

(2019) 03 CAT CK 0009

In the Central Administrative Tribunal

Case No : Original Application No. 2941 Of 2017

Raj Bahadu

APPELLANT

Vs

Union Of India Through The Secretar

RESPONDENT

Date of Decision : 01-03-2019

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 26

Citation : (2019) 03 CAT CK 0009

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : Yogesh Sharma, Rajnish Prasad

Final Decision : Dismissed

Judgement

1. Applicant is a 70 year old retired person. He was appointed as Khalasi in CPWD on 19.06.1968. CPWD vide their office order dated 13.07.1973 decided to depute certain staff to International Airport Authority of India (IAAI) on foreign service w.e.f. 16.07.1973. In compliance, a total of 88 staff, who all were work charged staff were relieved on 16.07.1973 to report to IAAI. Applicant's name appears at Sl. No.85 of this list. While on deputation to IAAI certain direct recruitment vacancies of Operator (E&M) occurred in IAAI and the applicant applied against these vacancies. The IAAI vide their offer of appointment dated 12.08.1980 selected the applicant and advised as under:

"With reference to your application dated - and the subsequent interview on 07.08.1980, we are pleased to offer you the post of Operator (E&M) on the following terms and conditions:-

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18. You shall report for duty to the undersigned of the authority at the Delhi Airport on or before 25th August, 1980 failing which the offer of appointment will be treated as cancelled without any further reference to you.

19. This appointment is provisional subject to the concurrence of his parent department, i.e. C.P.W.D."

2. The CPWD, however, did not agree to relieve the applicant and advised IAAI to repatriate him. IAAI repatriated the applicant to CPWD vide their orders dated 03.11.1982. It appears that along with the applicant two other candidates were also repatriated back. Thus, these three candidates approached Hon'ble High Court of Delhi in C.W. 243/1983, C.W. 298/1983 and C.W. 306/1983. A common judgment was delivered by the Hon'ble High Court on 03.03.1983. The relevant parts are extracted as under:

"C.W. 243/1983, C.W. 298/1983 & C.W. 306/1983 Rule D.B. The Petitioner who belongs to the C.P.W.D. had gone on deputation as Khalasi to the International Airport Authority of India (IAAI). In IAAI has been selected as Operator (E&M). He is continuing there but by an impugned order of 3.11.1982 has been directed to report to the Superintending Engineer, C.P.W.D. as Khalasi. This is what is challenged in the petition.

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Last time we had asked the authorities to look into the matter. We are now told by the C.P.W.D. authorities that if the petitioner who has a lien in the C.P.W.D. gives it up the C.P.W.D. authorities will have no objection to accept his request and release him and withdraw the request sent to the IAAI for repatriation of the petitioner back to CPWD, on 20.10.1982.

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So far as the petitioner in C.W. 298 & 243 OF 1983 C.P.W.D. They have now been selected as Operator (E&M) in IAAI. The reason for sending them back is also the same as in C.W.306/1983. Mr. G.D.Gupta appearing for the petitioners had offered that the petitioners were willing to resign their posts as Khalasi in C.P.W.D. The position will be that the petitioner in C.W.306/1983 who is a permanent employee of the C.P.W.D. will send his request to the C.P.W.D. authorities given up his lien. The C.P.W.D. authorities have agreed to release him and on that the IAAI will withdraw their order of 3.11.1982 and will continue him in their service. Similarly the petitioners in C.W.298 and 243/1983 who are not permanent will send their resignations to the C.P.W.D. authorities which will be accepted and naturally on that they will be continued in the IAAI.

As the petitioners have been out of job for a very long time we have no doubt that immediately when the letters of giving up lien and resignation are sent to the C.P.W.D. authorities, acceptance will immediately be conveyed to the petitioners as well as IAAI and request for their repatriation will be withdrawn. Immediately thereafter the IAAI will no doubt take immediate action to take these petitioners back. With these observations the writ petitions stand disposed of."

