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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2324/1995

New Delhi, this 15th day of October, 1999

Hon'ble Shri A.V. Haridasan, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member(A)

Manmohan Gupta
AD/68-A, Shalimar Bagh
New Delhi

.. Applicant

(By Shri M.L. Chawla, Advocate)

Versus

1. Union of India, through
Secretary
Ministry of Surface Transport
Transport Bhavan, New Delhi
2. Lt. Governor, through
Chief Secretary, Govt. of NCT of Delhi
Old Secretariat, Delhi
3. Secretary
Deptt. of Personnel & Training
Ministry of Home Affairs, New Delhi
4. Secretary
Department of Pension & Pension Welfare
North Block, New Delhi .. Respondents
(By Shri S.M. Arif, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, a retired Assistant Director(Civil) of the Ministry of Surface Transport, is aggrieved by the order dated 10.3.95 (A-1) by which respondents have denied the benefits of past services rendered by him in the Municipal Corporation of Delhi (MCD for short) as Draftsman Grade III/Grade II for the period from 25.6.59 to 1.7.65. This has the effect of reducing the pensionary benefits of the applicant because of recurring adverse civil effects. Consequently, he seeks issuance of directions to the respondents to declare him entitled for the pensionary benefits on the total services rendered under Government in two different spells, firstly from 25.6.59 to 1.7.65 and secondly, from 2.7.65 to 31.7.95, when he retired.

(8)

2. The background facts of the case are as below.

✓ Applicant joined service in the MCD/Delhi Admn.(R-2) as Draftsman Gr.III on temporary basis and was later on promoted to Draftsman Gr.II with effect from 3.3.65 and continued working in MCD upto July, 1965 rendering a total service of over six years. He joined service as Draftsman Gr.II with the Surface Transport Ministry on 2.7.65 after having been sponsored by the Directorate General of Resettlement with whom applicant's name was duly register after obtaining "no objection certificate" from MCD. Pursuant to his superannuation on 11.7.65, applicant continued agitating for counting of past services with the MCD in the first spell as aforementioned for the purpose of pensionary benefits on the basis of qualifying service for pension. Despite protracted correspondences between the concerned authorities, applicant ultimately received communication from R-2 asking him to confirm whether he had received any Contributory Provident Fund benefit at the time of his resignation from MCD. To this, applicant gave his reply in the negative. Relevant records as at A-9 and A-10 bring out the factual details in this respect.

3. Applicant's case is based on the regulations of the Government of India contained in OM No.28-10/84-Pension Unit dated 29.8.84. Appendix 12 of the said instructions provide the following:

2
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"An employee of an autonomous body on permanent absorption under the Central Govt. will have the option either to receive CPF benefits which have accrued to him from the autonomous body and start his service afresh in Govt. or choose to count service rendered

in that body as qualifying service for pension in Govt. by foregoing employer's share of CPF contributions with interest thereon, which will be paid to the concerned Govt. department by the autonomous body. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulated period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final."

4. Applicant would also seek to draw further support from the orders of GoI in para 5(2) of the same appendix which mentions the following:

"Where no terminal benefits for the previous service have been received, the previous service in such cases will be counted as qualifying service for pension only if the previous employer accepts pension liability for the service in accordance with the principles laid down in this OM. In no case pension contribution/liability shall be accepted from the employee concerned"

5. The basis on which respondents have rejected applicant's claim has not been mentioned. That apart, respondents' reply in Annexure A-1 contains the following:

"With reference to his representation dated 3.6.93, Shri N.M.Gupta, Asstt. Director (Civil), is informed that his request for counting his past service rendered under MCD w.e.f. 25.6.59 to 1.7.65 has been considered in consultation with Deptt. of Personnel & Training, but it is regretted that his request cannot be acceded to"

6. The issue that arises for determination is whether respondents' (MCD in particular) action in denying to consider applicant's claims can be sustained in the eyes of law?

7. We find that the impugned order dated 10.3.95 does not incorporate the reasons for the rejection. It is well settled in law that an order to the detriment of an official cannot be made without recording reasons for the same. Apex court in a Constitution Bench decided in the case of S.L.Mukherjee Vs. UOI 1990(5) SLR 8 has held that except in cases where requirement has been

2/1

dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial function is required to record reasons for its decision. The impugned order as at A-1, therefore, does not serve the purpose of law.

8. We also find that the present case will be governed by the provision under 3(a) of the OM dated 29.8.84. The relevant portion of the OM, for the purpose of disposal of this case, is extracted as under:

"(a) In case of autonomous bodies where pension scheme is in operation -

(i) Where a Central Govt. employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him under the Govt. shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Govt. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Govt. The same procedure will apply in the case of employees of the autonomous bodies who are permanently absorbed under the Central Govt.

The Govt./autonomous body will discharge its pension liability by paying a lump sum as a one-time payment, the pro-rata pension/service gratuity/terminal gratuity and retirement gratuity for the service upto the date of absorption in the autonomous body/Govt. as the case may be. Lump sum amount of the pro-rata pension will be determined with reference to commutation table laid down in CCS(Commutation of Pension) Rules, 1981, as amended from time to time"

9. When the provisions under the existing instructions stipulate discharge of pension liability by paying a lump sum as a one-time payment or pro-rata pension etc., it is not understood how the MCD could take a stand mentioning as hereunder:

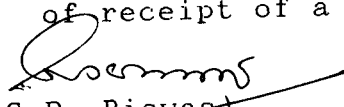
"In the absence of record, it is not possible to confirm this. Similarly, it is also not possible for us to remit the amount of pensionary liability for the said period. It is, therefore, requested that the Ministry may settle the issue on their own at their end".

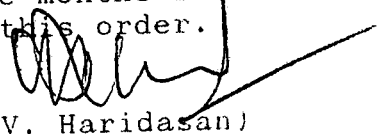
This is as per the communication of R-2 as at A-13 dated 26.10.89. What rule has been cited in rejecting the claim by the MCD has not been indicated.

10. We find that the case of the applicant is covered by the orders of this Tribunal in OA No.1232/97 decided on 24.7.98. That orders were also relating to pensionary claims of an official who had rendered similar services under the MCD before moving out to Government of India. The said orders have since attained finality.

11. In the background of the aforesaid situation, this OA is allowed with the following directions:

- (1) Applicant shall be entitled to the pensionary benefits for the services rendered by him under R-2 with effect from 25.6.59 to 1.7.65;
- (2) R-2 shall determine the pension liability for the period from 25.6.59 to 1.7.65 when the applicant had rendered services under them and also discharge the liability of pro-rata retirement benefits of the applicant for the services rendered by him in the relevant grade;
- (3) R-1 is directed to revise applicant's pension after taking into consideration both the spells of services rendered by the applicant for the purpose of pension and shall pay the arrears due to the applicant;
- (4) Our orders aforesaid shall be complied with within a period of three months from the date of receipt of a copy of this order.


(S.P. Biswas)
Member(A),


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

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