

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. 2714/2003

New Delhi this the 15th day of October, 2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Naik, Member (A)**

**Inder Jit Bharara,
S/o late Shri H.R. Bharara,
R/o 29/61, Ist Floor, West
Patel Nagar,
New Delhi.**

..... **Applicant.**

(By Advocate Shri Ashwani Bhardwaj)

Versus

1. Government of NCT, Delhi,
through the Chief Secretary,
Secretariat, Indra Gandhi Stadium,
Player Complex,
New Delhi.
2. The Joint Secretary (TTE),
Government of NCT of Delhi,
Directorate of Training & Technical Education,
Muni Maya Ram Marg, Pitampura,
Delhi-110 088.
3. The Deputy Director (Training),
Directorate of Training and Technical Education,
Muni Maya Ram Marg, Pitampura,
Delhi-110 088.

(By Advocate Mrs. P.K. Gupta)

ORDER (ORAL)

Shri S.K. Naik, Member (A).

The applicant, Shri Inder Jit Bharara, has come before this Tribunal for the second time. He had earlier filed O.A. 277/2003 challenging the rejection of his request for counting of his past service for the purpose of pension and gratuity, etc. His O.A. then had been allowed holding as under:

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“that the claim of the official for counting of his past service could not be refused on the ground that after retirement, the benefit of past service cannot be counted and if any benefit accrues it cannot be refused. This cannot be refused as a logic on incorrect reason”

The Tribunal while quashing the impugned order, however, left it open to the respondents to pass a fresh speaking order conveying the reasons to the applicant.

2. Taking advantage of the liberty given by the Tribunal, the respondents have passed fresh order dated 28.8.2003 (Annexure A-1) vide which they have held that the applicant is not entitled to the benefit of counting of past service rendered by him in Desh Bandhu College from 27.8.1963 to 17.1.1973 as he did not fulfil any of the stipulated conditions laid down in the Rules.

3. Aggrieved there against, this O.A. has been filed.

4. Learned counsel for the applicant has contended that the respondents have failed to appreciate that the applicant had submitted his application for counting of his past service way back in 1981 itself but they failed to take prompt action thereon and issue necessary orders despite repeated representations. The delay is now being attempted to be attributed to deprive him of the benefit of his past service to which he is fully entitled. The counsel on the other hand blames the respondents in their casual handling of representations of the applicant over the decades. In that, he states that the respondents had asked the applicant during December, 1993 to give an undertaking with regard to the deposit of his CPF received from Desh Bandhu College. They had further directed the Principal of IIT, Narela vide their letter dated 30.6.1995 to submit the complete record of the applicant, including his service book which was promptly submitted by the Principal. Thereafter, in 1997 the Principal, Desh Bandhu College was also asked for the service book which too had been supplied by the said institution. Despite all this exercise, the respondents failed to pass any order regarding counting of past service of the applicant. Thus, for purely negligence on the part of the respondents, learned counsel contends that the applicant should not be made to suffer.

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5. On the contents of the impugned order, the counsel submits that the request for counting of past service of the applicant was made by him as soon as he was confirmed by the respondents and, therefore, the period of one year prescribed in the CCS (Pension) Rules, 1972 read with Appendix 12 to the said Rules should not be so rigidly construed so as to deprive him of his right. Further, the applicant had categorically replied to the respondents that in the event of his past service being counted, he is willing to refund the amount received from his previous employer.

6. The learned counsel has further contended that his case for rejection has been singled out by the respondents for reasons known to them whereas the benefit of counting of past service has been extended to other similarly placed employees. In that respect, he has cited the names of S/Shri Prithvi Singh, G.L. Khatri and Harmeet Singh, Craft Instructors. The counsel, therefore, submits that the respondents have rejected his case in an arbitrary and illegal manner and that they be directed to count past service of the applicant from 27.8.1963 to 17.1.1973 towards his qualifying service for the purpose of pension and other retiral benefits.

7. The O.A. has been contested by the respondents. Learned counsel appearing on behalf of the respondents has submitted that the question of counting of past service when it has been rendered in autonomous institutions is governed by Rule 26 (2) of the CCS (Pension) Rules, 1972 read with Appendix 12 of the said Rules. The said Rules provide that,

“1. An employee of an autonomous body on permanent absorption under the Central Government will have the option either to receive CPF benefits which have accrued to him from the autonomous body and start his service afresh in Government or choose to count service rendered in that body as qualifying service for pension in Government by forgoing employer's share of CPF contributions with interest thereon, which will be paid to the concerned Government Department by the autonomous body. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulated period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final.

