

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No. OA 350/00942/2015

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

SATYA RANJAN HAZRA

VS

UNION OF INDIA & ORS.

For the applicant : Mr.G.C.Chakraborty, counsel

For the respondents : Mr.K.Sarkar, counsel
Mr.S.Paul, counsel

Order on : 30.5.16.

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. This application has been filed seeking the following reliefs :

- a) Quash and set aside the impugned letter dated 18.5.15 whereby and whereunder respondent No.3 declined to count the past service of the applicant for the purpose of pension on total qualifying service of 31 ½ years and other service benefits;
- b) A direction upon the respondent 3 to revise the pension of the applicant on total qualifying service of 31 ½ years by counting his past service of 2 ½ years rendered under respondent No.4;
- c) A direction to the respondent 3 to make the payment of arrear pension, and other pensionary benefits along with other service benefit including 3rd MACP to the applicant;
- d) A direction upon the respondent to pay interest @ 18% per annum on arrear amount of pension and gratuity and other payments from the date of those became due for payment to the date of payment;

3. The grievance of the applicant in a nutshell is that his present employer i.e. Controller of Accounts wherefrom he retired on superannuation, is not willing to count his past service in EPFO rendered from 8.3.83 till 2.9.85, (almost 2 ½ years) towards qualifying service for the purpose of pension in view of the fact that he had not applied for the post under new employer, through proper channel and while resigning from EPFO the applicant had not informed about his employment in Central Accounts Office (Dept. Of Mines) and thus he obtained resignation from EPFO without prior permission of EPFO to join

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Central Accounts Office. As per CCS (Pension) Rules 1972, that was in operation in EPFO, pro rata retirement benefits would be borne by the office only in cases where it was admissible as per rules and the Rule 26 of CCS (Pension) Rules is explicit that resignation from a service or a post unless allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service but if resignation is submitted to take up with proper permission another appointment, whether temporary or permanent, under the Government where service qualifies, it shall not entail forfeiture of past service. 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.*

(3) *Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.*

(4) *The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely :-*

(i) *that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation ;*

(ii) *that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper ;*

(iii) *that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days ;*

(iv) *that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.*

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(5) *Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.*

(6) *When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.*

(7) *A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government.*

4. According to the Id. Counsels of both EPFO and Central Accounts Office, since the applicant did not apply through proper channel and had not tendered resignation with proper permission to take up another appointment (in CAO), counting of past service rendered in EPFO was rightly disallowed to be counted towards the service rendered at Central Accounts Office.

5. It is not in dispute that the applicant is earning full pension and therefore no benefit would enure in regard to his pension if past service is allowed to count, whereas the applicant in all his reliefs has harped upon counting of past service for the purpose of pension. However, the applicant if allowed to count the past service of 2 ½ years with service of 29 years in Central Accounts Office, would earn full gratuity.

6. During the course of hearing Id. Counsel for the applicant vociferously submitted that EPFO is keeping hostile attitude towards the applicant. He would invite my attention to the application form in regard to the post of Jr. Accounts/UDC/Auditor in Civil Accounts Department which he submitted on 12.8.82 whereafter he joined the EPFO on 8.3.83. Id. Counsel strenuously urged that since before joining EPFO the applicant had already applied for the post of Jr. Accounts/UDC/Auditor the question of application through proper channel or tendering resignation from EPFO with permission to join another department did not arise and therefore taking the shelter of technicality, as Rule 26 supra, suggests the respondents cannot deprive him his pensionary benefits.

7. Per contra, ld. counsels for EPFO as well as Controller of Accounts in unison suggested that the applicant should not be allowed reap benefits out of the fraud committed by suppressing the fact that he was leaving EPFO to join Central Accounts Office.

8. Ld. Counsels were heard and materials on record were perused.

9. In as much as, the applicant would not be entitled to any higher pensionary benefits due to counting of past service, as emphatically admitted by the ld. Counsel for the applicant at the Bar, it is felt that counting of service for pension ought not to have been prayed for by the applicant.

10. It is clear that the applicant was not required to apply through a proper channel for appointment under Central Accounts Office. Nevertheless he ought to have taken permission in terms of Rule 26 supra when he tendered resignation to join another department. His resignation without seeking permission to join another department could not be countenanced. The respondents' action could not be faulted with.

11. In regard to the further relief of counting past service towards MACP the same is not permissible since his appointment in Central Accounts Office was a fresh appointment due to which the MACP benefits would count from the date of such fresh appointment rendered on regular basis and not of any past service rendered in another organisation which would neither count for seniority, nor promotion in the present organisation. Further, no circulars, rules, law or precedents have been cited in support of such claim. The claim is speculative.

12. In regard to getting full gratuity amount, since no such prayer is made in the present application, the OA is disposed of without any order with liberty to seek the same in accordance with law.

10. Therefore the OA stands disposed. No costs.

(BIDISHA BANERJEE)
MEMBER (J)

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