3. In compliance thereof, the applicant submitted his technical resignation on

10.03.1983, which was accepted by CPWD w.e.f 15.03.1983 and the applicant along with two other candidates joined IAAI on different posts w.e.f 16.03.1983 (FN). Office order to this effect was issued by IAAI on 16.03.1983 wherein following three names were indicated:

S.No.

Name

Post in which taken back on duty in IAAI at Delhi Airport

Date on which actually reported back for duty

1.

Shri Raj Bahdur

Operator (E&M)

16.3.1983 (FN)

2.

" Prahlad Mehto

Operator (E&M)

16.3.1983 (FN)

3.

" Devinder Chander

Serviceman (AC

16.3.1983 (FN)

Applicant's name appears at Sl. No.1 above. The applicant is aggrieved that Sh. Devinder Chander, Sl. No.3 above, who was also appointed vide orders dated 16.03.1983 has been granted pro-rata pension whereas the applicant is not granted this pro-rata pension. This grievance has been ventilated in the instant OA.

4. The applicant pleads that DOP&T have issued an OM dated 17.08.2016 wherein the earlier instructions on this subject were consolidated and directions were issued. The relevant para is reproduced below:

"Subject: Technical Resignation & Lien - Consolidated guidelines.

The undersigned is directed to refer to this Department's OM of even number dated the 26th December, 2013 on the above subject and to say that guidelines/instructions regarding Technical Resignation have been issued from time to time. It is now proposed to further consolidate these instructions, as the Department continues to receive frequent references on these issues.

2.1 Technical Resignation

2.1.1 As per the Ministry of Finance OM No. 3379-E.III (B)/65 dated the 17th June, 1965, the resignation is treated as a technical formality where a Government servant has applied through proper channel for a post in the same or some other Department, and is on selection, required to resign the previous post for administrative reasons. The resignation will be treated as technical resignation if these conditions are met, even if the Government servant has not mentioned the word "Technical" while submitting his resignation. The benefit of past service, if otherwise admissible under rules, may be given in such cases. Resignation in other cases including where competent authority has not allowed the Government servant to forward the application through proper channel will not be treated as a technical resignation and benefit of past service will not be admissible. Also, no question of benefit of a resignation being treated as a technical resignation arises in case of it being from a post held on ad hoc basis."

It is pleaded that this OM is in accordance with Rule 26 of CCS (Pension) Rules, 1965 which provides as under:

"It has been decided that in cases where Govt. 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 FR 27."

5. Applicant pleads that Sh. Devinder Chander, whose name is also included in IAAI letter dated 16.03.1983 (para 3 supra), is junior to him in CPWD. Further, the applicant has served CPWD from 1968 till 1983, a period more than 10 years and as such he is also eligible to be granted pro-rata pension. He had represented to the CPWD for the same, who vide their letter dated 06.07.2017 advised him as under:

"With reference to your above P.G. cases and of this office letters under reference it is to inform you that you have left CPWD in 1983 hence you are not eligible to get pension from CPWD. You might have been getting retirement benefit from IAAI. In case there is any order that make you eligible for getting pension benefit from CPWD you please submit all such documents."

The applicant's request has thus been rejected and this grievance has been ventilated in the instant OA wherein the applicant seeks relief to quash the letter dated 06.07.2017 and to grant him pro-rata pension w.e.f. 16.03.1983 with all consequential benefits. No interim relief was sought.

6. The applicant relies upon a judgment by the Tribunal in OA No.3730/2015 titled U.K.Goel vs. Union of India & Ors., wherein judgment was delivered on 04.05.2018.

7. The respondents have opposed the OA. It is pleaded that the resignation from

CPWD came into effect in the year 1983 and he has approached the Tribunal in 2017. In between 34 years have elapsed and as such the OA is time barred.