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2. The previous employer should discharge his pension liability by paying in lump sum as a one-time payment, the pro-rata pension/Service Gratuity/Terminal gratuity and Retirement Gratuity.

3. The order accepting the resignation from previous service should clearly indicate that the employee is resigning to join an another appointment with proper permission and that the benefits under Rule 26 (2) will be admissible to him. The contents of the above order should also be noted in the service book of the official concerned under proper attestation".

It is thus clear that the Rules stipulate that any option for counting of past service shall be exercised within one year from the date of absorption. If no option has been exercised, the employee is deemed to have opted for the CPF benefit. Further, the option once exercised shall be treated to be final. Since the applicant did not ~~offer~~ ^{opt} for counting of his past service within one year from the date of absorption, the counsel contends that he has no case. His plea that the respondents having called for some details from previous employer will not make any change since the matter can be considered only under the Rules. As per his own averment, the applicant had made his representation during 1981 which also was badly delayed. The counsel has further contended that as per Rule 26 (2) of the CCS (Pension) Rules, 1972 read with Appendix 12 to the said Rules, the autonomous body where the applicant had earlier worked should have paid the CPF amount directly to the respondents if the applicant had applied for counting of such service within the stipulated time prescribed for the purpose. But the case in hand is that the applicant has cleverly taken away the CPF amount along with interest during October, 1978 itself and has much later only made an offer to refund the received amount if a decision is taken to count his past service. Further, the counsel contends that as required under sub-clause (3) of the provisions stated above, the competent authority, who accepted the resignation of the applicant from his previous service, should clearly indicate that the employee is resigning to join another appointment and that the benefits under Rule 26 (2) will be admissible to him. As per this provision, the contents of the

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above order should have been noted in the service book of the official concerned under proper attestation. However, quite to the contrary, no complete endorsement had been made in the service book. While the service book contains an entry signed by the OSD, Desh Bandhu College stating "Resigned – Left w.e.f. 18.1.1973" the counsel contends that "to join Delhi Administration" has been added subsequently in different hand writing which is nothing but an attempt to tamper with the record to make out a case in favour of the applicant. With regard to the alleged discrimination vis-à-vis S/Shri Prithvi Singh, G.L. Khatri and Harmeet Singh, Craft Instructors, the counsel submits that in their case the provisions of the Rules had not been violated and each case had been considered on its own merits and the applicant cannot draw support therefrom.

8. We have considered the contentions raised by the learned counsel for the parties as also have perused the records of the case. At the outset, it must be stated that it would be wrong to contend that the respondents have passed another order in response to the liberty granted by this Tribunal in the earlier O.A. 277/2003 in a mechanical manner and relying on the same ground that after retirement the benefit of past service cannot be counted.

9. We find that the order dated 28.8.2003 which is under challenge in this O.A. is a detailed speaking and reasoned order. It clearly ~~analysed~~ the rules position with regard to the claim of an employee to count his past service. The applicant before joining the services of the Government having served in Desh Bandhu College, an institution under the UGC, an autonomous body, will be governed for counting of his past service under the provisions of the CCS (Pension) Rules, 1972. He was, therefore, clearly required to have furnished his option within the prescribed period of one year which he has failed to do. As per his own averment, he appears to have made a request to this effect only during 1981, even though the respondents have categorically denied that ^{any} ~~such~~ request has been ever made. ^{do} Further, the



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applicant never requested his earlier employer to pass his CPF contribution or the pro-rata pension, etc. to his new employer. On the contrary, he has received the dues in this regard from Desh Bandhu College in 1978 itself. A later date offer to return the same, we are afraid, will not make his case any better.

10. With regard to the entries in the service book, we had called for the same for perusal and find that the words "to join Delhi Administration" have indeed been added separately. Obviously, the addition appears to have been attempted to somewhat satisfy the provisions of the Rules.

11. Thus, we find that the applicant has failed to exercise his option within the prescribed period of one year as per the Rules. Further, neither he asked his previous employer to remit the CPF contribution or pro-rata pension to the respondents at the time he joined the new service and on the contrary, he received the retiral dues from his previous employer during 1978 itself and further that the entries in the service book do not support his case, as required under the Rules,

12. In the result, as we find no merit in this O.A., the same is dismissed with no order as to costs.

Naik
(S.K. Naik)
Member (A)

Aggarwal
(V.S. Aggarwal)
Chairman

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