manager with RITES Ltd., Respondent No.7, Gurgaon, Haryana (pay scale of Rs.8600-14600, Industrial DA Scale).

2(b). While working with the Respondent No.7, he applied for the post of Chemist & Metallurgist (Senior Scale) in the Indian Railways, in response to an advertisement notification issued by Union Public Service Commission (UPSC) in Employment News dated June, 2007. In that notification it was mentioned that all candidates, whether in Government service or in Government owned industrial or other similar organizations or in private employment should submit their applications directly to the Commission and the persons already in Government service, whether in permanent

or temporary capacity or as work charged employees (other than casual or daily rated employees) are required to submit a declaration that they have informed in writing their Head of Office/Department about submission of their applications to the Commission.

2(c). He has further stated that accordingly on 26.06.2007 he informed Group General Manager (Personnel), RITES Ltd. (R-7) that he had applied for the post of Chemist and Metallurgist (pay scale of Rs.10,000-15,200) in the Indian Railways, although his lien was maintained with the earlier employer i.e. Metal & Steel Factory, Ishapore. In the letter dated 21.04.2007 it was mentioned that name of the applicant had been struck off from the strength of Respondent No.6 with effect from 24.04.2007 and for all purposes he had become employee of Respondent No.7. In view of this, about having applied the UPSC, he had correctly complied with the instructions .

2(d). After his selection by the UPSC for the post of Chemist & Metallurgist in the Indian Railways, the applicant informed the office of Respondent No.7 vide his representation dated 17.12.2008 for further processing of his case. In that representation he also requested that

Respondent No.2 (i.e. Secretary, Ordnance Factory Board, Kolkata) and Respondent No.6 (i.e. Senior General Manager, Metal & Steel Factory, Ishapore, 24-Parganas, West Bengal) should be intimated about his aforesaid selection.

2(e). In this way the applicant had fully complied with the procedure of keeping his employer / controlling organization informed about submission of his application to the UPSC and there was no laxity or avoidance on his part in following the instructions.

2(f). When the applicant was denied the advantage of counting of his past service rendered with Respondents No.6 and 7, he filed O.A.1962/2009 before Kolkata Bench of the Tribunal for this relief. This was disposed of on 05.06.2012 directing Respondent No.5 in present O.A. to decide his representation dated 19.11.2009.

3. Contention of the parties:

In the O.A. and during submissions of his Advocate on 09.07.2019, the applicant has contented that -

3(a). after having worked as Chargeman Grade-I in Metal & Steel Factory, Ishapore (Respondent No.6) under the Ministry of Defence from 1998 to 2007 on permanent absorption basis, he had joined as Assistant Manager with RITES Ltd

(Respondent No.7) with effect from 26.04.2007 with lien of two years maintained with the former. Since letter of Director General, Ordnance Factory Board dated 20.04.2007 addressed to the General Manager, Metal & Steel Factory, Ishapore had clarified that his lien was for two years and, therefore, he should either get absorbed with RITES Ltd within that period or revert to his parent organization (i.e. Metal & Steel Factory, Ishapore) or resign at the end of two years of the lien. As per letter of 21.04.2007 his name had been struck off from the strength of Respondent No.6 organization with effect from 24.04.2007, he was required to inform only Respondent No.7 about his application to the UPSC. As per UPSC letter dated 04.09.2008, he was recommended to the Ministry of Railways for his appointment to the post of Chemist & Metallurgist with the Indian Railways. Accordingly he informed Group General Manager, RITES Ltd on 17.12.2008 about his selection;

3 (b) . on 06.01.2009, he also wrote to RITES Ltd (i.e. R-7) for his repatriation to Metal & Steel Factory, Ishapore (i.e. Respondent No.6) so that he can join on the new post with the Indian Railways on or before 31.01.2009. The

Respondent No.7 sent a letter on 12.01.2009 conveying his request for repatriation to the Metal & Steel Factory and if that was accepted he would be sent back to Metal & Steel Factory, Ishapore. On receipt of the reply on 28.01.2009, he was relieved from Respondent No.7 on 05.02.2009. Thus based on that agreement between RITES Ltd and the Metal & Steel Factory, on joining back with the latter, he should have been relieved immediately to join with the Indian Railways, but he was not relieved stating that there was shortage in the non-gazetted officers cadre, thereby forcing him to resign. This was unfair to him. Consequently he had to resign on 14.03.2009, and acceptance of his resignation with effect from 25.03.2009 was informed vide order dated 24.04.2009. However had his request for relief been agreed to by the Metal & Steel Factory, he would have continued to be in service till joining with the Indian Railways;

