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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1915/1989.

DATE OF DECISION: July 30, 1990.

Smt. Mundresh Bala Nagar	Applicant.
Shri M. Chandrasekharan	Counsel for the Applicant.
	V/s.	
Union of India	Respondent.
Shri K.S. Dhingra	Senior Administrative Officer - for the Respondent.

CORAM: Hon'ble Mr. P.K. Kartha, Vice Chairman (J).
Hon'ble Mr. P.C. Jain, Member (A).

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. To be circulated to all Benches of the Tribunal? *No*.

37/90
(P.C. JAIN)
Member(A)

37/90
(P.K. KARTHA)
Vice Chairman (J)

30.7.1990.

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Shri K.S. Dhingra	Sr. Administrative Officer - for the Respondent.

CORAM: Hon'ble Mr. P.K. Kartha, Vice Chairman (J).
Hon'ble Mr. P.C. Jain, Member (A).

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

JUDGEMENT

The applicant, who is widow of late Shri A.P. Nagar (who was initially appointed in the Army Headquarters) has filed this application under Section 19 of the Administrative Tribunals Act, 1985. She has assailed the communication letter dated 28.4.1989 (Annexure 11) in which her prayer for grant of family pension has been rejected. She has prayed for a direction to the respondents to give her all the pensionary dues on account of her late husband's services rendered with the Central Government and the ONGC, with interest at the rate of 12% per annum.

2. The admitted facts are that Shri A.P. Nagar, the applicant's husband, was appointed as L.D.C. in Armed Forces Headquarters on 22.3.1943. He was subsequently promoted to the grade of U.D.C. He was selected for appointment as Head Assistant in O.N.G.C. on 16.3.1959 and went on deputation to the O.N.G.C. initially for a period of one year, but the period of deputation was extended for a further period of five years. He continued on deputation with ONGC till 7.8.1965 and was absorbed

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therein with effect from 8.8.1965. He retired from ONGC on 31.12.1977 on attaining the age of superannuation. At the time of his initial selection and appointment in the ONGC, ONGC was a Central Government Department under the Ministry of Steel, Mines and Fuel. It was converted into a Statutory Autonomous Organisation with effect from 15.10.1959 in terms of ONGC Act (43 of 1959). By virtue of the rules framed under provisions of Section 31 of the Act, Shri A.P. Nagar became a deputationist to ONGC. His lien was maintained, during the entire period of deputation, against the permanent post held by him in AFHQ. On retirement from the ONGC, he was paid by the ONGC the following terminal benefits: -

- | | |
|---|---------------|
| (1) CPF including employer's contribution | Rs. 35,144.00 |
| (2) Gratuity for the period of service rendered in ONGC from 8.8.1965 to 31.12.1977 | Rs. 7,500.00 |
| (3) Terminal leave benefit under ONGC Rules | Rs. 1,268.55 |

The ONGC also paid to the Government, vide letter dated 5.11.86, an amount of Rs. 7,111.75 towards pension and leave salary contribution for the period Shri A.P. Nagar was on deputation with ONGC, i.e., 15.3.59 to 7.8.65. For the period of his service under the Government, i.e., from 22.5.1943 till 14.3.59, as also for the period of deputation, i.e., 15.3.59 to 7.8.65, for which the Government demanded and received pension and leave salary contribution from the ONGC, Shri A.P. Nagar or the applicant, who claims to be the sole legal heir of the deceased employee, has not been paid any pension, gratuity or family pension etc.

3. When the case came up for final hearing, there was no representation either from the applicant or from the respondents. We, therefore, decided to dispose of this application on the basis of the records of the case, which we have perused very carefully.

Clerk.

4. The applicant has relied on clause (d) of sub-rule (1) of Rule 27 of the Central Civil Services (Pension) Rules, 1972 and the provisions of O.M. No. F-2(6)-EV (a)/62, dated 5.11.64, issued by the Ministry of Finance (Department of Expenditure) (Annexure 3). Rule 27 of the Pension Rules *ibid* is not at all relevant, as it deals with the cases of interruption in service and in the case before us, no such issue is involved. O.M. dated 5.11.64 (*supra*) is on the subject of "SETTLEMENT OF PENSIONARY TERMS IN RESPECT OF GOVERNMENT EMPLOYEES TRANSFERRED TO AN AUTONOMOUS ORGANISATION CONSEQUENT ON THE CONVERSION OF A GOVERNMENT DEPARTMENT INTO AN AUTONOMOUS BODY".

