

Central Administrative Tribunal
Principal Bench

O.A.No.157/99

Hon'ble Shri Justice K.M.Agarwal, Chairman
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 7th day of September, 1999

Brij Bhushan Sharma
S/o Late Shri Devi Lal Sharma
R/o H-21, Jangpura Extension
New Delhi 110 014

....Applicant

(By Advocate: Shri S.M. Rattan Paul)

Versus

1. The Comptroller and Auditor General of India
10, Bahadurshah Zafar Marg
New Delhi 110 002
2. The Director General of Audit
Central Revenues
Indraprastha Estate
New Delhi 110 002
3. The Secretary
The Ministry of Personnel,
Public Grievances and Pensions
North Block, New Delhi
4. The Sr. Audit Officer(Admn)
Office of the Director General of Audit
Central Revenues
Indraprastha Estate, New Delhi 110 002
5. The Chairman-cum-Managing Director
National Thermal Power Corpn. Ltd.
Govt. of India Undertaking
NTPC Bhavan, Core-7
Scope Complex, Lodhi Road
New Delhi

.....Respondents

(By Advocate: Shri Madhav Panikar &
Shri M.K. Gupta for R 1-4
Shri V.P. Dewan for R-5)

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant joined as an Upper Division Clerk (UDC) on 4.11.1970 in the Office of the Accountant General Central Revenues, New Delhi. After passing the various departmental examination he was declared as Quasi-permanent in the re-designated post of Auditor vide letter dated 29.1.1975. In 1976, on bifurcation of Audit and Accounts, the applicant was

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retained in the Directorate of Audit, Central Revenues. He went on deputation to Delhi Administration in 1978 and remained there till 8.3.1982. The National Thermal Power Corporation Ltd. (NTPC), a Govt. of India Undertaking invited applications for the post of Accountant Grade-I, in a higher pay scale of Rs.630-30-1050 and the applicant applied for the said post through proper channel and on selection joined in NTPC on 1.4.1982. He also tendered his resignation from AGCR service on 31.3.1982. He was kept on probation in NTPC for a period of one year and was retrospectively absorbed w.e.f. 1.4.1982. The applicant submits that he served with the Central Government for a period of more than 11 years from 4.11.1970 to 31.3.1982 and he was thus entitled to pro-rata pension and other retiral benefits including DCRG. However his numerous representations, the last one dated 5.3.1998, were rejected even though he cited the case of Shri Praduman Kumar Jain Vs. Union of India (1994 Supp(2) 548) wherein the Supreme Court in its judgment held, in circumstances similar to that of applicant, that Shri Jain was entitled to pro-rata pension and also to 12% interest on the arrears of pension and other retiral benefits. He submits that the only reason respondents have rejected his claim is that he was not confirmed in the Government service. His case is that his long service, declaration of quasi permanent status, his deputation to Delhi Administration and the fact that a person junior to him was later confirmed with retrospective effect from 1980 shows that he was holding the post under the Central Government in a substantive capacity. In any case the Central

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Government had delinked the confirmation from the availability of permanent vacancy in the grade vide OM dated 28.3.1988. In Bhaleshwar Das and Others Vs. State of Uttar Pradesh and Others, (1981(1) SCR 449), the Hon'ble Supreme Court had also held that a person is said to hold a post in a substantive capacity when he holds it for an indefinite period, especially for long duration in contradistinction to a person who holds it for definite period or a temporary period, or holds it on probation subject to confirmation. Further, if the Public Service Commission has been consulted and has approved, if the tests prescribed have been taken and passed, if the probation has been prescribed and approved, it has to be concluded that the post was held by the incumbent in a substantive capacity. The applicant has also relied on the orders of this Tribunal in S.K.Bedi Vs. Union of India & Others (TA No.25/88, decided on 17.10.1994), O.A.No.84 HR - 1994 (Jasbir Singh Narula Vs. Union of India and Others, decided on 17.7.1996 and Smt.Aruna Mehta & Others Vs. Union of India & Others (O.A.No.2362/97, Annexure-10) decided on 2.4.1998 by a Single Bench presided over by one of us.

2. Respondents No.1 to 4 have resisted the claim of the applicant. They submit that Rule 49(2)(b) of CCS (Pension) Rules, 1972 provides that proportionate pension is payable after completing 10 years qualifying service and under Rule 37 of the said Rules read with the aforesaid Rule 49(2) (b) a Government servant on absorption in Public Undertaking/Autonomous body is also entitled to pension if he has completed 10 years or more

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Government service before such absorption. However under Rule 13 of the Pension Rules qualifying service of a Government servant shall commence from the date he took charge of his first appointment in either substantive or officiating temporary service provided such service is followed without interruption by substantive appointment. They admit that this requirement was modified by order dated 14.4.1987 when quasi permanent and temporary employees who retire on superannuation or invalid pension after having rendered temporary service of not less than 10 years of service were also made eligible for grant of Superannuation/invalid pension, retirement gratuity and family pension at the same scale as admissible to permanent employees. This provision however is available only to those who were in service on 1.1.1986. The applicant however left Government service in 1982 and according to the respondents he is therefore not entitled to pension.

