

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.630 of 2016

=====

Ram Nivas Kumar S/o Hari Kishore Sharma resident of village Salalpur, P.S. Parwarpur, District – Nalanda.

.... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Information and Broadcasting, Government of India, New Delhi
2. The Director General, Doordarshan, Doordarshan Bhawan, Copernicus Marg, New Delhi
3. The Dy. Director (Admn.), Prasar Bharati, Doordarshan Bhawan, New Delhi
4. The Director, Prasar Bharti, Doordarshan Kendra, Muzaffarpur
5. The Sr. Administrative officer, o/o the Director, Prasar Bharti, Doordarshan Kendra, Muzaffarpur
6. The Additional Deputy Inspector General of Police, Group Centre, Reserve Police, Yelhanka, Bangalore

.... Respondents

=====

Appearance :

For the Petitioner	:	Mr. Sunil Kumar, Advocate
		Mr. Sushant Kumar, Advocate
For Union of India	:	Mr. S.D. Sanjay, ASG
		Mr. Rajesh Kumar Verma, CGC

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 16-01-2017

Petitioner filed O.A. No.118 of 2011 in the Central Administrative Tribunal, Patna Bench, Patna. The prayer of the petitioner before the Tribunal, which has been reproduced in the order of the Tribunal dated 19th August, 2015, is as under:

"[A] Letter No. 28/26/2002-SII(A)/1494 dated 16.09.2003, issued by the Dy. Director [Admn.], Prasar Bharti, Directorate General, Doordarshan Bhawan, New Delhi, addressed to the Director, Doordarshan Kendra, Muzaffarpur, as contained in Annexure A/3 may be quashed and set aside.

[B] The letter dated 14/01/2010, issued by



Sr. Administrative Officer for the Director, Prasar Bharti, Doordarshan Kendra, Muzaffarpur, as contained in Annexure A/5, may be quashed and set aside.

[C] The respondent authorities may be directed to fix the initial pay of the applicant after counting his previous service, rendered in CRPF and accordingly all the consequential benefits such as revised scale of pay as per the revision and difference of salary etc may be fixed and paid to him.

[D] The cost of litigation, incurred in filing the instant OA, may be awarded upon the respondents.

[E] Any other relief / reliefs as the applicant is entitled and Your Lordships may deem fit and proper in the ends of justice."

2. Even an application for condonation of delay was filed, which was allowed by the Tribunal.

3. The background to the filing of the OA application before the Tribunal was that the petitioner initially joined the Central Reserve Police Force as an A.S.I. on 15.03.1996. Prior to the joining, it is his case that he had sat for an examination for Stenographer Grade-D post for which the examination was conducted by the Staff Selection Commission on 03.02.1996. The petitioner was selected for the post of Stenographer on 10.12.1996. This is at the time when he was still in service of CRPF. Petitioner took leave between 02.12.1996 to 31.12.1996 and thereafter informed the CRPF authorities about his selection and the requirement to report for duty before Doordarshan on 01.01.1997. There was obvious difficulty because the petitioner could not serve two masters simultaneously and he was rather desperate to join



Doordarshan as a Stenographer rather than continuing in CRPF. There are certain reasons why it was so and it emerges from the order of the Tribunal, which indicates unsatisfactory service etc.

4. Problem arose for the petitioner. The authorities obviously took a grim view since there was no prior information nor any permission was obtained. This led to the petitioner tendering his resignation before the Deputy Inspector General of Police, Group Centre, CRPF at Bangalore where he was stationed. The letter of resignation is Annexure-5 to the writ application and dated 21.10.1998. On the basis of the acceptance of the resignation, which is a resignation simplicitor, the petitioner joined the Doordarshan Kendra, Muzaffarpur and has now suddenly got wise that he can be better off if those additional years of service rendered under CRPF is allowed to be added to his present service.

5. The benefit of past service can be provided under circumstances, which has been crystallized by the Central Administrative Tribunal in paragraph-6 of the order and is rather precise, therefore, Court is tempted to reproduce the same:

"6. Heard the parties and considered their submissions/arguments/documents. The facts/views which emerge are as below:-

[a] It is clear from the records that the applicant had participated in an examination conducted by the Staff Selection Commission for appointment to the post of Stenographer Grade 'D' before he joined as a ASI [M] in Group Centre, CRPF Yalhanka, Bangalore on 15.03.1996.



That he subsequently succeeded in the said examination and joined as Stenographer Grade 'D' in the Doordarshan Kendra, Muzaffarpur on 9.11.1998. That being the case, the issue to be adjudicated in this OA is whether the past services of the applicant under the CRPF will be counted and whether he will be eligible for consequential benefits thereafter.

[b] The instruction relating to extension of benefits of past service are quite explicit. In terms of G.I, M.F, O.M No. 3379-E.III (B)/65, dated 17th June, 1965, it has been stipulated 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 resignation'. The pay in such cases may be fixed under FR 27."*

[c] Further, in terms of DOP&T O.M No. 13/24/92-Estt.(Pay-1), dated 22nd January, 1993, the following has been clarified:-

"A question has now been raised as to whether the above benefit is admissible to Government servants who applied for posts in the same or other Departments before joining Government service and on that account the application was not routed through proper channel. The matter been examined and it is now decided that the benefit of past service subject to the same condition as incorporated in OM, dated 17.6.1965 above, may be allowed in such cases also, subject to the fulfilment of the following conditions:-

[i] the Government servant at the time of joining should intimate the details of such application immediately on their joining;

[ii] the Government servant at the time of



resignation should specifically make a request, indicating the dates that he is resigning to take up another appointment under the Government/Government Organization for which he applied before joining the Government service and that his resignation may be treated as 'technical resignation';

[iii] the authority accepting the resignation should satisfy itself that had the employee been in service on the date of application for the post mentioned by the employee, his application would have been forwarded through proper channel."

