
(2018) 09 CAT CK 0008

In the Central Administrative Tribunal

Case No : Original Application No. 2469 Of 2016

Krishan Kumar Sharma

APPELLANT

Vs

Delhi Development Authority And Ors

RESPONDENT

Date of Decision : 28-09-2018

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 14(6)

Citation : (2018) 09 CAT CK 0008

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : Malaya Chand, Sriparna Chatterjee, Piyush Gaur

Final Decision : Allowed

Judgement

Pradeep Kumar, Member (A)

1. Heard Sh. Malaya Chand, learned counsel for applicant, Ms. Sriparna Chatterjee, learned counsel for respondent no.1 and Sh. Piyush Gaur, learned counsel for respondents no.2 & 3.

2. The applicant pleaded that he had worked as Junior Engineer (Civil) [JE (Civil)] under Haryana Government Irrigation Department from 04.01.1980 to 26.05.1986. The applicant came across an advertisement by Delhi Development Authority (DDA) for the post of JE (Civil) for which he made an application but the same was rejected on 23.01.1986 on the plea "not through proper channel". However, subsequently the 'No Objection Certificate' was submitted to DDA on 07.02.1986 and he was allocated roll no.1268 to appear in the written exam for the post of JE (Civil) in DDA. For this NOC, the applicant drew attention to a letter issued by Superintending Engineer, Construction Circle No.1, Canal Colony, Rohtak on 07.02.1986 which reads:

"Shri Krishan Kumar son of Shri Chander Bhan is working as Junior Engineer (Civil), in P.W.D. Irrigation Department, Haryana. He has applied for the post of Junior Engineer (Civil), in D.D.A. in May, 1985. This department has no objection

on his appointment in D.D.A. and in case of his selection he will be relieved as per departmental rules in force."

3. Thereafter once he was selected by DDA, he has tendered his resignation to the Irrigation Department of Haryana which was accepted by the Superintending Engineer, Construction Circle No.1, Rohtak vide his letter no. 3000/PF dated 14.5.1986 and he was relieved from his charge on 26.05.1986. A certificate to this effect was issued by Sub Divisional Officer, Construction Sub Division, Panipat on 03.07.1987 which reads thus:

"TO WHOM IT MAY CONCERN

Certified that Shri Krishan Kumar Sharma s/o Shri Chander Bhan has worked as J.E.(Civil) in P.W.D. Haryana Irrigation Department from 04-01-80 to 26-05-86 (A.N.) in the pay scale of Rs.700-1250. His basic pay at the time of resignation was Rs.760/- P.M. He resigned from service w.e.f. 26-05-86 (A.N.) as his resignation was accepted by the competent authority. During this period his work and conduct was found satisfactory."

4. Subsequently, he joined DDA w.e.f. 27.05.1986. During the course of his service in DDA certain applications were invited on 28.01.2008 to consider the representations of Junior Engineers/Assistant Engineers (JEs/AEs) to count past service for pensionary benefits as well as for upgradation under ACP scheme. He applied for the same. However, this was rejected by the respondent-DDA vide their letter dated 22.03.2016 with the following directions:

"This has reference to your letters/request dated 14.12.2012 and 06.01.2016 regarding counting of past service rendered by you in PWD, Irrigation Department, Haryana for the period from 04.01.1980 to 26.05.1986 for pensionary benefits. In this regard, it is to inform you that you have not applied through proper channel for the post of J.E.(C) in DDA. Your previous department is not willing to pay past service pension contribution. Thus your request for counting of past service for pay protection and pensionary benefits cannot be acceded to as you do not fulfil the terms and conditions of circular No.03 dated 28.01.2008.

This issues with the approval of competent authority."

5. The applicant pleaded that since he had applied to DDA after issuance of NOC by the Superintending Engineer, Irrigation Department, Haryana who was his appointing authority and accordingly who had also accepted his resignation subsequently, the action on the part of the DDA in not considering the past service and the action on the part of Irrigation Department, Haryana in not honouring the NOC and for not transferring Leave Salary Pensionary Contribution (LSPC) to DDA cannot be sustained. Since this benefit has been denied to him, this is the grievance being ventilated in the instant OA.

6. The respondent-DDA had submitted their counter and brought out that the DDA had issued a circular no.3 dated 28.01.2008 to consider the representations

of JE/AEs to grant benefit of counting of past service for pensionary benefits as well as for upgradation under ACP scheme. The respondents brought out that the benefit of past service could be extended subject to fulfilment of the following conditions by the applicants:

"(i) That they have applied through proper channel;

(ii) That the technical resignation is submitted by the officers in their parent departments and joined the new departments in continuity of the technical resignation; and

(iii) That their Parent Department paid the LSPC to the DDA."

