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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. NO. 1364 of /19 94 Decided on : 17.11.95

Mrs. Sushil Kaur

... Applicant(s)

(By Shri B.S. Jain

Advocate)

versus

Comptroller & Auditor General
of India & Urs.

... Respondent(s)

(By Shri J. Banerjee

Advocate)

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THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE SHRI

1. To be referred to the Reporter or not ? Yes
2. Whether to be circulated to other Benches
of the Tribunal ? Yes

S.R. Adige
(S.R. ADIGE)
Member (A)

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A.No.1364/94

New Delhi: November 17th, 1995

HON'BLE MR. S.R.ADIGE MEMBER(A)

Smt. Sushil Kaur,
w/o Late S.Harcharan Singh,
was working with the Steel

Authority of India Limited, Ispat

Bhavan, Lodhi Road,
New Delhi - 110003,

R/o EA-407, Maya Enclave, G-8 Area,
New Delhi - 110064.

.....Applicant.

By Shri B.S.Jain, Advocate.

Versus

1. The Comptroller & Auditor General
of India, Bahadur Shah Zafar Marg,
New Delhi

2. The accountant General(A & E)
Punjab, Chandigarh(160017),
(Formerly A.G., Punjab, Shimla).

3. Union of India
through

Secretary,
Ministry of Personnel,
Public Grievances & Pension,
North Block,
New Delhi -110001 .

4. The Secretary to the Govt. of India,
Ministry of Finance,
Department of Expenditure,
New Delhi - 110001

....Respondents.

By Shri J.Banerjee, Advocate.

JUDGMENT

In this application, Smt.Sunil Kaur, legal
heir ^{and widow of late} / Shri Harcharan Singh, former UDC , Office
of A.G.Punjab, Shimla has sought a direction to
the respondents to extend to her the benefits of
GOI's orders contained in Finance Ministry's O.M.
dated 16.6.67 as admissible to ^{her} / late husband
as had been given to Shri T.S.Thiruvengadam and

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others vide Hon'ble Supreme Court's judgment dated 17.2.93 and to direct the respondents to give to the applicant family pension w.e.f. 27.2.82, the date of her late husband's death in accordance with Finance Ministry's O.M. dated 8.4.76.

2. Shortly stated Shri Harcharan Singh joined as UDC in the Accountant General Punjab's Office Shimla on 18.4.51 and worked in that office till 12.5.63. According to the applicant, Shri Singh was went on deputation to the post of Accountant, Hindustan Steel Ltd. (now SAIL) a CPSU on 13.5.63 where he remained on deputation till 1.5.66 and thereafter upon his request dated 26.3.66 (Annexure-A3) for absorption, he was permanently absorbed in SAIL w.e.f. 2.5.66 (Annexure-A4) and served in SAIL upto 27.2.82 on which date he expired (Annexure-A6, upon which the applicant was given compassionate appointment.

3. The applicant thus avers that her husband rendered a qualifying service of more than 15 years under the Central Govt. from 18.4.51 to 2.5.66, and thereafter he served SAIL till 27.2.82. At the time he left the Central Govt. to join a PSU there was no provision of allowing pro rata retirement benefits to Govt. servants, but as per Finance Ministry's O.M. dated 10.11.60 (Annexure A3), Central Govt. servants who joined PSUs/Autonomous bodies in the public interest were entitled to an amount equal to what Govt. would have contributed had the Officer been on CPF terms under the Govt. together with 2% interest thereon for the period of pensionable service under the Govt. The applicant states that as far as

she remembers her husband did not get this amount and in case the position ^{was} / otherwise that amount may be adjusted against the arrears of pension/ family pension claimed by the applicant. It is further stated that subsequently, permanent Central Govt. employees on deputation to and permanently absorbed in PSUs on or after 16.6.67 were made eligible for pro rata retirement benefits for their service under the Central Govt. vide Finance Ministry's O.M. dated 16.6.67 and their family was also made entitled to family pension vide paragraph 8 of Finance Ministry's O.M. dated 8.4.76 (Annexure-). The applicant further states that by the Hon'ble Supreme Court's judgment in D.S.Nakra Vs. UOI - AIR 1983 SC 130 whereby fixing a date for retirement benefits was held to be arbitrary, and on the basis of the Hon'ble Supreme Court's judgment dated 17.2.93 in the case T.S.Thiruvengadam Vs. UOI & others -1993 (24) ATC 102, the applicant is also entitled to pro rata retirement benefits to her husband till 27.2.82 and family pension thereafter, but her representation addressed to the respondents dated 17.2.94 was rejected in May, 1994 (Annexure-A2), compelling her to file this application.

