

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 818/98

New Delhi this the 15th Day of February 1999

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

P.M. Hinduja,
S/o Late Shri M.C. Hinduja,
Ex. Senior Observer,
India Meteorological Department,
R/o 501/4, Khurbura,
Dehradun, U.P.
Pin-248 001.

Applicant

(Applicant in Person)

-Versus

Union of India

Through:

1. The Secretary to the Govt. of India,
Dept. of Science & Technology,
Technology Bhawan,
New Mehrauli Road,
New Delhi-110 016.
2. The Director General of Meteorology,
India Meteorological Department,
Mausam Bhawan, Lodi Road,
New Delhi-110 003.
3. The Senior Accounts Officer,
Pay & Accounts Office,
India Meteorological Department,
Ministry of Science & Technology,
Lodi Road,
New Delhi-110 003.

Respondents

(By Advocate: Shri R.V. Sinha)

O R D E R

The facts giving rise to this O.A. may be briefly stated. On migration from an area now in Pakistan, the applicant was given appointment in the Indian Meteorological Department w.e.f. 9.3.1948 and was declared a permanent Lower Division Clerk w.e.f. 1.1.1956. He joined the O.N.G.C., Dehradun on deputation w.e.f. 22/24-9-1959. The O.N.G.C. was converted into a Statutory Body w.e.f. 15.10.1959.

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On being permanently absorbed in O.N.G.C., the applicant tendered his technical resignation from Government service and the same was accepted w.e.f. 7.6.1962. The dispute relates to the claim for retiral benefits including pro-rata pension on the basis of the government service rendered by the applicant before his technical resignation. Before proceeding further some further facts may be noted. As per Govt. of India, Ministry of Finance (Department of Expenditure) OM NO. F-2 (33) EVA/60 dated 10.11.1960, (hereafter referred to as O.M. of 1960) it was decided that on permanent transfer of Government servants to Government Companies/Corporations "An amount equal to what Govt. would have contributed had the Officer been on Contributory Provident Fund term under Govt. together with simple interest thereon at two percent for the period of his pensionable service under Government may be credited to his Contributory Provident Fund Account with the autonomous body as an opening balance on the date of permanent absorption"; this being done the officer's pensionable service under the Government would be treated as extinguished by this act. By an O.M. dated 16.6.1967 (hereinafter referred to as O.M. of 1967) however the permanent government servants on absorption in a public undertaking were made eligible for pro-rata pension and DCRG based on the length of qualifying service under government till the date of absorption. However, these orders were made applicable prospectively. By an O.M. No. 4(6)/85 P&PW(D) dated 3.1.1995, it was decided that the benefits of the O.M.

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dated 16.6.1967 may be extended to all Central Government employees who were absorbed in Central Public Sector Undertaking prior to 16.6.1967 subject to certain conditions. One of these conditions was that absorbee should have received the retirement benefit as per O.M. dated 10.11.1960 within one year from the date of his/her permanent absorption. It is on the basis of this O.M. that the applicant raised his claim for grant of pro-rata pension from the date of his technical resignation from the government service. After considerable correspondence the sanctioning authority granted him pro-rata pension w.e.f. 9.3.1978 i.e., the deemed date of voluntary retirement on completion of 30 years service, his date of joining the government service being 9.3.1948. However, claiming that payments had been made on his account to ONGC in terms of O.M. dated 10.11.1960 to the extent of Rs. 3534/-, a deduction was made from his estimated arrears of pension amounting to Rs. 96,889/- and DCRG amounting to Rs. 1344/-. Since the deduction was estimated at Rs. 1,06,044/-, the applicant was informed that an amount of Rs. 7811/- was still outstanding against him and the same was recoverable from his pension. Aggrieved by this order, the applicant has approached the Tribunal. It may further be noticed that the respondents are now questioning their own decision to grant pension to the applicant on the ground that ONGC was at the relevant time neither a public sector undertaking nor an autonomous body under the Central Government and the O.Ms 1967 and 1995 were not applicable to government servants absorbed in ONGC.

