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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.27890 OF 2025

In the matter of an application under Articles 226 & 227 of the Constitution of India, 1950.

Union of India and others .... ***Petitioners***

-versus-

Dr. Manoj Kumar Das .... ***Opposite Party***

Advocates Appeared in this case

For Petitioners	**-**	***Mr. P.K. Parhi, DSGI*** ***along with*** Mr. D.R. Bhokta, CGC
For Opp. Party	-	Mr. Abhaya Kumar Behera, Sr. Advocate with M/s. R.K. Bisoi, A.K. Samantray, D.P. Parija & A. Mishra, Advocates

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HON'BLE MR. JUSTICE DIXIT KRISHNA SHRIPAD
HON'BLE MR. JUSTICE SIBO SANKAR MISHRA

Date of Hearing & Judgment : 09.01.2026

PER **KRISHNA S. DIXIT,J.**

The Union Government through the Ministry of Health & Family Welfare and its entities are knocking at the doors of Writ Court for assailing the order dated 31.01.2025, whereby the Central Administrative Tribunal, Cuttack, having favoured sole OP's OA No. 260/00692 of 2022,

has set at naught the order dated 26.04.2019 and has given a consequent direction *inter alia* for reckoning his service during the period between 04.01.1988 & 15.03.2007 in NIMR under IDVC Project as qualifying service for the purpose of terminal benefits. A period of sixty days is prescribed for compliance.

2. Learned DSGI Mr. P.K. Parhi appearing for the Petitioners urged the following grounds seeking invalidation of the impugned order.

(i) Case of the OP is not one of Technical Resignation and therefore, the service rendered in NIMR under IDVC Project prior to OP's regular appointment to the post in question cannot be counted for the purpose of pension & other terminal benefits.

(ii) Though the letter of Technical Resignation was submitted by the OP, the same has not been accepted by the competent authority and therefore, there was no Technical Resignation for reckoning his previous service for the purpose of terminal benefits, which aspect has been lost sight of by the Tribunal.

(iii) The Tribunal grossly erred in not following the decision of Madras High Court in ***P. Philip Samuel v. The Director, Vector Control Research***

Centre, IMCR[1] and thus there is error apparent on the face of record, warranting interference of this Court for setting the same at naught.

3. Learned Senior Advocate appearing for the OP vehemently opposes the petition making submission in justification of the impugned order of the Tribunal and the reasons on which it has been founded. Essentially, he made the following submissions seeking dismissal of the petition:

(i) OP has put in about 19 years of service in the Project in question as a temporary employee in the post in question to which he has been appointed later and was drawing the emoluments admissible to the post unlike in **Philip Samuel** *supra* and therefore, the ratio of the said decision is not applicable to the case of OP.

(ii) The case of OP is one of Technical Resignation, inasmuch as the letter of Technical Resignation was tendered on 15.03.2007 afternoon and on its tacit acceptance, OP had reported for duty in the post on regular basis on the following day, i.e., 16.03.2007 forenoon. It is under the same direction in the same office and to the same post, with the same table & chair. Therefore, the disconnect sought to be made out between the previous service and the subsequent regular service is fictional and therefore, liable to be ignored.

(iii) Rule 13 of CCS (Pension) Rules, 1972, having expansive text, speaks of qualifying service which would commence from the date a Government

[1] 2023:MHC:5412

employee takes charge of the post, to which he is first appointed substantively, on official basis or on temporary basis with no interruption. That being the position, the impugned order of the Tribunal perfectly accords with law and does not call for interference.

4. Having heard learned counsel for the parties and having perused the petition papers, we decline indulgence in the matter for the following reasons:

4.1. OP on being selected pursuant to an open advertisement came to be appointed on 04.01.1988 as a Technical Officer in the IDVC Project, Malaria Research Centre, NIMR on temporary basis. His pay scale was Rs.2000-3200/-. Subsequently, on 31.12.1991, he was appointed as Research Scientist in the same Project in the pay scale of Rs.2000-4000/-. Subsequently, on 30.06.1994, he was appointed as Senior Research Scientist in the pay scale of Rs.3000-4500/-. He was subjected to the discipline of all Rules applicable to regular employees of the Central Government. Subsequently, he was duly selected and came to be appointed in the regular cadre of Senior Research Officer under MRC/NIMR on regular pay scale of Rs.3000-4000/-. He submitted his Technical Resignation on 15.03.2007 afternoon and reported for duty on regular basis on the forenoon of following day, i.e., 16.03.2007. All this is a matter of record and that there is no much dispute thereto.