8. Even on merits, the respondents pleaded the applicant was recalled to work under CPWD for which repatriation orders were also issued on 03.11.1982. Feeling aggrieved with these orders, applicant approached Hon'ble High Court and in compliance of those orders (para 2 supra) the resignation was accepted on 15.03.1983. This acceptance letter reads as under:

"Your request for acceptance of Resignation from C.P.W.D. as Khallasi, in order to enable you to be absorbed/employed as the case may be under International Airport Authority of India as Operator (E+M) is acceded to in obedience of an order of High Court of Delhi passed in case No. CW/243/1983, CW/298/1983 & CW 306/1983, w.e. from the date of issue of this acceptance letter. Your all connections will also stand severed with this Department from the very date as well."

9. The terms and conditions applicable to the acceptance of resignation were advised by CPWD to IAAI vide their letter dated 29.01.1985 which reads as under:

"In continuation of this office letter No.2(7)/DCED7/2140 dated 27.12.84, it is intimated that S/Shri Raj Bahadur, Devinder Chander and Prahlad Mehto, Khallasi are not entitled to terminal benefits as they had resigned from this department all the workers may please be informed accordingly.

A reference is also invited to this office letter No.2(7) EC0II/2090 dated 15.12.84. Your reply in this regard is still awaited. Please expedite."

These were, in turn, advised to the applicant as well as the two other candidates in respect of whom IAAI had initially issued the posting orders on 16.03.1983 (para 3 supra), vide IAAI letter dated 12.02.1985. With this in view, respondents pleaded that the applicant was well aware as of 12.02.1985 itself that he is not entitled for any terminal benefits as he had resigned from CPWD.

10. It was further pleaded that since the applicant wanted to work in IAAI, he had kept quiet all these years and is ventilating his grievance only after a long period of 34 years which is now not maintainable.

11. In respect of the discrimination, as alleged by the applicant vis-a-vis Sh. Devinder Chander, it was brought out that Sh. Devinder Chander was a quasi permanent staff w.e.f. 03.01.1976 as per entries in his service book. He had been requesting for pro-rata pension since long and at least since 1995 as per available records. This request was not agreed as prior to 01.01.1986, pension was admissible only if a Government servant was permanent or if he/she has rendered more than 28 years of service as a temporary Government servant. However, Sh. Devinder Chander had continued to pursue the matter and accordingly, a Departmental Promotion Committee (DPC) meeting took place on 30.12.2003 and vide orders dated 30.12.2003 Sh. Devinder Chander was

declared as confirmed w.e.f. 04.01.1976.

As against this, the applicant herein had felt satisfied with his absorption in IAAI and had never approached CPWD for taking any action in respect of confirmation. Thus, there has not been any discrimination.

12. The applicant has claimed that Sh. Devinder Chander was issued pro-rata pension orders vide letter dated 26.08.2005 and thereafter he has made certain representations in the year 2007. The applicant had also lodged his grievance on the web portal of DOP&PW on 01.05.2017 as well as again on 04.05.2017. In reference to both these on-line registration of grievance, the applicant was advised vide CPWD letter dated 16.05.2017 that the matter is more than 34 years old and the records are not traceable in the office and accordingly the applicant was requested to submit service documents along with a copy of the judgment by Hon'ble High Court of Delhi in CW No.243/1983 so that further action could be taken.

CPWD vide letter dated 31.05.2017 also advised as

under:

"Sub: REGARDING PENSION CASE.

This has a reference to your letter dated nil and even without any signature. In this regard it is intimated that this office has not received any application/letter from your side previously (Stated to have been delivered in 2007). Moreover, photocopy of letter enclosed does not bear signature of applicant and date which has been received now. Secondly, you were requested to provide copy of judgment of CW No.243/1983, CW 298/1983 and 306/1983 from Delhi High Court but the same is still awaited from your side.

The subject matter pertains more than 34 years old and record either has been weeded out. However, you are advised to submit any documents pertaining to your service matter only and copy of the above judgments so that the matter can be taken up with Pay & Accounts Office for further action/advise, if needed. You are also advised to attend the office of the undersigned on any working day from 2.30 p.m. to 4.30 p.m. for authentication of your claim and signature so that your case may be referred to Pay & Accounts Office for further advise in the matter."

