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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 14.03.2024*+ **W.P.(C) 3767/2024****DELHI DEVELOPMENT AUTHORITY AND ANR.**

Petitioners

Through: Mr. Arun Birbal, Mr. Varun Gupta
and Mr. Sanjay Sinha, Advocates.

versus

SURJIT SINGH AND ANR.

..... Respondent

Through: Mr. M.S.Saini, Advocate for R-1.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)****CM APPL. 15512/2024 -Ex.**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 3767/2024 & CM APPL. 15511/2024 -Stay.

3. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 01.06.2023 passed by the learned Central Administrative Tribunal in O.A.3694/2018. Vide the impugned order, the learned Tribunal has allowed the original application filed by the respondent/applicant by directing the petitioners to take into account his past service with the Military Engineering Services (hereinafter referred to as 'MES') from



05.10.1972 to 30.07.1981 for the purposes of computing his ACP and pensionary benefits.

4. Before dealing with the rival submissions of the parties, the brief factual matrix as emerging from the record may be noted.

5. Upon an advertisement being issued by the petitioners in the year 1980 inviting applications for the post of Junior Engineer (Civil), the respondent/applicant, who was working with the MES applied for appointment to the said post and upon being selected, was issued an offer of appointment by the petitioner/DDA on 25.06.1981. The respondent, accordingly, tendered his resignation from the MES and was relieved on 30.07.1981 by retaining his lien in the MES for two years. It is the common case of the parties that the respondent joined the services of the petitioner on 31.07.1981 i.e., without any break after being relieved from the MES on 30.07.1981. While joining the service of the petitioner/organization, the respondent also gave an undertaking that he would not claim any benefit of his past service. After rendering about 20 years of service, the respondent resigned from the petitioner authority on 01.01.2000 and has since then been drawing pension on the basis of his service with the petitioner reckoned for the period between 31.07.1981 to 01.01.2000.

6. Upon representations being made by a number of Junior Engineers/Assistant Engineers, the petitioners, while acceding to their demands, issued a circular dated 28.01.2008 providing therein that the past service of Junior Engineers/Assistant Engineers in pensionable establishments under Central Government/State Government/Autonomous Bodies prior to their joining service with the



petitioner would be included for reckoning their pensionary benefits as also for up-gradation under the ACP Scheme. Upon learning about this circular, the respondent made various representations to the petitioner, which proved to be futile and therefore, approached the learned Tribunal by way of original application being O.A.3694/2018, which has been allowed under the impugned order. Being aggrieved, the petitioner has approached this Court by way of the present petition.

7. In support of the petition, Mr Arun Birbal, learned counsel for the petitioners has made three submissions. The first and foremost being that the respondent having given a specific undertaking while joining the service of the petitioner that he would not claim any benefit of his past service, he cannot, now be permitted to pray that his service with the MES should be taken into account for computing his pensionary and ACP benefits. He, next contends, that even otherwise since the respondent was no longer an employee of the petitioner when the circular dated 28.01.2008 conveying its policy decision to include the past pensionable service under the Central Government/State Government or Autonomous Bodies was issued, he cannot claim benefits of the said decision. Finally, he submits that since the respondent had, at the time of joining services with the petitioner, retained his lien with the MES for a period of two years, it could not be said that he had submitted his technical resignation from the MES at the time of joining the petitioner organization. Consequently, the circular itself was not applicable to the respondent. He, therefore, prays that the impugned order be set aside.



8. On the other hand, Mr. M. S. Saini, learned counsel for the respondent no.1 supports the impugned order, and submits that once the petitioners have taken a policy decision to take into account the past service of all Assistant Engineers and Junior Engineers working in the petitioner organization for computing their pensionary benefits and up-gradation under the ACP scheme, they ought to have extended the said benefit to the respondent/applicant on their own without compelling him to approach the Court.

9. He further submits that the petitioners' plea that the respondent had not submitted his technical resignation from the MES and, therefore, the circular dated 28.01.2008 would not be applicable to him is also wholly misconceived. He submits that even though the respondent had initially retained a lien of two years with the MES at the time of his joining service in the petitioner organization, he had subsequently tendered his resignation and had, therefore, rendered service with the petitioner/organization for almost 20 years before he took voluntary retirement on 01.01.2000. It is, therefore, not open for the petitioners to now urge that the respondent had not submitted his technical resignation to the MES. Finally, he submits that even otherwise the impugned order has already been implemented by respondent no.2, who has already transferred the requisite amount payable towards his enhanced pension after taking into account his past service with the MES. He, therefore, prays that the writ petition be dismissed.

