

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 308/2000

New Delhi, this the 14th day of January 2002.

Hon'ble Shri Govindan S. Tampi, Member (A)

Dr. D.S. Shukla
A-802, Florentine Building,
Hiranandani Garden, Powai,
Mumbai.

.....Applicant.

(Shri D K Thakur, Advocate)

VERSUS

1. Union of India,
Min. of Personnel,
Public Grievances and Pensions,
through its Secretary, New Delhi
2. The Director General,
Council of Scientific and Industrial
Research, Anusandhan Bhawan,
Rafi Marg, New Delhi
3. The Director,
India Institute of Petroleum
PO: Mokhanpur, Dehradun
4. Mr. A P Bhatia, Administrative Officer,
Indian Institute of Petroleum,
PO: IIP Mokhanpur,
Dehradun.

.....Respondents

(By Sh. R N Singh, Advocate *proxy for R.V. Sunka for resp No 1 and*
Sh. Rahul V. Roy Adv. for Res No. 2 to 4)

O R D E R

Dr. D S Shukla, the applicant seeks directions from the Tribunal to the respondents to grant him on his resignation terminal benefits including gratuity, pension or compensation in lieu of pension, encashment of full Earned Leave etc.

2. Heard S/Shri D K Thakur learned counsel for the applicant and Shri R N Singh, as well as Sh. Rahul V. Roy learned counsel for the respondents.

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3. The applicant who joined on 20.11.80 as Sr. Scientific Assistant in the Indian Institute of Petroleum Dehradun (IIP) under the Council of Scientific and Industrial Research (CSIR), was promoted upto the rank of Scientist E-I. He resigned from the post and was relieved of his duties on 4.7.97. After waiting for about 10 months to get his gratuity, pension and compensation in lieu of pension as well as encashment of Earned Leave, earned by him, he filed a representation on 1.5.98 followed by reminders dated 20.6.98 and 12.8.98, which was replied on 6.10.98 by the respondents. In the said letter his request has been turned down with the observation that only encashment of half of the leave earned by him was permissible as he had resigned from the post without assigning any reason. Applicant's plea is that as he has resigned after a long tenure of faithful and satisfactory, the respondents should have granted him the pensionary benefits in terms of Section 4 of the Payment of Gratuity Act 1972 which directs payment of gratuity by private employers to their employees who have completed five years of Service. Besides as in terms of Rule 40 of the CCS(Pension) Rules, those who are retired compulsorily are given pension and Rule 41 ibid permits payment of compassionate allowance to those who are removed or dismissed, the applicant should also be given the benefit of pension. Further Sh. Thakur, learned counsel points out that the Government has ignored the recommendations of 5th Pay Commission in para 133.79, where under the 5th Central Pay Commission has suggested for payment of terminal gratuity for those who had worked for more than five years but less than 20 years. Keeping the above in mind, the

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4. Rebutting the above Sh. R N Singh, learned proxy counsel, submits as the applicant has not retired but resigned from service, in term of Rule 26 of the CCS(Pension) Rules, 1972, past service is forfeited and the benefits thereto attached. This has been clearly settled by the Hon'ble Supreme Court in UOI and Others Vs Rakesh Kumar (Civil Appeal No. 6166/99) decided on 30.3.2001. The application therefore deserves dismissal, according to the respondents.

5. The specific plea raised on behalf of the applicant is that when even removed and dismissed employees are given some monetary compensation denying the same to the applicant who had resigned the job, after honourable service was unreasonable and unjustified.

6. I have carefully considered the matter. This is not a case where the applicant has sought voluntary retirement from service in terms of FR 56(k) or Rule 48 A of the CCS (Pension) Rules, but a case, where he had voluntarily resigned from service before he completed 20 years of service. He cannot therefore get any pensionary benefit. In this context the findings of the Hon'ble Apex Court in the case of UOI & Others Vs Rakesh Kumar (supra), are germane. The relevant position of the judgement reads as below "CCS (Pension) Rules, nowhere provide that a person who has resigned before completing 20 years of service as provided in Rule 48 A is entitled to pensionary benefits. Rule 19 of the BSF Rules also does not make any provision for grant of pensionary benefits. It only

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granting such permission may reduce the pensionary benefits if he is eligible to get the pension. Therefore, by erroneous interpretation of the rules, if pensionary benefits are granted to someone it would not mean that the said mistake should be perpetuated by the direction of the Court. It would be unjustifiable to submit that by appropriate writ, the court should direct something which is contrary to statutory rules. In such cases there cannot be any consideration on the ground of hardship. If rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate rules but court cannot direct payment of pension on the ground of so-called hardship like to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits. As a normal rule, pensionary benefits are granted to a Govt. servant who is required to retire on his attaining the age of compulsory retirement except in cases, where there are special provisions." The circumstances of the instant OA are clearly covered by the above ^{decision}. The applicant's pleas for the grant of pensionary benefits on his resignation has therefore to fail.

7. I find that the applicant has not made out any case for my interference in this OA. It therefore fails and is accordingly dismissed. No costs.

(Govindan S. Tampi)
Member (A)