

Central Administrative Tribunal
Principal Bench

O.A.No.2362/97

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

New Delhi, this the 3rd day of April, 1998

1. Smt. Aruna Mehta
w/o Shri R.K.Mehta
r/o A-68, Double Storey
Kalkaji
New Delhi - 19.
2. Smt. Santosh Behl
w/o Shri G.K.Behl
r/o KG-II/31, Vikaspuri
New Delhi - 18.
3. Smt. Gulshan Thapar
w/o Shri S.C.Thapar
r/o GG-II/2C, Vikaspuri
New Delhi - 18.
4. Smt. Usha Tandon
w/o Shri C.P.Tandon
r/o 13/2 West Patel Nagar
New Delhi - 8.
5. Smt. Sucheta Marwaha
w/o Shri B.K.Marwaha
r/o Ad/36, Tagore Garden
New Delhi - 27.

... Applicants

(By Shri S.M.Rattan Paul, Advocate)

Vs.

1. Union of India through the
Secretary
Ministry of Water Resources
Shram Shakti Bhawan
New Delhi.
2. The Secretary.
Ministry of Personnel, Public Grievances
and Pensions
North Block
New Delhi.
3. The Chairman
Central Water Commission
Sewa Bhawan
R.K.Puram
New Delhi.
4. Chairman-cum-Managing Director
National Thermal Power Corporation Ltd.
Govt. of India Undertaking
NTPC Bhawan, Scope Complex
Lodhi Road
New Delhi.

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-2-

5. Senior Accounts Officer
Pay & Accounts Office
Central Water Commission
Sewa Bhawan, R.K.Puram
New Delhi.

... Respondents

(By Shri D.S.Mahendru, Advocate)

ORDER

The applicants, five in number, were appointed as Lower Division Clerks (LDC) in the subordinate office of Central Water and Power Commission (CW&PC) between 1969-71. They were subsequently declared quasi permanent between 1972-74 after rendering three years service. They were also promoted as UDCs in CW&PC from various dates between 1973-76. The applicants were transferred to National Thermal Power Corporation (NTPC), a public sector undertaking of the Government of India, when the Badarpur Thermal Power Project where they were working was transferred to NTPC. They also accepted the offer given to them for permanent absorption in NTPC. Vide orders issued on 8.5.1986 they were so absorbed w.e.f. 1.1.1984. On absorption in NTPC the applicants sought their pensionary benefits from the CW&PC including pro-rata pension but as no reply was received to their various representations they filed an OA No.2271/94 before this Tribunal. The said OA was disposed of with a direction that the respondents will sort out the matter within a period of six months giving liberty to the applicants to approach the Tribunal again if any grievance survived thereafter. As no decision was taken by the respondents the applicants filed a Contempt Petition No.249/96.

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2. In their compliance report the respondents submitted before the Tribunal that the applicants being quasi permanent in CW&PC they were entitled to their terminal benefit, i.e., gratuity and not pro-rata pension. The Contempt Petition was thereafter dismissed considering that the dissatisfaction of the applicants with the said decision of the respondents would be a fresh cause of action. This has led to the present OA.

3. The issue which thus arises for decision in the present OA is whether the applicants are entitled to pro-rata pension despite the fact that they were not declared permanent and had only the quasi permanent status at the time of their absorption in the NTPC.

4. I have heard the counsel on both sides. The case of the applicants in short is that on the ratio of Supreme Court Judgment in Praduman Kumar Jain Vs. Union of India & Another, 1994 Supp(2) SCC 548 they were in 'substantive capacity' in the CW&PC and under Rule 37 read with Rule 49(2)(b) of CCS Pension Rules, they were on absorption in Public Sector Undertaking, entitled to pro-rata pension, having completed the qualifying service of 10 years. The applicants also claim that w.e.f. 1.1.1986, service rendered with temporary or quasi permanent status was also made eligible for superannuation pension and since the orders of their absorption in NTPC were issued on 8.5.1986, they were entitled to the benefit of the aforementioned amended Pension Rule even though their absorption was with retrospective effect from 1.1.1984.

(b)

5. I have considered the matter carefully. As pointed out by the learned counsel for the applicant, the Hon'ble Supreme Court in Praduman Kumar Jain (Supra) had laid down that a person appointed against a permanent vacancy who had crossed EB, and was even promoted to a higher rank could not be considered to be working in an officiating capacity. It was also held by the Supreme Court in Baleshwar Das & Others Vs. State of Uttar Pradesh & Others, 1981 (1) SCR 449 that a person is said to hold a post in an substantive capacity when he holds it for an indefinite period especially of long duration in contradistinction to a person who holds it for a definite or a temporary period or holds it on probation subject to confirmation. It was further held that if an appointment to a post and the capacity in which the appointment is made is of an indefinite duration, if the Public Service Commission has been consulted and has approved, the tests prescribed have been taken and have passed the probation as prescribed and approved, one may well say that the post was held by the incumbent in a substantive capacity. Since applicants herein were direct recruits and appointed for an indefinite period, they had earned increments, crossed EB, attained quasi permanent status and were also promoted as UDCs, it cannot be said that they ^{were} not holding their posts in CW&PC in a substantive capacity. This Tribunal had also in its order dated 17.10.1994 in the case of S.K.Bedi Vs. Union of India & Others, Jaipur Bench, TA No.25/88, held in an identical case, of a Mechanic Instructor in CW&PC, who had been declared as quasi permanent and who had gone to NHPC that he was working in a substantive capacity in the Central Government/CW&PC prior to his absorption in NHPC. Finding myself in respectful agreement with the

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decision of the Division Bench in S.K.Bedi (Supra), I also hold that in the present case also, the applicants herein were holding the posts in the CW&PC in a substantive capacity at the time of their absorption in NTPC and thus in terms of Rule 37 read with 49(2)(b) of the CCS Pension Rules, applicants are entitled to pro-rata pension on the basis of their service rendered under the Central Government.

6. In the light of the above discussion, the OA is allowed. The respondents are directed to calculate and pay the arrears of the pension to the applicants within a period of three months from the date of receipt of a copy of this order along with 12% interest from the date of due till the actual payment of such arrears. No costs.

R.K.Ahooja
(R.K.Ahooja)
Member(A)

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