

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

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Original Application No. 290/00096/2015
With Misc. Application No. 290/00056/2015

RESERVED ON : 17.10.2019
PRONOUNCED ON: 25.10.2019

CORAM:

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

Arun Kumar S/o Sh. Ratan Lal Tailor, aged about 32 years, R/o A-6 "Mateswari" Ramnagar Colony, Bhudoli Road, Neem Ka Thana, District Sikar (Rajasthan). Presently posted as Assistant Divisional Mechanical Engineer, Indian Railway Service of Mechanical Engineer at Bhagat Ki Kothi, Diesel Shed, Jodhpur

...Applicant

By Advocate: Shri Rishabh Purohit, proxy for Mr. Kuldeep Mathur)

Versus

1. The Union of India through its Secretary, Department of Atomic Energy, Mumbai.
2. The Director, RR CAT, Indore, Madhya Pradesh.
3. The A.P.O.. (Estt.) RR CAT, Indore, Madhya Pradesh.
4. The Head, SSLD, RR CAT, Indore Madhya Pradesh.
5. The Section Officer (R&D-I), Anushakti Bhawan, CSM Marg, Mumbai.

...Respondents

By Advocate: Shri Gaurav Thanvi, proxy for Mr. Rajendra Kataria)

ORDER

Per Mrs. Hina P.Shah

In this application filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant prays for the following reliefs:-

- (i) That the present original application may kindly be allowed and directions may be issued to the respondents to treat the resignation of applicant as technical resignation and to issue last pay certificate to Indian Ordnance Factory Service, National Academy of Defense Production, Nagpur under Ministry of Defence.
- (ii) To transfer the PRAN Account (Pension A/c) of applicant to IOFS, NADP, MOD, Nagpur and correct the pay fixation and to pay arrears with interest along with promotion w.e.f. 1st July, 2009;
- (iii) To direct the respondents to pay salary to the applicant for a period of 90 days along with interest from 31st March 2011 to 31 June, 2011;
- (iv) Any other relief, which this Tribunal deems fit and proper in favour of the applicant any be granted. The original Application may kindly be allowed with costs and all circumstantial benefits may be granted in favour of the applicant.

2. Brief facts of the case, as stated by the applicant, are that he was a trainee of BARC, Training School OCES-2005 from 49th Mechanical Engineer Batch and was working as Scientific Officer/D (CC SSLD), RRCAT, Indore under the

Department of Atomic Energy. He was appointed in the respondent department vide order dated 27.11.2006 as Scientific Officer in the pay band of Rs. 8000-275-13500. The applicant has intimated the Head, SSLD about his appearing in the Indian Engineering Services Examination conducted by the Union Public Service Commission (Ann.A/1). As he successfully qualified the said examination, he was selected and accordingly he submitted resignation on 31.3.2011 (Ann.A/2) and requested the respondents to transfer his service/LPC and PRAN account which he had acquired during his services as Scientific Officer in the Department of Atomic Energy. Vide application dated 31.5.2011 (Ann.A/3), the applicant requested the competent authority to issue him the Last Pay Certificate (LPC) as per Department of Personnel and Training Rules. Vide letter dated 3.6.2011 (Ann.A/4), the APO (Establishment), RRCAT directed the applicant to submit particulars of the Ministry/Department where his services were supposed to be transferred. In reply to the above letter, the applicant informed the authority about the details of transferring his LPC and Permanent Retirement Account Number (PRAN) and requested to transfer his particulars in favour of the Senior Principal Director,

National Academy of Defence Production, Nagpur vide application dated 14.6.2011 (Ann.A/5). Thereafter, the respondent vide office order dated 1.7.2011 accepted the resignation of the applicant and relieved him of his duties. He was directed to surrender his Identity Card, CGHS Card, departmental accommodation and other Government articles issued to him. However, no steps were taken by the respondents to transfer the service LPC and PRAN of the applicant to the Ministry of Defence. The applicant pleaded that as a consequence of his selection to the Indian Engineer Service and his resignation being accepted by the respondents, he joined duties on being appointed on the post of Assistant Work Manager (Professor), Mechanical Engineer in IOFS, Nagpur. The applicant repeatedly requested the authorities to transfer his PRAN No.110070164063 and LPC to the Ministry of Defence, but no heed was paid to the request of the applicant. The respondents have intimated the applicant that 'no intimation/documents as regard to your candidature in Engineering Services Examination conducted by the Union Public Service Commission is available in RRCAT.' To substantiate his claim, the applicant has placed on record communication dated 5.4.2011 (Ann.A/6) obtained by the

applicant under RTI recommending the acceptance of resignation of the applicant on the ground that he wants to join Engineering Services of India. It is the case of the applicant that despite repeated representations, reminders and personal approach to issue LPC and transfer of PRAN, the respondents have not issued LPC and not transferred the PRAN to his newly joined department. In this regard, the applicant has also addressed a letter dated 1st October, 2014 (Ann.A/8) to the Secretary to the Government of India, Department of Atomic Energy, Mumbai in this regard. Aggrieved by the action of the respondents, the applicant has filed the present OA.

