

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~XXX~~ No. 283/1995

Decided on: 10/10/96

Shri N. Krishnaswamy

....Applicant(s)

(By Shri R.L. Sethi

Advocate)

Versus

U.O.I.

....Respondent(s)

(By Shri N.S. Mehta

Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter *per*
or not?

2. Whether to be circulated to the other *Ex*
Benches of the Tribunal?

[Signature]
(K. MUTHUKUMAR)

MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No.283 of 1995

New Delhi this the 1st day of November, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri N. Krishnaswamy
S/o Late Shri V. RAmaiah
R/o C-6A/76-A Janak Puri,
New Delhi-110 058.

...Applicant

By Advocate Shri R.L. Sethi

Versus

Union of India through
The Secretary,
Ministry of Human Resource & Development,
Department of Education,
'C' Wing, Shastri Bhawan,
New Delhi-110 001.

...Respondents

By Advocate Shri N.S. Mehta

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant joined Government service under the respondents as Technical Assistant on 28.3.1952 and was later on confirmed in the said post. Thereafter, he earned his promotion to the grade of Senior Technical Assistant and Assistant Education Officer Class-II. While working in the office of the respondents, he applied for the post of Assistant Editor in an Autonomous Body, namely, National Council of Research and

Training (NCERT) and on being selected, he was relieved of his duties with effect from 30.11.1963. Initially he was on deputation on foreign service which was extended from time to time till 30.6.1968. He tendered his resignation from the post of Assistant Education Officer Class-II under the respondents which was accepted by the competent authority w.e.f. 1.7.1968 and thereafter, he was permanently absorbed and was appointed as Assistant Editor in the NCERT in substantive capacity w.e.f. 1.7.1968. His permanent absorption was treated as not in public interest by the respondents. He was, however, informed that he would be entitled to pensionary benefits applicable to the employees of the NCERT from 1st July, 1968 under the rules applicable to NCERT. The applicant, however, resigned from the service of the NCERT also w.e.f. 15th September, 1970 to join the private sector. The applicant's case is that he had rendered qualifying service under the Central Government for 16 years 3 months 3 days and in terms of Liberalised Rules in this behalf, his resignation from Government service should not entail forfeiture of service for the purpose of retirement/terminal benefits and he should be deemed to have retired from the service from the

date of deemed resignation from the service and he should be eligible to receive all retirement benefits as admissible under the relevant rules applicable to him. After several years passed by, the applicant sent in a representation vide his letter dated June 6, 1990, Annexure A-1 requesting for grant of pension and gratuity proportionate to the service rendered by him under the Government. His representation was considered by the respondents and by the impugned order, the applicant was informed that after due consideration in consultation with the Ministry of Finance, it would not be possible to reopen the matter at this stage for consideration of the case as his transfer to NCERT was not in public interest and, therefore, it would not be possible to reconsider this matter under the rules which came into force much later than his resignation from service under the Government and also under the NCERT. Aggrieved by the above order, the applicant has approached/praying for a direction to the respondents to grant pension and pensionary benefits for the service rendered by him under the Government and/allow the penal interest of 18% per annum.

2. The respondents have averred as follows:-

(i) A permanent Government servant on absorption

(15)

in an autonomous body was eligible for pro-rata pensionary benefits based on the length of service rendered under the Central Government till the date of absorption in the autonomous body only when the permanent absorption was in public interest. In the case of the applicant his appointment/subsequent absorption was specifically treated not in public interest and, therefore, no prorata pensionary benefits were admissible to him for the service rendered under the Central Government.

(ii) The applicant resigned from his substantive and it was made clear to him that if he resigned from his substantive post, he would forego all his claims to the service rendered under the Central Government.

(iii) The applicant accepted the aforesaid position and sent in his resignation vide his letter dated 28.10.1967, Annexure R-III to the counter-reply and his resignation was accepted with effect from 1.7.1968. He was permanently absorbed in the NCERT with effect from 1.7.1968. It was clearly mentioned in the order that "his permanent absorption in the Council has not been treated as in public interest by the Ministry and that he would be eligible for retirement benefits

in the Council w.e.f. 1.7.1968 under the rules of the Council". The applicant had accepted this order and, therefore, he knew that he would forego his pensionary benefits under the Government.

(iv) The respondents have also opposed the application for condonation of delay and have pointed out that there is no satisfactory explanation in filing of this O.A. almost after 25 years from the date of even resignation from the NCERT and the applicant is, therefore, estopped from agitating for any claim for retirement benefits at this point of time. The respondents also contend that the cause of action arose in 1967 and it would not be even within the jurisdiction of the Tribunal to entertain this application.