4.2. The vehement submission of learned DSGI that Petitioner's Technical Resignation was never accepted, although he was permitted to join the post in question on being freshly appointed in a selection process, is bit difficult to

countenance. Reasons for this are not far to seek. Firstly, Petitioner's resignation letter dated 15.03.2007 specifically mentions 'Technical Resignation'. The same reads as under:

> *"To*
> *The Director,*
> *National Institute of Malaria Research,*
> *22-Sham Nath Marg,*
> *Delhi-110054.*
>
> *Sub: - Technical Resignation from the post of Senior Research Scientist, IDVC Project - reg.*
>
> *Sir,*
>
> *There was a vacant post of SRO at NIMR Delhi for which advertisement was made by the council. I have applied for the said post which was duly forwarded by the Director, NIMR, Delhi to The Director General, ICMR, Delhi. Since I have applied through proper channel and I have been selected for this post of Senior Research Officer at NIMR Delhi, vide Councils letter no. ICMR/MRC/4/2005-Pers dated 7th March 2007 by following the usual procedure.*
>
> *As such I am resigning from the post of Senior Research Scientist, IDVC Project and this may be treated as technical resignation.*
>
> *My resignation may kindly be accepted from afternoon of 15.03.2007."*

Secondly, he reported for duty vide joining report dated 16.03.2007, which has the following text:

> *To*
> *The Director, National Institute of Malaria Research,*
> *22-Sham Nath Marg,*
> *Delhi-110054.*
>
> *Sub:- Joining for the post of Senior Research Officer at NIMR Delhi - regarding.*
> *Sir,*
> *I have been selected to the post of Senior Research Officer at NIMR Delhi on a pay of Rs. 11625/-p.m. vide councils letter No. ICMR/MRC/4/2005-Pers dated 7th March 2007. I have joined my duties on 16th March 2007 fore noon at IDVC, FU, Itki, Ranchi. As I*

am already posted at this field unit and acting as OIC as such my joining may be treated as deemed to have been joined at NIMR Delhi."

Thirdly, both the resignation letter and the joining report are addressed to the very same authority, namely, the Director, National Institute of Malaria Research, Delhi and the gap between the two letters is less than 24 hours. Therefore, when duty report of the OP was accepted without any demur, the Technical Resignation is deemed to have been accepted.

4.3. It is pertinent to mention something more about the above: Had the authorities, to whom these letters are addressed, been different or that had there been a long gap between tendering of resignation and submission of duty report, arguably contention of learned DSGI would have merited acceptance. Ordinarily, resignation would take effect once the request is accepted, regardless of its communication, unless the Rules otherwise provide. If the resignation is accepted by a formal record, that would be very ideal. However, cases of tacit acceptance of resignation, by way of conduct of the authorities, are not unknown to Service Jurisprudence. It is not the case of Petitioners that the resignation letter of the OP has not been rejected, in which case such a rejection needs to be communicated to the employee. Learned Senior Advocate appearing for the OP is right in telling the Court that the post against which his client was serving, before being selected & appointed on regular basis, is the same; the office in which the OP was earlier working on temporary basis is the office in which he is made to work on regular appointment; even the table & chair also are same. Therefore, contention of the learned DSGI that in the

absence of formal acceptance by drawing some record, the resignation would not take effect, does not merit acceptance.

4.4. It hardly needs to be stated that the Service Jurisprudence broadly recognizes the difference between ordinary resignation & the Technical Resignation. In some jurisdictions, even Rules are promulgated. In the case of resignation simpliciter, there is break in service in the sense that the *vinculum juris* is disrupted putting an end to the relationship of employer-employee for all purposes. In the case of Technical Resignation, that may not happen *stricto sensu,* and in any event there is a notional continuation of service, be it in the same post or the same department or in a different department under the same employer. The decisions in ***Krishna Kant Tiwari v. Kendriya Vidyalaya Sanghatana***[2] and ***Sh. Jitendra Kumar v. Indraprastha Power Generation Co. Ltd.***,[3] broadly echo the same view. It is observed in the said decisions that resignation tendered for joining another Government post through proper channel is a Technical Resignation, and that the employee is entitled to continuity of service. However, this is not a Thumb Rule, is also true.