4. The respondents in their reply have contested the O.A. They state that the question cannot be brushed aside whether Shri Harcharan Singh got the CPF from SAIL or not. They further state that Shri Singh is not entitled to pro rata pensionary benefits as per Govt. instructions, including the recent instructions issued on 3.1.95 (Annexure-R1),, because the concept of payment of prorata pension on absorption in a CPSU came into existence w.e.f.

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16.6.67 and there was provision for payment of prorata pension prior to that date. Furthermore they point out that those Govt. servants who were absorbed in PSU's between 10.11.60 and 15.6.67 were entitled to the retirement benefits envisaged in GOI's O.M. dated 10.11.60 provided that the absorption was made in the public interest but in the present case Shri Singh tendered resignation from Govt. service which was accepted w.e.f. 2.5.66 to take up a CPSU appointment on his own volition. Since this absorption was not in the public interest, he was neither eligible for the benefits as contained in GOI's O.M. dated 10.10.60 nor entitled for the pensionary benefits under O.M. dated 16.6.67 and the judgments relied upon by the applicant were irrelevant.

5. The applicant had filed rejoinder in which the Resp.'s averments that the applicant's husband took employment in the PSU on his own volition has been specifically denied, and it has been emphatically stated that the applicant was sent on deputation to HSL(now SAIL) and was absorbed there in the public interest. It is further asserted that the applicant never resigned from the Govt. service but the Respondents on their own used the words "resignation" in their order dated 22.3.69 which was only a technical resignation.

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6. I have heard Shri B.S. Jain for the applicant and Shri J. Banerjee, for the respondents. I have also perused the materials on record, and have considered the matter carefully.

7. It is not denied that the applicant's husband was absorbed in HSL u.s.f. the same date his resignation from the Central Govt. was accepted resulting in the termination of his lien there. (Annexure A-5). There was thus no break in service. From the reply filed by the Respondents it appears that they have rejected the claim for prorata pensionary benefits, because according to them his absorption in the PSU was not in the public interest but on his own volition, and also because he did not satisfy the conditions laid down in the Department of Pensions O.M. dated 3.1.95.

8. Although the applicant in her rejoinder has contended that her husband was absorbed in the PSU in the public interest, it is noticed that in paragraph 4(6) of the O.A. she admits that her husband requested for absorption in HSL which was agreed to and moreover in her representation dated 17.2.94 addressed to the Accountant General, Punjab (Annexure A8) she has stated that her husband's case was exactly similar to that of Shri H.B. Lal who was also on deputation from office of the A.G., Punjab and was finally absorbed in HSL in 1966. I note that Shri H.B. Lal had filed O.A. 527/87 in the Hyderabad Bench of CAT

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also claiming prorata pensionary benefits which was disposed of by an exhaustive and well considered judgment on 14.4.88 allowing the prayer w.e.f. 1.8.76 (AISLJ 1988(3) p.53) wherein it was conclusively held that the applicant had resigned from the Govt. service on his own volition to join the PSU. Thus manifestly the applicant's assertion in her rejoinder that her husband had resigned from the Govt. service and was absorbed in the PSU in the public interest, does not stand scrutiny, but in the light of the Tribunal's judgment in H.B. Lal's case (Supra), the challenge to which in SLP (Civil) No. 14434 of 1988 was dismissed by the Hon'ble Supreme Court on 9.1.89 Annexure RJ-2) that fact that Shri Harcharan Singh was absorbed in the PSU on his own volition would not debar him from the prorata retirement benefits.

