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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 16.07.2015

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W.P.(C) 6660/2003

DEVINDER NATH NARULA

..... Petitioner

Through : Sh. A.P. Nagrath, Advocate.

versus

UNION OF INDIA

..... Respondent

Through : Sh. J.K. Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The review petitioner seeks direction for inclusion of two periods of service in the employment of state agencies of the Government of Punjab, i.e. between 01.12.1953 and 01.01.1955 as Panchayat Secretary and between 23.02.1960 and 23.12.1960 as Assistant Hostel Warden in the Punjab Polytechnic at Nilokheri in erstwhile Punjab, for pensionary purposes by the Railway Protection Force (RPF) which he subsequently joined after selection.

2. The petitioner's original claim in these proceedings was disposed off on 05.03.2014 with the following direction:

“4. Now, if the petitioner wants the two services to be counted as pensionary service he has to first approach the State of Haryana or Punjab which would proportionately make the

payment to the Railway Protection Force and thereupon the Railway Protection Force would do the needful. Since this has not happened we permit the petitioner, as prayed by counsel to withdraw the petition and simultaneously permit the petitioner to make a representation to the State of Haryana/Punjab on the subject of the two periods of aforesaid service rendered by him to be reckoned as pensionable service so that the State could make the contribution of the necessary sum to the Railway Protection Force, to be credited in the pension account and thereafter revised pension be paid to the petitioner treating length of service as inclusive of the two periods of service above noted.”

3. Subsequently, the petitioner moved Review Petition No.179/2014, relying upon the Office Memorandums (OM) dated 09.10.1986 and 05.12.1989. It was contended that the combined effect of these OM's is that those who joined the Central Government employment after having served with a State Government would be entitled to reckon the previous period/periods of employment for the purpose of pensionary benefits. Taking note of these OM's, the petitioner's review was accepted on 23.05.2014.

4. Learned counsel relies upon OM dated 09.10.1986 which recounts appointment of a Committee to review the existing rules and to simplify/rationalize them. The Committee pointedly addressed itself to the issue of allocation of leave, service, salary and pension on a proportionate basis to those absorbed in either's employment after having served with the State/Central Government as the case may be.

5. The relevant part of the said O.M. reads as follows:

“2. Pursuant to the above, it has been decided in consultation with the State Governments to dispense with the system of allocation of Leave salary and pension between Central and State Governments as specified below:

(a) Leave Salary – The existing system of allocation or sharing of the liability on account of leave salary contributions by Central Government to State Governments or vice versa will be dispensed with. The liability for leave salary will be borne in full by the Department from which the Government servant proceeds on leave, whether it be his parent Department or a borrowing Department with whom he is on deputation.

(b) Pension – The liability for pension including gratuity will be borne in full by the Central/State Department to which the Government servant permanently belongs at the time of retirement. No recovery of proportionate pension will be made from Central/State Government under whom he had served.”

6. Learned counsel for the petitioner also relies upon the subsequent O.M. dated 05.12.1989 which clarifies that the 09.10.1986 O.M. applies to all cases, “*where the system of apportionment of pension liability was in vogue prior to its issue, i.e. in respect of both permanent and temporary employees of the Central/State Government as the case may be.*” It is thus contended that these circulars/O.Ms entitle the petitioner to claim that the two periods of services spent with the Punjab Government ought to be included for the purpose of pension fixation etc. and other consequential benefits.

7. Learned counsel for the RPF resists the claim and submits that a bare reading of the introductory part of the OM dated 09.10.1986 shows that it applied only where deputationists were sought to be absorbed to the Central Government. He also relied upon an earlier OM dated 31.03.1982, to say that where an individual secures employment with the Central Government or any of its departments without obtaining approval of the previous State employers, he cannot claim inclusion of past service for the purpose of pension.

8. This Court proposes to deal with both the contentions of the respondent, in reverse order. From the facts apparent on the record, the petitioner did not resign from his services of Punjab Government in either instance where he worked (either in the Panchayat office or Punjab Polytechnic at Nilokheri); rather the tenure of his engagement/employment ended. Nevertheless, he did serve Punjab Government for over two years. Consequently, the submission of the respondent that permission of the previous employer has not been obtained and that this disentitled him to claim inclusion of his past service for the purpose of pension is meritless. So far as the other contention, i.e. OMs dated 09.10.1986 and 05.12.1989 are applicable or restricted only in the case of deputationists who are eventually absorbed by the Central Government is concerned, the tenure and the phraseology employed by the two documents do not bear out such an argument. In fact, they applied to all cases where employees with the State Government/Central Government are subsequently absorbed in the other, i.e. State or Central Government, as the case may be.

9. In view of the above conclusion, this Court hereby directs the respondent to include the said two periods of service claimed by the petitioner to be in the service of the Punjab Government, i.e. at the Panchayat office and Punjab Polytechnic at Nilokheri for the purpose of pension. On the basis of due verification of these periods of service, the respondent shall pass fresh pension fixation order and disburse the arrears of pension, taking into account the recommendations of the Fifth and Sixth Pay Commissions in such cases, as accepted and implemented by the Central Government. The notional increase in the pension shall be disbursed but arrears shall be payable for the period 2003 onwards. The writ petition is

allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JULY 16, 2015

