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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1992 of 1997

Date of Decision 28-6-99

Shri S.R. Dutta Applicant(s)

Shri A. Bhattacharjee Advocate for the Applicant(s)

Versus

The Secretary M/o Agriculture Respondent(s)
& Ors.

Sh. Rajeev Bansal Advocate for the Respondent(s)

C O R A M: (Single/Division)

Hon'ble Shri R.K. Ahoja Member (A)

Hon'ble Shri _____

1. Whether Reporters of Local papers may be allowed to see the Judgement? Yes/No No

2. To be referred to the Reporter or not? Yes/No Yes

Re

(R.K. AHOJA)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1992/97

New Delhi, this the 28th day of June, 1999

HON'BLE SHRI R.K. AHOOJA, MEMBER (A)

In the matter of:

Sh. S.R.Dutta,
s/o Late U.R.Dutta,
r/o B-353, Chittaranjan Park,
New Delhi-110019. Applicant
(By Advocate: Sh. A.Bhattarcharjee)

Vs.

1. The Secretary,
Ministry of Agriculture,
Government of India,
Krishi Bhawan, Dr. Rajendra Prasad Road,
New Delhi-110001.
2. The Secretary,
Ministry of Personnel
Government of India,
North Block,
New Delhi-110001.
3. The Secretary,
Ministry of Industry
(Formerly Ministry of Commerce & Industry),
Udyog Bhawan,
New Delhi-110001. Respondents
(By Advocate: Sh. Rajeev Bansal)

O R D E R

The applicant states that he was appointed as a LDC in the scale of Rs.55-130 under the Ministry of Industry and Commerce w.e.f. 24.3.56. In 1964 he was transferred to Ministry of Agriculture. The applicant thereafter had applied through proper channel for the post of Inspector in the Central Fisheries Corporation Ltd. a Central Public Sector Undertaking also under the Ministry of Agriculture. The permission was granted as per Annexure-II. The applicant was selected by appointment order dated 3.11.66 (Annexure-III). The applicant thereafter joined the Central Fisheries Corporation and submitted his technical resignation from the post of LDC

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in the Ministry of Agriculture. The applicant states that initially the respondents had issued OM No. F.24(12)-E.V/66 dated 16.6.1967 wherein it was laid down that permanent government servants were entitled to the payment of pro-rata reitrement benefits on absorption in Central Public Sector Undertakings provided that such absorption was in public interest. Later the Supreme Court in its judgment in Civil Appeal No.66 of 1993 T.S.Thiruvengadam Vs. The Secretary, Ministry of Finance & Ors. dated 17.2.93 held that the cut off date for grant of his benefit was arbitrary. In view of this the Ministry of Personnel Public, Grievances & Pensions issued an OM dated 3.1.95 extending the benefits of OM dated 16.6.1967 to all Government servants including those who were absorbed in Public Sector Undertakings prior to 16.6.1967. The applicant submits that he made various representations claiming pro-rata pension on the basis of the service rendered by him in the Ministry of Agriculture etc. and though his case was forwarded by the Ministry of Agriculture to Ministry of Commerce and the Department of Personnel & Training, his representation has been rejected by the impugned memorandum (Annexure-8) dated 27.2.97.

2. The respondents in their reply have stated that the applicant who was selected on temporary basis as LDC in the grade of Rs.56-130 applied for the post of Inspector in the Public Sector Undertaking in the grade of Rs.168-300 purely in order to improve his prospects. The conditions for grant of pro-rata pension laid down in the OM dated 16.6.67 required that the absorbee was holding a permanent post under the Central Government, he had been on deputation to the Public Sector Undertaking; that the

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Public Sector Undertaking had consulted the Central Government prior to absorbing the officer and the absorption was in public interest. The respondents submit that since the applicant was neither permanent nor the absorption was in public interest he could not be considered eligible for grant of pro-rata pension.

3. The learned counsel for the applicant in his arguments has relied heavily on the Government of India Department of Personnel & Training OM No.28016/5/85-Estt.(C) dated 31.1.86 which has been reproduced in Appendix 12 of the Swamy's Pension Rules. He has submitted that as per this OM there is no requirement that the Government servant who is absorbed must hold a permanent post. In particular the learned counsel cited para 4 of the above mentioned OM. For facility of reference the same is reproduced below:-

"(i) Resignation from Government service

with a view to secure employment in a Central Public enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the Government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all requirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation.

(ii) The officer eligible for pension will be entitled to draw pro-rata monthly pension (with option to commute 1/3rd pension wherever admissible) and retirement gratuity as admissible under the relevant rules.

(iii) Any further liberalization of pension rules decided upon by Government after the date of resignation of a Central Government servant to join the public enterprise will not be extended to him.

(iv) A Government servant who receives pro rata monthly pension on his resignation from Government service will not be entitled to relief on pension during his service in the public enterprise."

4. He also drew attention to para 6 (vi) under the heading 'Family Pension' which reads as follows:-

"The terminal benefits, etc., enumerated in para 1 above will be admissible to all Central Government servants, who secure appointments in Central public enterprises with proper permission. A Government servant selected for appointment in an enterprise on the basis of an application submitted by him before joining the

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Government service will be deemed to have applied with proper permission for the purpose of these orders."

5. I find that the OM cited above relied upon by the applicant is of no assistance to the applicant since this OM has been specifically made effective from 6.3.85. On the other hand, the applicant was absorbed in a Public Sector Undertaking w.e.f. 3.11.66. This OM is, therefore, not applicable in the case of the applicant.

6. I also find that as pointed out by the learned counsel for the respondents the Supreme Court in Union of India and others vs. V.P.Chadha SLP No. 697/95 have held that pro-rata pension is permissible only when such absorption is declared by the Government to be in the public interest after obtaining permission from the Government. The Supreme Court have observed that merely because at the time of forwarding the application of the respondent the authorities imposed the condition that on selection he would have to resign does not mean that the necessary permission had been granted for the absorption of the respondents on the post he holds. Thus, in the ratio of Union of India and others vs. V.P.Chadha the applicant cannot be treated to have been absorbed in public interest since no such permission for absorption has been shown.

7. In any case the applicant admittedly was not a permanent Government servant at the time when he left the Ministry of Agriculture and joined the Central Fisheries Corporation. It was one of the conditions of the

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memo dated 16.6.67 that, to be entitled for pro-rata pension the concerned Government employee should have been permanent in service. The argument of the learned counsel for the applicant that the applicant was working against a regular post and was not declared permanent only because the case of one of the seniors was pending is in my view not relevant. We are here dealing with facts and the factual position in this case is that the applicant at the relevant point of time was not a permanent Government servant.

8. In view of the above discussion I hold that the applicant is not entitled to the relief claimed by him. Accordingly, the OA is dismissed. No order as to costs.

R.K. Ahuja
(R.K. AHOOJA)

Member (A)

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