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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1153/2003

New Delhi, this the 3rd day of February, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

Mohinder Singh Choudhary
working as Director of Physical Education
College of Art
20-22, Tilak Marg
New Delhi.

... Applicant

(By Advocate: Shri Arun Bhardwaj)

Versus

1. Chief Secretary
G.N.C.T. of Delhi
Delhi Sectt., I.P.Estate
New Delhi.
2. Pr. Secretary
G.N.C.T. of Delhi
Directorate of Training and
Technical Education
Muni Maya Ram Marg
Pitampura
Delhi - 110 088.
3. The Principal
College of Art
20-22, Tilak Marg
New Delhi.

... Respondents

(By Advocate: Sh. George Paracken)

O R D E R

Justice V.S. Aggarwal:-

The applicant on 15th July, 1969 had joined as Physical Training Instructor in Dayanand Vidyalaya, Ajmer, Rajasthan. It is an aided and stated to be a recognised school by the Government of Rajasthan. On 14.6.1976, the applicant joined the respondents' department, i.e., Government of National Capital Territory of Delhi as Physical Training Instructor (for short 'PTI'). Thereafter, he was granted the scale of Director of Physical Education.

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2. Applicant contends that in 1999, an Office Memorandum dated 19.4.1999 was issued by the Ministry of Personnel, Public Grievances and Pensions, which provided for counting of past service of employees who joined the services in a State Autonomous Body after leaving their earlier service in a State. On coming to know the same, the applicant made a representation that his past service in the Dayanand Vidyalaya, Ajmer should be counted. The said representation has since been rejected vide order of 11.2.2003 which reads:

"With reference to your office letter No.F1(197) 76-CA Vol-III 8579 dated 18/10/02 on the subject cited above. I am directed to inform you Finance Department Govt. of NCT of Delhi has not concurred the approval regarding counting of Past service of Sh. Mohinder Singh Choudhary, Director, Physical Education, College of Art as his case is not covered under the Rules."

3. By virtue of the present application, he seeks quashing of the said order and for a direction to the respondents to count the past service in Dayanand Vidyalaya, Ajmer for purposes of pensionary benefits. He also contends that in similarly situated matter of one Shri O.P.Sharma, the said benefit had been accorded.

4. The application has been contested. It has been asserted that in terms of sub-Rule 2 to Rule 14 of Central Civil Services (Pension) Rules, 1972, past service in a non-pensionable establishment cannot be treated as qualifying service. Otherwise also the respondents contend that applicant was serving in a

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private School in the State of Rajasthan, he is not entitled to count the said service for the pensionary benefits.

5. It is denied that the case of Shri O.P.Sharma is not identical to that of the applicant.

6. So far as the contention of the applicant that similarly situated person Shri O.P.Sharma who has been accorded the said benefit is concerned, we do not dispute that the State cannot discriminate between the individuals but in this regard, one cannot forget the basic fact that they should be similarly placed. It has been explained that Shri O.P.Sharma had earlier taught in the College of Architecture which is a Government Institution. It has also been explained that it is a pensionable establishment. In the present case before us, it is not so. Therefore, the applicant cannot seek the same treatment pertaining to his matter.

7. A strong reliance, on behalf of the applicant, was being placed on the Office Memorandums that have been issued from time to time to contend that he should be accorded the benefit. Delhi Administration issued O.M. of 18.3.1991 for counting of services rendered in recognised and aided Schools of autonomous bodies. The said OM reads:

"In continuation of this office letter No.F.30-3(72)/88-Coord 39732-40732 dated 7.11.88 on the subject noted above, it has been clarified by the Govt. of India, Ministry of Human Resource Development (Deptt. of Education), New Delhi that the services rendered in autonomous bodies under State Govts. and vice-versa in respect of the States with

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which reciprocal arrangement exists vide Ministry of Personnel, Public Grievances & Pension, Deptt. of Pension and Pensioners Welfare O.M. No.28(10)/84-P & PW-Vol.II dated 07.2.86 and thereafter (list attached) has also been allowed for counting of services for pensionary benefits rendered in the autonomous bodies in Haryana, vide Ministry of Personnel, Public Grievances & Pensions vide their O.M. dated 20.7.89.

The benefits of these orders will be admissible to the employees who are in service of Govt./Autonomous Bodies on the date of issue of these orders of Govt. of India dated 20.7.89."

8. Similarly, reliance is being placed on the OM of 7.11.1988, issued by the Government of India, Ministry of Human Resources and Development. The same reads:

"i) In regard to service rendered in Autonomous Bodies under State Governments and vice-versa counting of service for pensionary benefits will be allowed in respect of those State Government with which reciprocal arrangement exists i.e. Karnataka, Madhya Pradesh, Punjab, Rajasthan, Sikkim, Tripura, Gujrat, Assam, Uttar Pradesh, Bihar, West Bengal, Meghalaya, Himachal Pradesh and Goa (Fourteen State Governments). The above said benefit has been extended by the Ministry of Personnel, Public Grievances and Pension, Department of Pension & Pensioners Welfare O.M. 28(10)/84-P&PW-Vol.II, dated 7.2.86 and 27.5.88. These orders will apply to the employees of the Central Government moving to State Autonomous Bodies to the State Governments and their Autonomous Bodies and vice-versa who are in service on the date of issue of the aforesaid orders irrespective of the date of their absorption. All the cases pertaining to the counting of service of teachers rendered by them in Aided/recognised schools in Delhi and outside Delhi prior to coming over to Delhi Admn, for pensionary benefits may be settled accordingly."

9. It is abundantly clear from reading of the same that the past service for pensionary benefits would only be counted if it is rendered in Autonomous

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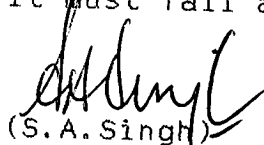
Body under the State Government. The applicant was serving in Dayanand Vidyalaya, Ajmer. It is not shown that it was an Autonomous Body under the State. The applicant feels shy of expressing in this regard. Merely because it was a recognised institution will not permit the applicant to take advantage of the said Office Memorandum.

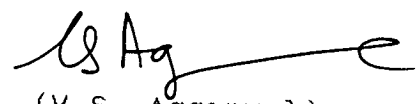
10. In fact, sub-Rule 2 to Rule 14 of the CCS (Pension) Rules, 1972 reads:

"For the purposes of sub-rule (1), the expression "Service" means service under the Government and paid by that Government from the Consolidated Fund of India or a Local Fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government."

11. From the aforesaid, it is clear that qualifying service would be under the Government and paid by that Government from the Consolidated Fund of India but if it is rendered in a non-pensionable establishment, the said service will not be counted. The applicant does not show that his past service with Dayanand Vidyalaya, Ajmer was a pensionable one. Therefore, looking the matter from either angle, it is clear that the applicant is not entitled to the benefit of the past service.

12. For these reasons, the OA has no merit. It must fail and is accordingly dismissed. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman