

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2125 of 2001

(8)

New Delhi, this the 13th day of February, 2002.

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

1. Smt. Uma Arora
W/o Shri S.P. Arora
R/o 16-A, OCS Apartments,
Phaze-I, Mayur Vihar,
Delhi-110 091.
2. Smt. Sudesh Kalra
W/o Shri M.L. Kalra
R/o 19, Ajanta Apartments,
36, I.P. Extension,
Delhi-110 092.Applicants

(By Advocate: Shri S.M. Ratanpaul)

Versus

1. Union of India
Through the Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi.
2. The Secretary,
Min. of Personnel, Public Grievance and
Pensions,
North Block,
New Delhi.
3. The Chairman,
Central Water Commission,
Sewa Bhawan,
R.K. Puram, -RESPONDENTS
New Delhi.

(By Advocate: Shri D.S. Mahendru)

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (JUDL)

MA 1765/2001 filed by the applicants for
filing a single application is allowed.

2. The applicants have filed this OA under
Section 19 of the Administrative Tribunal's Act, 1985
whereby they have assailed the act of the respondents in

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denying them his pro-rata pension and other pensionary/retirement benefits including DCRG, Leave Encashment etc. to which they have become entitled as per rules.

3. Facts in brief are that the applicants had worked for a period of about 10 years initially in Central Power Water Commission and then in Badarpur Thermal Power Project (hereinafter referred to as BTPP), a subordinate office of the erstwhile Central Water and Power Commission (CWPC) which was bifurcated into Central Water Commission (CWC) and Central Electricity Authority (hereinafter referred to as CEA). The applicants came on the strength of CWPC but the applicants having joined the service in BTPP were transferred to National Thermal Power Corporation (hereinafter referred to as NTPC), a Government of India undertaking on 1.4.78 and were being considered as working in NTPC. The applicants opted for their permanent absorption in NTPC w.e.f. 1.1.1984. Therefore, under the existing rules applicants claim that they are entitled to pro-rata pension and other retiral benefits as they had rendered 10 years of service with the Central Government in the CWC but somehow the same has not been granted to them inspite of their making a number of representations to that effect to the authorities concerned.

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4. The applicants also claim that after their absorption they had been representing for their pro-rata pension, DCRG etc. for rendered 10 years of service with the Central Government but till date he they have not been paid the same.

5. It is also pleaded that in the replies received by the respondents it has been stated that the applicants are not covered under Rule 49(2)(b) of the Pension Rules as applicants were not permanent Government servants so they are not entitled for pro-rata pension.

6. It is further stated that under Rule 37 of the CCS (Pension) Rules, 1972, a Government servant who has been permitted to be absorbed in a post under Corporation or Company wholly or substantially owned by the Government shall be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed elected and minimum qualifying service required for this purpose is 10 years. Thus a Government servant who is absorbed in Public Sector Undertaking is entitled to pension if he has completed 10 years or more in Central Government before his absorption in the undertaking. A similar case of Praduman Kumar Jain Vs. Union of India (1994 Supp. (2) SCC 548) came up before the Hon'ble Supreme Court of India and it is stated that the employee who had been appointed by direct method is to pro rata be treated as having been appointed permanently and similarly it is stated that technical resignation does not amount to forfeiture of service. So the applicants state that since he had worked for 10

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years in the Government of India and in accordance with Rule 37 of the CCS (Pension) Rules read with Rule 49 (2) (b) of the Pension Rules, the applicants are entitled to pension on absorption in NTPC as they have completed more than 10 years of service, so it is accordingly prayed.

7. Respondents have filed their counter-affidavit in which it is pleaded that since the applicants were quasi-permanent at the time of their absorption in NTPC, their retirement benefits cannot be regulated under CCS (Pension) Rules, 1972 in view of the specific provision of Rule 2 of the Pension Rules but are entitled for terminal benefits as per provisions contained in Rule 11 of the CCS (Temporary Service) Rules, 1965.

8. It is further pleaded that in the case of a Government servant in quasi-permanent services who retires from service on attaining the age of superannuation or on his being declared to be permanently incapacitated for further Government service by the appropriate medical authority, after he had rendered service of not less than 20 years (10 years in respect of those temporary and quasi-permanent servants who were in service on 1.1.1986) shall be eligible for the grant of superannuation or invalid pension, death-cum-retirement gratuity and family pension in accordance with the provision of the CCS (Pension) Rules, 1972.

9. It is also submitted that terminal gratuity as per the rules have already been paid to the applicants.

10. It is further submitted that provisions of CCS (Pension) Rules, 1972 are applicable to the permanent

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Government servants exception has been made in the case of those temporary/quasi-permanent Government servants who intend to take voluntary retirement after completion of 20 years of service or who retire on superannuation with a minimum of 10 years qualifying service in a temporary/quasi-permanent. In both the cases pro-rata pension is payable in accordance with the rules. None of the above pension rules including Rule 37 are applicable to temporary/quasi-permanent employees. Cases of such temporary or quasi-permanent Government servants who have been absorbed in a Public Sector Undertaking or Autonomous body prior to 1.4.88 are to be regulated in terms of the CCS (Temporary Service) Rules, 1965 as such it is prayed that the OA be dismissed.

11. I have heard Shri S.M. Ratanpaul, counsel appearing for the applicant and Shri D.S. Mahendru, Counsel for the respondents.

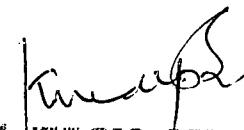
12. The applicants have referred to a judgment given by this very Bench in the case of Shiv Narain Vs. U.O.I. & Others (OA 167/2001) wherein OA was allowed directing the respondents to calculate and pay pro-rata pension and other retiral benefits to the applicant on counting his service which he has rendered with the Central Government while working with BTTP. The said decision has been upheld by the Hon'ble High Court. He has also relied on the judgment in OA 699/2000 entitled as K.C. Rastogi Vs. U.O.I. By this very Bench and this court while relying upon various judgments including that of Praduman Kumar Jain (Supra) and in the case of S.K. Bedi VS. U.O.I. (TA 25/88) wherein also a similar situation was there as employee was working as Mechancial Instructor in the Central Power and Water Commission

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(CWPC) and ultimately it was taken over by the Baira Sial Hydro-Electric Project where he got absorbed. In that case also the OA was allowed and respondents were directed to grant pension and other retiral benefits for the services rendered by him with the Government of India.

13. So keeping in view the facts of the present case are fully covered by the decision given in OA No. 167/2001, I have no reason to differ with the earlier view taken by the Tribunal. I may also mention that the case of the applicant is fully covered under Rule 37 of the CCS (Pension) Rules, 1972.

14. In view of the above, I direct the respondents to calculate and pay pro-rata pension and other retiral benefits as per rules to the applicants on counting their service which they had rendered with the Central Government while working with BTPP. This may be done within a period of 3 months from the date of receipt of a copy of this order. The arrears of pension and retiral benefits shall also be paid within the aforesaid period along with 12% interest from the date due till the actual payment of such arrears. No costs.


(KULDIP SINGH)
MEMBER (JUDG)

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