
(2018) 09 CAT CK 0167

In the Central Administrative Tribunal

Case No : Original Application No. 1514 Of 2016

Maj (Retd) Umesh Chandra Naik

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 06-09-2018

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 26

Citation : (2018) 09 CAT CK 0167

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Padma Kumar S., R.K. Jain, Gyanendra Singh

Final Decision : Dismissed

Judgement

1. This OA has been filed by the applicant seeking the following reliefs:-

"(a) Quash and set aside the Order dated 16.3.2016 (ANNEXURE A-1).

(b) Direct the respondents to count the services rendered by the Applicant in the ARC and grant the applicant the pensionary benefits under the old pension scheme under CCS (Pension) Rules, 1972.

(c) Direct the respondents to grant the applicant all consequential benefits including the arrears of pension under CCS (Pension) Rules 1972 and also reimburse the pension contribution made by the Applicant under the new Pension Scheme with interest thereon.

(d) Any other relief which this Hon'ble Tribunal may be pleased to allow."

2. It is the case of the applicant that he should be given the benefits of his previous service with Aviation Research Centre (ARC) before joining National Technical Research Organisation (NTRO) and accordingly be given benefits as per old Pension Rules.

2.1 Counsel for the applicant brought attention to the fact that before joining

NTRO, he has continuously worked in ARC and there is only a gap of few days before his joining NTRO and the said delay of few days should be condoned and his services be treated as continuous and accordingly he be given the benefits of old Pension Scheme in place of new pension Scheme.

3. Counsel for the respondents strongly opposed the pleas raised in this OA and informed that the applicant - Maj (Retd.) Umesh Chandra Naik had also raised this issue about accepting his resignation as a technical resignation in respect vide his letter dated 8.6.2011, the said matter has already been considered by the respondents and he had been informed on 21.9.2011 that the said request was not agreed to and his resignation from the post of AD (A) was not accepted as technical resignation with retrospective effect.

3.1 It is stated by the respondents that the applicant submitted his request for release from the answering respondent due to personal reason. A copy of the application given by the applicant was examined and he is found to have stated in his application that he wishes to resign due to personal reason. Once having resigned for personal reason, the acceptance of the resignation cannot be deemed to be technical resignation. The rules clearly state that when the resignation to be treated as a technical resignation. The executive instructions of the Government of India, appended under Rule 26 of the CCS (Pension) Rules, read as follows:

"GOVERNMENT OF INDIA'S DECISIONS

(1) When resignation a technical formality and when it subsists. - A Government servant intending to apply for a post or posts outside his parent office/department under the Government of India should have his application forwarded through the competent authority under whom he was serving at the time of applying for the post. Such an authority should either forward the application or withhold it according as the exigencies of public service may indicate but it should not forward the application conditionally, for example, that in the event of the applicant coming out successful, he will be required to resign his post before taking up the new one. Once the application has been forwarded unconditionally and the person concerned is offered the post applied for, he should be relieved of his duties to join the new post as a matter of course and the question of his resigning the post held by him in such circumstances should not arise. Accordingly, the amended article is intended to cover the cases where even though the applications were forwarded by the competent authority, the applicant had been asked for one reason or the other to resign his post before taking up the new one. The above position holds good whether the Government servant held the post in permanent or temporary capacity, before resigning the post.

Situations may arise where the application of a Government servant was not forwarded and the Government servant resigned his appointment of his own volition with a view to his taking up the new post or where it was not possible to

forward his application in the public interest but the Government servant had volunteered to resign his post or where the conditions of service in an office demand as a matter of policy that the Government servant should resign his post in the event of his taking up another post outside. In all such cases, it has been held that resignation of public service will subsist and entail forfeiture of past service.

It has been decided that 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 posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a 'technical formality'. The pay in such cases may be fixed under F.R. 27.

[G.I. M.F. Letter No.35(15)-E. V/60, dated the 21st September, 1960, to the Secretary to the Government of Orissa, Finance Department, Bhubaneswar and G.I., M.F., O.M.No.3379-E, III(b)/65 dated the 17th June, 1965.]"

4. From the above it is quite clear that the applicant applied for the NTRO post directly and not through his parent office/department under Government of India, nor his application was forwarded through the competent authority. In fact initially even his resignation was not accepted by the respondents in view of the operational requirement of their organization. The applicant subsequently filed OA No.3809/2005 and after direction from the Tribunal to release the applicant within a period of two months, the acceptance of resignation of the applicant was conveyed vide Cabinet Secretariat UO No.4/27/2000-DO-II-25 dated 05.01.2006.

5. Quite clearly the respondents have been able to show that this case was not a case of technical resignation, as the resignation was submitted to be on personal ground. Hence, the benefit of technical resignation was not given to the applicant. It is not as if the applicant has not been covered with the benefit of pension. He is getting pension according to the rules and hence the respondents cannot be faulted for disposing of his request as early as in 2011 and conveyed the same to him. Simply because the applicant seeks to be paid his pension according to old pension rules and has filed this OA in 2016, this cannot become a ground to allow this OA. Quite simply the respondents have discharged their duties to pay pension as per the pension rules and hence, there is no merit in this OA and the same is accordingly dismissed. There shall be no order as to cost.