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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
O.A. No. 920/95

New Delhi this the 12th Day of December, 1996

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

Shri O.S. Kalra,
Administrative Officer,
Central Pulp & Paper Research Institute,
Post Box No. 174,
Saharanpur-247 001 (U.P.).

(By Advocate: Shri Ravi Verma)

Applicant

Versus

1. Union of India,
Through the Secretary,
Ministry of Human Resource Development,
Department of Culture,
Shastri Bhawan,
New Delhi-110 011.

2. The Director,
Anthropological Survey of India,
27 Jawahar Lal Nehru Road,
Calcutta- 7 00 016

Respondent

(By Advocate: Shri B.K. Punj)

O R D E R (Oral)

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

The applicant who commenced his career in the General Reserve Engineering Force under the Border Roads Development Board on 12th October 1964 was selected by the Union Public Service Commission for appointment on direct recruitment as Senior Administrative Officer in the Anthropological Survey of India under the Ministry of Human Resources Development, Department of Culture in the pay scale of Rs. 3000-4500 (Revised). He joined the Anthropological Survey of India on 12.5.1988. While so he applied through proper channel for appointment as Administrative Officer in the Central Pulp and Paper Research Institute, Saharanpur (UP) for short (CPPRI). He was selected for appointment as Administrative Officer in the scale of Rs. 3700-5000 by order dated 2.8.1989. The applicant had tendered his resignation with the Border Road Development Board where he was holding a lien with

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effect from 15.10.1989. He also gave one month's notice under the CCS (Temporary Service) Rules 1965 resigning from his service of the second respondent with effect from 15.10.1989. The respondent No. 1 accepted the resignation of the applicant and the applicant was relieved with effect from 15.10.1989. Thereafter, the applicant had joined the CPPRI on 19.10.1989 as Administrative Officer in the pay scale of Rs. 3700-5000/-.. The question as to who was to grant the pro-rata retiral benefits was under consideration of respondent No. 1 & 2 and the Boarder Roads Development Board and ultimately it was decided that it would be the responsibility of the respondents to bear the pro-rata pensionary benefits due to the applicant. On completion of the probation the applicant was confirmed by order dated 6.5.1992 (Annexure A-8). However, the Presidential sanction for absorption of the applicant in the CPPRI in public interest was conveyed on 19.12.1991 and the sanction was to absorb the applicant permanently as Administrative Officer in the CPPRI with effect from 15.10.1989. The applicant claimed pro-rata pensionary benefits upto the date of the Presidential sanction and the matter was under correspondence. Ultimately by order dated 23.3.1985 Annexure A-31 the applicant was informed that he would be entitled to pro-rata pensionary benefit for the period upto 15.10.1989. It is aggrieved by this that the applicant has filed this application praying that the respondents may be directed to calculate and pay provisional pro-rata gratuity w.e.f. 19.12.1991 when the Presidential sanction declaring the permanent absorption of the applicant in the CPPRI in the public interest was issued and for a direction to the respondents to pay him the commuted value of the entire pension with interest at

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the rate of 18% per annum as the payment was unjustifiably withheld from him for a very long time.

2. The respondents in their reply resist the claim of the applicant for pro-rata retiral benefits upto 19.12.1991 on the ground that the applicant resigned from service with effect from 15.10.1989 and therefore his claim for pro-rata retiral benefit after that date is untenable. Regarding the delay in settling the pensionary claim of the applicant, the respondent contend that as there was a dispute, the payment could not be made in time.

3. However, during the pendency of the application on 4.4.1996 the respondents paid to the applicant the entire amount due according to them as pro-rata pension in lump sum and the gratuity was paid on 26.3.1996.

4. I have carefully gone through the pleadings in this case and heard the learned counsel Shri Ravi Verma for the applicant and also Shri P.H. Ramachandani, learned counsel for the respondents. Shri Ravi Verma argued that as the Presidential sanction for permanent absorption was issued on 19.12.1991, the retirement of the applicant also should be deemed to have taken effect only on that date and not retrospectively with effect from 15.10.1989. In support of his contention, the learned counsel referred to the ruling of the Tribunal in the case of S.K. Sharma Vs. Union of India 1990 Vol. 13 ATC P 79 as also to another ruling of the Tribunal in OA 364/86 J. Saran Vs. Union of India. In the two cases under citation the applicants were absorbed in Public Sector Undertaking while they were



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holding a lien on a post each in the parent service. In S.K. Sharma's case the applicant was IAS officer who had while on deputation sought permanent absorption and got absorbed in HUDCO on 4.2.1985 tendering his resignation; but the Presidential sanction for his retirement as also absorption was issued only on 28.6.1985 though with retrospective effect from 4.2.1985. Before the said order was issued S.K. Sharma applied to the Government that his resignation/retirement may be effective from 1.4.1985 in that case he would get the benefit of the liberalised pension rules. However, in accordance with the Presidential sanction for retirement of the applicant with effect from 4.2.1985, the Government took the date of retirement of Shri Sharma as 4.2.1985 and granted him pro-rata pensionary benefit accordingly. This action was challenged by S.K. Sharma on the ground that the Presidential sanction for retirement could not have been with retrospective effect. The Tribunal held that the retirement could not take effect retrospectively that it would be effective from the date on which sanction was accorded and that till date Shri Sharma should be deemed to have been on deputation. In coming to this finding, the Tribunal relied on the decision of CAT in J. Saran Vs. Union of India where it was observed as follows:

"To sum up therefore, we hold that the respondent's action in issuing the presidential order absorbing the petitioner w.e.f. 16.10.1984 cannot be sustained. In the normal course, the said order would be operative on its own force from the date on which it was issued. It being purely an administrative order, cannot operate retrospectively to the prejudice/detriment of the petitioner who must be deemed to have continued on deputation with RITES till his

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final absorption. Hence, we hold and direct that the lien of the petitioner on his cadre post in the parent department department stood terminated with effect from the date of the Presidential Order, i.e. 14.4.1986 and he shall be entitled to all the consequential benefits in respect of salary and pension etc., if any, following therefrom".

5. The facts and circumstances of the case under citation are totally different from those of cases on hand. In those cases the officers were considered for permanent absorption while on deputation holding a lien on their post in their parent cadre. The applicant joined the CPPRI after tendering his resignation and was not holding the post on deputation. The order dated 19.12.1991 conveying the Presidential sanction was for his permanent absorption in the CPPRI and not for retirement or resignation. The resignation of the applicant took effect from the date on which it was accepted by his parent department and by the order relieving him. The claim for pro-rata pensionary benefits will be tenable only upto the date on which the applicant resigned from service in his parent department. He was not on deputation nor was pension contribution being made by CPPRI. Therefore, I am of the considered view that the applicant is not entitled to have the pro-rata pensionary benefits calculated upto 19.12.1991 as claimed by him. The Presidential order dated 19.12.1991 is one sanctioning the absorption of the applicant with effect from 15.10.1989 and therefore under this order the applicant's stand permanent absorbed in the CCPRI with effect from 15.10.1989 would count for retiral benefits in CPPRI and therefore there is no basis for the applicant's claim for pensionary benefits from the Border Roads Development Board after 15.10.1989.

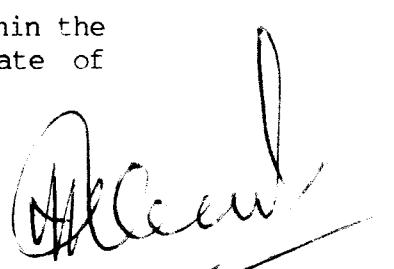
6. Having found that the applicant is not entitled to pro-rata pensionary benefit calculated as on 19.12.1991 but only from 15.10.1989, we have to consider whether the applicant is entitled to any relief at all. It is a fact which is beyond dispute that the pro-rata pensionary benefits of the applicant was not disbursed to him till the date of filing of this application and also upto March/April 1996. There was no justification for the respondents to delay the disbursement of pro-rata pensionary benefit for such a long time after he was permanently absorbed in the CPPRI. After the Presidential sanction dated 19.12.1991 atleast within a period of one month the pro-rata pensionary retiral benefit should have been disbursed to the applicant. The delay thereafter is not justified and can be considered as culpable. Shri Ravi Varma argued that if the Tribunal takes the view that the applicant is entitled to pro-rata pensionary benefits only upto 15.10.1989 then the payment should have been made within 3 months from that date and therefore the culpable delay had occurred from January 1991 onwards entitling the applicant to get interest from that date. I am not persuaded to accept this argument. According to the provisions contained in Rule 37 of the CCS (Pension) Rules only on declaration that the absorption in the public sector undertaking was in public interest, the pro-rata pensionary benefit would be due to Central Government Servants. The declaration in this case came with the Presidential Order dated 19.12.1991, therefore the respondents could have disbursed the pro-rata retiral benefits to the applicant only thereafter. Therefore, I am of the considered view that the applicant will be

entitled to get interest on the amounts due to him from a date after one month from the date of the Presidential sanction i.e. 19.12.1991.

7. The next question is to be considered what should be the rate of interest? In the case of **State of Kerala Vs. P. Padmanabhai Nair** the Hon'ble Supreme Court held that when there is a culpable delay in disbursement of the retirement complete interest at current market rate should be paid. In this case also as there has been a culpable delay, I find that the respondents have to pay to the applicant interest on the delayed payment at the rate of 18% per annum.

8. In the result the application is allowed in part:

- a) Then claim of the applicant for calculation of pro-rate pensionary benefit taking his service as upto 19.12.1991 as against 15.10.1989 is disallowed.
- b) The respondents are directed to pay to the applicant interest at the rate of 18% per annum on the pensionary dues including gratuity, group insurance amounts and leave salary at the rate of 18% from 19.1.1992 till the date of payment.
- c) The above payment should be made within the period of two months from the date of communication.
- d) No order as to costs.


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