3(c). the stand taken by the Chief Personnel Officer, Rail Wheel Factory, Bengaluru that the applicant should have informed the authorities of the Metal & Steel Factory about his application to the UPSC is not required as per the stipulations under the advertisement notification issued by the UPSC. Also there was no justification for the Metal &

Steel Factory to withhold his request for relief to join with the Indian Railways. Therefore, the stand of Respondent No.6 about ignorance of submission of his application to the UPSC and benefit of past service is not relevant. Because Respondent No.6 authorities were aware that he was joining back only for being relieved to join with the Indian Railways. Therefore, not treating his resignation by them as technical resignation is bad in law;

3(d). contents of the letter dated 22.10.2009 issued by Respondent No.6 were considered by the Tribunal while deciding the O.A.1962/2009 but even then the Respondent No.5 has mechanically disposed of his representation on 19.11.2009 by the impugned letter;

3(e). similarly the decision of the Respondent No.5 dated 03.08.2012 is illegal, discriminatory and in violation of Articles 14 and 16 of the Constitution. Therefore, the O.A. should be allowed and the Respondent No.6 be directed to treat the applicant's resignation as technical resignation so that he can get benefit of continuity of his service rendered with the Respondents No.6 and 7;

3(f). The applicant's intimation about his selection by UPSC for the post of Chemist & Metallurgist with the Indian

Railways was also endorsed to Respondent No.2 and 6. Since his lien was maintained with Respondent No.6, the latter ought to have informed of his career progression in respect of his juniors. In view of the lien, he also wanted to join back with Respondent No.6 with a request to relieve him to join with the Indian Railways as Chemist & Metallurgist. Therefore, the Respondent No.6 should not have taken a stern view of having no knowledge about submission of his application to the UPSC as intimation about it had already been given to Respondent No.7.

3(g). In view of his having informed the Respondent No.7 about his application to the UPSC and in terms of his intimation to Respondent No.6 also, the applicant was entitled for exit from Respondent No.6 under Rule 26(2) of CCS (Pension) Rules, 1972 and not under Rule 26(1) of those rules. Also Respondent No.6 and 7 being organizations under the Ministries of Defence and Railways, they should have processed his case properly allowing him the benefit of his past service and, therefore, this O.A. be allowed.

In the reply and during arguments on 09.07.2019, the respondents have contended that-

3(h). the applicant should have submitted the present

O.A. within one year from the date of issuance of the speaking order by Respondent No.5 on 03.08.2012, in pursuance to the order of the Tribunal dated 05.06.2012 in O.A.1962/2009, i.e. by 02.08.2013 but the present O.A. has been filed on 09.10.2013. Even an application for condonation of delay has not been filed by the applicant. As per Apex Court view in the case of **Secretary to Govt. of India & Ors. Vs. Shivram Mahadu Gaikwad**, 1995 Supp.(3) SCC 231 and in **Ramesh Chand Sharma Vs. Udham Singh Kamal & Ors.** (Civil Appeal No.3119/1997 decided on 12.10.1999, 1996(6) SCC (L&S) 1488, the Tribunal cannot entertain an application barred by limitation. Therefore, the present O.A. should be dismissed on this ground;

3(i). the Senior General Manager, Metal & Steel Factory, Ishapore has been made party as Respondent No.6 in the present O.A. but it is mis-joinder of parties as there is no such post in the Metal & Steel Factory and, therefore, Respondent No.6 should be deleted from the list of the respondents;

3(j). after the applicant joined with the Metal & Steel Factory, Ishapore as Chargeman Grade-II on 30.05.1998, through direct recruitment, he was trained at the cost of

the Government and was subsequently promoted to the post of Chargeman Grade-I from 03.05.2004. The applicant applied on 23.09.2006 for permission to forward his application for the post of Assistant Manager, RITES Ltd through proper channel and after following proper procedure, the applicant was released on 24.04.2007 to join as Assistant Manager, RITES Ltd., Gurgaon with two years lien with a pre-condition that either he should revert back to the parent department within that period or resign from the parent department at the end of that period;

