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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 491/2001

New Delhi, this the 7th day of June, 2002

Hon'ble Shri Govindan S.Tampi, Member (A)

V.K.Puri
Ex-Dy Stores Manager
178/1, J.K.Colony
Kanpur (U.P.).

...Applicant

(By Advocate Shri Yogesh Sharma)

V E R S U S

UNION OF INDIA : THROUGH

1. The Secretary
Ministry of Defence, Govt. of India
South Block, New Delhi.
2. The Engineer-in-Chief
Army Headquarters, M.E.S.
Kashmir House, DHQ - PO,
New Delhi - 11.
3. The Chief Engineer
C.E.S.E., M.E.S.
Pune (Maharashtra).

...Respondents

(By Advocate Shri Rajiv Bansal)

O R D E R (ORAL)

By Shri Govindan S.Tampi,

Challenge in this OA is directed against the order dated 30-5-2000 passed by the respondents denying the applicant, grant of pro-rata pension.

2. Heard S/Shri Yogesh Sharma and Rajeev Bansal, ld. counsel for the applicant and the respondents respectively.

3. The applicant born on 19-9-1928, served as Artificer Apprentice with Indian Navy from 20-8-45 to 10-9-47, being recognised as the approved war service. Thereafter he served Indian Navy from 20-3-1950 to 19-3-1960 rendering pensionable service. On his discharge with sixty days' leave, he joined MES on

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23-1-1960 as Store Keeper. The military service rendered by him was considered as qualifying service in MES for all purposes including seniority, promotion and grant of pensionary benefits. He had become Store Keeper Gr.I w.e.f. 15-3-63 and Supervisor B/S Gr.II w.e.f. 14-6-65. He also served as 2nd Lieutenant in Territorial Army. On 20-5-65, he resigned from MES and joined Hindustan Aeronautics Ltd. (HAL) in public interest wherefrom he retired on superannuation. Govt. of India, Ministry of Finance (Deptt. of Expenditure) OM dated 10-11-1960 regulated the retirement benefits of Govt. servants on permanent absorption in public sector undertakings and subsequently revised the same for those who were absorbed on or after 16-6-67. These instructions provided that those with not less than 10 years of qualifying service on absorption in public sector undertakings ~~were~~^{are} eligible for pro-rata pension and DCRG based on length of their qualifying service till the date of their absorption. Pro-rata pension, gratuity etc. were disbursable only from the date the Govt. servant would have normally superannuated had he continued in service. The fixation of the cut off date of 16-6-67, had been declared as illegal by the Hon'ble Supreme Court in the case of T.S.Thiruvengadam Vs. Secretary to the Govt. of India (JT 1993 (1) SC 609). Government's Notification dated 31-9-86, relating to the payment of pensionary benefits had directed that those who joined Public Sector Enterprises with proper permission would not entail forfeiture of service for the purpose of retirement/terminal benefit. Government's subsequent OM dated 3-1-1995 provided that those who were

permanently absorbed in Central PSUs prior to 16-6-67 would have to refund CPF benefits received by them together with interest. Ex-Service man/Airman cannot be denied the service benefits on pro-rata pension which have been made available to civilian Govt. servants in terms of Rule 37 of the CCS (Pension) Rules, 1972, as otherwise it would become a case of discrimination. In the case of R.D.Sharma & Ors. Vs. UOI & Ors. (CWP No.4942/92, decided on 9-12-94, Hon'ble Delhi High Court had relied upon the decision in Thiruvangedem's case (supra) and directed that the applicants' case be considered for grant of benefits, which was given effect to by the Govt. of India Notification dated 14-9-95. The benefit of this order was clearly available to the applicant also, but he could not apply for the same, as he was staying away at Kanpur. It was further pointed out that by the Govt.'s order that there shall not be any distinction between those who joined PSUs on their own volition or in public interest provided that the period to be carried forward should be restricted to 120 days.

4. The applicant's representation dated 21-5-98 was not replied to, leading to filing of OA No. 2143/98, decided on 13-10-99. The applicant's case was decided on 30-5-2000. The applicant's claim was rejected holding that the applicants' joining the PSU was on his own volition. Notification dated 3-1-95 was not applicable to his case and that the pension Rules became effective only in 1972.

5. Grounds raised in this OA are as below :-

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(a) the applicant's case was identical to that of Ex-CPL S.S.Kalan(No.610843) and therefore there was no justification for denying him pro-rata pension which has been granted to S.S.Kalan ;

(b) as the applicant was absorbed in the central PSU in national interest, after ten years of service in the Navy, he was entitled for grant of pro-rata pension as civilian officers are entitled;

(c) as the Hon'ble Supreme Court has directed the payment of pro-rata pension on the basis of CCS (Pension) Rules, 1972, the respondents' plea that the said Rule did not apply in the case of the applicant was illegal ;

6. All the above pleas and grounds were forcefully reiterated by Sh. Yogesh Sharma, counsel for the applicant during the oral submissions. He also relied upon the decisions of Delhi High Court in CW No.4275/99 (UOI Vs. P.M.Hinduja, decided on 17-10-2001) which covered his case also.

7. In the reply filed on behalf of the respondents and strongly reiterated by Sh. Rajiv Bansal, ld. counsel, it is pointed out that the applicant's absorption in HAL was not in public interest and, therefore, he did not fulfil the conditions of OM dated 16-6-67 read with OM dated 3-1-95. OM dated 16-6-67 clearly provided that pro-rata pensionary benefits can be granted to Central Govt. employees who were absorbed in Central PSUs in public interest. The OM also stated that :-

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"The absorbee should have received the retirement benefits as per Ministry of Finance, Deptt. of Expenditure OM dated 10-11-1960 viz., an amount equal to what Government would have contributed had the officer been a Contributory Provident Fund terms under Government, together with simple interest thereon at 2 % for the period of his pensionable service under Govt., should have been credited to his contributory provident Fund Account with the PSU as an opening balance within one year from the date of his permanent absorption."

The above requirement was not fulfilled in the case of the applicant. Further, the applicant had joined HAL in 1965, much before CCS (Pension) Rules, 1972, came into force. Rules 18 and 19 of the Pension Rules cannot be invoked in the case of the applicant. It is further pointed out that there was neither any illegality nor any arbitrariness in the action of the respondents who have acted correctly. Once the applicant's absorption in the PSU was purely on individual/private interest, he cannot claim any parity with those who have joined such PSUs in public interest. Further, OM dated 19-2-87, applied to those serving commissioned officers, absorbed in PSUs on their own applications but forwarded through proper channel and who were permitted to retire pre-maturely from defence service. It is definitely was not the ^{like the applicant,} case and his pleas otherwise are faulty and cannot be endorsed. Sh. Bansal also stated that the reliance sought to be placed while the applicant on the decision of the Delhi High Court in the case of UOI vs. P.M.Hinduja (supra) did not merit any consideration, as relevant facts were different.

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8. I have carefully considered the matter. The request for grant of pro-rata pension to the applicant who had served in the Navy before joining Central PSU (HAL), for the period he was in the Govt., has been repelled by the impugned order dated 30-5-2000 in the following words :-

"4. The case has been examined by Naval HQs and Ministry of Defence and on scrutiny of the documents it is found that you are not eligible for pro-rata pensionary benefits on the following grounds :-

(a) As per DP&PW's OM dated 3-1-95 pro-rata pensionary benefits can be granted to all Central Govt. Employees provided in absorption in Central Public Sector Undertaking (PSU) was in public interest. In the present case, the absorption in PSU was not in public interest. You had joined PSU on your own and hence the question of public interest does not arise. As per the condition laid down in Ministry of Finance OM dated 16-6-67 pro-rata pensionary benefits can be granted only where the transfer from Govt. service to a Public Sector Undertaking is in the public interest."

9. In this context, it is necessary to refer to the basic provision governing the modalities of payment of pensionary benefits to Central Govt. employees moving to and getting absorbed in PSUs. Rule 37 of the Central Civil Service (Pension) Rules, 1972 is the relevant provision at present. However, even before the Rule was formulated, Ministry of Finance, Deptt. of Expenditure OM dated 16-6-67 had enumerated the modalities for protecting pensionary benefits of Central Govt. Servants before their absorption into public undertakings. Originally, it was restricted only to those Govt. servants who were absorbed in a Central PSU on or after 16-6-67, but this distinction/discrimination was obviated by the decision of the Hon'ble Supreme Court in the case of T.S.Thiruvengadam Vs. The Secretary, Ministry of

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Finance, Deptt. of Expenditure & Ors. (JT 1993 (1) SC 609). Thereafter, the Govt. by its OM No. 4 (6)/85-P&PW (B) dated 3-1-1995 extended the benefits to all Central Govt. employees subject to the following conditions :-

"The absorbee should satisfy all the terms and conditions regarding grant of retirement benefits as laid down in the Ministry of Finance, Deptt. of Expenditure OM dated 16-6-67, as amended vide OM No. 44 (8)/E.V/71 dated 19-6-1972. The question of proportionate pension will not arise in cases where an officer, at the time of absorption, had rendered less than 10 years of service under government and was not entitled to pension. In such cases, he will only be eligible to proportionate service gratuity in lieu of pension and to DCR Gratuity based on the length of service.

(ii) The absorbee should have proceeded to a Central PSU in public interest and absorbed therein prior to 16-6-1967.

(iii) The absorbee should have received the retirement benefits as per Ministry of Finance, Deptt. of Expenditure OM No.F.2 (33)/EVA.60 dated 10th November, 1960, viz., an amount equal to what Government would have contributed had the officer been on Contributory Provident Fund terms under Government, together with simple interest thereon at 2 % for the period of his pensionable service under Government, should have been credited to his Contributory Provident Fund Account with the PSU as a opening balance within one year from the date of his/her permanent absorption.

Obviously, therefore, the employees absorption in PSU should have been in public interest and he should have received retirement benefits in terms of Deptt. of Expenditure OM dated 10-1-1960. In this OA, it is the plea of the respondents that the applicant's absorption in HAL was not in public interest, but it was an act by the applicant, on his own volition. The applicant states that his joining HAL and getting himself absorbed there was an act in public interest, but he has not been able to prove his contention, except referring to a GOI's Notification of 25-3-77

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which has ^{according to him} removed the distinction between those who have ^{been} appointed PSUs in public interest and those who joined PSUs on their own volition. However, no copy of this Notification has been brought on record and, therefore, the plea of the applicant cannot be accepted. Unless and until, it is proved that the applicant had moved the PSU in public interest or any exception has been made in his case, he cannot gain ^{the}

benefit of pro-rata pension with reference to the period he spent in the Government, before his absorption in HAL. His having not proved his own case, he cannot expect the respondents to extend him the benefit, which he is seeking.

10. The applicant also refers to the decision of the Hyderabad Bench of the Tribunal dated 27-6-94 in a few OAs (D.Prabhakar Rao & Ors. and Hon'ble Delhi High Court in the case of UOI Vs. P.M.Hinduja (supra). However, they deal with different facts and applicant cannot get any benefit from the said decisions.

11. In the above view of the matter, I am convinced that the applicant has not made out any case for my interference. The OA fails and is accordingly dismissed. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

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