

Central Administrative Tribunal
Principal Bench: New Delhi

OA 707/95

New Delhi this the 31st day of December 1996.

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

S. Balakrishnan
S/o Shri S.P.Subramania Iyer
R/o E-73 DDA Flats
Saket, New Delhi.

...Applicant

(Through Dr.J.C.Madan, Advocate)

Versus

The Union of India through
The Secretary
Ministry of Home Affairs
North Block, New Delhi.

...Respondent

O R D E R

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

This application is directed against the decision contained in the O.M.dated 20.1.95 of the respondent - Secretary, Ministry of Home Affairs, which was sent in reply to the claim of the applicant for payment of gratuity and encashment of half pay leave for the period between 28.8.83 to 5.10.93, when he was employed as an Adviser to the Government of India long after he retired from government service as Joint Secretary, turning down the claim.

Briefly stated, the facts are as follows:

2. The applicant who was born on 3.4.1911 and was working as Joint Secretary in the Ministry of Law was to retire on superannuation on 3.4.1969. He was given extension of service by one year and thus he retired on 3.4.1970. He was given retiral benefits. He was re-employed as Joint Secretary in the Ministry of Home Affairs w.e.f.30.4.70 till 31st August 1976. Thereafter, in the year 1983, the Government decided to appoint a full time senior officer of appropriate rank with adequate knowledge and experience in constitutional law with administrative experience

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to present the approach of the Central Government to the various problems in relation to Centre-State relations before the Sarkaria Commission. Accordingly, a post in the grade of Additional Secretary to the Government of India was created with approval of the Cabinet and the applicant was appointed on that post by order dated 17th December 1983. In terms of the offer of appointment, the tenure was upto 30th June 1984 initially and the applicant was to receive a fixed pay of Rs.3000/- plus allowances admissible minus pension and pension equivalent of other retirement benefits. It was also stipulated that the applicant would be entitled to medical facilities and leave etc. under the Central Government Rules as admissible to officers of equivalent status. When the scale of pay of Additional Secretary to the Government of India was revised on acceptance of the report of the Fourth Pay Commission, the applicant's pay was revised to a new scale of Rs. 7300-7600. Thereafter, the applicant's pay was raised to Rs.8000 in the grade of Secretary to Government of India w.e.f. 1.1.1988. The above appointment of the applicant on contract basis was terminated on 6.10.93 and thereafter under a new contract, the applicant agreed to continue as Adviser on a token remuneration of Rs. 1/- only p.m. The applicant made a request for payment of gratuity and for encashment of half pay leave for the period 28.8.83 to 5.10.93. The applicant asserted that his service during the period could not be treated as re-employment as the contract of appointment was reduced to writing after pre-deliberation between parties and it was not stipulated therein that the employment was on re-employment terms. Since the applicant had served for a

period of 10 years under the contract, he, according to the rules, is entitled to payment of gratuity as also encashment of half pay leave. As the applicant was given cash equivalent of the earned leave for the period in accordance with the provisions of Rule 39 (2) of the Civil Service (Pension) Rules, the applicant claims that he is similarly entitled to gratuity as also encashment of half pay leave. This request of the applicant was turned down by the respondents by the impugned OM wherein the respondents contend that the applicant's service during the period being on re-employment, he is neither entitled to gratuity nor to encashment of half pay leave as the encashment of half pay leave is permitted only on retirement on superannuation and as the Civil Service (Pension) Rules do not provide for payment of gratuity on termination of re-employment of a pensioner. The applicant has assailed this decision mainly on the ground that his service during the period in question was not on re-employment terms and was analogous to the appointment

as Controller of Auditor General or Members of Central Administrative Tribunal etc. The applicant, therefore, prays that a direction may be given to the respondents to pay to him

gratuity and other benefits due to him in respect of his service as Adviser to Government of India w.e.f. 26.8.83 to 6.10.1993 including cash equivalent of the half pay leave with interest.

3. Respondents have filed a detailed reply statement. I have, with meticulous care, gone through the entire pleadings and other materials on record and have heard at length the arguments of Mr P.H. Ramchandani on behalf of the applicant and Mr V.K. Mehta on behalf of the respondents.

