

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.6092/2006**

% 12<sup>th</sup> January, 2011

SHRI JAGDISH NARAIN

..... Petitioner  
Through: Mr. Umesh Singh,  
Advocate.

VERSUS

BSES RAJDHANI POWER LTD. & ORS.

..... Respondents  
Through: Mr. S.N. Choudhary,  
Advocate for the  
respondent No.1.  
Mr. Sumeet Pushkarna,  
Advocate with Mr.  
Jitender Kumar,  
Advocate for the  
respondent No.2.  
Mr. Himanshu,  
Advocate for the  
respondent No.3.

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? **Yes.**
3. Whether the judgment should be reported in the Digest? **Yes.**

**VALMIKI J. MEHTA, J (ORAL)**

1. The present petition shows the plight of an employee who after his honest service for 33 years and 2 months has been forced to

knock the doors of the Court because the original employer and the successor in interest employer are refusing to give the petitioner due benefits flowing from service of 33 years and 2 months.

2. The facts of the case are that the petitioner joined service with department of Overseas Communication Services (Ministry of Communication) on 16.11.1971. The petitioner through proper channel then applied for transfer to Delhi Electric Supply Undertaking (DESU). On this application of the petitioner filed through proper channel, the petitioner was allowed to join DESU and which he did on 16.11.1977. It is not in issue that the petitioner applied through the proper channel and through proper channel was relieved from the Ministry of Communication and was employed with DESU. This is clear from the letter dated 2.5.2001 annexed by the respondent No.1 with its counter and para 1 whereof clearly states that it is through the proper channel that the petitioner applied for and joined DESU. Since the contents of this letter dated 2.5.2001 are relevant, the same are reproduced hereunder:-

“No.HQ-C/03-01(2)/2001-PER

Asstt. Personnel Officer (Pension),  
Delhi Vidyut Board,  
Pension Cell,  
Rajghat Power House,  
New Delhi

Sub: Counting of past service rendered by Shri Jagdish  
Narain w.e.f. 16-11-71 to 4-11-71, Ex.JTA, OCS, R/S

Chhatterpur N.D.

Sir,

Please refer to your letter No.APO(P)/2000-2001/2890 dated 14-2-2001, on the above subject.

The information desired by you in your above cited letter dated 14-2-2001 is as under:-

1. Shri Jagdish Narain had applied through proper channel.
2. Shri Narain joined OCS on 16-11-1971 (FN) and was relieved w.e.f. 04-11-1977 (AN) to join D.E.S.U. He had not taken any Ex-O.L. during the above period.
3. Shri Narain was a member of GPF.
4. Shri Narain's GPF alongwith GPF ADA was transferred to D.E.S.U. in the year 1978 by the Regional Pay & Accounts office, OCS, New Delhi. He was not paid any service/retirement gratuity or pro-rata pension, as he was not eligible for the same.

Yours faithfully,  
For VIDESH SANCHAR NIGAM LTD.

(SMT. M.K. PANKAJ AKSHAN)  
DY. GENERAL MANAGER (HR)''

3. The petitioner worked with DESU then with DVB and thereafter with BSES Rajdhani Power Limited/respondent No.1 for 27 years and two months. The sum total of service period of petitioner with his employers therefore came to 33 years and 2 months. The petitioner superannuated on 31.1.2005.

4. On retirement, when the petitioner was granted his service benefits including the pensionary benefits it transpired that the petitioner was getting the said benefits only for 27 years and 2 months and not for 33 years and 2 months. The petitioner after the usual follow up, ultimately served a legal notice dated 13.1.2006 for giving

the service benefits taking the service period as 33 years and 2 months and not as 27 years and 2 months. The matter was again thereafter followed up with the authorities, which was however to no avail forcing the petitioner to file the present writ petition.

5. At the outset, I may state that when an employee through the proper channel joins one government department from another government department, there is a presumption of continuity of his service, unless, it is brought to the notice of the petitioner that in spite of getting employment through the proper channel, which is indicative of continuity of service, he would not be granted the benefit of continuity of service unless a particular act is done by an employee. This is important because it is not for the employee to find out, unless he specifically required to do it, whether two government departments have done their duties and any financial consequences/amounts are paid by the original government department to the successor government department.

