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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1645/1989
~~T.A. No.~~

199

DATE OF DECISION 14.8.91

SH. KHWAJA ABDUL KHALIQUE Petitioner
SHRI B.S. CHARYA Advocate for the Petitioner(s)
Versus
UNION OF INDIA Respondent
MRS. RAJ KUMARI CHOPRA Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. I.K. Rasgotra, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *qs*
2. To be referred to the Reporter or not? *qs*
3. ~~Whether the Members wish to see the fair copy of the Judgement?~~
4. ~~Whether it needs to be circulated to other Benches of the Tribunal?~~

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)

O. A. NO.1645/1989

DATE OF DECISION 14.8.91

SHRI KHWAJA ABDUL KHALIQUE

.....APPLICANT

VS.

UNION OF INDIA

.....RESPONDENT

CORAM

SHRI I.K. RASGOTRA, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

.....SHRI B.S. CHARYA

FOR THE RESPONDENT

.....MRS. RAJ KUMARI CHOPRA

J U D G E M E N T

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant on attaining the age of superannuation working in the senior scale (Grade-I) as Information Officer in Press Information Bureau, New Delhi retired w.e.f. 31.5.1987 (A/N). It appears that he was re-employed for a period of six months w.e.f. 1.6.1987 and was posted in the same capacity. His pay was ordered to be fixed in accordance with the instructions contained in O.M. No.A(24)/E-III/51 dated 25.11.1958 as amended from time to time. Again the term of re-employment was extended by the Government of India order dt. 30.11.1987 for one year from 1.12.1987 to 30.12.1988. Again by the order of the Government of India dated 8.12.1988, the period of re-employment of the applicant was further extended upto 31.5.1989. The applicant has a grievance that his service from 1.6.1987 to 31.5.1991

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was not treated as extension of service in the post of Information Officer, P.I.B., Ministry of I & B in accordance with the instructions contained in the Office Memorandum dated 18.5.1977 read with O.M. Dated 13.4.1988.

The applicant has prayed for the following reliefs :-

- (i) Quash the impugned action of the respondents in not treating the period from 1.6.87 to 31.5.89 as extension of service but instead illegally and wrongfully treating it as re-employment despite the clarifications given by the Deptt. of Personnel vide its memo dated 13.4.88;
- (ii) Hold that the retention of the applicant in service as Information Officer from 1.6.87 to 31.5.89 was extension of service and as such he is entitled to all the consequential benefits in terms of pay, increment, gratuity, pension and also other attendant benefits;
- (iii) Call upon the respondents to pay to the applicant the difference in amount of enhanced pay, increments, gratuity, pension etc. while treating the aforesaid period from 1.6.87 to 31.5.89 as extension of service right upto the stage of selection grade based on the revised seniority list.

2. The case of the applicant in brief is that he attained superannuation on 31.5.1987, but he was given extension in service till 31.5.1989 at different occasions, firstly for six months, then for one year and then for six months. The applicant during this period worked in the same as well as on the same post of Information Officer which is senior scale Grade-I post of Group-A under Ministry of

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Information and Broadcasting. The applicant made a representation on 27.5.1988 to the Government of India for treating his service after the date of superannuation, i.e., from June 1, 1987 onwards as extension of service and not as re-employment. He made another representation on August 18, 1988 to the same effect. On this representation of the applicant, the Government of India informed by memo dt. 17th October, 1988 that the benefit of the O.M. dt. 13.4.1988 where a decision has been given by the Government of India whether a service given after superannuation of a person should be treated as extension of service or re-employment, cannot be given to the applicant because the applicant was re-employed before 13th April, 1988. The said Office Memorandum is reproduced below :-

"With reference to their representations dated 18th August, 1988 for treating of re-employment as extension of service, Shri Khwaja A.Khalique and Shri B.L. Sondhi, Information Officers, Press Information Bureau, New Delhi are informed that their case was reconsidered in consultation with Department Personnel and Training. On re-examination, it has not been found possible to accede to their request as instructions contained in Department of Personnel and Training's O.M. No.26012/6/87-Estt.(A) dated 13.4.1988 are effective from the date of its issue and in their cases both the officers were re-employed before 13.4.1988."

