

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 74/1995

(b)

New Delhi, this 27<sup>th</sup> day of October, 1995

Hon'ble Shri B.K. Singh, Member(A)

R.C. Sachdeva,  
Flat No.11A, dena Society Apartments  
S-13, Rohini, Delhi-85

Applicant

By Shri G.D. Bhandari, Advocate

versus

Union of India, through

1. The Secretary  
Min. of Telecommunications  
Sanchar Bhawan, Ashoka Road  
New Delhi

2. The District Telecom Manager  
Rohtak, Haryana

Respondents

By Shri M.M. Sudan, Advocate

ORDER

This OA is directed against non-payment of retiral benefits to the applicant from the date he was allowed to retire voluntarily. The reliefs prayed for in the OA are:

(i) To direct the respondents to make payment of pension, gratuity and all other retirement benefits that have become due to the applicant on the date of his voluntary retirement; and

(ii) To direct the respondents to pay interest @ 18% per annum from the date of voluntary till the payment is made.

2. Notice was issued to the respondents who filed their reply contesting the application and grant of reliefs prayed for. Heard the learned counsel for the parties and perused the record of the case.

3. The uncontroverted facts are these. The applicant, on selection, joined as Telephone Operator on 13.7.63 and

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continued with the respondents till his voluntary retirement on 31.12.90. While working, he fell ill and remained under medical treatment from 1986 to 1989 during several spells. The period from 1.9.86 to 5.8.89, except 27 to 30.11.88, was regularised by grant of leave due to him. Copies of the medical certificates filed by him to this effect are on record. On recovery from illness, he submitted medical certificates covering the entire period, except 27 to 30.11.88. He was issued with charge-memo for having remained on leave unauthorisedly. The disciplinary authority did not find the charge substantiated in view of the explanation submitted by the applicant and the proceedings were dropped. He gave notice for voluntary retirement on 30.4.90 to be effective from 31.7.90 but he was not permitted to retire since the DE was pending against him at that time. When the proceedings were dropped he was allowed to retire voluntarily on 31.12.90. He preferred OA No.2309/92 against the order treating the period of absence from 1.9.86 to 5.8.89 as dies non, on which the Tribunal passed the order on 16.11.93 and the operative portion of the same reads as under:

(i) The applicant shall be granted leave of the kind due for the period from 1.9.86 to 16.11.88 on the basis of the medical certificates submitted by him. The required payments shall be made to him within a period of 3 months from the date of this order.

(ii) The respondents shall consider the point raised in the representation dated 15.3.1991 and pass a speaking order thereon within a period of 4 months from the date of communication of this order; and

(iii) No interest shall be payable on the dues for the aforesaid period.

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4. The learned counsel for the applicant vehemently argued that in view of the Tribunal's judgement stated above, there was no break in service and as such the applicant will be deemed to have continued in his assignment till 31.12.90, when he was allowed to retire voluntarily.

5. After hearing the rival contentions of the parties and going through the records of the case, it is clear that the applicant is entitled to grant of pension, gratuity etc. The learned counsel for the respondents fairly conceded that the applicant is entitled to the retiral benefits but he opposed the grant of interest @ 18%, as there was no lapse on the part of the administration and the matter could not be decided since the said OA was preferred and decided only on 16.11.93. The applicant was asked to substantiate his averments made in the OA to claim compounded rate of interest. In response to this, he has produced a copy of the registered letter sent by him on 16.8.92 enclosing therewith Forms 5, 3, specimen signatures, particulars of height etc., passport size photographs of self and wife and application for commutation of pension. However, these were sent back to him on 5.6.93 asking him to submit three copies each of them duly attested alongwith notice for voluntary retirement and copy of reply received thereto. But since OA 2309/92 filed by the applicant was decided only 16.11.93 and more details in regard to pension papers were wanting as mentioned above, the respondents could not have taken any action. The bonafide of the respondents is not in question since they had already sent the pension papers and wanted certain other details from him. Again the applicant has not been able to

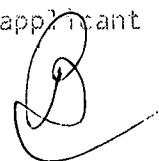
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indicate as to whom and when he sent the duly completed pension papers alongwith duly attested photographs and specimen signatures.

6. Direction (ii) of the Tribunal's order dated 16.11.93 was to consider the points raised in the representation dated 15.11.93 within four months. Annexures R-1 & R-2 to the reply shows that the representation was disposed of on 16.1.95 and 10.4.95. It is clear from these annexures that the applicant stood relieved from 31.12.90 due to pendency of DE launched against him for unauthorised absence, the salary for the disputed period could not be paid. After the proceedings were dropped and subsequent orders of Tribunal received he was paid the salary for this disputed period by cheque No.A-977419, and annual increment was also granted. DPC for OTBP/BCR promotion did not consider him fit for promotion. Leave etc. has been decided according to the direction of the Tribunal. 15 days leave from 10 to 24.4.80 has been treated as dies non. These annexures also indicate that the period of leave from 1.9.86 to 16.11.88 had been treated as admissible leave. The continuity of the service gets disrupted because of a break from 10.4.80 to 24.4.80 since this period continued to be treated as dies non. No representation or appeal was preferred against this order and no relief was prayed for regularisation of this period against any leave due nor is there any order of any court about this period.

7. It seems no relief was prayed for in OA 809/92 decided on 16.11.93 because that relief would have been barred by limitation, in the light of the various judgements of the Hon'ble Supreme Court. The applicant seems to have acquiesced



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in this period since he never filed any representation or appeal against the non-regularisation of the period treated as dies non resulting break in the continuity of service. He seems to have reconciled to this position without raising any howl or objection or grievance and therefore he has forfeited his right to question its validity now. In a situation like this, the ratio of judgement Om Prakash Shukla vs. Aplesh Kumar Gupta decided by a three-Member Bench of the Hon'ble Supreme Court will hold good (AIR 1986 SC 1943). The applicant is estopped from raising it now.

8. The matter has become complicated and the entire service can be split up in two spells, from 13.7.63 to 9.4.80 and other from 25.4.80 till 31.12.90. The very objective of long service becomes disputed because of this break. The matter is left to the discretion of the respondents to decide the question of fixation of pension and gratuity on the basis of the option exercised by the applicant, whether he would like to opt for pension for the period from 25.4.80 till 31.12.90, which is more than 10 years, as per extant rules or for the period from 13.7.63 to 9.4.80, which will be on the basis of lower scale of pay but the period would be longer, which is approximately 17 years and the pension and gratuity would be admissible on a longer period. In the first option, the pay would be higher but the period would be less. The question of adding five years will not arise because he has not completed 20 years of service in one spell and as such he can not get the benefit of 5 years for purpose of fixation of pension and gratuity and he is barred from claiming the same.



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9. It is unfortunate that this point has escaped the attention of both the applicant and the respondents. At this belated stage, since he is estopped from raising the dispute about the period from 10 to 24.4.80, he is given liberty to exercise his option and the respondents will be free to fix pension on the basis of that option. Most of the problems have arisen because of the inaction on the part of the applicant and therefore there is no justification for grant of any interest since what amounts are due to him are not clear. Even now, it will be fixed on the basis of the option exercised by him. He is at liberty to approach the respondents for regularisation of the period declared as dies non and the respondents will be free to decide the same and adjust that period against any kind of leave due to him. Since the applicant remained totally indolent, we can not give any direction on this in view of the judgement of Hon'ble Supreme Court cited above.

10. With the above direction, the OA is partly allowed and thus disposed of but without any order as to costs.

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B. N. Singh  
Member (A)

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