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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1525 of 2000

New Delhi, this the 7th day of March, 2001

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

P.C. Chatterjee
R/o 71-D, Pocket-A,
Sukhdev Vihar,
New Delhi-110 025.

-APPLICANT

(By Advocate: Shri U.S. Bhisht)

Versus

1. Union of India through
Secretary,
Min. of Defence,
South Block,
New Delhi-110 011
2. Engineer-In-Chief's Branch,
Army Headquarters,
Kashmir House, DHQ, PO,
Rajaji Marg, New Delhi-110 011.
3. Chief Engineer,
Southern Command,
Pune, Maharashtra.
4. The Secretary,
Department of Pension and Pensioners
Welfare,
Lok Nayak Bhawan,
Khan Market,
New Delhi-110 003. -RESPONDENTS

(By Advocate: Shri R.P. Aggarwal)

O R D E R (ORAL)

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant has impugned order dated 4.7.2000 (Annexure A-1) whereby the request of the applicant for grant of retirement benefits on the basis of counting of past service with the Government has been denied to the applicant.

2. Facts in brief are that the applicant had joined the Government service as Superintendent B/R

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Grade-I in Military Engineering Service (MES) Department under Engineer-in-Chief's Branch, Army Headquarters on 6.12.1968. Thereafter he was declared quasi-permanent on 6.12.1971. In the year 1978 he was assigned to the cadre of Superintendent B/R Grade-I which was bifurcated into two cadres and while he was working under the MES certain posts on deputation were available with the Indian Road Construction Corporation (hereinafter referred to as IRCC), a central Government enterprise. The applicant applied for proceeding on deputation and joined the IRCC on deputation on 20.3.1980 retaining his lien in the MES.

3. Thereafter the applicant made an application to his parent department to the effect that since IRCC had decided to absorb him in their Corporation permanently in public interest and he has been asked to seek retirement from MES, accordingly the applicant sought retirement from his parent department. Meanwhile, his parent department had also been processing his papers to declare him permanent and ultimately he was confirmed on 1.4.1982. So in these circumstances, the applicant had to submit a technical resignation in the MES for joining the post in IRCC. Accordingly, the applicant submitted his resignation on 3.7.83 and joined the IRCC on 4.7.83 when he was permanently absorbed in IRCC. Thereafter he had been making representations for payment of retiral benefits but to not effect. Hence, this OA.

4. In this OA it is stated that the department has erroneously rejected the claim of the applicant for pro-rata pension because of "In absentia confirmation".

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This plea of the respondents is null and void and has not been accepted by this Tribunal while delivering judgment in OA 573/91 at Hyderabad Bench. It is also stated that mere delay in grant of permanency cannot be a ground for grant to deny grant of pro-rata pension to the applicant for issuing permanency orders later than the effective date of permanency, so it is stated that as per the CCS (pension) Rules, 1972, an OM dated 29.8.94, the applicant is entitled to pro-rata pension as such he has prayed that the respondents be directed to sanction pro-rata pension w.e.f. 4.7.83, the date on which he was absorbed in IRCC.

5. The respondents are contesting the OA. The respondents tried to justify the impugned order whereby the applicant had been denied pro-rata pension and has submitted that the resignation of the applicant was accepted on 3.7.1983 and he had been paid the terminal benefits. It was also submitted that the pro-rata pension is not applicable to the Government servant not holding a permanent post and the applicant at the time of his absorption in IRCC was not holding a permanent post and was absorbed w.e.f. 4.7.83 after he resigned from the post of SA Grade-I which was accepted by the competent authority.

6. I have heard the learned counsel for the parties and have gone through the records of the case.

7. The learned counsel for the applicant has submitted that in a similar case before the Hyderabad Bench of the Tribunal in OA 573/91 wherein also

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petitioner in that case had claimed a similar relief like the present applicant (OA 1525/2000) was allowed the relief of grant of pro-rata pension. The relevant operative portion of the said judgment is reproduced hereinbelow:-

The main dispute in this case revolves round the question whether the applicant before proceeding to Hindustan Shipyard was a permanent employee of the Government or not. It is seen that the respondents declared the applicant as confirmed w.e.f. 1.4.74. This order regularising the services of the applicant w.e.f. 1.4.74. This order regularising the services of the applicant w.e.f. 1.4.74 was rescinded subsequently in 1983 on the ground that as the employee left the Government service in the meantime, he could not have been declared permanent".

8. The Tribunal relying upon an earlier judgment of the same Bench in TA 81/87 has observed as under:-

"Consequently we are of the considered view that the applicant in the present case is also entitled to be treated as having become a permanent employee w.e.f. 1.4.74. Another aspect that comes to our notice is that the Government of India, Department of Personnel & A.R. vide OM dated 29.8.1984 decided that the service rendered by the Government servant shall be allowed to be counted towards pension under an autonomous body irrespective of whether an employee was temporary or permanent in Government".

9. He has also relied upon the rule as well as judgments given by the various other Benches. In view of the position of law as stated in the order quoted above, I also find that merely because the order of permanency

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has been delayed at the hands of the respondents, cannot deprive the applicant to the grant of benefit of pro-rata pension and the applicant should be deemed to have become permanent at the time of his absorption in the Central Government organisation - IRCC when he was absorbed there.

10. In view of the above, I find that the case of applicant is fully covered by aforesaid judgment as well as under the OM dated 29.8.84 which states that the service rendered by the Government servant shall be allowed to be counted towards pension under an autonomous body irrespective of whether an employee was temporary or permanent in Government.

11. In view of the above, OA is allowed and I direct the respondents to treat the applicant as having become permanent employee on the date when he submitted his resignation and/or when he was absorbed in the IRCC. The applicant is thus entitled to all the consequential benefits with regard to the grant of pro-rata pensionary/terminal benefits as applicable to persons seeking employment in Public Sector Undertakings in accordance with the extant rules and instructions. The respondents shall comply with this directions within a period of 3 months from the date of communication of this order.

12. OA is disposed of with the above directions.
No costs.

(*Rakesh*)
KULDIP SINGH
MEMBER (J)

RAKESH