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It is stated by the applicant that the said O.M. is a clarification and the clarification relates back to the date of the original O.M. of 1978. Thus the applicant has prayed for being given the benefit of the clarification dt. 13th April, 1988 (Annexure-P 4, Page-17 of the paper book). The respondents contested the application and stated that the application is misconceived. It is the case of the respondents that the applicant was re-employed against a vacant post during the period of 1.6.1987. to 31.5.1989 after his retirement on superannuation on 31.5.1987. It is stated that there is a distinction between the term re-employment and the term extension of service. In the case of re-employment, the concerned officer is to retire from service before he was re-employed. In the latter case, he will retire at the extended period of service. The O.M. dt. 13.4.1988 (Annexure-P 4) contains the fresh decisions and it is not a clarification regarding the interpretation of the term re-employment whereas it is in the same cadre post and in continuity of the date of retirement. The applicant, according to the respondents, is trying to distort the meaning and terms used in the order to suit his own interpretation. The decision was issued in April, 1988 and these instructions were not in existence at the time when the applicant was re-employed. It is further stated that the applicant started drawing pension

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immediately after retirement on 31.5.1987 and was paid other retirement benefits , which are essential, on commitment of retirement. Having availed all retirement benefits, he cannot claim further benefit of extension of service. Thus the case of the respondents is that the applicant was re-employed and had drawn retirement benefits also.

3. We have heard the learned counsel of the parties at length and have gone through the record of the case. The O.M. dt. 18.5.1978 which is referred to in the O.M. dt. 13.4.1988 (Annexure-P 4) has also been filed by the applicant. The O.M. dt. 13.4.1988 (Annexure-P 4) is also reproduced below :-

"Subject : - Grant of extension/re-employment to Central Government employees beyond the age of superannuation-Clarification regarding.

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The undersigned is directed to invite the attention of the Ministry of Finance etc. to the instructions contained in this Department's O.M. No.26011/1/77-Estt.(B), dated the 18th May, 1977 which stipulate the extension/re-employment of Central Government officers beyond the age of superannuation should be resorted to as very rarely and in exceptional circumstances purely in the public interest. Since the expression "extension/re-employment" has given rise to an impression that the terms "extension" and "re-employment" could be used interchangeably, a need has been felt to distinguish the cases in which retention of the services of Government servant beyond the date of his superannuation is to be treated as extension of service" as also those in which it shall be treated as "re-employment".

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2. The question has been examined carefully by the Government of India and the following decisions have been reached :-

- (i) Where the services of a Government servant beyond the age of his superannuation are required in the same cadre post which he is holding at the time of superannuation, then such retention shall be treated as "extension of service";
- (ii) Any proposal for retaining the services of a Government servant in the parent cadre beyond the normal age of superannuation in a post different from the one which he was holding at the time of superannuation, should be strongly discouraged. If, however, such retention is for very exceptional reasons considered to be unavoidable, the same shall be treated as "re-employment"; and
- (iii) Where the services of a Government servant on deputation to an ex-cadre post of holding an ex-cadre post are required by the competent authority beyond the date of his superannuation in his parent service, then such retention, be it on the post he was holding at the time of superannuation or in any other post shall for all purposes be treated as "re-employment".

In cases where the services of a Government servant are to be retained beyond the age of superannuation for reasons other than in public interest or where such proposals do not satisfy the criteria/conditions as laid down in the Office Memorandum cited above, the matter shall be referred to the Department of Personnel and Training for seeking specific clarification about the manner in which such retention is to be regulated.

