

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1510/97

New Delhi, this the 13th day of November, 2000.

(3A)

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

Sh. K.D.Saksena, S/O (Late) Sh.
Parmeshwari Dayal Johri, R/O C-II/83,
Moti Bagh-I, Shanti Path, New Delhi-21.

Present working as Member, Board for
Industrial & Financial Reconstruction
(BIFR), 1, Tolstoy Marg, Jawahar Vyapar
Bhawan, Janpath, New Delhi-1.

.....Applicant.

(By Advocate: Sh. V.K.Mehta)

VERSUS

1. Union of India through the
Secretary, Ministry of Personnel,
Public Grievances and Pension
(Department of Personnel &
Training), New Delhi.

2. State Govt. of Madhya Pradesh
through the Chief Secretary,
Secretariat, Bhopal (MP).

.....Respondents.

(By Advocate: Sh. V.S.R.Krishna)

O R D E R

By Hon'ble Mr. S.A.T. Rizvi, Member (A):

1. The applicant in this case is a retired IAS officer of 1961 batch who sought voluntary retirement way ahead of the date of his superannuation in order to serve the Board for Industrial & Financial Reconstruction (BIFR), a statutory authority, as a Member. He is aggrieved by DOPT's letter dated 13.1.97 (Annexure A-1) by which his request for enhanced gratuity was rejected.

2. The facts of the case briefly stated are that while the applicant was serving the Union Govt. as Secretary in the Ministry of Textiles, he was appointed to the statutory post of Member, BIFR vide Notification

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dated 7.3.97 and he joined as such Member on 9.3.94. The date of his superannuation was 31.8.95, i.e., he joined BIFR roughly 18 months before the date of his superannuation. Meanwhile, the DOPT vide circular letter dated 14.9.95 conveyed the decision of the Govt. of India to treat the Dearness Allowance as Dearness Pay for the purpose of death gratuity and retirement gratuity and raising the maximum limit of gratuity from one lakh to Rs.2.50 lakhs. While this circular applied to the IAS officer, the corresponding circular for the Central Civil Services was issued earlier on 14.7.95. In both the cases, the advantage arising from the said decision of the Govt. of India was to be made available only to those members of the service who retire on or after 1.4.95. The applicant had, following his appointment in the BIFR, retired voluntarily from the service w.e.f. 2.7.94 and thus, could not avail the financial benefit resulting from the DOPT's circular dated 14.9.95. Hence, this OA.

3. I have heard both the learned counsel for the parties and have perused the material placed on record.

4. It is seen from the papers placed on record that the applicant remained in touch with the DOPT for a long enough time seeking relaxation of the condition fixing the cut-off date of 1.4.95 in special cases like those of the applicant. In the process, he made several representations to that Department but ultimately his plea was rejected again vide impugned letter dated 13.1.97.

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5. The applicant's contention in the main is that it was not at all necessary for him to seek voluntary retirement in the manner and at the time he did and if he had not done so, he would have superannuated from 31.8.95 and consequently, would have automatically benefited from the Govt. of India's decision contained in the DOPT circular dated 14.9.95. He would, at the same time, have continued as a Member of the BIFR also. He sought voluntary retirement in the best traditions of the statutory body (BIFR) after joining which almost every Member in active service has sought voluntary retirement from Govt. service. This is done to avoid embarrassment inasmuch as the BIFR is often required to take decisions against the Union Govt. A serving bureaucrat, bound as he is by the Conduct Rules, cannot possibly decide matters against the Govt., and it is for this reason alone that the applicant also sought voluntary retirement 16 months before the actual date of his superannuation. The applicant appreciates that there has to be a cut-off date whenever the Govt. of India makes decisions such as is contained in the DOPT's circular dated 14.9.95 and does not insist on a shift in that date. He simply wants a relaxation to be given in the peculiar circumstances of his case. His contention is that by limiting the relaxation asked for by the officers like him who seek voluntary retirement to take up a specialised job, offered on selection basis, in a statutory body like the BIFR the financial implications can be kept well under control as there would be very few persons falling in his category. The applicant in fact recalls the name of only one other officer who would, according to him, fall in

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such a category. He has also contended that, in any case, the Central Govt. will not have to bear the financial burden on account of relaxation in his favour and it is the Madhya Pradesh Govt. which will have to do so. In support of his plea for relaxation, the applicant has further pointed out that one Sh. B.K.Sinha, who has recently joined the BIFR as a Member, has secured the financial benefit of enhanced gratuity although the date of his superannuation fell three months before the applicant's date of superannuation. According to him, equity demands that the same benefit be allowed to be extended to the applicant.

