

Central Administrative Tribunal, Principal Bench

Original Application No. 1349 of 1997

New Delhi, this the day of 14th December, 2000

Hon'ble Mr.V.K.Majotra, Member (A)
Hon'ble Mr.Shanker Raju, Member(J)

Shri Raj Kumar Puri,
- Applicant
(By Advocate Shri A.K.Behra)

Versus

Union of India.
- Respondent.
(By Advocate Shri Vijay Pandita)

O R D E R (Oral)

By V.K.Majotra, Member(A)

The applicant was appointed as TGT on 15.7.57. He went abroad on 23.4.65 on his own after submitting his resignation from service and then he returned from abroad and rejoined as TGT on 2.3.70. Absence during intervening period between 23.4.65 and 2.3.70 was condoned by order dt. 8.12.76 allowing its regularisation subject to the condition that he would not be given any benefits and right for selection grade etc., The applicant ultimately superannuated on 31.12.90. On 27.11.92 the respondents withdrew the condonation granted earlier for the period of absence during 1965-70 on the ground that the condonation had been granted irregularly and against the provisions of the pension rules. The applicant agitated against the aforesaid withdrawal of condonation of absence by OA 2204/92 which was decided on 5.7.93(R-I) as follows:-

"In the light of the above pleadings, it is evident that the withdrawal order effected by the respondents was subsequent to the retirement of the applicant and after a lapse of 10 years. In view of the contents referred to in Annexure A-1, it is the responsibility of the respondents to finalise pensionary benefits to the applicant within the specified time. If at all the condonation granted by the erstwhile respondents was found to be erroneous the same ought to have been rectified before his retirement which is not the case here. After the retirement of the applicant, the relationship between master and

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servant, between applicant and the respondents ceases to exist and any decision taken by the respondents is not binding on the applicant. Therefore, it is clear that the withdrawal decision taken by the respondents in the year 1992 subsequent to retirement decision is an after-thought and the same is not tenable. Nowhere it is denied by the respondents that he has not submitted his pension papers in time, through proper channel, the Principal of the school.

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In the conspectus of the circumstances and facts of the case, I am convinced that this OA can be disposed of with the following directions/orders:-

"The respondents are hereby directed to release the pension, gratuity, if any, commutation permissible under the law, balance of GPF, and other pensionary benefits to the applicant within a period of three months from the date of receipt of this order and also pay interest at the rate of 10% of the amounts due to the applicant."

2. In sum, it was held that withdrawal decision taken by the respondents in 1992 subsequent to applicant's retirement is not tenable and the respondents have to release to the applicant pension, gratuity, commuted pension, GPF and other pensionary benefits within a period of three months alongwith interest @10%. The applicant has alleged that the respondents gave him various benefits without taking into account the period between 23.4.65 and 2.3.70 for purpose of qualifying service and also that the applicant was not paid any interest on the delayed payments of such benefits.

3. The applicant filed CCP No.29/1994 in OA 2204/92 contending that various dues have not been paid by the respondents in pursuance of the aforestated order of the Tribunal. An earlier contempt petition was dismissed on 6th June, 1994 on the basis of the statement of the respondents for having fixed and paid correct dues to the applicant before the judgement was rendered in February, 1993 and that there was no question of payment of interest on any dues. The CCP was dismissed on 26th September, 1996 holding that since there

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was no intention on the part of respondents to defy orders to the Tribunal no fresh contempt petition would lie and the petitioner was free to claim interest or seek appropriate relief in accordance with the law, if available.

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4. The applicant filed misc. petition namely MA 596/97 under Rule 24 of the Administrative Tribunals(Procedure) Rules, 1987. Order dt. 2.6.97 in this MA is as follows:-

"This MA is virtually seeking to implement the unimplementable portion of the earlier judgement dt. 5.7.1993 in view of liberty given by this court by order dt. 26.9.1996 passed in C.P. No.215/95. Being a pension matter, this MA is converted into an OA.1349/97."

Hence the present OA 1349/97.

5. The applicant has alleged that the respondents have not fixed his pension on the basis of the 33 years of qualifying service. They have not taken into account the period of absence between 23.4.65 and 2.3.70 which had been ordered to be taken into account by Court's order dt. 5.7.93 in OA 2204/92. According to the applicant the findings of the Tribunal have attained finality. Thus the applicant has sought the following reliefs:-

i) Hold that the pension was actually paid to the applicant on 20th Feb., 1994 and not in Feb.1993, and thus is entitled to interest on the same delayed payment in accordance with the judgement of this Hon'ble Tribunal in the OA.

ii) Hold that the letter dated 27.11.92 withdrawing the condonation order for the gap period of 1965-70 cannot be given effect to in the case of the applicant for the purpose of completion of qualifying service and other consequential benefits flowing therefrom in view of the fact that the said order has been declared by not tenable in the judgement in the OA.

iii) Direct the Respondents to give effect to the aforesaid declarations in respect of the applicant with all consequential benefits forthwith.