3. After issuance of notices, the respondents have filed reply. The respondents have taken the plea of limitation as prescribed u/s 21 of the Administrative Tribunals Act and also denied that the applicant has followed the requisite procedure for technical resignation. It is further submission of the respondents that LPC and transfer of PRAN No./Account is applicable only in cases of transfer, deputation and foreign service and these certificates are not issued to the individual, but to the Government Department where the Government Servant has taken up appointment. The applicant has resigned from the respondent department

on personal reasons and not to join any Government Department. As such, the applicant did not fulfil the conditions for issue of LPC and transfer of PRAN No./Account. It is stated that the applicant was initially appointed as Scientific Officer/C w.e.f. 1.1.2006 and subsequently promoted as Scientific Officer/D w.e.f. 1.7.2009. In the intimation submitted to the Head, SSLD dated 5.2.2010 he has mentioned that he would be appearing in the Indian Engineering Examination to be conducted by the UPSC. An offer of appointment dated 21.3.2011 was issued to the applicant from the Office of Director General, Ordnance Factories, Ministry of Defence, Kolkata and a joining report dated 20.7.2011 was issued by the National Academy of Defence Production, Nagpur, by which the applicant was appointed as Assistant Works Manager (PROB) (Mechanical Engineering) in IOFS, Ministry of Defence. This appointment letter was submitted by the applicant to the respondent department as an annexure to his representation dated 19.3.2013. The respondents further state that the appointment of the applicant was based on the written test held in the year 2009. The applicant had never intimated the respondent department about appearing in the UPSC examination held in the year

2009. The applicant submitted resignation letter dated 31.03.2011 on the ground of personal reasons. The resignation was accepted and the applicant was relieved of his duties in the respondent Department vide office order dated 1.7.2011 (Ann.R/4). The respondents state that the letter dated 14.6.2011 (Ann.A/5) purported to have been written in reply to communication dated 3.6.2011 from APO (Estt.), RRCAT has not been received in the concerned section. With regard to the averments of the applicant that no steps were taken by the respondents for issue of LPC and transfer of PRAN of the applicant to the Ministry of Defence, the respondents have submitted that in terms of Rule 26 of CCS (Pension) Rules, 1972, "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 Govt. where service qualifies." Therefore, in order to count past service it is necessary that the resignation is submitted in order to take up post in another department under the Government where service qualifies. The respondents have also referred to GOI, Ministry of Finance OM dated 4.12.1971 and OM dated 20.05.1972 laying down that benefit of past service shall be allowed in cases where the order accepting the

resignation should clearly indicate that the employee is resigning to join another department with proper permission and the benefit of Rule 26(2) of CCS (Pension) Rules, 1972 will be admissible to him. According to DOPT OM dated 11.2.1988, in cases where Government servants apply for posts in the same or other departments through proper channel and on selection they are asked to resign the previous post for administrative reasons, the benefit of past service may, if otherwise admissible under Rule, be given for purposes of fixation of pay in the new posts treating the resignation as a 'technical formality' (Ann.R/6). In the case of the applicant, the requirement that the resignation should clearly indicate that the employee is resigning to join another department is not fulfilled. As such, resignation cannot be treated as technical resignation in terms of OM dated 11.02.1988. In this regard, the respondents have annexed letter dated 16.4.2014 addressed to the applicant (Ann.R/7). So far as the case of Ajeet Kumar, the respondents have submitted that he has intimated about his intention to appear in the Civil Services Examination to his Head of Division as well as to the establishment section of RRCAT. On being qualified in the said examination, he submitted his technical resignation on

16.8.2010 along with copy of the result of the Civil Service Examination in order to join the civil services. The said technical resignation was accepted by the respondents. Therefore, the case of Shri Ajeet Kumar is not similar to that of the applicant. Therefore, the respondents state that the applicant has not intimated about his appearing in the UPSC examination held in the year 2009. He has submitted his resignation on personal reasons. The respondent department was not aware that he has been selected for appointment in another Government department. In the resignation the requirement that the resignation should clearly indicate that the employee is resigning to join another department is not fulfilled. As such, the resignation of the applicant cannot be treated as technical resignation in terms of DOPT OM dated 11.2.1988. Therefore, the action of the respondents is just and proper.

