

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1267/1995

New Delhi, this 20th day of January, 1997

Hon'ble Shri S.P. Biswas, Member(A)

Shri J.N. Lalwani
28A, Central Govt. Housing Complex
Vasant Vihar, New Delhi-57 .. Applicant

(By Advocate Shri S.S. Tiwari)

versus

Union of India, through

1. Secretary
Ministry of Urban Development
Nirman Bhavan, New Delhi
2. The Director General of Works
Nirman Bhavan, New Delhi .. Respondents

(By Advocate Ms. J. Kaushik, through
Shri Ajesh Luthra)

ORDER(oral)

The facts of the case lie in a narrow compass. The applicant, a retired Section Officer (now called Junior Engineer), is seeking enhancement of pensionary benefits from Rs.1515 to Rs.1755/- per month. He retired voluntarily from service with effect from 3.1.68. As per applicant, out of total service of 35 years, four months and 20 days, a total of 31 years, zero month and 20 days was counted as qualifying service for the purpose of pensionary benefits. The applicant would submit that he was short of qualifying service to the extent of only one year, 11 months and 10 days. He claims that his service with the Assam Government from 20.4.48 to 20.8.52 has not been taken into account for the purpose of counting as qualifying service and this decision of the respondents is illegal and arbitrary. Consequently, the applicant has sought for an issuance of directions to the respondents to fix his pension @

Rs.1755/- per month with effect from 1.7.94, grant arrears and pay the entire amount alongwith 18% interest thereon.

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2. The short issue for consideration is whether the service rendered by the applicant for the State Government of Assam from 20.4.48 to 20.8.52 should be counted for the purpose of qualifying service?

3. Learned counsel for applicant argued the case strongly and by placing reliance on the decision of the Hon'ble Supreme Court in the case of R.L. Marwaha Vs. UOI {(1987)4 ATC 584}, contended that the claim of the applicant is covered under the ratio arrived at in the aforesaid judgement of the apex court. The counsel also argued that since it is a case of pension being received by the applicant on month-to-month basis, the case cannot be hit by limitation in the light of the decision of the apex court in the case of M.R.Gupta Vs. Govt. of India, 1995(2)ATJ 567. In this case, their Lordships have laid down the law that when the matter relates to fixation of pay, it is a continuing cause of grievance and should not be hit by principles of limitation.

4. Respondents have opposed the claim on grounds of limitation as well as on the basis of denial of the Assam Government in treating the period as qualifying service. It has been contended that the service rendered by the applicant in the Assam Government cannot be taken into account for the purpose of qualifying service, because the Assam Government did not agree to share pensionary liability in respect of the applicant.

5. I find that the applicant herein rendered his services in the Government of Assam with effect from 20.4.48 to 20.8.52 i.e. 4 years, 3 months and 6 days only on "contract basis". Based on the advice of the Department of Pension and Pensioners Welfare, the Government has taken a stand that "there were no orders relating to counting of service rendered in State Govt. on contract basis for the purpose of pension under the Central Government when the applicant retired voluntarily in 1968; hence unless the State government agrees to bear the incidence of pensionary liability on a service share basis, the question of counting that service for pension does not arise".

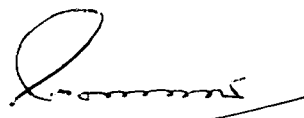
6. During the course of pleadings, the learned counsel for applicant was asked to show the appointment letter of the applicant in respect of the services rendered in the Government of Assam but this was not made available. The counsel also could not produce any evidence to substantiate that the applicant was holding a pensionary post before being absorbed in the Central Government under the Ministry of Urban Development, New Delhi. Ordinarily, working on contract basis does not entitle an employee for either regularisation or pensionary benefit unless otherwise catered by separate and express provisions. As pointed out by the apex court in the case of Karnataka State Private College Lecturers Association & Ors. Vs. State of Karnataka & Ors. AIR 1992 SC 6337 and also R.N. Mahadeo Vs. State of Orissa & Ors. AIR 1991 SC 1286, there can be circumstances justifying special treatment. Keeping this in view, the counsel was asked to produce the documents to show as to how contractual service under the State Government would

have made the applicant entitled for enhancement of pensionary benefits. The counsel expressed his inability as he is not in touch with his client since long. Available records do not have even a piece of monthly "pay slip" to ascertain if the applicant had been making regularly necessary pensionary contributions. The case cited by the learned counsel for applicant also does not render him any assistance since the applicant in the case of M.R.Marwaha(supra) was originally holding a pensionable post in the Central Government and was subsequently absorbed in an autonomous body where the pension scheme was also in operation. The circumstances of the present case are, therefore, different in the sense that the applicant herein, as per rules, was not officiating on a pensionable job.

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8. In the absence of unimpeachable documents and inadequate pleadings, I do not consider it a fit case where this Tribunal could exercise its discretionary jurisdiction under Article 226 of the Constitution of India in favour of the applicant.

9. The application is dismissed. There shall be no order as to costs.


(S.P. Biswas)
Member(A)

/gtv/