

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2491/2000

New Delhi, this day the 2nd April, 2002

HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Shri K.K. Dhir,
formerly working as General Manager, F&A,
in the Office of Oil & Natural Gas
Corporation Ltd.,
Baroda &
R/o D-236, Nirman Vihar,
Vikas Marg,
Delhi - 110 092

... Applicant

(By Advocate : Shri B.S. Jain)

Versus

1. Comptroller & Auditor General of India,
Bahadur Shah Zafar Marg,
New Delhi
2. Accountant General (A&E),
Punjab, Chandigarh-160017
(formerly A.G., Punjab, Shimla)
3. Union of India through
The Secretary,
Ministry of Personnel, Public
Grievances & Pensions,
North Block,
New Delhi - 110 001
4. The Secretary to the Govt. of India,
Ministry of Finance,
Dept. of Expenditure,
New Delhi

... Respondents

(By Advocate : Shri M.K. Gupta)

ORDER

Applicant's claim for the grant of prorata retirement benefits has been rejected on 30.6.1997 (Annexure A-1) on the ground that his claim did not merit consideration in terms of the Govt. of India's Memorandum dated 3.1.1995. The aforesaid claim was once again turned down by a subsequent letter dated 8.6.1999 also issued by the respondents. However, on this occasion, the ground taken was that since the applicant

had tendered his resignation from service, the pensionary benefits could not be extended to him in accordance with rule 26 of the CCS (Pension) Rules, 1972.

2. Facts of the case briefly stated are that the applicant joined the Office of Respondent No.2 as UDC on 24.2.1953. On passing the SAS examination, he was promoted as Superintendent on 8.1.1958. He was declared quasi permanent w.e.f. 1.7.1956. He applied for the post of Finance & Accounts Officer in Oil & Natural Gas Corporation (ONGC), a Government of India Undertaking in 1964. His application was forwarded to the ONGC. On being selected for the job of Accounts Officer, the applicant joined the ONGC on 25.2.1965. After joining the ONGC, the applicant proceeded to withdraw the resignation which he had tendered and which had been duly accepted by the respondent No.2 vide the same respondent's office order dated 24.2.1965 (A-5 Colly.). The aforesaid office order clearly provides that the applicant had resigned of his own accord. Further, as is clear from the respondent No. 2's letter dated 13.5.64 by which the applicant's application was forwarded to the ONGC, he had at that very time expressed in writing that he would resign the post held by him in the Office of Respondent No.2 before accepting appointment in the ONGC. The same letter of 13.5.1964 had also clarified that since the applicant would thenceforth not be borne on the strength of the respondent No.2's office, there would be no objection to relieving him for appointment as Accounts Officer in the ONGC (Annexure RJ-2). The applicant's plea for withdrawal of resignation was accepted and

thereupon he continued to work in the Office of the Respondent No.2 again till 7.1.1966. Thus, the applicant remained in service of the respondent No.2's department w.e.f. 24.2.1953 to 7.1.1966 minus the period of dies non from 25.2.1965 to 17.9.1965. He resigned once again and from 7.1.1966 onward he continued to work in the ONGC and finally retired from ONGC service on 30.4.1990.

3. In support of the applicant's claim, the learned counsel appearing on his behalf has placed reliance on the judgement rendered by the Supreme Court in T.S. Thiruvengadam vs. Union of India and Others reported in (1993) 24 ATC 102 which led to the issuance of Office Memorandum dated 3.1.1995. He has also placed reliance on the decision taken by this Tribunal on 23.11.1995, i.e. after the aforesaid Office Memorandum dated 3.1.1995 had been issued, in OA No. 1364/1994 (Smt. Sushil Kaur). Decisions taken by this Tribunal in several other cases have also been relied upon. The particulars of the decisions are given in Para 1.3 of the O.A. The applicant accordingly requested for the grant of prorata pensionary benefits on 15.10.1996. However, his claim was rejected vide respondents' letter dated 30.6.1997 (Annexure A-1). The applicant made further representations in the matter but his claim was once again rejected vide respondents' letter dated 8.6.1999 (Annexure A-1 Colly.).

