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Central Administrative Tribunal

Principal Bench

O.A. No. 1724 of 2001

New Delhi, dated this the 19 April, 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

1. Pensioers' Welfare Forum,
Rep.by its President,
Shri R.P.Singh,
C/O K.A.P.S., Township
P.O.Anumala, Via Vyara
District Surat, Gujarat-394 651.
2. B.Vishakam
S/O Shri S.Bashyam,
C-12/8, KAPP Township,
PO Anumala
District Surat,
Gujarat State 394 651.APPLICANT
(By Advocate :Shri S.Ravinder Bhat
with Shri Naveen. R.Nath)

VERSUS

1. Union of india
Rep.by its Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
(Deptt.of pension & Pensioners'Welfare)
6th Floor, Nirvachan Sadan, New Delhi.
2. The Nuclear Power Corporation,
(A Govt. of India Entertises),
Rep by Chairman & Managing Director,
Vikram Sarabhai Bhawan,
Anushkti Nagar, Mumbai -400 094
3. The Secretary,
Deptt. of Atomic Energy,
Anushakti Bhawan, C.S.M.Marg,
Mumbai - 400 039RESPONDENTS
(By Advocate :Shri V.S.R.Krishna)

ORDER

S.R. ADIGE, VC (A)

In this OA filed on 13.7.2001 by the Pensioners Welfare Forum and one other, respondents' OMs dated 5.7.89 (pages-155-159 of OA) and 31.3.95 (pages 192-194 of OA) as well as Notification dated 24.12.97 (pages 195-229 of OA) in so far as it denies to them commutation of pension are impugned.

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2. Heard.

3. It is not denied that many if not all the signatories to the present OA, who at one time were Central Government Employees and upon the formation of the Nuclear Power Corporation of India Limited were transferred on deputation to NPCL and were subsequently asked to give their option for permanent absorption in NPCL, had challenged the terms and condition that would govern their absorption, as also the settlement of their pensionary benefits for services rendered in Central Government, consequent upon their absorption in NPCL, in OA No. 150/95 Parmanu Vidyut Karamchari Union and one other Vs. UOI and Ors., and six connected OAs. All these seven OAs were dismissed by CAT PB by common order dated 31.8.95 (Annexure R-2).

4. The aforesaid order dated 31.8.95 was challenged in the Hon'ble Supreme Court in SLP (Civil) No. 24210-24213/95 which was disposed of by order dated 11.3.96 (Annexure R-3) which is extracted below in full:-

"Leave granted.

We have heard learned counsel on both sides. Only three clarifications have been sought from the order passed by the Tribunal and in fairness, the Government also has stated that the provisions relating to retiral benefits are available to the employees who are going to PSU. With regard to the second contention, relating to their entitlement to go as a surplus staff, in the event of their not

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opting to be absorbed as employees in the PSU, the option was kept open in Clause 3 of the Memorandum of Understanding dated July 5, 1989. With regard to the entitlement covered under Clause 4 they will continue to enjoy the benefits of pay-scales, leave entitlement and terminal benefits under the Government order till their promotion or retirement, whichever is earlier, in terms of Para 4 of the same Memorandum of Understanding. Another contention raised related relates to entitlement of those employees who have not completed 10 years of service to get interest @ 12% per annum. They complain that they are entitled to 12% per annum interest on the GPF. Payment of interest at 6% being an agreed formula under the Memorandum of Understanding they cannot go behind the same and claim higher rate of

interest. It is not a case where on section is given 12% interest and another is denied of the same.

Under these circumstances, we do not find any force in the last contention raised.

The appeals are accordingly disposed of. No costs."

5. Having exercised their options for permanent absorption in NPCL applicants have now filed the present OA on 13.7.2001.

6. Respondents in their reply have raised certain preliminary objections. Firstly it is pointed out that the present OA is barred by Constructive Res Judicata in view of the Tribunals aforesaid order dated 31.8.95 and the Hon'ble Supreme Court's order dated 11.3.96. Secondly it is pointed out that this OA filed on 13.7.2001 seek to challenge OMs dated 5.7.89 , 31.3.95 and 24.12.97 and is therefore squarely hit by limitation under Section 21 AT Act.

7. These preliminary objections raised by

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respondents in their reply to the OA have not been controverted by applicants in any rejoinder filed by them, and on the point of delay there is not even any MA filed for condonation of the same.

8. That apart, even on merit, we find that applicants have no case. As pointed by respondents in their replies to paras 4.1 to 4.5 of the OA, two options were made available to deputationists, either to remain in the service of Govt. or to get absorbed in NPCIL's service. The ~~options~~ joining the Respondent No.2 were given the following sub-options:

a) to retain the pensionary benefits for the total service (Govt. and Corporation) or

b) to draw pro rata monthly pension

c) to draw 100% commutation

Members of Applicants' Forum having exercised the option ² ~~a~~ best suited to them, cannot now turn back and challenge the very process of calling for options, and be heard to contend that option (b) above, should also have provided for commutation of pension.

9. The above averments of respondents in their replies to paras 4.1 to 4.5 of the OA have also not been challenged by applicants in any rejoinder.

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10. In the result, viewed at from any angle the OA warrants no interference, and reliance placed by applicants' counsel on the rulingⁿ in 2000 (3) SCC 350; 1991 (4) SCC 139 and 1993 (2) SCC 174, do not advance applicants' claim in the facts and circumstances of this particular case.

11. The OA is therefore dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

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S.R. Adige
(S.R. Adige)
Vice Chairman(A)