4. The facts which are beyond dispute are that the applicant who reached the age of superannuation on 3.4.69 was after an extension of service retired on 3.4.70; that w.e.f. 30.4.70 till 31.8.76, he was re-employed as Joint Secretary in the Ministry of Home Affairs; that thereafter in the year 1983, he was appointed as Adviser in the grade of Additional Secretary to Government of India w.e.f. 26.8.83; that he was later elevated to the level of Secretary to the Government of India in the pay scale of Rs.8000/-per month; that this service came to an end on 6.10.93; that thereafter, he was w.e.f. 6.10.93 working as Adviser on a token remuneration of Rs.1 per month; that he was given cash equivalent of earned leave to his credit for the period between 28.8.83 and 6.10.93 and that while he retired on 3.4.70, he was given retiral benefits like gratuity and pension. The applicant's present claim is for [a] gratuity and other retiral benefits for his service as Adviser to the Government of India from 26.8.83 to 6.10.93 [b] for encashment of half pay leave due to him during the period from 26.8.83 to 6.10.93

5. Rule 7 (2) of the Civil Service (Pension) Rules reads as follows:

"Except as provided in Rule 19, a Government servant who, having retired on superannuation or retiring pension, is subsequently re-employed shall not be entitled to a separate pension or gratuity for the period of his re-employment."

If the employment of the applicant between 26.8.83 and 6.10.93 under the Government as Adviser is treated as re-employment of a pensioner, in accordance with the above quoted statutory rule, the applicant would not be entitled to claim any gratuity or other retiral benefits for this period.

The case of the applicant is that his service between 26.8.83 and 6.10.93 cannot be characterised as service of a re-employed pensioner, for, the appointment was made on contract, instruments of which did not refer to the term 're-employment'. The contract of service was entered into between the applicant and the Government after mutual discussion and full deliberation and, therefore, nothing other than what has been reduced to writing in the instrument of contract can be looked into for ascertaining the terms of contract, argued the learned counsel for the applicant. In support of this contention, the learned counsel invited my attention to the provisions of Section 91 & 92 of the Indian Evidence Act. A copy of the order by which the applicant was appointed as Adviser to the Government of India in the rank of Additional Secretary to the Government in the Ministry of Home Affairs is available on record as produced by the applicant (Annexure A-2). Relevant part of this order reads as follows:

" I am directed to say that the Government have decided to appoint you to the post of Adviser in the rank of Additional Secretary to the Government of India, on contract basis in the Ministry of Home Affairs, with effect from 26th August 1983. The following functions have been assigned to the post:

- to advise on all constitutional/legal matters relating to Sarkaria Commission on Centre-State Relations.
- 2. Your appointment would be upto 30th June 1984 initially. While holding the post of Adviser, you will be entitled to a fixed pay of Rs.3000 plus all the allowances admissible at that pay minus pension and pension equivalent of other retirement benefits.
- 3. You will also be entitled to the Medical facilities and leave etc. under the Central Government Rules as admissible to officers of equivalent status."

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Referring to the above order, Mr P.H.Ramchandani, with considerable vehemence, argued that as no reference to any re-employment terms has been made in the order and since para 3 of the letter shows that the terms and conditions of service would be as in the case of officers of equivalent status, the applicant's

services could not be treated as on re-employment terms, but only as on a specific contract totally unrelated to his previous spells of services with the Government and his being a pensioner. The attempt of the respondents to introduce a new condition in the terms of the appointment of the applicant as on re-employment terms is hit by the provisions of Section 91 & 92 of the Indian Evidence Act, argued the counsel. To illustrate the difference between the appointment on re-employment terms and the appointment of the applicant which according to him is a special contract appointment, the learned counsel referred to the Presidential order dated 30th April 1994 by which Dr. P.C.Rao was continued as Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law, Justice and Company Affairs, on contract, on re-employment basis for a period from 1st May 1994 to 30th April 1996. (Annexure A-3), where the term re-employment is clearly mentioned, and also the order dated 7th December 1988 (Annexure A-4) by which H.R.Goel, a retired Selection Grade Officer of CSS Cadre was appointed as Director in the Committee on the Re-organisation of the Delhi Set-up on re-employment basis from 1st August 1988 to 31.12.1988 where also the term re-employment is clearly mentioned. As there is no similar mention of 'on re-employment basis' in the order at Annexure A-2 by which the applicant was appointed on contract basis, Mr Ramchandani argued that the intention of the contracting

