

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1232/1997

New Delhi, this 24th day of July, 1998

(V)

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri N.R. Yadav
s/o late Shri Gopal Singh
R2-40, Ganga Ram Batika
Tilak Nagar, New Delhi-110 018 . . . Applicant

(By Advocate Shri S.Y. Khan)

versus

1. Secretary
Planning Commission
Yojana Bhavan, Parliament Street
New Delhi
2. Secretary
Dept. of Family Welfare
M/Health & Family Welfare
Nirman Bhavan, New Delhi
3. Secretary
Dept. of Pension & Pensioners' Welfare
New Delhi
4. Govt. of NCT of Delhi, through its
Commissioner
Municipal Corporation of Delhi
Town Hall, Delhi-6 . . . Respondents

(By Advocates Shri S. Mohd. Arif(for R-1 to R-3) &
Ms. Amita Gupta (for R-4)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, a retired Deputy Advisor of Planning Commission, is aggrieved by the denial of the respondents for counting regular service of the applicant rendered by him as Community Organiser from 16.2.60 to 10.6.66 in the Municipal Corporation of Delhi (MCD for short), now under the Government of National Capital Territory of Delhi.

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2. Respondents have denied to share the pensionary liability on grounds (i) that the applicant did not exercise his option for adopting either Contributory Provident Fund (CPF for short) Scheme or the Pension Scheme within the stipulated period of one year of his joining service in MCD; (ii) that MCD did not have any Pension Scheme prior to 1971 and (iii) that the applicant's case is not covered under FR 115.

3. It is the case of the applicant that his claim is covered under the instructions of Government of India vide their OMs dated 29.8.84 and 12.9.85 as at A-11 (colly). Applicant would also submit that the respondents have allowed counting of previous service from 3.10.60 to 15.5.68 in the case of a similarly placed employee i.e. Mrs. C.K. Mann, DADG(SHE) who has been working also under the same organisation of MCD for the purpose of pensionary benefits in terms of OM dated 29.8.1984. In that case she had even refunded a sum of Rs.3672 representing the terminal benefits received by her from MCD alongwith interest.

4. The applicant, therefore, alleges discrimination against him. That apart, applicant submits that FR 115 empowers/authorises an employee on foreign service, to make payment of pensionary liability or CPF to the Government towards cost of pension in case the employer does not consent to bear the responsibility. Therefore, the same provision has to be applied in the case of

employees whose employer does not agree to make payment of pension liability for the period of service rendered by the applicant in MCD.

5. The issue that falls for determination is what would be the guiding principles/Rules for extension of various benefits like counting of past service etc. when an official working in an autonomous body (like the MCD herein) gets absorbed in Central Government. We find that this issue has been discussed in Government of India, Department of Pension & Pensioners' Welfare OM No.28(10)/84-P & PW/Vo.II dated 7.2.86, 17.6.86, 30.10.86 and 20.3.87, etc. In these, it has been mentioned that "After careful consideration, the President has now been pleased to decide that these cases may be decided in accordance with the principles as laid down in the Department of Personnel & Administrative Reforms OM No.28/10/84-Pension Unit dated 29.8.1984".

6. From a perusal of records it is seen that Government of India would not stand in the way of the applicant in not getting the benefit for the delay caused by the applicant in exercising his option. In this case the concerned authority in DoPT has already indicated that Government is prepared to consider condoning the delay in exercising the option. As per Government of India's OM dated 29.8.84, where no terminal benefits in the previous service had been received, such service will be counted as qualifying service.

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for pension only if the previous employer accepts pensionary liability for the service in accordance with the principle laid down in the said OM. In the case of the official governed by CPF scheme, as in the case of the applicant, the term "pensionary liability" would mean the employer's contribution of the CPF. In other words, the relevant period can count for service in the MCD for pension purpose if the MCD accepts that pensionary liability. In the instant case, the MCD has declined to share the responsibility.

7. We find that the present case will be governed by the provision under 3(a) of the OM dated 29.8.84. The relevant portion of the OM, for the purpose of disposal of this case, is extracted as under:

(a) In case of Autonomous bodies where Pension Scheme is in operation -

(i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employees of the autonomous bodies who are permanently absorbed under the Central Government.

The Government/autonomous body will discharge its pension liability by paying a lump sum as a one-time payment, the pro rata pension/service gratuity/terminal

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gratuity and retirement gratuity for the service upto the date of absorption in the autonomous body/Government, as the case may be. Lump sum amount of the pro-rata pension will be determined with reference to commutation table laid down in CCS(Commutation of Pension) Rules, 1981, as amended from time to time."

8. When the provisions under the existing instructions provide discharge of pension liability by paying in lump sum as a one-time payment or pro-rata pension etc., it is not understood how the MCD take the stand that "employer's National Share does not arise as per rules". What rule has been applied in rejecting the claim has not been indicated.

9. In the background of the aforesaid circumstances, we allow this OA with the following directions:

(i) Respondents shall determine the pension liability for the period from 16.2.60 to 12.6.66 when the applicant had rendered service with the MCD(Respondent No.4), who shall discharge the liability of pro-rata retirement benefit of the applicant for the service rendered by him therein in the pay scale of Rs. 210-350. This shall be done within a period of three months from the date of receipt of a certified copy of this order.

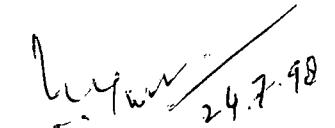
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(ii) To implement the order aforesaid, Respondent No.1 shall have the liberty of making a fresh proposal to Respondent No.4 to undertake the liability in terms of the instructions under the relevant OM.

(iii) R-1 shall revise the pension payment order dated 22.9.93 accordingly after counting the service rendered by the applicant for the above said period as qualifying service for the purpose of full pension and also for revision of other retiral benefits consequently.

(iii) There shall be no order as to costs.


(S.P. Biswas)
Member(A)


24.7.98
(T.N. Bhat)
Member(A)

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