7. In the instant case none of these conditions is fulfilled by the applicant and hence benefit cannot be extended.

8. The respondents also drew attention to Rule 14(6) of CCS Pension Rules, 1972 wherein following is provided:

"2) The Governments servants claiming the benefit of combined service in terms of the above decision are likely to fall into one of the following categories:

(1) Those who having been retrenched from the service of Central/State Governments secured on their own employment under State/Central Governments either with or without interruption between the date of retrenchment and date of new appointment;

(2) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Governments through proper channel with proper permission of the administrative authority concerned;

(3) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central governments direct without the permission of the administrative authority concerned and resign their previous posts to join the new appointments under State/Governments.

The benefit may be allowed to the Government servants in Categories (1) and (2) above. Where an employee in Category (2) is required for administrative reasons, for satisfying a technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement, to join, with proper permission, the new posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his Service Book under proper attestation to enable him to get this benefit at the time of retirement. Government servants in Category (3) will obviously, not be entitled to count their previous service for pension."

9. In the instant case the applicant falls under category (3) as he has applied without permission of Irrigation Department, Haryana and as such he is not

entitled for consideration of the same. In addition, Irrigation Department, Haryana are not paying LSPC to DDA.

10. The respondents no.2 & 3 had also submitted their counter and brought out that the present OA is not maintainable on account of limitation as he has already resigned from Irrigation Department, Haryana which was effective from 26.05.1986 whereas the action for verification of past service was initiated by DDA on 18.06.2008.

11. The respondents also pleaded that the applicant had applied without seeking permission of Irrigation Department and had instead submitted his resignation, therefore, benefit of past service cannot be extended. On the same plea LSPC can also not be paid to the DDA.

12. The applicant also pleaded that similar benefits had been extended in the case of another employee, namely, Sh. Prem Sagar Sikka, JE, who also worked in Irrigation Department, Haryana and had also joined DDA sometimes in 1982. His case being similar, the same benefit is required to be extended to the applicant also.

13. Respondents brought out that the case of the instant applicant is not similar to that of Sh. Prem Sagar Sikka. Sh. Prem Sagar Sikka had applied to DDA through proper channel and for him requisite NOC was also received and accordingly LSPC etc. was also paid. Hence, the matter of applicant cannot be considered as similar to Sh. Prem Sagar Sikka.

14. The matter was heard at length. It is undisputed that the applicant had worked on a permanent post in Irrigation Department, Haryana from 04.01.1980 to 26.05.1986, hence, he was eligible for pensionary benefits. The applicant had applied to DDA against the newspaper advertisement for the post of JE (Civil). His application was initially rejected but subsequent to issuance of NOC by the appointing authority, namely, Superintending Engineer, Irrigation Department, Haryana, his application was accepted by DDA and he was allowed to appear in written examination (para 2 supra). Issuance of this NOC by the Superintending Engineer, Irrigation Department, Haryana, has not been controverted in the counter submitted on behalf of respondents no.2 & 3.

In this NOC it is categorically stated that the applicant will be relieved in case he got selected by the DDA.

When the selection fructified in favour of the applicant, he had in turn submitted his resignation which was also accepted by the competent authority, namely, Superintending Engineer, Irrigation Department, Haryana.

15. In view of the foregoing, the technical requirement of having applied through proper channel is substantially met by the applicant as the NOC was issued by his appointing authority at the relevant point of time, wherein the said condition, of his being relieved in the event of his selection in the DDA, was specifically mentioned. Subsequent to selection, he has tendered his resignation also which

was effective w.e.f. 26.05.1986 and he joined the DDA the very next day i.e. 27.05.1986 that is without any break in service.

The rules, CCS Pension Rules, 1972 and the paras quoted by the respondents in para 8 above are therefore taken to have been complied with substantially.

16. In view of this, the substantial requirement of applying to DDA with proper NOC, DDA having accepted the NOC and subsequently resignation having been tendered and accepted by the competent authority and applicant joined DDA without any break in between, are all taken to have been met by the applicant. Accordingly, it is only logical that Irrigation Department, Haryana needs to now remit LSPC to the DDA and DDA also needs to give benefit of his past service also.

17. In view of this, OA is allowed with direction to respondents no.2 & 3 to remit the LSPC within a period of eight weeks from the date of receipt of a copy of this order and respondent no.1 are also directed to take this past service into account for all consequential benefits including ACP and pension etc., within a further period of eight weeks and issue directions to this effect. The letter dated 22.03.2016 issued by DDA stands quashed.No order as to costs.