parties, namely, the applicant and the Government, that the applicant's service would be on contract, without reference to his earlier employment, is abundantly clear. I do not find it possible to accept this argument. The contracting parties in this case were the applicant and the Government. Both the applicant and the Government were aware of the fact that the applicant was a pensioner under the Government having retired on superannuation. It is with this specific understanding that the contract of service has been entered into. The applicant as also the Government were also aware of the fact that a Government servant who having retired on superannuation pension or retiring pension if subsequently re-employed would not be entitled to a separate pension or gratuity for the period of his re-employment. It is impossible to accept the argument that the Government and the applicant while entering into the contract of employment ignored the statutory provisions under Rule 7 (2) of the Civil Service (Pension) Rules and contracted against the statutory rules. Assuming that they did, then unless it was made specifically clear in the appointment order that in the case of the applicant's service on contract, the provisions of Rule 7 (2) of the Civil Service (Pension) Rules would not be applicable which was not done, it is futile to contend that the understanding was that the applicant would not be treated as a re-employed pensioner. A person who has retired on superannuation and is in receipt of a pension from the Government is a pensioner under the Government and his employment again can only be treated as re-employment whether made immediately after his superannuation or even after a lapse of time. If the applicant had served under a private company and got a pension, his employment under the Government on contract would be a fresh appointment and the pension if any which he was receiving from the previous employer would not be deducted in fixing his pay on joining the Government.

In the order of appointment of the applicant (Annexure A-2) it has been very clearly stated that he would be entitled to a fixed pay of Rs.3000 plus allowances but minus pension and pension equivalent of other retiral benefits. If the intention of the contracting parties were that the applicant would not be treated as re-employed pensioner and the appointment would not be on re-employment terms, the condition that he would be entitled to a fixed pay of Rs. 3000 plus allowances but minus pension and pension equivalent of other retiral benefits would not have been in order. This itself is a clear indication that the applicant's service on contract between 26.8.83 and 6.10.93 was on re-employment terms only. Therefore, the case of the applicant that he is entitled to get gratuity and other retiral benefits for the service between 26.8.83 and 6.10.93 is unsustainable. It is not as if the applicant has not understood that the Government treated his service as on re-employment terms before the impugned order rejecting his claim for gratuiy and retiral benefits for the period was received by him. In the Government's letter dated 3.12.85 (Annexure A-I to the counter reply) according sanction for his (applicant) admission to the contributory provident fund, the word 're-employment' has been mentioned twice. Pursuant to the order, admittedly, the applicant was making contributions to the Provident Fund. If the applicant had any objection to the term 're-employment' being used, he would have protested at that time. In any case, as observed earlier, once a person is a pensioner under the Government, his further employment under he Government can only be treated as re-employment.

6. Learned counsel for the applicant argued that in the case of Controller & Auditor General of India and the Chairman, Vice Chairmen, Members of CAT, the appointment of retired

Government officers is not treated as re-employment and they are being given gratuity and other retiral benefits on retirement from such service and that his case should also be considered analogous to that. This argument has also no force because the terms and conditions of the appointment and services of Controller & Auditor General of India, Chairman, Vice Chairmen, and Members of CAT are governed by the statutory rules, namely, Central Administrative Tribunal (Salaries & Allowances & Conditions of Service of Chairman, Vice Chairmen & Members) Rule 1985. In the case of the applicant, these provisions are not applicable and what is applicable is the provisions of the Central Civil Service (Pension) Rules. The applicant's claim for gratuity and other retiral benefits is, therefore, to be rejected.

7. The next claim of the applicant is for encashment of half pay leave to his credit. The applicant claims that as he had been given cash equivalent of earned leave to his credit for the service between 26.8.83 and 6.10.93 by order dated 6th June 1991 (Annexure A-5) in accordance with the provisions of Rule 39 (2) (a) of the Central Civil Services (Leave) Rules 1972, for the purpose of eligibility for encashment of half pay leave, the termination of service on 6.10.93 should be deemed to be on superannuation when the contract came to an end. This argument of the applicant is also wholly baseless and untenable. It is true that in the order dated 6th June 1991 (Annexure A-5) conveying sanction of the competent authority to grant cash equivalent of leave salary for earned leave for a period of 105 days at the credit of the applicant, reference was made to Rule 39 (2)(a) of the Central Civil Services (Leave) Rules 1972. Rule 39 (2)(a) of the CCS(Leave) Rules deals with the question of

payment of cash equivalent of leave salary for earned leave in the case of a government servant who retires on attaining the normal age of superannuation. In the order of the appointment of the applicant (A-2), no age was prescribed for his retirement. Therefore, this rule was obviously misquoted in the order at Annexure A-5. The provisions of the rule under which cash equivalent of leave salary for the earned leave to the credit of the applicant was paid to the applicant must have been sub rule 6 (a) (iii) of the CCS (Leave) Rules which reads as follows:

"A Government servant, who is re-employed after retirement may, on termination of his re-employment, be granted, *suo motu*, by the authority competent to grant leave, cash equivalent in respect of earned leave at his credit on the date of termination of re-employment subject to a maximum of 240 days including the period for which encashment was allowed at the time of retirement."

