

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. SMT. LAKSHMI SWAMINATHAN, MEMBER 'J'
HON. SHRI R.K. AHOOJA, MEMBER 'A'

DA NO. 2017/1995

(11)

NEW DELHI, THIS 31ST DAY OF MARCH, 1997

SHRI A.D. RAMASWAMY
S/o Lt. Sh. A.R. Doreswamy Iyer
aged 63 years
Retd. Executive Director
Housing & Urban Development Corp. Ltd.
NEW DELHI

R/o C-2/64-A, MIG Flats
Lawrence Road
Rani Jhansi Kunj, Keshavpura
DELHI-35

...APPLICANT

'By Advocate - Shri G.D. Chopra'

VERSUS

1. UNION OF INDIA, through
Ministry of Finance
Government of India
North Block
NEW DELHI

2. THE COMPTROLLER & AUDITOR GENERAL OF INDIA
Bahadur Shah Zafar Marg
NEW DELHI

3. THE PRINCIPAL DIRECTOR OF AUDIT
Southern Railway Statutory Audit
Southern Railway
New General Offices
Park Town
MADRAS-3

..RESPONDENTS

'By Advocate - Shri Madhav Panicker'

ORDER

R.K. AHOOJA, MEMBER 'A'

The applicant had served as Senior Auditor under respondents in the Chief Auditor's office, Southern Railways, Madras, for a period from 23.3.1956 to 30.11.1966. He states that he applied for the post of Assistant Audit Officer in

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a public sector undertaking, Bharat Earth Movers Ltd., through proper channel and on being selected was relieved from his office, Chief Auditor's office, in the afternoon of 30.11.1966 and joined the Bharat Earth Movers from the next day, i.e., 1.12.1966, and hence there was no break. Initially, the service rendered with the Government was allowed to be counted for grant of pro rata retirement benefits in case the absorption in the public sector undertaking 'PSU' was in "public interest". Later, however, vide OM No.28016/4/76-Ests'C' dated 25th March 1977, this was extended also to such persons who had joined the PSU on their own volition. The benefit was however confined to such cases where the absorption took place on or after 9.11.1968 but prior to 21.4.1972, the benefit of proportionate pension being allowed however only from ~~from~~ 1.8.1976. The case of the applicant is that subsequently the Hyderabad Bench of this Tribunal in the case of HARBINDER LAL VS. THE CAG & ORS. OA NO.527/1988 decided on 14.4.1988 held in substance that persons like the present applicant who had been absorbed prior to 9.11.1968 were also entitled to the same benefit. A similar decision was taken in the case of R.V. RAGHAVAN VS. THE CAG & ORS. OA NO.350/93 decided on 25.5.1995 by the Principal Bench. The respondents went in appeal before the Supreme Court but the SLP was dismissed and thus the ratio of Raghavan's case 'Supra' became final. The applicant states that he sent a letter dated 28.2.94 and 26.5.1995 for his case to be processed on the lines of the decision in Raghavan's case 'Supra' but his case was rejected vide letter dated 1.6.1995 giving reasons that his case was to be considered in the light of instructions contained in DOP&T OM No.4/61/85-P&PW'D' dated 3.1.1995 and there was no provision in the said OM to consider his case. He now prays for a direction to respondents to pay him the retirement benefits w.e.f. 1.8.1976.

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2. The respondents in reply controvert the claims of the applicant. They state that the case of R.V. Raghavan 'Supra' was per incurium and the SLP against it was dismissed in limine and not by a speaking order and therefore it could not be said that the ratio of Raghavan's case 'Supra' had been endorsed by the Hon. Supreme Court. The respondents claim that the Supreme Court in another matter of UOI VS. V.R. CHADHA 'arising out of SLP Civil No. 697 of 1995' dated 2.5.1996 have clearly held that pension will be permissible only where absorption in the PSU is declared by the Government to be in "public interest". Further, the Hyderabad Bench of this Tribunal in a subsequent judgement dated 4.9.96 in the case of K.S. KRISHNA RAO VS. UOI & ANR. DA NO. 1356/1995 have, relying on the V.R. Chadha case 'Supra', dismissed the case of similarly situated persons as the applicant in the present O.A.

3. We have heard the ld. counsel for both sides. Shri G.D. Chopra, arguing for the applicant, sought to draw a distinction between the case of R.V. Raghavan and V.R. Chadha. He submitted that in the V.R. Chadha case, the Hon. Supreme Court was laying down the interpretation of Rule 37 of CCS 'Pension' Rules 1972, in which there is no provision for grant of pension unless the absorption in the PSU is declared by the Government to be in public interest. On the other hand, according to Shri Chopra, Raghavan's case related only to the cut off date prescribed in the OM of 25.3.1977 'Supra'. He submitted that the respondents themselves state that as per this OM, Government servants joining PSUs on their own volition between 1968 and 1972 would be equally entitled to the grant of pensionary benefits: what had been decided in the Raghavan's case was that the cut

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off date like this could not be fixed and cases of absorption on one's own volition prior to 1968 had also to be covered. This matter was not before the Supreme Court in V.R. Chadha case. The applicant's counsel submitted that he is seeking benefit of this OM as interpreted in Raghavan's case and not under Rule 37 of CCS' Pension' Rules.

4. We have carefully considered the above arguments. A copy of orders of the Supreme Court has been annexed by respondents as R-1 with the reply. In that case, the person concerned was also working as SS Accountant when he applied for the post of Accounts Executive in the Bokaro Steel Plant. His application was forwarded through proper channel with a condition that in case he was selected he would have to resign finally within a period of two years beyond which his lien would not be retained in the parent office. On selection he was relieved on 9.3.1967 and he tendered his resignation w.e.f. the date he was relieved from duty. His claim for pro rata retirement benefits was rejected. He approached this Tribunal in OA No.2414/92 which was allowed. The respondents in that case went before the Supreme Court and it was held that the order of the Tribunal was liable to be set aside. In the case of K.S. Krishna Rao 'Supra' 'Copy at R-II', the applicant, an SS Accountant in the Accountant General's office, Orissa, while on deputation to National Bridges Construction Organisation, tendered resignation from his parent office and joined the PSU. The respondents took the ground that as he had not been absorbed between 1968 and 1972, having gone to the PSU in 1966, he was not entitled to the pro rata pension. Relying on the judgement of the Supreme Court in V.R. Chadha case, the OA was dismissed by the Tribunal, Hyderabad Bench.

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We find that the facts of the present case are similar to those of V.R. Chadha's case and ~~Krishna Raj~~ ^{or} ~~Baghavan~~ case since the absorption of the applicant took place before 1968, as had happened in those cases also. We are therefore of the opinion that the ratio of these two cases would apply in the present instance also. The applicant having joined the PSU prior to the cut off date of 1968 on his own volition and not in public interest, is thus not eligible to receive any pensionary benefit from the respondents.

The O.A. is accordingly dismissed. No costs.

R.K. Ahuja
'R.K. AHUJA'

MEMBER 'A'

Lakshmi Swaminathan
'LAKSHMI SWAMINATHAN'

MEMBER 'J'

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