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2. The pleadings on both sides give rise to the following issues for a decision.

1. Whether the orders contained in O.M. 16.6.67 are applicable to Government servant permanently absorbed in ONGC?
2. Whether any retiral benefits had been paid to the applicant on the basis of O.M. dated 10.11.1960?
3. Whether any further claims are due to the applicant?

3. In regard to the first issue, the respondents have contended that even the order of sanction of the pro-rata pension to the applicant is itself subject to a review as the O.Ms. of 1967 and 1995, are not applicable to ONGC as it was neither a Public Sector Undertaking nor an autonomous body till its incorporation as a company in 1994. The learned counsel for the respondents argued before me that ONGC was created by an enactment of the Parliament in 1959 and was thus set up as a Statutory Body and it has not been under the purview of the Public Sector Enterprises Board. It was further pointed out that the ONGC Limited was incorporated on 23.6.1994 as a Public Limited Company under the Company Act, 1956 and it was only w.e.f. 1.2.1994 that the Undertaking of ONGC was transferred and vested in ONGC Limited. I am

unable to agree with the contention of the learned counsel. It is an admitted position that ONGC was at the relevant time a wholly owned organisation of the Govt. of India. As argued by the applicant it was being shown as a Public Sector Undertaking under the Ministry of Petroleum. Natural Gas in Government publications including Compendium of Addresses of Union Ministries/Department/Attached/Subordinate Offices/Public Sector undertakings/Autonomous Bodies/Offices at Regional & Field Levels etc. published in July 1987. The Brochure on 'Mobility of Personnel between Central Government and Central Autonomous Bodies' issued by the Ministry of Personnel, Grievances and Pension, in 1987 also described a 'Central Autonomous Body' as a non-profit making Organisation which is financed wholly or substantially by Central Government grants or cess. By substantially, it was understood to be that more than 50% of the expenditure was met through such grants. A copy of the letter produced from General Manager (F&A) and Company Secretary, ONGC vide O.M. dated 22.12.1998 addressed to the Joint Secretary, Ministry of Petroleum and Natural Gas letter of even No. dated 8.1.1999 also shows that ONGC was set up as a Public Sector Undertaking on 14.8.56 under the Ministry of Natural Resources and was later converted into a Statutory Body on 15.10.1959 by an Act of Parliament known as "Oil and Natural Gas Commission Act, 1959 (No. 43 of 1959)". So the question was asked of the learned counsel for the respondents as regards the Status of the ONGC in case it was neither a 'Public Sector Undertaking' nor an 'Autonomous Body'; the only

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answer was that it was a 'Statutory Body'. As already explained the Statutory Body which gets financial assistance exceeding 50% of its expenditure is to be regarded as a 'Central Autonomous Body'. It is thus clear that the ONGC, not being a departmental undertaking was either a 'Public Sector Undertaking' or a 'Central Autonomous Body'. In either case the O.M.s dated 16.6.1967 and 3.1.1995 would be applicable to the ONGC and the applicant would be entitled to the benefit thereof.

4. As regards the second issue, according to the respondents, the ONGC had paid a sum of Rs. 3534 to the ONGC by way of final retiral settlement of the applicant in terms of O.M. of 1960. The applicant denies it and has claimed that this amount was only the sum of his own GPF balance with his parent department at the time of his retirement. The applicant has produced a copy attached as Annexure A-10/C from the ONGC addressed to Director of Audit dated 21/27.8.1964 wherein it has been stated that the applicant's GPF account may immediately be transferred to the Commission. He has also produced a copy of the letter intimating the deposit of Rs. 3534/- received from DG Observatories, New Delhi, regarding "Transfer of balances" in respect of the applicant. The respondents have taken the stand that as the old records are not available, they cannot confirm the exact position in regard to these letters. On balance I am inclined to accept the version of the applicant that this amount consists only of his GPF balance because the OM dated 10.11.1960 required that not only

