

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1295/95

New Delhi, this 22nd day of January, 1996

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Hon'ble Shri A.V.Haridasan, VC(J)
Hon'ble Shri R.K. Ahooja, Member(A)

Sushant Baliga
D-II/32, West Kidwai Nagar
New Delhi-110 023

.. Applicant

By Shri J.C. Jetli, Advocate

Vs.

Union of India, through

1. Secretary
M/Urban Affairs
Nirman Bhavan, New Delhi
2. Director General of Works
CPWD, Nirman Bhavan
New Delhi
3. National Building Construction Corp.
NBCC House, Lodhi Road, New Delhi .. Respondents

ORDER (Oral)

Hon'ble Shri A.V. Haridasan

The applicant while working as Executive Engineer in the CPWD was by order dated 18.8.82 sent on deputation to NBCC initially for a period of two years with effect from 3.2.83. However, the period of deputation was later extended upto 2.2.88 by order dated 7.12.88 (Annexure A-4). While the applicant was serving the NBCC, proposal for his absorption on permanent basis was on but as the terms and condition of absorption were not made clear and as the applicant was not willing to get absorbed on the terms which were made known to him orally he, on 19.1.88, i.e. two weeks prior to the extended period

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of deputation, wrote a letter to the Deputy Manager NBCC seeking his repatriation. Though there was no exchange of correspondence thereafter and though he has been making repeated representations either to fix the terms of absorption or to repatriate to his parent department, he was finally relieved only on 11.10.93 as per order dated 1.10.93. After relief, the applicant went on a short leave and after the expiry of that leave he rejoined his parent department. His grievance is that the Director General of Works, CPWD on 3.6.94 issued an order (Annexure A-1) by which the period between 3.2.88 and 11.10.93 was treated as dies-non for all purposes and that the period would not count as qualifying service for pension providing that it would not be deemed a break for forfeiture of past service. Pursuant to the above order, orders were issued fixing his pay without reckoning the above said period for purposes of increment, etc. The applicant made representations to the Secretary, DoP&T on 12.9.94. The request made by the applicant in the above said representation was considered and rejected by the order dated 6.6.95 (Annexure A-15) It is under these circumstances that the applicant has approached this Tribunal under Section 19 of the AT Act, 1985 praying that the impugned order dated 3.6.94 may be quashed and the subsequent action basing on this order may

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be struck with consequential benefits to the applicant. 8
It has been ^{alleged} held by the applicant that though he had sought repatriation well before the extended period of deputation came to a close, his parent department did not call upon him to rejoin his duty and he was not relieved by the borrowing department thereby disabling him to rejoin duty in the parent department on expiry of the period of deputation sanctioned. According to the applicant, his non reporting for duty in the parent department after the expiry of extended period of deputation was not on account of lapse on his part but and the action on the part of the respondents in imposing on him the penalty of non-counting of service of a period of over 5 years is arbitrary, unreasonable, illegal and unsustainable.

3. The respondents in their reply contended that as deputation of the applicant was sanctioned only upto 2.2.88, his continuance thereafter in NBCL and not reporting for duty in the parent department on the expiry of that date was irregular and unauthorised and as such it was under these circumstances the period was treated as dies non. It has been contended that it is not correct to say that the applicant was not informed of the ending of the period of deputation on 2.2.88 because as early as in the month of November, 1987 he has been informed of this and has been asked to get absorbed by resigning from his parent service. However, there is no case for the respondents that the second respondent had required the applicant to

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report for duty in the parent department on the expiry of the extended period of deputation nor is there any contention that he ~~was~~ was relieved by NBCC on the expiry of deputation. Without an order for relieving from the borrowing department, the applicant could not have on his own abandoned the service of NBCC and rejoin^{ed} the parent department and therefore the inaction is on the part of the respondents and not of the applicant, as argued by the learned counsel for the applicant. In this connection, the learned counsel of the applicant invited our attention to the ruling of the Hon'ble Supreme Court in V. Sridharan Nair Vs. State of Kerala 1986(1) ATJ 516, where their Lordships have observed as follows:

"The assumption on the part of the department in this case is that the petitioner's continuance in the service of the Housing Board constituted absence from duty. We cannot subscribe to this view. It was not a case of his absenting from duty after he was asked by the Parent Department to join it. At no time was he asked to join duty in the Parent department. Without specific orders, the petitioner could not abandon the deputed Foreign Service and join the parent department".

4. The situation in the present case is ~~extremely~~ ^{exactly} similar to that in Sridharan Nair's case referred to above. On the expiry of deputation period, neither the applicant was called ^{up^{on}} to join duty by the parent department nor was he relieved by the borrowing department. Without either of these, the applicant could not have on his own ~~get~~ relieved from NBCC and report ^{ed} back in the parent department. Thus, it is obvious that whatever is the reason, the applicant was continued in NBCC not on his violation

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but for the reasons that are well known to the respondents. Under the circumstances, we are of the considered view that to deny the ~~benefits~~ applicant benefits of service of more than 5 years i.e. from 3.2.88 to 11.10.93 for no fault of his is arbitrary, unconstitutional, illegal and unsustainable. In the result we set aside the impugned order dated 3.6.94 (Annexure A-1) with all consequential benefits. The respondents are directed to treat the impugned order at Annexure A-1 did not take effect, to refix the pay and seniority of the applicant treating that the applicant was in service during the period between 3.2.88 and 11.10.92, to grant him increment of pay etc. and to make available to him the monetary benefits flowing out of the same within a period of four months from the date of communication of this order. The applicant has prayed ^{for} payment of interest on arrears but we are of the considered view that he is not entitled for the same in the ^{fact} ~~peculiar~~ and circumstances of the case.

There is no order as to costs.

Ahooga
(R.K. Ahooga)
Member (A)
22.1.96

Haridasan
(A.V. Haridasan)
Vice-Chairman (J)
22.1.96

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