In the rejoinder, the applicant has contended that he had already been granted cash equivalent of leave salary for the earned leave at his credit at the time of his retirement in 1970 and this was not taken into account when he was granted cash equivalent of leave salary for the earned leave at his credit by the A-5 order. It is evident that the provisions of sub rule 6 (a)(iii) of Rule 39 of the CCS(Leave) Rules would alone apply to his case. The mere fact that for whatever be the reason, either on account of mistake or otherwise, while granting sanction for payment of cash equivalent of leave salary for the applicant's service on re-employment, the payment to him of cash equivalent of the leave salary for the earned leave to his credit while he was in service prior to his retirement ~~does not~~ ^{was not taken into account} alter the factual position that the applicant is a re-employed pensioner as also the statutory rule relating to the payment of leave salary to a re-employed pensioner.

8. The facility of encashment of half pay leave to Central Government employees was introduced by order dated 6.4.93 in implementation of an Award of the Board of Arbitration and this was made effective from 14.6.82. It is worthwhile to extract the relevant para of this Government's order dated 6.4.93 which reads as follows:

"Subject: Encashment of half pay leave to the Central Government Employees on superannuation - consideration and implementation of the Award of the Board of Arbitration.

The undersigned is directed to say that in pursuance of the Award given by the Board of Arbitration (JCM) in C.A. reference No.1 of 1986, the President is pleased to decide that w.e.f. 14th June 1982, the entire half pay leave (HPL) at the credit of Government servants who retire on superannuation shall be allowed to be encashed subject to the condition that pension and pension equivalent of other retirement benefits shall be deducted from the amount payable as cash equivalent, as provided in sub-rule (5) of Rule 39 of the CCS (Leave) Rules, 1972.

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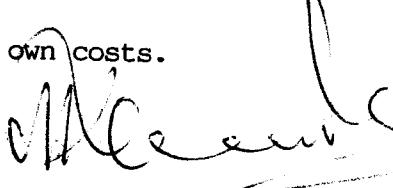
(Annexure-H).

It is evident from the extracts above that the facility of encashment of half pay leave would be available to government servants who retire on superannuation. The applicant retired on superannuation in the year 1970 and, therefore, this Government order does not apply to him as far as his service prior to his superannuation is concerned. Regarding the period between 26.8.83 and 6.10.93, this Government instruction dated 6.4.93 has no application at all because it applies only in the case of government servants who retire on superannuation. The applicant had superannuated more than two decades prior to 6.10.93. His service between 26.8.83 and 6.10.93 was on re-employment basis as has been held by me in the foregoing paragraphs. The termination of this re-employment cannot be considered as retirement on superannuation so as to attract the benefit of the encashment of half pay leave in accordance with the OM dated 6.4.93.

9. The Government of India, Ministry of Personnel & Training, Administrative Reforms and Public Grievances & Pension issued an OM No.12016/3/84-Estt.(L) dated 12th April 1985 deals with leave terms to be granted to officers appointed on contract in various posts under the Central Government. Under this OM, officers appointed on contract basis would be entitled to earned leave as admissible to a central government servant governed by the Central Civil Services (Leave) Rules 1972 half pay leave/commuted leave as admissible to a temporary Government servant under the CCS (Leave) Rules 1972 and extra ordinary leave. There is a provision for encashment of earned leave at the credit of an officer on the date of termination of contract, but there is no provision for encashment of half pay leave in the case of officers appointed on contract basis.

10. What emerges from the concpectus of facts and position of rules discussed above is that the applicant is not entitled to either gratuity or other retiral benefits for his service between 26.8.83 and 6.10.93, or to the encashment of half pay leave which accrued to his credit during the said period. On receipt of a request fom the applicant for extending to him the retiral benefits and to pay him cash equivalent of the earned leave for the period between 26.8.83 and 6.10.93, the respondents have, after detailed examination of the claim, gave him a reply, making the position clear. The impugned order at Annexure A-1 speaks for itself and no fault can be found with the decision contained therein.

11. In the result, I find that there is no merit in this application at all and, therefore, I dismiss the application, leaving the parties to bear their own costs.


[A.V.Haridasan]
Vice Chairman (J)