

Central Administrative Tribunal
Principal Bench
New Delhi

O.A. No. 113/98

Decided on 29.1.99

Shri Amir Singh Applicant

(By Advocate: Mrs. Avnish Ahlawat)

Versus

Union of India Respondents

(By Advocate: None)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not ? No.

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

(10)

Central Administrative Tribunal
Principal Bench.

O.A. No. 113 of 1998

New Delhi, dated this the

29th JANUARY 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)

Shri Amir Singh,
Ex-Grade II,
(M DASS) Presently working
as Asst. Manager G-I,
in D.S.C.S.C. Ltd. ... Applicant

(By Advocate: Mrs. Avnish Ahlawat)

Versus

1. Union of India
Govt. of NCT of Delhi
through the Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. Secretary (Services),
Joint Seniority Cell,
Government of NCT of Delhi,
Delhi. ... Respondents

(By Advocate: None appeared)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

The only surviving grievance in this O.A.
is regarding payment of interest on the alleged
delay in release of retiral benefits to applicant.

2. Applicant began service as an L.D.C.
in Delhi Administration and was promoted to DASS
Gr. II in January, 1978. He was sent on
deputation to Delhi State Civil Supplies
Corporation as AGI in August, 1984, where with
Delhi Administration's approval, he was permanently
absorbed and appointed as Asst. Manager, G-I vide
letter dated 14.2.86 (Ann. B). Pursuant to Delhi
Administration's letter dated 17.1.86 applicant

7

submitted a representation to Delhi Administration on 8.9.86 (Ann. C) seeking voluntary retirement and for release of consequential pensionary benefits.

3. Not having been granted the pensionary benefits for three years, he followed it up with representation dated 10.4.89. In this representation he stated that though Delhi Administration while conveying their consent to his absorption in DSCCS in the public interest had agreed to allow him to take voluntary retirement and accordingly had asked for his application for seeking voluntary retirement, it had now found that voluntary retirement was not permissible in case of absorption and applicant's case for pensionary benefits had to be processed under Rule 37 CCS (Pension) Rules. Applicant stated that under this rule and its relevant instructions only permanent employees were eligible for grant of pensionary benefits and his case remained pending because he had not been confirmed on any post in Delhi Administration although he had rendered regular satisfactory service since May, 1964. Pointing out that the pre-requisite for confirmation was to locate a permanent post against which applicant could be confirmed, which was time consuming and complicated, he suggested that respondents do in this case what they had done in a number of other cases, namely confirm him notionally against the post of L.D.C. or any other post held by him the past.

12

4. No reply of respondents to this representation dated 10.4.89 is on record, but after the lapse of nearly 6 years, Delhi Administration wrote to DP&T on 10.1.96 (Ann. D) pointing out that the case related to a date prior to issue of O.M. dated 26.5.86 and seeking approval/sanction for grant of prorata retirement benefits consequent to his permanent absorption in DSCCS.

5. Upon not being communicated any final decision in the matter applicant sent off two more representation, on 27.3.97 one addressed to Secretary (GAI), Govt. of NCT of Delhi and the other to L.G., Delhi. In these representations he stated Delhi Administration while giving their no objection certificate to his absorption in DSCCS had given a clear indication that he would be granted pensionary benefits, but despite the passage of 11 years and several representations on his part they had not done so, on the plea that he had not been confirmed for which he could not be held responsible, after having put in 22 years of service. In this connection he referred to a judgment of Hon'ble Supreme Court that temporary employees having 20 years service were eligible for pension which had appeared in a prominent daily newspaper on 27.9.95, and prayed that in his case respondents do what they had done in other cases namely grant him notional confirmation against a post held by him to enable him to qualify for pension.

6. No reply of respondents is on record in regard to these two representations either, whereupon applicant filed the present O.A. on 7.1.98.