3(k). the applicant had applied for the post of Chemist & Metallurgist Grade-A (Sr. Scale) in the Indian Railways in response to the UPSC advertisement issued in June, 2007 without informing the Metal & Steel Factory and/or Ordnance Factory Board, Kolkata. Respondent No.2 and 6 in the present O.A. i.e. Secretary, Ordnance Factory Board, Kolkata and Senior General Manager, Metal & Steel Factory, Ishapore were informed about the applicant's application submitted to the UPSC after 1 year and half from its submission;

3(1). on his request the applicant was allowed to join back with the Metal & Steel Factory and on his request to join to the Indian Railways a decision was to be taken

subsequently and the RITES Ltd were so informed on 28.01.2009. Accordingly the applicant joined back with the Metal & Steel Factory on 06.02.2009 and then submitted an application on 11.02.2009 for relieving him to join the Indian Railways as Chemist and Metallurgist. Since the applicant had applied in response to the advertisement notification issued by the UPSC, without obtaining approval of the Metal & Steel Factory, Ishapore or the Ordnance Factory Board, Kolkata and because of shortage of non-gazetted officers (Chargeman) with the Metal & Steel Factory, his request was not accepted and he was accordingly informed on 13.03.2009;

3(m). then the applicant submitted an application dated 13.03.2009 for simple resignation, it was accepted with effect from 25.03.2009. His subsequent representations to the Metal & Steel Factory authorities were not agreed to because of his simple resignation under Rule 26(1) of the CCS (Pension) Rules, 1972 which stipulates that "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". Therefore, his past service cannot be counted;

3(n). the earlier O.A.1962/2009 filed by the applicant before the Kolkata Bench of the Tribunal was disposed of on 05.06.2012 directing General Manager, Rail Wheel Factory, Bengaluru to take decision on his representation dated 19.11.2009 in accordance with law within a period of 3 months. Accordingly Respondent No.5 in the present O.A. rejected the applicant's claim for counting of his past service rendered with the Metal & Steel Factory, Ishapore. However, the present O.A. has been filed by the applicant belatedly, it is hopelessly barred by limitation. In view of these submissions, the O.A. should be dismissed.

4. Analysis and conclusions:

We have perused the O.A. memo and its annexes, replies filed by the respondents, and considered the arguments advanced by both sides on 09.07.2019. Based on careful consideration of the case record and rival contentions of the parties, our conclusions are as follows:

4(a). After having worked with the Metal & Steel Factory, Ishapore (R-6) from 03.05.1998 till 21.04.2007, the applicant joined as Assistant Manager with RITES Ltd, Gurgaon, Haryana (R-7). After having applied for the post of Chemist and Metallurgist with the Indian Railways

advertised by the UPSC in June, 2007, he applied to the UPSC and accordingly informed Group General Manager, RITES Ltd about it on 26.06.2007. In view of the letter of Metal & Steel Factory, Ishapore dated 21.04.2007 stating that for all purposes the applicant was an employee of the RITES Ltd, informing by the applicant about submission of his application to the UPSC to the Group General Manager, RITES Ltd on 26.06.2007, amounted to compliance of requirement of informing the Head of the Office or Department of his employer.

4 (b) . On being selected by the UPSC for the post of Chemist and Metallurgist with the Indian Railways, the applicant again informed the Respondent No.7 on 17.12.2008 for processing his case for relief to join with the Railways. In that representation he had also requested the Respondent No.7 to inform Respondents No.2 and 6 also about his selection for the post of Chemist and Metallurgist with the Indian Railways. Thereafter he reported back with the Metal & Steel Factory, Ishapore for getting relieved to join his new assignment with the Indian Railways. However, the Respondent No.6 did not relieve him and ultimately the applicant had to resign from the Metal & Steel Factory,

Ishapore, which was accepted on 25.03.2009. Thereafter also the Respondent No.6 did not accept the applicant's request for counting of his service with the Metal & Steel Factory, Ishapore and RITES Ltd, Gurgaon in his future career, he submitted a representation on 19.11.2009 which came to be decided by Respondent No.6 only on intervention by the Kolkata Bench of this Tribunal by order of 05.06.2012. By the impugned order dated 03.08.2012, the applicant's request of counting of his past service has been rejected by Respondent No.6. Hence the applicant had to file the present O.A.