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the GPF balance will be transferred but the Govt. contribution thereon also on the assumption that the absorbee was a member of the CPF. The applicant had been in service since 1948 and he had shifted over to ONGC after nearly 15 years of service. It is therefore difficult to believe that the applicant's own GPF contribution as well as the equal contribution of the Government including interest would have only amounted to Rs.3534/- . I therefore, hold the amount which was transferred to the applicant's accounts by the Government was only his own GPF and not the Government contribution in terms of O.M. dated 10.11.1960.

5. The third issue ^{which} has to be decided is what further claims are due to the applicant. As per order dated 16.6.1990. Para 3(i) the pro-rata pension admissible in respect of the service rendered under Government would be disbursable only from the date the Government servant would normally have superannuated had he continued in service. In terms of OM No. F-44(8)/EV-71, dated 19.6.1972, copy at Annexure A-7, such pro-rata pension would be disbursable either from the earliest date from which the government servant could have retired voluntarily under the rules applicable to him or from the date of absorption in the undertaking/corporation whichever is later. The applicant had joined service in 1948. Rule 48(A) of CCS (Pension) Rules, 1972 introduced by the Govt. of India, Ministry of Finance Notification No. 7(2) E.V(A)/73 dated 28.11.1978 now allows pension on voluntary retirement on completion of 20 years

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qualifying service. However, Rule 48(A)(6)(b) specifically states that it is not applicable to those who retire from government service on being absorbed permanently in an autonomous body or a Public Sector Undertaking to which he was on deputation at the time of seeking voluntary retirement. FR 56(k) allows any Govt. servant who retires from service after he has attained the age of 50 years if he is not in Group A or B or 55 years by giving three months notice. The applicant was at the time of his absorption a permanent L.D.C. or in other words in Class III. F.R. 56(k)(1) was also introduced by Department of Personnel and Administrative Reforms, Notification No. 25013/25/83-Estt(A) dated 25.2.1984. By that time the applicant had already become eligible for receiving pro-rata pension on completion of 30 years qualifying service as per Rule 48 of CCS (Pension) Rules, 1972. The respondents have also allowed him pension on completion of 30 years deemed service. Therefore, I find that the applicant is eligible to receive pension only from the date allowed to him by the respondents i.e. on the date of completion of 30 years qualifying service.

6. The applicant has raised an objection regarding the calculation of the pro-rata pension alleging that the rates had changed from particular dates. These points have been raised by the applicant by way of MAs after filing the main O.A. Since the respondents have not examined these points at their own level, necessary directions on that account are being given below separately.

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7. The applicant has also raised certain points i.e. regarding the non supply of his service book to him and also non encashment of earned leave credited to his account. The question of encashment of leave at the time of his absorption in 1962 is now barred by latches. However, the applicant is entitled to a copy of his service book if it is still available as per rules.

8. In the sum total, this O.A. is disposed of with the following directions:

- a) The applicant is entitled to pro-rata pension on the basis of his Govt. service. However, the pension is payable only from the date after 30 years deemed qualifying service.
- b) The applicant has not been granted the retiral benefits in terms of order of 1960 as the amount of Rs. 3534/- is held to be only a transfer of his GPF balance. Therefore, no deductions are liable to be made on that account from the pensionary benefits.

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- c) The pensionary benefits as calculated without making any deduction would also be given to the applicant within four months from the date of receipt of a copy of the order.
- d) The points raised by the applicant in respect of the proper calculation of the pension will be examined and decided by the respondents by a speaking order within a period of four months from the date of receipt of a copy of this order.
- e) A copy of the Service Book of the applicant will be made available to the applicant within a period of four months from the date of receipt of this order.

R.K. Ahuja
(R.K. Ahuja)
Member (A)

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