4.5. Learned Senior Counsel appearing for the OP is more than justified in contending that Rule 13 of 1972 Rules comes to the rescue of his client. The said Rule reads as under:

> *"13. Commencement of qualifying service*

[2] (2014) 13 SCC 471
[3] 2017 SCC OnLine Del 6903

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post: ...."

(Other part of this Rule not being relevant is not reproduced.)

This Rule employs the expression '*officiating or temporary capacity'*, that precedes the substantive appointment. The provision to the Rule has the term '*officiating or temporary service*' that precedes such substantive appointment. Very significantly, Proviso to the Rule contains the term '*substantive appointment in the same or another service or post*'. This Rule by its very text is expansive and intends to extent benefit to a temporary employee who gains permanent one subsequently. The intent & Policy content of the Rule is apparent from its text that the previous temporary service in the same post or not, cannot be wiped out while computing the qualifying service for determining the pension & other terminal benefits. An argument to the contrary cannot be sustained without manhandling the language of said Rule.

4.6. Support for the above view also avails from a part of Rule 26, namely, Sub-Rules (2) & (3) which have the following texts:

"26. Forfeiture of service on resignation

xxx xxx xxx

(2) A resignation shall not entail forfeiture of post service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him….."

A plain reading of these sub-rules of Rule 26 coupled with Rule 13, which appear in the very same Chapter of the Rule Book uniformly applying to the employees of the Central Government would unmistakably lead to a conclusion that the previous temporary service of an employee has to be reckoned along with regular service for the purpose of determining the terminal benefits, of course, subject to complying with the conditions stipulated in them.

4.7. The last contention of learned DSGI that the Tribunal erred in deviating from the ratio of Madras High Court decision in **Philip Samuel** *supra*, is difficult to countenance. The said decision has not been structured keeping in view the Rule position, namely, Rules 13 & 26 of the 1972 Rules, presumably because they were not attracted to the fact matrix of that case. It hardly needs to be reiterated that a decision is an authority for the proposition that has been laid down in the given fact matrix of a case, and not for all that which logically follows from what has been so laid down as observed by Lord Halsbury more than a century

ago in ***Quinn v. Letham***[4].The other rulings pressed into service by the learned DSGI do not merit due consideration, their substratum being miles away from that of the case at hand.

4.8. There is one more aspect to the case, namely, the elements of justice that weigh with the OP. He has put in a long & spotless service of about 19 years in the temporary capacity, having gained entry to the said employment in a due selection process pursuant to a public advertisement. Strictly speaking, his is not a case of backdoor entry. By all standards, his services could have been regularized with retrospective effect from the date of entry itself, as has been done in the case of other similarly circumstanced employees, as rightly contended by the learned Senior Advocate representing the OP. The record of the case shows that he worked in various capacities and had a progressive career, with all regular emoluments & facilities as are available to permanent employees. He has worked in Nicobar Islands and suffered detriment during Tsunami episode in December, 2004. Thereafter, on regular appointment he was holding significant post of Research Scientist. The Tribunal, after considering all aspect of the matter, has handed the impugned order that has brought about a just result, regardless of arguably infirmities that do not go to the root. A Writ Court exercising a limited supervisory

[4] [1901] AC 495 (HL).

jurisdiction under Article 227 of the Constitution of India, ornamental employment of companion Article 226 notwithstanding, does not sit in appeal over the decisions of a statutory Tribunal which too exercises powers almost on par with Writ Court, under the provisions of the Administrative Tribunals Act, 1985, as construed by the Apex Court in ***L.Chandra Kumar v. Union of India***[5]. Ours is a constitutionally ordained Welfare State and therefore, the Government, be it Central or Provincial, has to conduct itself as a model litigant. It should rejoice when a worthy litigant secures victory in his legal battle. *Much is not necessary to specify and less is insufficient to leave it unsaid*.

In the above circumstances, this petition being devoid of merits is liable to be dismissed and accordingly it is, costs having been made easy. The impugned order of the Tribunal to be implemented within sixty days, without giving scope for contempt proceedings.

Web copy of the judgment to be acted upon by all concerned.

(Dixit Krishna Shripad)
Judge

(S.S. Mishra)
Judge

Orissa High Court, Cuttack
The 9th day of January 2026/Ashok

[5] AIR 1997 SC 1125