

Central Administrative Tribunal
Principal Bench

O.A.No.1815/96

Hon'ble Shri R.K.Ahooja, Member(A)
Hon'ble Shri S.L.Jain, Member(J)

New Delhi, this the 10th day of March, 1999

Virendra Swarup Bhatnagar
s/o Shri Har Sarup Bhatnagar
r/o 148 - Chitra Vihar
Vikas Marg
Delhi - 110 092.

(last employed as Scientist-F (now retired)
Central Scientific Instruments Organisation
Chandigarh - 160 020.) ... Applicant

(By Shri B.S.Mainee, Advocate)

Vs.

1. Director General
Council of Scientific and Industrial Research
Rafi Marg
New Delhi - 110 001.
2. Deputy Secretary
Department of Pensions and Pensioners Welfare
Ministry of Personnel, Public Grievances and Pensions
Govt. of India
Lok Nayak Bhawan, Khan Market,
New Delhi - 110 003.
3. Director
Atomic Minerals Division
Department of Atomic Energy
AMD Complex
Begumpet
Hyderabad - 500 016. ... Respondents

(By Shri V.K.Rao, Advocate)

O R D E R (Oral)

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant initially joined in the Department of Atomic Energy in the year 1956. Thereafter the applicant came to Central Scientific Instruments Organisation (CSIO) initially on deputation but was later absorbed w.e.f. 5th March, 1981. He also received retirement benefits amounting to Rs.1,69,980/- from the Department of Atomic Energy. In 1984 the Ministry of Personnel, Public Grievances and Pensions issued an OM No.28/10/84-Pension Unit, dated 29.8.1984, copy at

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Annexure A-11 stating that a Central Government employee with CPF benefits on permanent absorption in an autonomous body will have the option either to receive CPF benefits which had accrued to him from the Government and start his service afresh in that body or choose to count service rendered in Government as qualifying service for pension in the autonomous body by foregoing Government's share of CPF contributions with interest, which will be paid to the concerned autonomous body by the concerned Government Department. It was provided as follows:

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"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."

2. As per Para-7 of the said OM the orders will take effect from the date of issue, i.e., 29.8.1984 and the revised policy as enunciated above will be applicable to those employees who retire from Government/autonomous body service on or after the issue of these orders. Since the applicant had already retired from the Central Government in 1981, he did not consider himself a beneficiary of this OM and he therefore did not exercise his option afresh. However on the basis of Supreme Court's orders in Writ Petition No.3739/85 - Shri R.L.Marwaha Vs. Union of India & Others, the Government issued a fresh OM dated 22.2.1988, copy of which is annexed at A-12 whereby it was decided as follows:

"The question regarding implementation of the Supreme Court judgement has been under consideration of the Government. The President has now been pleased to decide that the benefit under the instructions contained in the orders dated 29.8.1984 should also be extended to all those who had retired prior to the issue of said orders and who are otherwise eligible for the benefit of counting of service thereunder."

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3. The applicant submits that a copy of the said OM dated 22.2.1988 was not circulated in the CSIR and he therefore did not come to know of it till after some time. Thereafter he submitted a representation dated 1.3.1990, copy of which is at Annexure A-15, for exercising his option for counting the past service rendered in Government Department for purposes of pension in CSIR. However this and further representations made by him were not successful and ultimately he has come before the Tribunal in 1996 by filing the OA on 21.8.1996 with the prayer that the respondents be directed to allow him to exercise his option and he be allowed the pensionary benefits after combining services in the Department of Atomic Energy and the CSIR and after refunding/revising the retiral benefits received by him earlier from the Department of Atomic Energy.

(A)

4. The respondents have contested the application on the ground that the applicant did not exercise his option within a stipulated period of one year. They also take a preliminary objection that the application is barred by limitation as the applicant has approached this Tribunal much after the rejection of his representations made to the Department.

5. We have heard the parties. We find that the application is not maintainable on the ground of limitation. The applicant submits that he was entitled to exercise his option only as per the OM issued in 22.2.1988 and he filed his representation in the year 1990. Since his representations with CSIR did not meet a favourable response he filed a representation before the DoPT and he was only informed vide letter dated 18.9.1995

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that the matter had been referred for a final decision to the Department of Agriculture. The learned counsel for the applicant submits that both the OM's of 1984 and 1988 were issued by the DoPT and that was the proper authority for the interpretation of the contents of the OM's. The applicant considered himself entitled to the benefit of exercising this option and therefore he had a right to approach DoPT but DoPT only made a reply vide their OM dated 18.9.1995 and that too by referring him to a wrong authority. The learned counsel for the applicant points out that the present OA had been filed within the period stipulated under Section 21 of the Administrative Tribunals Act and therefore the application was in no way time barred. We do not agree with this argument. The applicant was an employee of the CSIR which is an autonomous body. There was no question of any interpretation of rules since the question was whether the application for exercising of option had been made within the stipulated period of one year or not. These representations had been filed repeatedly and repeatedly rejected by the CSIR as would be clear from its replies, copies of the which are at Page 131 and 142. The applicant in fact retired from service somewhere in the year 1993. Even then he took another three years before approaching this Tribunal. In terms of the law laid down in S.S.Rathore Vs. Union of India & Others, AIR 1990 SC 10 - repeated representations made by the applicant ^{do-} not extend the period of limitation.

6. Even otherwise we do not consider that the applicant has a case. The original provision for exercising the option came in the OM dated 29.8.1984. As already pointed out in Para-3 (A) (ii) reproduced above,

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the option was to be exercised within a period of one year. However in para 7 this facility was extended only to persons who retired from Government/autonomous body service on or after the issue of the orders. On the basis of the Supreme Court's decision in R.L. Marwaha Vs. UOI & Others another OM dated 22.2.1988 was issued, where in the only change was that the facility provided by OM dated 29.8.1984 was also given retrospective effect. It was clearly mentioned that all the other conditions of the OM dated 29.8.1984 would be applicable to those who retired before 29.8.1984. We do not agree with the contention of the applicant that since no date was stipulated in the OM dated 22.2.1988 therefore he could exercise his option at any time. As already pointed out the only change provided by the OM dated 22.2.1988 was to ~~apply~~ the provisions of the earlier OM dated 29.8.1984 also to those who retired before the date. Hence the stipulation of exercising the option within one year was applicable to pre 1984 cases also. On the other hand, it is an admitted position that the applicant had made his first representation for exercising option in the year 1990, i.e., after the expiry of the one year from the issue of OM dated 22.2.1988. The applicant submits that he could not exercise the option earlier as the latter OM was not circulated in the CSIR and he ultimately came to know of this OM only at a latter stage. We cannot now go into this question as to whether or not the respondents had properly circulated the OM as this was not a ground taken by the applicant in his representation dated 18.1.1990, Annexure-13.

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7. We therefore find that the representation made by the applicant for exercising fresh option was beyond the stipulated period of one year and therefore he could not avail of the benefit of OM dated 22.2.1988 read that 29.8.1984.

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8. In the light of the above discussion, the OA is dismissed both on ground of merit as well as on the limitation. No order as to costs.

S.L. Jain
(S.L.Jain)
Member(J)

/rao/

R.K. Ahuja
(R.K.Ahreja)
Member(A)