10. Before dealing with the rival submissions of the learned



counsel for the parties, it would be apposite to note the relevant extracts of the impugned judgment as contained in para 14 to 16 thereof :

“14. Now the question is whether the applicant should be denied advantage of counting his past service solely on the ground that he has not resigned or because it is not on record of the respondent department. It is undisputed that the applicant was appointed as Superintendent B/R Grade-II in the MES on 05.10.1972. He had served in the MES from 05.10.1972 to 30.07.1981 and was released for taking up the appointment of JE (Civil) in DDA on 30.07.1981 afternoon. He was also issued a Movement Order which clearly stated that if he fails to report to his new place of posting, he will be entitled for no pay and allowances and after a week's time he will have no lien of appointment. Subsequently in 2011, his last pay certificate was also forwarded to the DDA. This is also not in dispute that he joined DDA with due permission of competent authority in the MES. Entry regarding release of the applicant for taking up appointment in DDA was also recorded in his service book. Further, his lien in MES was automatically terminated after two years and entry to this effect was also recorded in his service book. The applicant claims that he tendered his technical resignation to the parent department, but the Respondent No.3 has denied it as the same has not been found in the records of the parent department. However, it is not the case of the applicant that he did not apply through proper channel nor his application was rejected. This is also not in dispute that he put in continuous service in MES for 9 years and upon his selection he joined DDA on 30.07.1981 without any break and continued therein. In the case of a procedural provision such as technical resignation, if it is not met and more particularly in absence of any evidence that the applicant cannot be singularly held responsible for this, our considered view is that the issue should be examined from the standpoint of substantial compliance.



15. In this case, even though the formality of technical resignation remains contentious, we do not think that solely on this ground he should be denied the benefit of the past nine years of service rendered in his parent organization. We are also of the view that the interests of natural justice demand that the technicalities which do not occasion failure of justice are not allowed to defeat the ends of justice. Therefore, it will be in fitness that the MES remits his LSPC to DDA and the DDA gives benefit of past service in MES to the applicant with all consequential benefits.

16. In view of this, the OA is partly allowed and the impugned order is quashed with a direction to Respondent No 3 to remit the LSPC within a period of 8 weeks from the date of receipt of a copy of this order. The Respondent No.1 is also directed to take his past service into account with all consequential benefits, including ACP and pension etc. within a period of further 8 weeks and issue a direction to this effect. No order as to costs”.

11. Having perused the aforesaid extracts of the impugned judgment, we find that the learned Tribunal has allowed the original application filed by the respondent after taking into account the admitted position that the respondent had served with the MES for about 9 years between 05.10.1972 to 30.07.1981 before he had joined the petitioner organization. The learned Tribunal was of the view that it was now too late in the day to get into the question whether the respondent had submitted his technical resignation to the MES while joining the petitioner on 31.07.1981 where he served for almost 20 years, it had to be presumed that he had submitted his resignation to the MES before joining the petitioner. Consequently, the learned Tribunal was of the opinion that the respondent should not be deprived of the



benefits of his past service with the MES when the same was being extended to all similarly placed Assistant Engineers and Junior Engineers in the petitioner organization.

12. In the light of these findings of the learned Tribunal, we have considered the plea of learned counsel for the petitioner but find no merit therein. Even though the learned counsel for the petitioners has vehemently urged that there was no document on record to show that the respondent had tendered his technical resignation at the time of joining the petitioner organization, we are in agreement with the learned Tribunal that taking into account that the respondent was permitted to serve with the petitioner organization for 20 years, it has to be presumed that he had tendered his resignation to the MES before joining the petitioner though the same was within a lien of two years.

13. We have also considered the petitioners' plea that the respondent had, while joining service with the petitioner, submitted an undertaking that he will not claim any benefit of his past service with the MES and, therefore, he is estopped from seeking benefit thereof for the purpose of pension and ACP. In our view, merely because the respondent had, at the time of joining the petitioner organization, given an undertaking that he would not claim any benefits of his past service, it would not imply that he had given up his rights to claim benefits under a subsequent circular issued by the petitioner. Once the petitioner itself decided to extend the benefits of past service under the Central Government/State Government or Autonomous Bodies to its Assistant Engineers and Junior Engineers for the purpose of computing pensionary and ACP benefits subject to the earlier department paying



the LSPC to the petitioner, it cannot now be permitted to urge that the respondent cannot to seek benefit of this circular. There is also no merit in the petitioners' plea that since the respondent had already resigned in 2000, he would not be entitled to benefits under the circular dated 28.01.2008. Pension is a recurring cause of action and, therefore, the respondent was justified in claiming that his pensionary be suitably revised by taking into account his past service with the MES.

14. For the aforesaid reasons, we find no infirmity with the impugned order, the writ petition being meritless is, accordingly, dismissed.

REKHA PALLI, J

RAJNISH BHATNAGAR, J

MARCH 14, 2024/ib