9. Coming to the contents of Dept. of Pensions O.M. dated 3.1.95 it appears that the said O.M. has been issued in the back ground of the Hon'ble Supreme Court's judgment in Thiruvengadam's case (Supra).

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That judgment noted the contents of Rule 37 CCS (Pension) Rules, 1972 as it then stood^{which} read as under :

" A Govt. servant who has been permitted to be absorbed in a service or post in or under a corporation or company wholly or substantially owned or controlled by the Govt. shall, if such absorption is declared by the Govt. to be in the public interest, be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Govt. applicable to him:

Provided that no declaration regarding absorption in the public interest in a service or post in or under such corporation, company or body shall be required in respect of a Govt. servant whom the Govt. may, by order, declare to be a scientific employee. "

It noted that Rule 37 provided that a Govt. servant who was permitted to be absorbed in service in a Central Govt. Public Undertaking in public interest be deemed to have retired from service from the date of such absorption and would be eligible to receive retirement benefits in accordance with the orders of Govt. applicable to him. It was not disputed in Thiruvengadam's case (Supra) that he was permitted to be absorbed in the Central Govt. Public Undertaking in the public interest and must be deemed to have retired from Govt. service from the date of his absorption and was eligible to receive the retirement benefits. The Hon'ble Supreme Court further observed that it was no doubt correct that the retirement benefits envisaged under Rule 37 were to be determined in accordance with Govt. orders, but a

plain reading of the Rule did not permit any classification for granting the retirement benefits. When the Rule specifically provided that all the persons who fulfilled the pre-conditions prescribed therein were deemed to have retired from Govt. service from the date of absorption and would be eligible to receive retirement benefits, the Govt. while granting benefits could not deny the same to some of them on the basis of arbitrary classification. All those persons who fulfilled the conditions under Rule 37 were a class by themselves and no discrimination could be permitted within the same class. Government's action in restricting the benefits under the revised O.M. dated 16.6.67 only to those who were absorbed after that date went contrary to Rule 37 and could not be sustained. Accordingly Shri T.S. Thiruvengadam's appeal (who after about 15 years in Govt. service was permanently absorbed in a Public Undertaking when he retired on 1.4.84) was allowed, and the Respondents were directed to grant prorata pension and other benefits to Shri Thiruvengadam under the Finance Ministry's O.M. dated 16.6.67.

10. In this connection it is specifically to be noted that Rule 37 CCS (Pension) Rules, 1972 as it then stood required the absorption of the Govt. servant in the PSU in the public interest. In fact the Finance Ministry's O.M. dated 10.11.60 as well as 16.6.67 also required the Govt. servant's permanent transfer to the PSU in the public interest.

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However, the Respondents in their rejoinder have appended copies of Dept. of Personnel O.M. dated 21.4.72 (RJ-1) as well as 25.3.77 (RJ-2) whereby the requirement of getting absorbed in the PSU in the public interest was no longer made ^apre-condition and even those permanent Govt. servants who had been or were appointed in the PSU on the basis of their applications in response to press advertisements, circulation of vacancies etc. and who were absorbed on permanent basis in such PSUs in which they were appointed were also made eligible for payment of retirement benefits.

11.. It is perhaps for this reason that Rule 37 CCS (Pension) Rules, 1972 ~~was~~ amended by Dept. of P ensions Notification No. 4/15/88/P&PW(D) dated 9.10.91 published as S.O. No. 2740 in the Gazette of India dated 2.11.91, whereby the requirement of absorption in the *public interest* ~~was~~ for eligibility for retirement benefits was specifically deleted, which runs as follows:

"Rule 37. Pension on absorption in or under a corporation, company or of body

(1) A Govt. servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Govt. or a State Govt. or in or under a Body controlled or financed by the Central Govt. or a State Govt., shall be deemed to have retired from service from the date of such absorption and subject to sub-rule(3) he shall be eligible to receive retirement benefits which he may have elected, or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Central Govt. applicable to him.

EXPLANATION - Date of absorption shall be -
(i) in case a Govt. employee joins

that corporation or company or body;

- (ii) in case a Govt. employee initially joins a corporation or company or body on foreign service terms by retaining a lien under the Govt., the date from which his unqualified resignation is accepted by the Govt.

(2) The provisions of sub-rule (1) shall also apply to Central Govt. servants who are permitted to be absorbed in joint sector undertakings, wholly under the joint control of Central Govt. and State Govts./UTAs or under the joint control of two or more State Govts./UTAs.

(3) Where there is a pension scheme in a body controlled or financed by the Central Govt. in which Govt. servant is absorbed, he shall be entitled to exercise option either to count the service rendered under the Central Govt. in that body for pension or to receive pro-rata retirement benefits for the service rendered under the Central Govt. in accordance with the orders issued by the Central Govt. "

12. Hence the requirement of absorption in the public interest in the PSU would not appear to be a necessary pre-condition for grant of retirement benefits, which is also supported by para 4(i) of the Deptt. of Personnel O.M. dated 31.1.86 which states that the resignation from Govt. 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 Govt. servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation. The contents of Deptt. of Pensions O.M. dated 3.1.95 has to be

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viewed in the above background. This O.M. requires fulfilment of the following condition before the benefits of O.M. dated 16.6.67 can be extended, even if the Govt. servant was absorbed in the CPSU prior to 16.6.67.

- (i) the absorbee would have to satisfy all the terms and conditions regarding grant of retirement benefits as laid down in Finance Ministry's O.M. dated 16.6.67 as amended by their O.M. dated 19.6.72.

If according to the Respondents' contention that the applicant's husband does not fulfil this condition (i), they should ^{have} indicated specifically which of the conditions in Finance Ministry's O.M. dated 16.6.67 as amended by their O.M. dated 19.6.72 ^{were} ~~was~~ not satisfied by the applicant's husband because the initial burden of ^{proof} ~~the~~ rests upon ^{who} ~~that~~ to make ^{the} ~~an~~ assertion. ^{but this has not been done by the respondents} If it is the Respondents' contention that the applicant was not absorbed in HSL in the public interest, but on his own volition and hence does not satisfy that condition which specified in Finance Ministry's O.M. dated 16.6.67, I have already noted that the requirement of being absorbed in the PSU in the public interest, is no longer a pre-condition for entitlement to the retiral benefits.

- (ii) The second condition which requires to be fulfilled in Finance Ministry's O.M. dated 3.1.95 that the absorbee should have proceeded (emphasis supplied) to the CPSU in the public interest and was absorbed there prior to 16.6.1967.

Admittedly the applicant's husband was absorbed

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in HSL before 16.6.67, and it is also not denied that the applicant's husband proceeded there initially on deputation. An organisation borrows staff from other organisations on deputation, when it cannot fill a particular vacancy from its own resources, and it is necessary to fill up the vacancy in the public interest. The fact that the consent of the person going on deputation to that organisation is taken, does not make such deputation in the public interest any less. Hence this condition must be deemed to have been satisfied.

- (iii) the absorbee should have received the retirement benefits as per Finance Ministry's O.M. dated 10.11.60 viz. an amount equal to what Govt. would have contributed had the officer been on Contributory Provident Fund terms under Government, together with 2% simple interest thereon for the period of his pensionable service should have been credited to his CPF Account with the PSU as an opening balance within one year from the date of his/her permanent absorption.

The requirement that ^{the} absorbee should have received an amount equal to what the Govt. would have contributed had the officer been on Contributory Provident Fund term under Govt., together with simple interest thereon at two percent for the period of his pensionable service under Govt. may be credited to his Contributory Provident Fund Account with the PSU as an opening balance on the date of permanent absorption as laid down in Finance Ministry's O.M. dated 10.11.60 itself

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appears to be based on the assumption that the officer was permanently transferred to the CPSU in the public interest, but as Rule 37 CCS (Pension) Rules, 1972 as amended in 1991, no longer makes permanent transfer/absorption in the PSU in the public interest a necessary pre-condition for grant of retirement benefits, even if the absorbee did not receive the retirement benefits as per Finance Ministry's O.M. dated 10.11.60, ~~that~~ should not debar him for grant of the retirement benefits, more particularly as the paragraph 4 of O.M. ^{dt. 3.1.95} itself states that where the retirement benefits are granted, CPF benefits received in terms of O.M. dated 10.11.60 would have to be refunded by the absorbee to Govt. together with interest at the prescribed rate thereon. In any event the applicant herself has stated that she is not aware whether her husband had been paid this sum or not, and in case this amount was received by her late husband who has offered that the same could be adjusted against pension/family pension being given to her.