3. The Ministries/Departments are requested to bring these instructions to the notice of all concerned."

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4. Thus by the above O.M. dt. 13.4.1988 (Annexure-P 4) in para-2 sub-para (i), it has been clarified that where the services of a Government servant beyond the age of superannuation are required in the same cadre post, which he his holding at the time of superannuation, then such retention shall be treated as extension of service. It is also expressly mentioned in sub-para (ii) of the above para-2 that if the services of a Government servant after the normal age of superannuation are in a post different from the one which he was holding at the time of superannuation, then the same shall be treated as re-employment. Applying the above test in the case of the applicant, then his case falls under sub-para (i) of para-2 of the above O.M. dated 13.4.1988 (Annexure-P 4) and as such the applicant is to be governed by the terms and conditions of extension of service. The respondents on the representation of the applicant informed him vide memo dt. 17.10.1988 quoted above observing that the instructions contained in the O.M. dt. 13.4.1988 (Annexure-P 4) are effective from the date of its issue. In fact, the applicant was very much in extended service on 8.8.1988 and 17.10.1988 (Annexures P-4 and P-8) respectively and was informed that the said O.M. does not apply to him. It cannot be said that when the applicant was still working on extension and the O.M. dt. 13.4.1988 (Annexure-P 4) was issued by the Ministry of Personnel at the time when the applicant was on extended

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service, then it cannot be said that the said O.M. will not apply to him. The reasoning taken in the reply given by the respondents is untenable. In para 4.5, it is stated by the respondents that the instructions contained in the O.M. dt. 13.4.1988 were not in existence at the time when the applicant was re-employed, but the employment of the applicant continued when the said O.M. was issued. The other objection taken by the respondents in their reply is that the applicant started drawing pension immediately after his retirement on 31.5.1987 and was paid other retirement benefits which are essential concomitants of retirement. Thus the case of the respondents is that having been employed earlier to the issue of the OM dt. 13.4.1988 and further having availed all retirement benefits, the applicant cannot claim further benefit of extension of service. It has been held by the Cuttack Bench of the Central Administrative Tribunal in 1987 (4) ATC p-143 (Gaya Prasad Mishra Vs. U.O.I.) that the clarification if any, issued subsequently to an ambiguous aspect, shall be effective from the date of original order and in the present case it is of 1978.

5. Regarding the withdrawing of the retirement benefits, the applicant cannot have both the benefits at one and the

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same time. In the event, his services are treated as extension of service and he traced an advantage out of it, then the applicant has to refund all those retirement benefits which could not have accrued to him, if, his service is treated as extension of service. However, the safeguard can be made by putting both applicant as well as the respondents on equitable basis and making the applicant to pay interest on the amount he has drawn in lumpsum on the date of the retirement, i.e. 31-5-1987 as on the basis of extension in service he has been discharged from service from 31-5-1989 and all those amounts paid to him as retirement benefits could only have been paid to him in June, 1989. In view of the above discussion, we are of the opinion that the case of the applicant is covered by the Memo dt. 13-4-1988 (Annexure-P 4) and since he has worked in the same cadre on the same post as Information Officer, then his services after superannuation shall be treated as extension in service upto two years, i.e. till 31-5-1989. The applicant shall be entitled to draw all benefits except promotion, seniority till that date. At the same time, the applicant has to pay interest on the amount of D.C.R.G. which he has withdrawn after reaching superannuation on 31-5-1987 and on the differential of the amount of commutation of pension received on 31.5.87 and which he would have received on 31.5.89 at the prevailing rate of interest at 10% as per Rule 68 of C.C.S. (Pension) Rules, 1972. He ~~will~~ could also refund interest at the same rate on the lumpsum received as leave encashment received by him on 31-5-1987. The

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learned counsel for the applicant has given up his claim by making a statement at the Bar for the grant of any promotion or selection grade or a position in the seniority list due to this extension of service.

6. The only point now remains that the applicant wants his services to be treated as extension of service from 1.6.1987 to 31.5.1989 and his relief in that regard is allowed with consequential benefits in terms of pay, increment, gratuity and pension. The applicant, however, shall pay to the respondents the interest @ 10% from the date of withdrawal of D.C.R.G. and other retirement benefits in lumpsum, i.e. differential amount of commutation of pension as on 31.5.1987 and on 31.5.1989 and amount of leave encashment, which could not have accrued to him before 1.6.1989. The interest on the said amounts shall be adjusted towards any amount due to the applicant. With the above directions, the present application is disposed of leaving the parties to bear their own costs.

J.P. Sharma

(J.P. SHARMA) 14.8.91
MEMBER (J)

I.K. Rasgotra

(I.K. RASGOTRA) 14/8/91
MEMBER (A)