4 (c) . In reply to this O.A. the respondents have opposed it on the ground of delay. This O.A. was filed by the applicant on 09.10.2013 challenging the order of 03.08.2012 and thus there has been a delay of two months and some days. Although the applicant has not filed any formal application for condonation of this delay, considering the special circumstances related to career progression of the applicant and adoption of an insensitive approach by Respondent No.6 in not accepting his request for counting of his past service, in our view it is an exceptional case justifying condonation of the delay and, therefore, the delay is

condoned.

4(d). As per the details narrated above, it is not in dispute that the past service of the applicant has been with the Metal & Steel Factory, Ishapore from May, 1998 till April, 2007 and with RITES Ltd from April, 2007 till February, 2009 and again with the Metal & Steel Factory, Ishapore from February to 21st March, 2009. In view of fact of the continuous past service rendered by the applicant as above and also the fact that while working with the RITES Ltd he had informed the Group General Manager, RITES about his application to the UPSC for the post of Chemist and Metallurgist as well as about his selection by the UPSC, rejection by Respondent No.5 of request of the applicant by the order of 03.08.2012 was not correct, it was not justified.

4(e). The additional ground taken by the respondent No.6 for not accepting his request to count his past service is that after joining as Chargeman, the applicant had been trained on Government expenses, with RITES Ltd he was only on two years lien from the Metal & Steel Factory, Ishapore and there was shortage of non-gazetted officers with the Metal & Steel Factory, Ishapore. However, in our view these

grounds of the respondents are not justified and they are mere technicalities to justify their rejection of the applicant's request. These grounds are not acceptable at all.

In the context of the career progression of the applicant, this amounted to adoption of an insensitive and impracticable approach by Respondent No.6 in informing Respondent No.5 that the applicant had not informed the Ordnance Factory Board or the Metal & Steel Factory, Ishapore directly before he applied to the UPSC.

4 (f) . After his selection by the UPSC, when the applicant reported back with the Metal & Steel Factory, Ishapore, management of that factory did not relieve him to take up the new assignment. As a result the applicant was compelled to submit his resignation which was accepted on 25.03.2009 and then it was treated by the Metal & Steel Factory management not as a technical resignation from service under Rule 26(2) but it was accepted only as a simple resignation under Rule 26(1). Because of this his past service is not being counted for fixation of pay, length of service for pension, etc.

4 (g) . From the above details it is clear that the

applicant had duly complied with the requirement of informing his employer when he applied for the post of Chemist and Metallurgist to the UPSC. In view of the letter of Respondent No.6 dated 21.04.2007 relieving the applicant also mentioning that the applicant's name had been struck off from the strength of that organization with effect from 21.04.2007 and for all purposes he had become employee of Respondent No.7, apart from informing the then employer i.e. Group General Manager, RITES, no additional requirement of informing was required from the applicant.

4 (h) . Also in this case on selection by the UPSC, the applicant has moved from one organization of the Government of India i.e. Metal & Steel Factory, Ishapore to another organization of the same Government i.e. Indian Railways. In this situation, instead of adopting an appreciative and encouraging approach towards career progression of the applicant, the stand taken by Respondent No.6 communicated through impugned order by Respondent No.5 is not justified, it is unreasonably harsh. Viewed in this perspective, the contentions of the applicant are correct, they are accepted. Hence the O.A. is allowed and the applicant is entitled for acceptance of his resignation from Metal & Steel Factory,

Ishapore as technical resignation from the post of Chargeman Grade-II with effect from 25.03.2009 and all other consequential benefits such as protection of his last pay drawn at the time of his such technical resignation, counting of his past service for pension purposes, etc as per provisions of relevant rules.

4(i). The Respondent No.6 is directed to issue to the applicant a proper communication stating that his technical resignation from the post of Chargeman Grade-II was accepted from 25.03.2009 and send it along with last pay certificate and full service record of the applicant to his present employer i.e. the Officer In-charge, Lalaguda Workshops, South Central Railway, Secunderabad, Telangana for further necessary action. The parties to bear their own costs.

(R.N. Singh)
Member (J)

(Dr.Bhagwan Sahai)
Member (A) .

H.