4. The learned counsel appearing on behalf of the respondents has argued that the aforesaid Office Memorandum dated 3.1.1995 will not find application in

the present case. Firstly, according to him, the applicant is not an absorbee in the ONGC. This is because he had tendered his resignation in the Department of Respondent No. 2 before he joined the ONGC. Tendering of resignation, as stated, was a pre-condition also as is clear from the forwarding letter to which a reference has already been made. Furthermore, his so-called absorption in the ONGC should have been in the public interest in accordance with the aforesaid Office Memorandum. There is no declaration of public interest and, therefore, the condition of public interest is also not satisfied. I have considered the aforesaid argument and find that the applicant cannot successfully rely on the provisions made in the aforesaid Office Memorandum in this case.

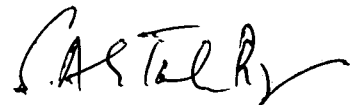
5. The learned counsel appearing on behalf of the respondents also places reliance on the provisions of rule 37 of CCS (Pension) Rules, 1972 read with the aforesaid Office Memorandum dated 3.1.1995. For the aforesaid rule 37 to find application, the requirements to be fulfilled are two fold. Firstly, it should be shown that the applicant was permitted to be absorbed. Secondly, his absorption should be declared by the Government to be in the public interest. As already stated, none of these conditions stood fulfilled in the case of the applicant. Thus, the applicant cannot successfully rely neither on the provisions of rule 37 of the CCS (Pension) Rules, 1972 nor on the Office Memorandum dated 3.1.1995 and, by the same token, ^{nor} on the Supreme Court's judgement in T.S. Thiruvengadam's case (supra) either.

6. In order to buttress support for his argument, the learned counsel appearing on behalf of the respondents has also relied^{*} on the judgement rendered by the Supreme Court on 2.5.1996 (Annexure R-2) in the case of Union of India & Another vs. V.R. Chadha. I have perused the aforesaid judgement and find that the present OA is fully covered by the aforesaid judgement. The facts and circumstances of the case decided by the Supreme Court in V.R. Chadha's case (supra) are substantially similar to the facts and circumstances^{*} obtained in the present O.A. I also find that the Supreme Court while deciding V.R. Chadha's case (supra) had noticed the earlier judgement made in T.S. Thiruvengadam's case (supra). The Supreme Court found that in the case of T.S. Thiruvengadam's case (supra) it had not been disputed that the appellant was permitted to be absorbed in the Central Government Public Undertaking in the public interest. In the present case these very factors are very much in dispute and, therefore, the ratio of the judgement made in T.S. Thiruvengadam's case (supra) will clearly not apply. In a subsequent case decided by this Tribunal (Chennai Bench) in OA No. 502/1996 (Annexure R-3), reliance has been placed by the Tribunal on the judgement rendered in V.R. Chadha's case (supra).

7. In the light of the foregoing, it is clearly established that the applicant has no case and the OA, therefore, deserves to be dismissed. The letter of rejection issued to the applicant on 30.6.1997 is, therefore, in order. I find nothing wrong with the

subsequent letter of rejection dated 8.6.1999 either. Rule 26 (2) of the CCS (Pension) Rules, 1972 clearly provides that resignation from service entails forfeiture of past service. The applicant had resigned on 7.1.1966 again and this too was a voluntary resignation, wholly in accord with the forwarding letter referred to in Para-2 above. Thus, for this reason also prorata retirement benefits cannot be sanctioned in favour of the applicant.

8. For the reasons mentioned in the preceding paragraphs, the O.A. is found to be devoid of merit and is dismissed. No costs.



(S.A.T. RIZVI)
Member (A)

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