7. Meanwhile during the pendency of the O.A. respondents issued order dated 21.5.98 (Ann. R-1) sanctioning applicant prorata retiral benefits, but without interest. This order states that consequent upon applicant's permanent absorption in DSCCS w.e.f. 14.2.86 his name was struck off from the list of DASS Gr. II and since his permanent absorption was allowed by Delhi Administration in public interest vide letters 17.1.86 and 14.2.86 applicant stood retired from Delhi Administration service in terms of Rule 37 CCS (Pension) Rules w.e.f. 13.2.86 and would therefore be allowed retirement benefits on prorata basis.

7. The claim for interest @ 24% p.a. w.e.f. 198⁷ on account of delayed payment of retiral benefits finds mention in Para 8(1) of the O.A. and the same has been pressed.

8. Various grounds have been taken in the O.A. which have also been pressed in regard to the claim for interest on delayed payment. It has been emphasised that applicant fulfilled all the ingredients for grant of pensionary benefits in terms of Rule 37 CCS (Pension) Rules; he had put

in more than 21 years qualifying service; one Shri A.P. Ahooja who was also absorbed along with applicant had been paid his full pensionary benefits by Delhi Administration; that confirmation had nothing to do with pension as had been held by Hon'ble Supreme Court; that in any case it was not applicant's fault that he had not been confirmed; others junior to him had been confirmed; and respondents by their own letter dated 17.1.86 assured applicant for grant of pensionary benefits, upon which applicant sought for absorption in DSCCS, which position respondents could not resile from.

9. Respondents in their reply challenge the O.A. on the preliminary ground that no orders have been issued by them which applicant has challenged and also on limitation. On merits it has been contended that prorata pensionary benefits are admissible only to permanent (confirmed) Government servants but at no stage during the period of his employment did applicant complain of his non-confirmation and hence he could not be confirmed and consequently pensionary benefits could not be extended to him. Elsewhere in reply to Para H of the grounds taken in the O.A., it has been stated that....."it is not possible to locate the reasons why applicant was not confirmed".

R

10. I have heard applicant's counsel Mrs. Avnish Ahlawat. None appeared for respondents when the case came up for hearing. However, respondents in Para 8 of their reply have sought to explain the delay with the following words:

"However the delay occurred due to lapse of the applicant in not being vigilant to agitate his grievance if any about his non-confirmation at any time he was entitled to for such confirmation. As such for his own lapse the Respondents could not be held responsible."

12. Manifestly this attempt on the part of respondents to put the blame on applicant for not confirming him is not acceptable. Applicant in his representations as well as in grounds taken in the O.A. has correctly pointed out that if his non-confirmation was an obstacle to the release of pensionary benefits to him, it was entirely for Delhi Administration to confirm him against any post during his long service with them and he is not at fault for his non-confirmation, particularly when, as he contends those junior to him were confirmed.

13. As noted above, however, respondents have since sanctioned applicant his retiral benefits by order dated 21.5.98 and the only surviving grievance now is with regard to interest on the delayed payment.

15. In this connection it is noticed that the applicant also approached the Tribunal with considerable delay. Applicant submitted his

representation to Delhi Administration seeking voluntary retirement on 8.9.86 (Ann. AC) and his cause of action therefore arose on that date but this O.A. was filed as late on 7.1.98, that is after a lapse of nearly 11 years. There is therefore no case for allowing interest from 1986 and under the circumstances it will be fit and proper to restrict the claim of interest on retiral benefits to one year prior to filing of this O.A. As regards the rate of interest, 12% p.a. is the rate applicant would have earned had he placed the money in G.P.F. or PPF, which is quite fair and equitable.

16. Accordingly the O.A. is disposed of with a direction to respondents to pay applicant interest on account of delayed payment of each monetary item of retiral benefits contained in respondents' order dated 21.5.98, @ 12% p.a. w.e.f. 1.1.97 till 21.5.98, within three months from the date of receipt of a copy of this order under intimation to applicant supported by a comprehensive calculation chart in support of the same. No costs.

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

/GK/