3. We have heard the counsel. It was contended on behalf of the respondents that the case of the applicant is governed by Rule 37 of CCS (Pension) Rules, 1972. According to this Rule, only those government servants are entitled to receive retiral benefits who have been "permitted to be absorbed in a service or post in or under a corporation or company wholly or substantially owned by Govt.". It was argued that the applicant can be treated as having been permitted to be absorbed only if such absorption was treated as in public interest. The learned counsel for the respondents drew our attention to the decision of the Supreme Court in

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Union of India Vs. V.R. Chadha in SLP No.697/95. A copy of this order is available at Annexure R-6. In that case the Govt. employee was appointed as UDC in the Office of the Accountant General from November 21, 1955. He was also declared permanent with effect from March 1, 1960. He had applied for the post of Accounts Executive in the Bokaro Steel Plant. The said application was forwarded through proper channel with the condition that in case he was selected he would have to resign finally within a period of two years beyond which his lien would not be retained in the parent office. On selection for the said post of Accounts Executive the applicant was relieved on 19th October, 1967 and he tendered his resignation on the date he was relieved from his duty, which was accepted with effect from 20.10.1967. The applicant made a claim for pro-rata retirement benefits for the service rendered by him in the office of the Accountant General from 21.11.1955 to 19.10.1967. As that claim being rejected he filed an O.A. No.2414/92 before the Principal Bench of this Tribunal and the same was allowed by an order dated 7.6.1994. On a SLP being filed by the respondents, the Supreme Court held that Rule 37 of the CCS (Pension) Rules, 1977 requires satisfaction of two conditions namely:- (i) he has been permitted to be so absorbed, and (ii) such absorption is declared by the Government to be in the public interest.

4. The Supreme Court held in that case that neither of these two conditions was satisfied as absorption was not declared by the Govt. to be in the public interest in the service of Bokaro Steel Plant.

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It was further held that the consent of the Govt. Department to forward the application of the employee with the condition that the employee will have to resign from Govt. service did not mean that the necessary permission had been granted for the absorption of the employee. It was contended by the learned counsel for the respondents that the facts in the present case are similar to those in Union of India Vs. V.R. Chadha (supra) and the applicant cannot therefore claim pro-rata retirement benefits prescribed in Rule 37 of CCS (Pension) Rules.

5. We find ourselves in agreement with the stand taken by the learned counsel for the respondents. It is true that in the case of P.K. Jain Vs. Union of India (supra) and Bhaleshwar Das & Ors. (supra) it was held that a person is holding a post in a substantive capacity when he continues for an indefinite period and it could be said that the applicant herein also, though not formally confirmed in service, was also holding his post in a substantive capacity under the AGCR. At the same time, he could be considered entitled for pension only if he meets the aforesaid requirements of the Pension Rules highlighted and elaborated by the Supreme Court in Union of India Vs. V.R. Chadha (Supra). It was contended by the learned counsel for the applicant that the objection of the respondents in rejecting the case of the applicant was not that he did not fulfil the requirement of Rule 37 of Pension Rules but that he had not been confirmed in service. Even if that is correct, a direction by us for grant of pro-rata pension cannot be granted in contravention of the

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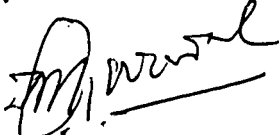
provisions of the Pension Rules. The decision of the Supreme Court in Union of India Vs. V.R. Chadha (supra) is subsequent to the decision in P.K. Jain Vs. Union of India, therefore, we holds the field. We also agree that the decision in V.R. Chadha's case is in the similar facts and circumstances of this case. The Supreme Court clearly interpreted the provision of Rule 37 of the CCS (Pension) Rules and in terms of that interpretation the applicant herein cannot be said to have absorbed in NTPC in public interest. His claim to avail of Rule 37 is based on the permission granted by the Govt. Department to forward his application on the condition of submitting his resignation, if selected. This as we have noticed has been held by the Supreme Court in V.R. Chadha to be an insufficient ground by itself to conclude that the absorption was in the public interest. Clearly, therefore, the case of the applicant does not meet the requirement of Rule 37 as interpreted by the Supreme Court in its latest order.

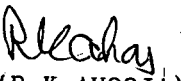
6. It was also contended by the learned counsel that the requirement of absorption "in public interest" existed in Rule 37 only till its amendment in 1991 when the words "in public interest" were omitted. The order of the Supreme Court in V.R. Chadha are dated 2.5.1996. In that order the Court had reproduced Rule 37 as amended and thereafter deferred the requirement necessary to get the benefit of Rule 37. Thus it cannot be aid that the view taken by the Hon'ble Supreme Court is in the context of the pre-amended rule. In any case, the amendment of 1991

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would have prospective effect and would relate only to cases of absorption in public sector occurring after that date.

7. In the result, we find that the reliefs sought for cannot be granted. The O.A. is accordingly dismissed.


(K.M. AGARWAL)
Chairman


(R.K. AHOOJA)
MEMBER (A)

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