

Central Administrative Tribunal
Principal Bench

O.A.No.678/2002

(P)

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 9th day of April, 2003

B.R.Subba Rao
450 HIG Ramachandra Puram
Hyderabad, presently staying at
D-1392 Vasant Kunj
New Delhi - 110 070. Applicant

(By Advocate: Sh. K.B.S.Rajan)

Vs.

1. Union of India through
The Secretary
Dept. of Pension & Pensioners' Welfare
Loknayak Bhawan
New Delhi-3.
2. The Secretary
Ministry of Personnel & Training
(Dept. of Personnel & Training)
North Block
New Delhi.
3. The Secretary
Ministry of Power
Shram Shakti Bhawan
New Delhi.
4. The Chairman
Central Electricity Authority
Seva Bhawan
R.K.Puram
New Delhi - 66. Respondents

(By Advocate: Ms. Promila Safaya)

O R D E R

By Shri Shanker Raju, M(J):

Applicant impugns respondents' order dated 20.3.2001 where his request for grant of pro-rata pensionary benefits in relaxation of OM dated 3.1.1995 has been rejected. He has sought quashment of this order with grant of pro-rata pensionary benefits.

2. The Apex Court in I.S.Ithiruvengadam v. Secretary to Govt. of India, 1993(2) SCC 134 held that the cut off date 16.6.1967 for benefit of pro-rata

pension to those Government servants who had been permanently absorbed in Public Sector Undertakings as arbitrary, consequently by an OM dated 3.1.1995, pro-rata pension made admissible even to pre 16.6.1967 absorbees provided they are permanent Government servants, put in minimum of ten years of service and refund of retiral benefits as per order dated 10.11.1960. In this background, it is stated that applicant entered the Government service on 10.9.1956 and was relieved on 22.4.1967 and having put in ten years and seven months of service. He was holding the status of quasi permanency whereas his juniors have been confirmed from retrospective effect.

3. Applicant who was accorded the quasi permanency, in Central Water and Power Commission (Power), as Extra Assistant Director on 1.7.1960 and was promoted on officiating basis as Assistant Director on 23.11.1961 as well as Deputy Director in officiating capacity on 24.6.1964.

4. While on deputation to UPSEB in October, 1996, applicant applied for the post of Mechanical Engineer Gr.I in Bokaro Steel Limited and he applied through proper channel and on selection, applicant submitted his resignation and accordingly he was relieved on 22.4.1967 and joined Bokaro Steel Limited on 22.4.1967. From there, he joined on deputation to BHEL on 31.12.1976 where he was absorbed in July, 1977 and retired on superannuation from BHEL on 25.5.1987. At the time of joining Bokaro Steel Limited, he had

ten years and seven months service in Central Government. But the benefit of his past service has not been accorded to him.

5. After OM issued on 16.6.1967, as per the Supreme Court's decision, another OM dated 3.1.1995 was issued and mentioned therein certain conditions made admissible pro-rata pension to permanent absorbees in Public Sector Undertakings. Applicant who fulfilled all the conditions except permanent Government servant, as his resignation was in Public Interest having tendered through proper channel, preferred representation, which was rejected, giving rise to the present OA.

6. Shri K.B.S.Rajan, learned counsel appearing on behalf of applicant, contended that in the wake of decision of the Supreme Court's decision supra having declared the cut off date, i.e., 16.6.1997 as arbitrary, those who were absorbed in Central Public Sector Undertakings in public interest have been deemed to be retired from the date of such absorption and are eligible to pro-rata benefits under Rule 37 of the CCS (Pension) Rules, 1972. As per order dated 3.1.1995, it is contended that applicant fulfills the two conditions of ten years qualifying service and absorption in Public Sector Undertakings in public interest. Applicant who was granted two^{two} promotions was not confirmed whereas his juniors have been confirmed retrospectively. As he had applied through proper channel for the post outside the parent

department and applicant is duly qualified, on his selection, as per OM dated 14.4.1988, the aforesaid resignation would be in public interest.

7. Respondents rejected his plea on the ground that he resigned from the post and was not declared permanent in parent department his resignation was with a view to secure employment in Central Public Sector Undertaking will not entail forfeiture of past service.

8. As per the rules, and as applicant has been denied permanency, in view of the decision of Tribunal in OA 2445/2000 decided on 7.8.2001 in Baldevi Verma v. Union of India, in similar circumstance, it has been observed that "the question with regard to the status of the applicant whether he is permanent or temporary or quasi permanent cannot come in the way of the applicant as the applicant had worked for a long period against the substantive post". Learned counsel for applicant in this backdrop stated that the case of the applicant, in all fours, covered by the aforesaid decision of the Tribunal.