6. The stand of the respondents and so argued on behalf of the respondent Nos.1 and 2 is that the petitioner was bound in terms of a resolution No.1381 dated 23.3.1987 of MCD, of which DESU was a part, to exercise an option for continuity of service and financial benefits within one year from his joining DESU. It is urged that since the option was not exercised by the petitioner, the respondent Nos.1

and 2 are not liable to club the service period of the petitioner with the earlier employer together with the subsequent employers for grant of pensionary and other financial benefits and there cannot be tagging of periods flowing from rendering of service to Ministry of Communication, DESU and the subsequent employers. Reliance in this behalf is placed upon the decision of a learned Single Judge of this Court in the case of ***B.D. Sharma Vs. Deputy Education Officer & Ors. 2004 VI AD (Delhi) 50.***

7. It is also argued that the petition is barred by delay and laches.

8. I am afraid I am unable to agree with the arguments as raised on behalf of the respondent Nos.1 and 2. Firstly, the petitioner joined the service of DESU in the year 1977 and this circular of MCD relied upon is of the year 1987. Surely, the circular of the year 1987 will only apply to persons who joined DESU post 1987 and not to those who have already joined much earlier. The petitioner had joined DESU about 10 years before the issuance of the circular i.e. on 16.11.1977. This circular of MCD, therefore, clearly does not apply to the petitioner. Further, where a person is deprived of the normal benefits flowing from applying and joining through the proper channel, then, when adverse consequences have to follow, it should necessarily have been brought to notice of the petitioner that he was bound to exercise an option.

During the course of arguments, I put it to the counsel for the respondent Nos.1 and 2 whether at any time, it was brought to the notice of the petitioner that such a circular dated 23.3.1987 exists and that an option should be exercised within one year. Very fairly, the counsel for the respondent Nos.1 and 2 state that as per the record there is nothing to suggest so.

9. In my opinion, therefore, In view of above stated facts, the decision relied upon in the case of **B.D. Sharma (supra)** are distinguishable and will not apply to the facts of the present case.

10. In view of the above, the petitioner is entitled to pensionary and other financial benefits flowing to him from service of a period of 33 years and 2 months and not for 27 years and 2 months. In my opinion, there is also no question of any delay and laches in filing of the petition because the petitioner retired on 31.1.2005. He thereafter regularly approached the authorities and served a notice dated 13.1.2006. After serving the notice and failing to get an appropriate response, this petition has been filed on 3.4.2006 i.e. just within one year and three months from the date of his retirement, and that is only when he came to know that he is getting service benefits on the basis of service of 27 years and 2 months and not 33 years and 2 months. Also, in a case where a person is praying for his legitimate dues from service, the principle of denying relief on the ground of

delay and laches should not be easily applied unless grave prejudice is shown to have been caused to the employer by the delay, and of course the prejudice cannot be one which is self-inflicted by in action of the employer.

11. I may note that it is for the government departments inter se and for one former govt. department/ employer to give to one subsequent govt. departments/employers, financial adjustment or payments which had to take place pursuant to joining of one government department by an employee after obtaining permission through the proper channel of another government department. Because the government departments do not follow up in their duties for transfer of amounts from the original government department to the subsequent government department cannot mean that an employee who has worked for a long period, should be deprived of his normal benefits of superannuation which he is entitled to by tagging of the two periods of service in the two government departments.

12. Accordingly, writ petition is allowed and the respondents by writ of mandamus are directed to give all superannuation benefits to the petitioner considering the service period of the petitioner of 33 years and 2 months and not 27 years and 2 months. In view of the facts of the present case, I also deem it fit to award costs of Rs.10,000/- in favour of the petitioner and against the respondents.

Costs shall be paid within a period of four weeks from today.

With the aforesaid observations, the writ petition is disposed of as allowed.

**JANUARY 12, 2011**  
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**VALMIKI J. MEHTA, J.**