3. I have heard the learned counsel for the parties and have carefully perused the entire material on record.

4. The applicant resigned from Government service as early as on 1.7.1968 and also from the autonomous body w.e.f. 15.9.1970 itself. Even at the time of his permanent absorption in the NCERT after his resignation from Government service, he was clearly informed that joining NCERT on his own volition and his absorption in the Council could not be held to be in public interest, and he was aware that he was not

entitled to the benefits of his Government service, after he resigned from his post in the Government. Almost after 20 years, the applicant made a representation for the first time to the Government requesting for grant of proportionate pension and gratuity for the service rendered under the Government. It is no doubt true that Government had from time to time considered the question of grant of proportionate pensionary benefits in respect of the employees who sought permanent transfer to Central Autonomous Bodies/Public Enterprise, particularly after the CCS (Pension) Rules/ ¹⁹⁷¹ came into force. Consolidated instructions were issued by the Government vide their O.M. dated 8.4.1976. It was provided in terms of those instructions that any further liberalisation of pension rules decided upon by Government after the permanent absorption of a Government servant in a public undertaking/autonomous body would not be extended to him. However, the benefit of further liberalisation in pension shall also be allowed to a Government servant after his permanent absorption if, in any case, such liberalisation is sanctioned retrospectively with effect from a date prior to the date of such absorption. It was also made clear that the

proportionate pension/proportionate gratuity could be available when permanent absorption to autonomous body was made in public interest and in all other cases, Government will not accept liability to pay any retirement benefits for the period of service rendered by Government servant before his transfer. In regard to the pensionary benefits admissible in case of absorption w.e.f. 21.4.1972, it was provided in the consolidated instructions that a permanent Government servant who had been appointed in the autonomous body financed wholly or substantially by the Government upon his own application shall, on his permanent absorption in such body w.e.f. 21.4.1972 or thereafter, be entitled to the same retirement benefits in respect of his past service under the Government as are admissible to a permanent Government servant going on deputation to an autonomous body and getting absorbed therein, except carry forward leave. It must be pointed out that this order covered cases of absorption w.e.f. 21.4.1972 or thereafter and not before. The distinction between absorption under 'public interest' and 'own volition' was also removed by the orders of the Government dated 25.3.77 as part of liberalisation. In O.M. No.28-16/4/76-Ests.(C) dated 25.3.1977, it was provided that the prorata pensionary benefits to Government servants shall be made available only to those Government servants who got permanently

absorbed in the Public Sector Undertakings on or after 21.4.1972, whereas the Government servants who were on deputation in public interest, were entitled to prorata pension on their permanent absorption in the Public Sector Undertakings even prior to 21.4.1972 but after 6.11.1968. It was also provided that the Government servants getting absorbed on their own volition are also not entitled to carry forward leave at their credit. However, there was some further liberalisation and it was provided that there should be no distinction between the two types of deputationists getting absorbed in Public Enterprises, subject to the condition that the period of leave to be carried forward should be restricted to 120 days in the case of absorption of deputationists who initially joined the enterprise on their own volition. It was also made clear that this would apply to all cases of absorption of Government deputationists in Public Enterprises, who had earlier joined the concerned undertakings on their own volition, provided that in cases of such absorptions which took place on or after 6.11.1968 but prior to 21.4.1972, the benefit of proportionate pension should be allowed only from 1.8.1976. Although the above position was in respect of persons appointed in Public Sector Undertaking, there

was no change in regard to persons appointed on autonomous bodies on the basis of their own application and on permanent absorption in such a body w.e.f. 21.4.1972 or thereafter. The case of the applicant is not the case of a permanent Government servant going on deputation to an autonomous body and getting absorbed there. From the facts on record, the case of the applicant was that he was appointed on a post on his own application and although he was initially treated as on deputation to foreign service, he resigned from Government service and was permanently appointed in the autonomous body and at no stage this was treated as permanent absorption in public interest. Although the distinction between the Government servants who got absorbed in public interest and the Government servants getting absorbed in their own volition for the purpose of grant of prorata pension was removed, ~~but~~ the benefit of prorata pension was allowed only in cases of such absorption which took place or or after 8.11.1968 but prior to 21.4.1972 in terms of the O.M. dated 25.3.1977. The liberalisation in regard to non forfeiture of service for the purpose of retirement benefits in case of resignation from Government service

with a view to secure employment in Central Public Enterprise/Central Autonomous Bodies came into force only after issue of the orders dated 31.1.1986 which took effect from 6.3.1985 in respect of Central Public Enterprises and with effect from 31.3.1987 in respect of Central Autonomous Bodies.

It is an admitted position in the case of the applicant that on his resignation from Government service, he was absorbed in NCERT w.e.f. 1.7.1968, i.e., prior to the liberalisation in respect of cases of absorption w.e.f. 21.4.1972 or thereafter.

5. In the conspectus of the above orders issued from time to time, it is evident that the applicant's case is not covered even by liberalised terms announced by the Government from time to time for prorate pensionary benefits for the service rendered under the Government.

6. In the light of the foregoing, this application has no merit and is accordingly dismissed. In the circumstances, there shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)

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