13. From this, it appears that representations were never sent earlier in the year 2007, even though it is being claimed now. Further, the requisite documents were also never submitted even after applicant was advised on 31.05.2017 (para 12 supra). It was only thereafter, that the CPWD had issued him a letter on 06.07.2017 which reads as under:

"With reference to your above P.G. cases and of this office letters under reference it is to inform you that you have left CPWD in 1983 hence you are not eligible to get pension from CPWD. You might have been getting retirement

benefit from IAAI. In cases there is any order that make you eligible for getting pension benefit from CPWD you please submit all such documents."

14. It was pleaded that OA needs to be dismissed.

15. Matter has been heard at length. Sh. Yogesh Sharma, learned counsel represented the applicant and Sh. Rajnish Prasad, learned counsel represented the respondents.

16. The applicant was a quasi permanent staff when he was deputed to IAAI. However, the applicant wanted to continue with IAAI as he was selected as Operator (E&M) against a direct recruitment by IAAI. He was ordered to go back to the parent department, namely, CPWD. It was only with the intervention of Hon?ble High Court that his resignation was accepted by the CPWD. The terms and conditions of this resignation included a condition that retiral benefits are not due and this was advised to the applicant in the year 1985 itself.

The applicant had kept quiet all these years and ventilated the grievance in the year 2017 only, firstly, with the CPWD and thereafter with the Tribunal. The application is thus time barred and not maintainable.

17. In regard to discrimination vis-a-vis Sh. Devinder Chander, it is noted that Sh. Devinder Chander was deputed to IAAI through a different order and not the one dated 16.07.1973 in which applicant was deputed (para 1 supra). Thereafter, said Sh. Devinder Chander had continued to pursue the matter in regard to his confirmation as the same needs to be processed by a specially constituted DPC. It was as a result of that continuous persuasion at least since 1995 that he was confirmed w.e.f. 04.01.1976 and he may have become eligible for certain pensionary benefits as per orders issued in 2005.

However, this by itself does not give a cause of action to the applicant since he never pursued the matter in respect of his confirmation in CPWD all these years and accordingly, the required process of DPC etc. could never take place in his case. Therefore, claim of discrimination is not acceptable.

18. As per relevant rules, the pensionary benefits are not admissible in respect of the applicant since his status was that of a quasi permanent staff only and he had rendered only 15 years of service in CPWD as of 1983. The applicant?s claim fails in this context also.

19. The judgment in respect of Sh. U.K.Goel (para 6 supra) is in a different context as said Sh. U.K.Goel was working as a Section Officer (Electrical) in CPWD on a temporary basis and thereafter he was deputed to IAAI. However, CPWD still maintained his lien for two years. The maintenance of lien is normally done in respect of permanent staff, who are deputed to other departments. The Tribunal had kept this aspect into view as is very clear from the observations made by the Tribunal in their orders dated 04.05.2018:

"15. I may also like to further observe that the respondent-CPWD had allowed

the applicant as well as few other CPWD Junior Engineers to retain the lien for 2 years after they were selected as Assistant Engineers by IAAI. Pertinent to note that the lien is normally allowed to be retained to the permanent employees. Hence, the action of the respondents to allow the applicant to retain his lien for 2 years vide their order dated 19.07.1976, would go to prove that the applicant was treated as regular employee, even though on the record he continued as quasi permanent employee in CPWD."

This condition of being treated as permanent, does not hold true in respect of the applicant and this aspect was made very clear in the year 1985 itself and the same was advised also by CPWD to IAAI and in turn, by IAAI to the applicant.

20. Thus, viewed from any angle, the pleading by applicant is not finding acceptability.

21. In view of the foregoing, the OA does not succeed. The same is dismissed being devoid of merit. No costs.