9. Alternatively, one of the argument of Shri K.B.S.Rajan is that assuming without accepting that one of the conditions has not been fulfilled, in case of undue hardship, the relaxation can be accorded under Rule 88 of the CCS (Pension) Rules, 1972 with the prior approval of the DoPT. As the case of applicant comes within the ambit of hardships, having attained 72 years, and on grant of pensionary benefits the

cause of action is recurring and as to the order passed on 3.1.1995, and once the cut off date is declared arbitrary and on the basis of the decision of the Apex Court and various pronouncements of the Tribunal, applicant has approached this Court on a recurring cause of action and as his request was considered and rejected on 20.3.2001, limitation issue cannot be agitated.

10. On the other hand, Smt. Promila Safaya in reply repeated the contentions and stated that concession of pro-rata benefit cannot be claimed as a matter of right. His request for benefits as per OM dated 10.11.1960, has already been turned down on 20.12.1967 and 19.11.1970 as such filing of the OA after such a long period is barred by limitation. It is however, contended that even if the cut off date is declared arbitrary as per OM dated 3.1.1995 as the applicant has neither fulfilled the conditions of permanency nor his resignation was in public interest as well as his absorption, pro-rata benefits cannot be accorded to him as his repeated representations would not extend the period of limitation.

11. It is stated that OM dated 3.1.1995 does not provide him any fresh cause of action as the aforesaid OM extend the benefits available under OM dated 16.6.1967, to those absorbees in PSUs who were eligible for retiral benefits under OM dated 10.11.1960. As the applicant is not covered under this OM he cannot be accorded the benefit.



12. In so far as the decisions of this Tribunal are concerned, the same would not apply and distinguishable.

13. In so far as Rule 88 of the Rules ibid is concerned, his request for relaxation has already been considered and rejected and accepting of his request would have cascading effect.

14. I have carefully considered the rival contentions of the parties and perused the material on record. In so far as the limitation is concerned, in view of the decision of the Apex Court in M.R.Gupta v. Union of India and Others, 1995(31) ATC 186 as the cause of action is pertaining to pensionary benefits, i.e., pay and allowances, the denial of the same constitute recurring cause of action. Moreover, as per the decision of the Apex Court supra, and in view of the OM issued on 3rd January, 1995 where cut off date for pro-rata benefits for PSU absorbees has been held to be arbitrary, applicant's cause of action had arisen from the date of OM dated 3.1.1995 and as his representation has been turned down on 20.3.2001, this application has been filed within the limitation period as envisaged under Section 21 of the Administrative Tribunals Act, 1985. Accordingly, this objection is rejected.

15. As per the order dated 3.1.1995, issued by the Government, applicant fulfills the conditions of rendering ten years service under the Government and as far as his proceeding to Central Public Sector Undertakings in public interest is concerned, having

applied for the post in PSU through proper channel and joining the department after rendering formal resignation, in my considered view this condition is also satisfied.

16. The only impediment for grant of pro-rata pension in the case of applicant is his non-permanency in the Government. From the perusal of the record, it appears that applicant was granted quasi permanency and was promoted twice on officiating basis. Having completed more than ten years in Government service, there is a presumption of his permanency as he had worked on regular post. The question of being permanent or temporary has already been dealt by the Co-ordinate Bench in Baldev Verma's case (supra), where on the basis of having rendered long period of service, the question of permanency has been observed not to come in the way of applicant for grant of pro-rata pension which has been based on the decision of the Apex Court in I.S.Thiruvengadam's case (supra) the requirement of having permanent in Government service cannot be an impediment for grant of pro-rata benefits to applicant.

17. Moreover, I find that under Rule 88 of the CCS(Pension) Rules, 1972 in case of undue hardship caused to applicant by any of the Rules, the same can be relaxed by the Government in consultation with DoPT.

18. In this regard on perusal of the order passed on 20.3.2001, where the applicant has been denied grant of pro-rata pensionary benefits under

Rule 88 ibid in relaxation, the same contains no reasons and is a bald order. Being a quasi judicial Authority and particularly when the substantive right of a person is jeopardised, it is incumbent upon the Government to support the order with reasons. As the applicant fulfils all the conditions and having rendered long service and earned promotions twice, there is a presumption of his permanency more particularly in the circumstances when his juniors have been accorded confirmation retrospectively, the impugned orders passed by the respondents cannot be sustained under the law.

19. Accordingly, for the foregoing reasons, OA is allowed. Order dated 20.3.2001 is quashed and set-aside. Respondents are directed to consider a fresh the claim of applicant for pro-rata benefits and in this furtherance Respondent No.2 is directed to re-consider the issue of grant of relaxation to applicant of the provisions of order dated 3.1.1995 in so far as his permanency is concerned having regard to the decision of the Apex Court and as also followed by the Tribunal in Baldev Verma's case (supra). If the applicant is accorded relaxation, he may be accorded benefits of pro-rata pension and other benefits in accordance with law. The aforesaid exercise shall be completed within three months from the date of receipt of a copy of this order.

S. Raju

(Shanker Raju)
Member(J)

/rao/

Not Allowed on 8/4/03
from M.A. J.S. EOT