13. Thus the contents of O.M. dated 3.1.95 cannot be a barrier to the applicant's late husband's claim to prorata retirement benefits.

14. As stated above in the case of O.A. 527/87 H.B. Lal Vs. C & AG of India & Ors. decided by the Supreme Court, (1988) 1 SCC 101, the

the Hyderabad Bench of the Tribunal on 14.4.88, in which judgment the prorata pension retirement benefits to the applicant were allowed under very similar circumstances, ^{and} the Respondents were directed to extend to him prorata retirement benefits w.e.f. 1.8.76 for the service rendered by him in the Central Govt. from May, 1952 to 11.12.67. SLP (CA No. 14434/88) filed by the C & AGI against the Tribunal judgment dated 14.4.88 was dismissed by the Hon'ble Supreme Court on 9.1.89. Similarly, Shri J.M. Paul who had been refused prorata pension by the Comptroller & Auditor General of India filed O.A. No.1521/93 seeking directions to the Respondents to extend to him the prorata retirement benefits as had been given to Shri H.B. Lal who was similarly situated, and the Tribunal by its judgment dated 13.12.93 in that O.A. allowed the prayer and directed the Respondents to grant the prorata pension to the applicant from the date of his retirement. Against that judgment the C&AGI filed SLP (CA No.16725 & 16726/94) which was dismissed by the Hon'ble Supreme Court on 14.11.94. Similarly one Shri J.R. Goel filed O.A. No.860/93 praying for grant of prorata retirement benefits, which had been refused to him by the Respondents. That

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O.A . was disposed of with the judgment dated 17.1.94 whereby the application was allowed and the Respondents were directed to grant the applicant prorata pension w.e.f. 1.8.76- SLP (CA No. 16554/94) filed by the Union of India was dismissed by the Hon'ble Supreme Court on 28.11.94.

15. In the light of the fact that the prorata retirement benefits have been granted to the similarly situated persons viz. S/Shri H.B. Lal, J.M. Paul and J.R. Goel, the denial of these benefits to the present applicant's late husband would ^{be} arbitrary and discriminatory, and hence violative of Article 14 of the Constitution.

16. In this connection we may also note that in O.A. No.1915/89 decided by the Tribunal on 30.7.90, Smt. Mundresh Bala Nagar who was the legal heir of the late Shri A.P. Nagar, a Central Govt. servant who went on deputation to ONGC and was subsequently absorbed there, was allowed pensionary benefits admissible to her late husband for the period of service put in by him under the Govt. which qualified for pensionary benefits. The Respondents have not shown me any material to lead me to conclude that the such judgment dated 30.7.90 has been quashed or set aside or otherwise was modified, hence that judgment seems to become final.

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17. In the result this application succeeds and is allowed, to the following extent:

- (i) in the back ground of the various rulings cited above, the Respondents are directed to grant prorata pension and other benefits to the applicant's late husband under the O.M. dated 16.6.67 read with O.M. dated 3.1.95, which will be payable to his legal heir; and
- (ii) the Respondents are further directed to grant family pension to the applicant herself at the prescribed rates w.e.f. the date of her husband's death i.e. 27.2.1982 in accordance with Finance Ministry's O.M. dated 8.4.76 subject to there being nothing contained in the relevant rules or instructions which debars a widow who has been given employment in a public sector undertaking consequent to the death of her husband there, from claiming such family pension.

18. These directions should be implemented within four months from the date of receipt of a copy of this judgment. No costs.

Arifolgi
(S.R. ADIGE)
Member (A)

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