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iv) Direct the respondents to pay the cost of litigation to the applicant.

v) Pass any order or direction which this Hon'ble Tribunal thinks fit and proper in the facts and circumstances of the case.

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6. In their reply the respondents have stated that the OA is not maintainable as the applicant had worked in an aided school and not in a school under the respondents. This contention, at this stage, is not acceptable as the same point was raised in OA 2204/92 and not accepted in the order of the Tribunal dt. 5.7.93. The respondents have further stated that the applicant has been provided calculation statement of interest and adjustment of Government dues dt. 11.6.97 and he had not submitted any representation against the same. The respondents have also contended that MA 596/97(converted into OA 1349/97) is not maintainable either under Rule 24 or under the principle of resjudicata. This MA had been filed by the applicant in pursuance of order dt. 26th September, 1996 in CP 215/95 in OA 2204/92. This MA was ordered to be converted into an OA. There is nothing wrong with this.

7. We have heard learned counsel of both parties and carefully perused material available on record.

8. The learned counsel for the respondents has pointed out that while the government servant was abroad having submitted his resignation and for private purpose he had not made any contribution to the cost of his pension. Thus even if the period between 23.4.65 and 2.3.70 has to be reckoned for purposes of qualifying service for pensionary benefits he cannot be given any benefits in addition to what has already been given him.

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9. Learned counsel for the respondents has further stated that on calculation a sum of Rs.11,468/- was found admissible as interest. He was paid pension in February, 1994. The P.P.O. was issued on 3.12.93. Thus he was paid interest upto December, 1993. The applicant had collected the value of commutation for the period 1.1.91 - 14.10.93 and the interest on the delayed payment of commuted pension amounting to Rs.11,921.30 had also been paid. The respondents have held that the applicant is either entitled to take interest on delayed payment or the commutation value. Only one of the two is admissible. The respondents have also stated through Memorandum dt. 11.6.97 (Annexure R-3) that the value of commutation 384/- per month for 34.5 months is found recoverable from him which calculates to Rs.13,224/-. By adjustment of this amount against interest paid nothing is payable to the applicant. Instead a sum of Rs.2066 is found recoverable from him.

10. Vide Order dt. 5.7.93 in OA 2204/92(Annexure R-I) whereby it was held that withdrawal order regarding regularisation of the period between 23.4.65 and 2.3.70 could not have been passed subsequent to applicant's retirement after a lapse of 18 years. The respondents were also told to release pension, gratuity, if any, commutation permissible under the law, balance of GPF and other pensionary benefits alongwith interest at 10% thereon within a stipulated period of three months. This order, in our view, has attained finality and the respondents have to take into account the period between 23.4.65 and 2.3.70 for purposes of qualifying service.



11. We had specifically asked learned counsel of the respondents to explain how either interest on the delayed payment or commuted value of pension is admissible to the applicant. Learned counsel for the respondents as well as Shri D.R. Munjal, Accounts Officer, present in the Court, were unable to explain satisfactorily why one of the two i.e. interest on delayed payment or commuted value of pension is admissible. The applicant retired on 31.12.90. He was entitled to pension w.e.f. 1.1.91. He was paid the commuted value on 14.10.93. In our considered view the applicant is entitled to interest @10% on the commuted value for the period 1.1.91 to 14.10.93.

12. As we have already stated that the period between 23.4.65 and 2.3.70 has to be reckoned for purpose of qualifying service, the pensionary benefits of the applicant have also to be calculated certainly by taking the above period into account as a period of his regular service. However, we are not inclined to accept the contention of the learned counsel for the applicant that the applicant cannot be subjected to payment of contribution towards the cost of his pension for the period 23.4.65 and 2.3.70. As a matter of fact, vide FR-115 while a government servant is in foreign service, contribution towards cost of his pension has to be paid to general revenues on his behalf. When the applicant was abroad he was certainly not in public service. Government cannot pay towards cost of his pension. If the applicant has to be given the benefit of the period of absence between 23.4.65 and 2.3.70 while he was abroad for a private purpose even though not on any foreign service, he has to be subjected to contribute cost towards his pension as well.

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13. Thus, in our view, having regard to the above reasons and discussions, it is only fit and proper to direct the respondents to (i) fix the pension and other pensionary benefits of the applicant treating the period between 23.4.65 and 2.3.70 as qualifying service and pay him consequential difference with interest @10% p.a. (ii) pay him interest @ 10% p.a. on the pension amount paid to the applicant in February, 1994 from 1.1.91 to date of actual payment.

14. However, it is made clear that the respondents would be entitled to adjust due contribution from the applicant towards cost of his pension for the period of 23.4.65 and 2.3.70

15. The respondents are further directed to comply with the above orders within a period of three months from the communication of this order. No costs.

S. Raju
(Shankar Raju)
Member(J)

V.K. Majotra
(V.K. Majotra)
Member(A)

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