6. The respondents are not at all convinced with the arguments made by the applicant. According to them, the extension of the financial benefit in question stems from the recommendations of the 5th Pay Commission and the Govt. of India's decision thereon. In all such cases, according to the respondents, a cut-off date is invariably fixed for the sake of administrative convenience and also having regard to the financial import of the decision, it is not possible to tinker with the cut-off dates so fixed even by means of relaxation, however limited in scope. Such relaxations granted even in exceptional cases of the kind noted in this OA invariably prove to be the proverbial tip of an ice-berg. In course of time, according to the respondents, exceptions multiply and tend to create a free for all situation leading to administrative inconvenience as well as ever increasing financial burden on the Govt. The learned counsel for the respondents even gave the example

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of officers who are required to seek voluntary retirement as a compulsory measure before taking up a fresh assignment in several organisations, like BIFR. In such cases, the grievance of the affected officers would appear to be more genuine even if it would be as unacceptable as in the present case. According to the learned counsel, officers belonging to the organised services can seek voluntary retirement years before the respective dates of their superannuation. Once the plea of the applicant for relaxation is accepted, it would be impossible to refuse similar requests from whosoever voluntary retires and whenever he retires and the Govt. of the day happens to announce such measures of financial benefit after the retirement of someone or the other officer from time to time.

In support of his claim that it is possible to build in relaxations while announcing such measures of financial relief, the applicant has placed on record the decision of the Govt. of India in respect of a modified parity formula evolved for Pre and Post 1.1.96 pensioners. His plea is that acting similarly, it should be possible to concede the request of the applicant insofar as the cut-off date of 1.4.95 is concerned. Reiterating their arguments that it is not possible to modify the recommendations of expert bodies like 5th Central Pay Commission, even in specialised and exceptional circumstances, like that of the applicant, the respondents have stressed that the various pleas taken by the applicant have been gone into thoroughly by

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the DOPT in the past and they have rejected the request of the applicant on an earlier occasion also, i.e., on 18.6.96. This was nearly 7 months before the impugned order dated 13.1.97 was passed after reconsidering the matter in its entirety. In the rejection letter of 18.6.96, the DOPT have referred to the decision taken by the Hon'ble Supreme Court in Union of India Vs. P.S.Menon and Others JT 1994 (3) SC 26 and the judgement of this Tribunal (Principal Bench) in OA-451/98 - Sonelal & Others Vs. UOI & Others. There is thus nothing that can be done to salvage the situation and deal with the applicant's various pleas in a different manner at this stage.

8. Yet another argument put forward by the applicant relates to interpretation of the term "retirement". He has contended that the term "retire" used in the DOPT's circular dated 14.9.95 should naturally and ordinarily be taken to mean retirement on superannuation and if that is done, the applicant's purpose will be served. The respondents vehemently contest this method of interpretation and have asserted that by not specifying the nature of retirement, the DOPT clearly imply that the cut-off date would be 1.4.95 irrespective of the nature of retirement. We agree.

9. In yet another plea taken by the applicant, he has tried to link up the cut-off date with the date on which the All India Consumer Price Index (AICPI) stood at 1201.66. There is a mention of this AICPI in the DOPT's OM dated 14.7.95 relating to the Central Civil Servants.

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The relevant date for the purpose of this AICPI (1201.66), according to the applicant, is 1.7.93. Based on this line of argument, the applicant has suggested that the said date, namely, 1.7.93 would have been a more appropriate date to be treated as the cut-off date for the purpose in question. On this basis, he has termed the cut-off date fixed by the DOPT, namely, 1.4.95 as arbitrary. The respondents do not accept this line of argument and have asserted that, amongst other things, in order to curtail the large scale out-go of funds from the State exchequer, the Govt. can always fix a date different from the date of the AICPI. In other words, without being accused of arbitrariness, the Govt. can always take a decision to the effect that, in such circumstances, while the benefits will be calculated with reference to the AICPI date, the actual payments will be made to the employees as from a different and prospective date. According to the respondents, the right of the Govt. to do so cannot not be questioned. We also agree.

10. In the background of the above discussions, we find no force in the OA which fails and is dismissed without any order as to costs.

S.A.T. Rizvi

(S.A.T. Rizvi)
Member (A)

/sunil/

Kuldeep
(Kuldeep Singh)
Member (J)