[d] It is, thus, obvious from the above that the first responsibility of the applicant was to inform the competent authority in the CRPF about the details relating to his application for another post at the time he initially joined service i.e., on 15.03.1996. Clearly, the applicant has failed to do so since, by his own admission, he informed the competent authority in the CRPF about his selection for another post only on 01.01.1997 i.e after being informed about his selection for the post of Stenographer Grade 'D' in Doordarshan Kendra, Muzaffapur. That being the case, the applicant has clearly defaulted in meeting the first obligation stipulated in the circular quoted above.

[e] In terms of the above quoted circulars, the applicant was also obliged to make a formal request for treating his resignation as a technical resignation. However, it is abundantly clear from the letter dated 20.10.1998 [Annexure R/2] that the applicant has made a simple prayer "to kindly accept my resignation from service with effect from 3.11.1998 (A.N.]. Contrary to the arguments now being made by the applicant, his mere intimation that he has received an offer of appointment from the Doordarshan Kendra, Muzaffarpur does not, by itself, translate into a request for a technical resignation. It is additionally noted from the said document at Annexure R/2 that the applicant



has also stated that he "*hereby submit my resignation from the service for your kind consideration.....*". That being the case, the applicant has clearly defaulted in not making a specific prayer for technical resignation.

[f] It is further noted that, while resigning from the service under CRPF, the applicant has also refunded a sum equal to three months pay and allowances on account of the cost of training imparted to him in the said Organization. By doing so, the applicant has acquiesced in the decision of the respondents to process his resignation in terms of Rule 17 (A) of the CRPF Rules, 1975. Quite obviously, this has been done by the respondents also on account of the fact that the applicant has not applied for a job elsewhere after joining service and after having been granted cadre clearance for the same. It is also possible to argue that in case the applicant had intimated the full picture of his application for a job elsewhere at the time of joining, he could have availed the benefits available in such cases. Here too, the application of the appropriate rules cannot be questioned in view of the facts and circumstances of the case.

[g] The service record of the applicant is also quite explicit and it is quite clear from the entries therein that the resignation tendered by the applicant has been accepted with effect from 4.11.1998 [F.N.] under the provision of Rules 17 and 17 (A) of CRPF Rules, 1955.

[h] From the applicant's own submission, it also appears he was not very satisfied / happy with his service under the CRPF on account of having had an earlier dispute regarding his medical fitness. Further, the probation of the applicant was also extended on account of unsatisfactory service. In the circumstances, it may not be unreasonable to assume that once he obtained a job elsewhere i.e., with Doordarshan Kendra, Muzaffarpur, the applicant was anxious to leave CRPF. In the process, he



seems to have taken the quick route of a simple resignation from service instead of joining issue with the CRPF authorities about treating his resignation as a technical resignation. He now seems to be attempting to retrieve the grounds which he has lost by his acts of omissions / commissions aimed at securing an early exit from the CRPF. Unfortunately, it appears to be too late for him to turn the clock back, given the facts and circumstances of this case.

[i] It is necessary to note that the DOPT's circular dated 22.1.1993 [already quoted above] clearly stipulates that benefit of past service, in cases such as that of the applicant, may be allowed "subject to the fulfilment" of the three conditions prescribed in said circular. There is no 'either – or' clause. In other words, all conditions are to be met. In this case, the applicant by his own act of omission, has not met the first requirement of intimating the details of his application for jobs elsewhere either "at the time of joining" or "immediately on his joining." In the circumstances, and even if a liberal interpretation is made about his claims of having sought a technical resignation [though this does not appear to be so from the records and in terms of applicable rules], the claim of the applicant falters at the very first step."

6. The Tribunal, therefore, came to a considered opinion by applying the circulars, which permits consideration of past service, with the conduct of the petitioner, and the steps, which he had taken by resigning simplicitor and therefore negated the prayer of the petitioner to grant benefit of past service.

7. The Court does not find any infirmity either in facts or in law in the Tribunal's order rejecting the prayer of the petitioner. In



addition to that the High Court also expresses its opinion after perusing Annexure-5, the resignation letter, that the letter of resignation was a resignation simplicitor and not a 'technical resignation' with the object of acquiring another job or responsibility either under the Organization or under the Union of India in another department. Obviously the petitioner is looking for a benefit, which is not available to him either in fact or in law and a close scrutiny of the words used in the letter of resignation supports the finding of the Tribunal as well as view of this High Court that the petitioner cannot be given benefit of past service because his letter of resignation being what it is, it amounts to forfeiture of his past service and since he took up appointment in Doordarshan as a fresh recruitment, the past will remain a past for him.

8. Writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

S.Kumar/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.01.2017
Transmission Date	NA

