

Central Administrative Tribunal  
Principal Bench: New Delhi

(9)

OA No. 435/99

New Delhi this the 3<sup>rd</sup> day of February, 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)

A.R. Ramanathan  
Member (Law)  
Central Electricity Regulatory  
Commission,  
Scope Complex, 5th Floor, Core 3,  
Lodi Road, New Delhi-110 003  
R/o BL-4 Shalimar Bagh (Paschimi)  
Delhi-110052.

...Applicant

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

Versus

1. Union of India  
through Secretary  
Department of Company Affairs  
Ministry of Law, Justice & Company Affairs,  
Shastry Bhawan, 5th Floor,  
Delhi-110011
2. Secretary,  
Department of Personnel & Training,  
Ministry of Personnel & Public Grievances  
and Pension,  
North Block,  
New Delhi-110 001.

...Respondents

(By Advocate: Shri Harvir Singh)

ORDER (Oral)

By Reddy, J.:-

The applicant was appointed as a Member of Company Law Board on the basic pay of Rs.5960/- in the scale of Rs. 5900-200-6700 w.e.f. 31.5.91 for a period of 5 years or till he attains the age of 58 years, whichever is earlier. He worked as a Member till July 1998. As he was offered the post as a Member of the Central Electricity Regulatory Commission (for short, Regulatory Commission). The applicant had written to the Respondent No.1 on 29.7.98 that he should be treated as deemed to have been retired on the date when he has been relieved from the post of Member Company Law Board. The

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applicant was relieved by order dated 6.8.98 w.e.f. 7.8.98. The applicant requested for the payment of gratuity and leave encashment facility as he was deemed to have been retired in his letter dated 6.8.98 filed at Annexure A-I but the same was rejected by the respondents on the ground that as the applicant had shifted from one post to another the applicant is not entitled for the benefits including gratuity etc. His request for relieving from the post was treated as notice for resignation and the respondents accepted his resignation.

2. The grievance of the applicant is that the respondents wrongfully treated the letter for relief to join Central Electricity Regulatory Commission as the notice for resignation. Instead of treating the same as deemed retirement from the Board. The applicant, it is alleged, is entitled for all the benefits viz. gratuity and leave encashment.

3. The case of the respondents is that the applicant having been contractual appointment on contractual basis in the Company Law Board, he could assume office in the Central Electricity Regulatory Commission only after resigning from the Board as per rule-6 of the Company Law Board (Qualification, experience & other conditions of service of Members) Rules-1993. Hence, the applicant's letter has been treated as a notice of resignation from the post of Member of Company Law Board. As per the letter of DOPT dated 5.7.98 the applicant is entitled only for 60 days of Earned Leave encashment, in terms of

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DOPT's OM dated 5.7.1990 which governs entitlement of leave encashment of officers appointed on contract basis, the encashment of 60 days earned leave was only allowed to the applicant. It is, therefore, contended by the learned counsel for the respondents that the applicant having been appointed on a contractual basis and as the rules do not speak of deemed retirement, the applicant's letter for relief would only be considered as letter of resignation which has been accepted by the respondents and the applicant is not entitled for the benefits of the encashment of leave and gratuity which are applicable only to the Government servants in their retirement.

4. I have given careful consideration to the contention raised by the counsel on either side.

5. The applicant was appointed by letter dated 23.12.91 for a period of 5 years or till he attains the age of 58 years, whichever is earlier. Thus initial appointment to the applicant appears to be an appointment on a contract basis. This appointment was also in accordance with Rule-10 of the Company Law Board Members (Qualifications and Experience) Rules, 1989. As per Rule-10 the term of every Member shall be only for a period of 5 years at a time or till he attains the age of 58 years, whichever is earlier. The vires of Rule-10 has been questioned in Madars High Court in V. Balachandran Vs. Union of India & another reported in 1993 Vol-76 Company Cases P.67. Rule-10 was questioned as ultra vires of Article 14 of the Constitution to

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the extent prescribed a contractual period of 5 years and the High Court accepted the plea of the petitioner therein holding that Rule-10 as ultra vires of Article 14 read with Article 13(2) of the Constitution of India. The Company Law Board has framed 1993 Rules superseding the 1989 Rules. The Rules are called Company Law Board (Qualifications and Experience and other Conditions of Service of Members) Rules, 1993. Rule-8 stipulates the term of office of Chairman and Members. According to the R-8, a Member shall hold office till he attains the age of 60 years. Thus all the Members are continuing in Company Law Board under the previous rules are entitled to hold the office till they attain the age of 60 years. In these rules, however, there is no provision for retirement of the Member. Rule-13, however, specifies that in respect of matters for which no provision was made in the rules they shall be the same as may for the time being be applicable to other employees of the Government of India of a corresponding status. Thus, the member is allowed benefits on his retirement, to all the benefits that are given to a Government servant.

6. The applicant, it is stated, has received a letter from the Central Electricity Regulatory Commission to join the commission as a Member. He, therefore, requested the Board to relieve him and to treat him as a deemed retirement. But it has been rejected by the respondents and they treated the same as a notice of resignation. Eventually, the applicant joined the commission on

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8.8.98. It is necessary to notice at this stage that the DOPT has its OM dated 29.1.98 clearly stated that the Chairperson and Member(s) shall be deemed to have retired from Govt. service upon taking up their respective appointments in the Regulatory Authority. Paragraph-3 of the OM clarifies that unless there is a constitutional or statutory obligation to the contrary, a Chairperson or Member appointed to the existing Regulatory Authorities subsequent to issue of these guidelines would be Governed by the guidelines. Thus it is clear that as the applicant having been appointed on the basis of the letter given by the Electricity Regulatory Commission as a Member of the Regulatory Commission and only for that reason the applicant had to leave the Company Law Board, the applicant is entitled to claim that he was deemed to have been retired from Government service. Thus, the applicant is entitled for all the benefits of gratuity and encashment of leave as is available to the Government servant upon his retirement from service.

7. Learned counsel for respondents, however, submits that under Rule-3 (A) of the Rules of 1993, the employees of the Central Government on their selection as Members shall have to retire from their service before joining as Members of Company Law Board. This rule has no application to the facts of the case. This rule speaks of an officer joining as a Member of the Company Law Board from a different organisation in the Government. In that eventuality the person has to retire from his

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previous service and join the Company Law Board.

This rule also does not assist the respondents. The expression used is 'retire' and not 'resign'. In my view, the employee concerned is entitled for all the retirement benefits. We are now concerned in this case with Rule-13 of 1993 Rules and the letter issued by the DOPT dated 29.1.98.

8. In the circumstances, the impugned order Annexure A-I is set aside and respondents are directed to treat the applicant as having been retired from service and grant him all the benefits including the gratuity and leave encashment as prayed for. This exercise shall be done within a period of three months from the date of receipt of a copy of this order.

9. The O.A. is accordingly allowed. No costs.

*Unhinderly*  
(V. Rajagopala Reddy)  
Vice-Chairman (J)

cc.