

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1605/1989
T.A. No.

199

DATE OF DECISION 01.10.1991.

<u>Shri M. S. Sehgal</u>	Petitioner
<u>Shri G.D. Gupta</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Others</u>	Respondent
<u>Shri P.P. Khurana</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. B.N. DHONDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal?

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

This is a unique case. The applicant who is presently about 65 years old filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for his pension and other retirement benefits as also the outstanding dues arising out of his posting at the Indian High Commission in London during the last lap of his career with the Central Government for over three decades.

2. The applicant began his career in the Punjab Police as

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Prosecuting Sub Inspector where he worked from 1951 to 1954. Thereafter he came on deputation to the Central Government and worked in various posts in the Intelligence Bureau and Research and Analysis Wing under the Cabinet Secretariat till he retired on attaining the age of superannuation on 31.3.1984. His terms of deputation to the Central Government and other particulars have not been produced before us by either party. His last posting was as Second Secretary in Indian High Commission, London from October, 1975 to July, 1980. While he was in London, he met with a serious accident in which his wife died and he and his two children were seriously injured. He had to remain in Hospital in London for about four months. According to him, even thereafter till today, he had not been able to compose himself and keep his faculties in tact due to the impact of the unfortunate accident. He returned to India in July, 1980. Thereafter, he did not attend office till he attained the age of superannuation on 31.3.1984.

3. It appears that the applicant raised the question of non-payment of various outstanding dues as well as pension and other retirement benefits, for the first time on 20.10.1986 through a Lawyer's notice addressed to the respondents. No reply was sent to him stating that he was still on deputation and that the pension was payable by the

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Punjab Police. Therefore, he filed a suit in the Court of the District Judge, Delhi in 1987 which was not maintainable as the jurisdiction of the Civil Court had been excluded by the provisions of the Administrative Tribunals Act, 1985. He filed the present application on 13.7.1989.

4. The applicant has claimed that apart from pension and other retirement benefits, he is entitled to the following benefits:-

- (i) Travelling Expenses from London to Delhi.
- (ii) Expenses for shipment of personal baggage from London to Bombay amounting to Rs.13,439.55.
- (iii) Customs clearance charges paid by the applicant at Bombay amounting to Rs.2,550/-.
- (iv) Port Trust charges/demurrage etc., amounting to Rs.3,216.40.
- (v) Transportation of personal effects from Bombay to Delhi (Home Station) by Truck amounting to Rs.1,850/-.
- (vi) Amount paid to the Cabinet Secretariat Group Housing Society Rs.5,000/- as a member.

Except for the entitlement of air-travel expenses, these amount comes to total of Rs.26,055.95.

5. As against the above, the respondents have stated in their counter-affidavit that the applicant was taken on the strength of I&AW w.e.f. 21.9.1968 on transfer from IB but was not absorbed in I&AW and that being a deputationist from Punjab Police, he should have submitted his pension papers etc. to the Punjab Police as in his case the Punjab Police are the cadre controlling authority and

competent to sanction pension etc. They have also stated that the following amounts are now recoverable from him:-

(i) TA Advance and handling	£ 37.00
(ii) Freight/charges paid to the shipping agent	£ 431.72
(iii) Telephones	£ 7.71
(iv) Packing charges	£ 54.79
	Total £ 531.22".

6. The respondents have, therefore, prayed that their counter-claim to the extent of £ 531.22 equivalent to Rs.14,342.94 be allowed.

7. We have carefully gone through the records of the case and have considered the rival contentions. The learned counsel of the respondents argued that the claims of the applicant, other than those relating to pension and other retirement benefits, are hopelessly barred by limitation as he should have moved appropriate legal forum within three years after his return to India from London in 1980. According to him, the Tribunal has no jurisdiction to adjudicate upon those claims. The learned counsel of the applicant contended that as a model employer, the Government should not raise the technical plea of limitation to defeat the just claims of the applicant. In our view, neither the applicant nor the respondents have substantiated their respective claims/for pension and other retirement benefits which are discussed hereinafter.

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8. As regards the claim for pension and other retirement benefits the learned counsel for the applicant argued that it is inconceivable, if not absurd, to take the stand that the applicant has continued on deputation for over 30 years from 1954 to 1984 and that in the facts and circumstances, specially after the applicant has been given more than one promotion in the Central Government, the applicant must be deemed to have been absorbed in the Central Government. The respondents have not substantiated their contention that the applicant was on deputation at the time of his retirement in 1984, by producing the relevant records.

9. In our opinion, in the absence of any evidence produced before us by either party, it may not be appropriate to conclude as to which is the better view - deemed absorption in the Central Government or continued deputation. The position is somewhat nebulous and we are in a grey area. For the purpose of pension and other retirement benefits, it will, however, be fair, just and reasonable to conclude that the status of the applicant is akin to that of a temporary Government servant. The Department of Personnel and AE have issued an OM on 30.12.1980 to the effect that a Government servant who has rendered

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temporary service of not less than 20 years shall be brought within the purview of CCS(Pension) Rules, 1972 and that the condition of holding a pensionable post in a substantive capacity shall be dispensed with in his case (See Swamy's Pension Compilation by F. Muthuswamy, 11th Edition, pages 2-3).

10. We are surprised to note that even the General Provident Fund amount belonging to the applicant has not been released to him. The averment in para 14 of the application in this regard has not been controverted by the respondents in their counter-affidavit. In case this has not been paid to him, the respondents are bound to release the same together with interest accrued thereon to date.

11. In the facts and circumstances of the case and having regard to the mutual equities, the application is partly allowed and the same is disposed of with the following orders and directions:-

(i) The respondents shall treat the status of the applicant as that of a temporary Central Government employee and they shall release his pension, gratuity and all other retirement benefits for the period of service from 1954 to 1984 together with interest at the rate of 12% from 31.3.1984 to the date of payment to him in accordance with the provisions of Government of India, Department of Personnel & AR OM No.38(16) - Pension Unit/30 dated 30th December, 1980,

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within a period of three months from the date of receipt of this order. The respondents shall immediately send to the applicant at the address to be indicated by him within a period of two weeks from the date of communication of this order, the necessary forms to be filled in by him for this purpose.

(ii) The respondents shall send to the applicant at his present address the General Provident Fund dues lying to his credit together with interest at the rate of 12% per annum upto date within one month from the date of receipt of this order, without insisting on any formalities.

(iii) We make no order in the claims and counter claims of both parties with respect to the other matters.

(iv) We make it clear that this will not be treated as a precedent.

There will be no order as to costs.

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(B.N. CHOUDIYAL) 11/10/91
MEMBER (A)

Parmanand
11/10/91
(P.K. KARHIA)
VICE CHIRMAN (J)