5. Heard Shri Rishabh Purohit, proxy for Shri Kuldeep Mathur, learned counsel for the applicant and Shri Gaurav Thanvi, proxy for Shri Rajendra Kataria, learned counsel for the respondents and perused the material on record. During the course of arguments, the learned counsel did not press relief No.(iii).

6. The applicant has also filed a Misc. Application for condonation of delay in filing the present OA stating the since he was pursuing the matter with the respondent Department on a number of occasions, therefore, the delay in approaching the Tribunal is bonafide and unintentional and the Misc. Application for condonation of delay may be accepted.

7. The respondents have not filed reply to this Misc. Application, but they have raised the issue of limitation in their reply to the OA.

8. After considering the Misc. Application for condonation of delay, we are of the view that in the interest of justice, the delay is condonable and accordingly, we condone the delay.

9. From the pleadings of the parties, it is evident that the applicant had informed the respondents about appearing in the Indian Engineering Service Examination vide letter dated 5.2.2010 (Ann.A/1). The respondents did not object or withheld permission for appearing in the said examination. He thereafter submitted his resignation mentioning personal reasons vide Ann.A/2 dated 31.3.2011. The letter dated April 5, 2011 (Ann.A/6), which

was issued after considering his resignation dated 31.3.2011, makes it clear that it was in the knowledge of the respondents that the applicant is resigning from the service to join Indian Engineering Service and accordingly, his case was recommended for acceptance of his resignation and relieving him from May 1, 2011. In response to his application dated 31.5.2011 regarding issue of LPC and PRAN, the respondent department asked the applicant to inform about the name of the Department/Ministry of Central Government Civil Services in which the LPC and PRAN is to be continued or produced. The applicant vide his letter dated 14.6.2011 provided the information to the respondent department. The respondents have denied receipt of this letter in the concerned section in the absence of signature of the addressee, but this letter bears the seal of the respondent department. The resignation of the applicant was accepted by the competent authority vide office order dated July 1, 2011 (Ann.R/4). It is also evident that offer of appointment on the post of Assistant Works Manager (Prob) (Mechanical Engineering) in Indian Ordnance Factories Services was issued to the applicant on 21.03.2011. The applicant has accepted the offer of appointment and after relieving by the respondent

department joined the National Academy of Defence Production, Nagpur. The stand of the respondents is that since the applicant submitted his resignation on personal reasons, therefore, the requirement that the resignation should clearly indicate that the employee is resigning to join another department is not fulfilled. We find that though the applicant has mentioned personal reasons in his resignation, but it cannot be said that the respondents have no knowledge about the joining of the applicant to the Indian Engineering Service. The respondents have not objected or withheld permission after the information was given by the applicant for appearing in the Engineering Service Examination. At the time of resignation though intentionally or unintentionally, the applicant has mentioned the ground as personal, but going by the information for appearing in the said examination given by the applicant and the subsequent efforts of the applicant after his resignation, makes it clear that he was not having any intention to suppress the fact of joining the Indian Engineering Services. In a similar case of Shri Ajeet Kumar, Scientific Officer/D, the respondents accepted the resignation as technical resignation because Shri Ajeet Kumar has mentioned the fact of appearing and qualifying

the Civil Services Examination 2009 while resignation the post of Scientific Officer/D. Had the applicant also mentioned the reasons of appearing and qualifying the Engineer Services Examination held in 2009 at the time of resignation, the said resignation could have been treated as technical resignation and the applicant could have been entitled for benefits of his past services. The Divisional Head has recommended his resignation and thereafter, the competent authority has accepted his resignation and the applicant has also joined the Indian Engineering Service, but the benefit of his past service has not been extended to him only due to mentioning of personal reasons in his resignation. In these peculiar facts and circumstances of the case, we are of the view that the applicant should not suffer for such a mistake committed by him at the time of filling the resignation form.

10. Accordingly, the respondents are directed to treat the resignation submitted by the applicant as technical resignation and the benefits, such as transferring of PRAN and issue of Last Pay Certificate etc., be extended to him within a period of three months from the date of receipt of a copy of this order.

11. The OA stands disposed of in above terms with no order as to costs.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

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