It is provided herein that permanent Government servants so transferred will be given the option to either retain the pensionary benefit available to them under the Government rules or be governed by the rules of the autonomous body. This option will also be available to quasi-permanent and temporary employees after they are confirmed in the autonomous body. Where a Government servant has opted to retain the service conditions as under Government and the autonomous body has no pension scheme on their side, Government would pay them pension but will recover the capitalised value from the autonomous body on the retirement of the individual concerned. In the event of death of an optee of Central Government Rules, while in service of the autonomous body, family pension / Death cum Retirement gratuity to the family of the deceased will be admissible under the Central Government Rules and liability thereof apportioned on the basis of service rendered with that ^{or body and the} Government. Where the concerned Government servant opts to be governed by the rules of the autonomous body and the rules of that body provide for C.P.F. benefits, the Government would

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pay to that body C.P.F. contributions and interest thereon for the period of service under them in terms of the Finance Ministry's Office Memorandum No.2(33)/EV(A)/60, dated the 10th November, 1960. If the rules of the autonomous body provide for pension, the pension on retirement from the autonomous body would be payable to them by that body, and the pensionary liability will be allocated between Government and the autonomous body on service share basis. The Government will liquidate its share by paying the capitalised value of their share of pension to the autonomous body. It is also provided that the Government would have no objection in extending the benefit of these orders to the Government employees who have been transferred to autonomous bodies before the issue of these orders.

5. The applicant's case is that her husband was absorbed in the service of ONGC after it became an autonomous body and that O.M. dated 5.11.64 nowhere provides that the transfer of a Government servant to an autonomous body cannot take place after a Department of the Government is converted into an autonomous body. She, therefore, claims that her husband on retirement from the service of the ONGC on 31.12.1977 was entitled to monthly pension as well as other terminal benefits and after his death, she is entitled to family pension on the basis of nearly 22 years of service put in by her husband under the Government.

6. The case of the respondents is that the applicant is not entitled to the pensionary benefits as per the orders contained in O.M. dated 5.11.1964 *ibid*, but the case is covered by the Ministry of Finance (Department of Expenditure) O.M. No.2(33)/EV(A)/60, dated 10.11.1960 (Annexure R-I). Under this O.M., there is no provision

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for family pension and the Government servant is eligible for payment of an amount equivalent to Government's contribution to C.P.F. along with 2 per cent simple interest thereon. It is further stated that the applicant's husband did not opt for service conditions as under the Central Government, but had opted for service conditions under ONGC and for the service rendered by him in ONGC, he has already been provided CPF benefits and other terminal benefits on his retirement as per the rules and regulations applicable to employees of ONGC. On this account also, the applicant is not entitled to family pension. The respondents have also raised some preliminary objections. First objection is that the Union of India has been made respondent through Chief Administrative Officer, Army Headquarters, Ministry of Defence, while it should have been done through the Secretary of the Ministry of Defence. The second objection is that the application is barred by limitation as the applicant has prayed relief with effect from 1.1.78 and the Tribunal has no jurisdiction in cases where the cause of action arose before 1.11.82. It is further denied that the Ministry of Defence letter dated 28.4.1989 is the final order or that it has given rise to any cause of action.

7. We first take up the preliminary objections raised by the respondents. Section 22 of the Administrative Tribunals Act, 1985 provides that the Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, but shall be guided by the principles of natural justice. Further, the Chief Administrative Officer appears to have been the appointing authority of the applicant's husband under the Government. He will, therefore, be the competent pension sanctioning authority in this case. We are, therefore, of the view

that the respondents' contention that the application is bad because the Union of India has not been made a party through the Secretary of the Ministry concerned, is at best, in the facts and circumstances of this case, a procedural lapse.

8. As regards limitation, the claims for pension as well as for family pension arise from month to month and it is a continuing cause of action. In the case of Shri P.L. Shah Vs. Union of India & Others (1989 (2) SLJ 49), the Supreme Court held that the question of payment of subsistence allowance during the period of suspension was a recurring cause of action and the Central Administrative Tribunal was not right in refusing relief simply because the cause of action had arisen before 1.11.82. Moreover, the respondents have not disputed the application made by the applicant's husband in August, 1977 for payment of pension etc. and his reminders thereon. They have also not disputed the representations which the applicant has been making in the last nearly 10 years. It is also a fact that no order was passed rejecting the claim till letter dated 28.4.1989 (impugned order) was issued. In fact, even in this letter, it is stated that the "case for grant of pension to Late Shri A.P. Nagar and grant of family pension to you was referred to Department of Pension & PW, wherein they have stated that your case is not covered under the rules. However, they have suggested some alternative action in the matter which has been processed now. Further communication in the matter will follow in due course." Even on the date of hearing which came up on 23.7.90, we had no information whether any relief had been sanctioned to the applicant. If the respondents themselves had not been able to take any decision for a period of nearly 11 years, the applicant cannot be denied the relief, if any, due to her on this ground. In the facts and circumstances of the

case, we are unable to uphold the preliminary objection of the respondents on the point of limitation.

9. The main point for determination in this case is whether the orders contained in O.M. dated 5.11.64 (supra) are applicable or the orders in O.M. dated 10.11.1960 (supra) are applicable. We have already mentioned briefly the provisions contained in O.M. dated 5.11.64. We may now refer to the provisions of O.M. dated 10.11.60. This O.M. is on the subject of "Permanent transfer of Government Servants to Government Companies, Corporations - grant of retirement benefits". It is provided herein that a Government servant who is deputed or transferred to service under a body corporate owned or controlled by Government, or whose services are lent to such a body, should in the event of his permanent absorption in service under that body, be allowed retirement benefits in respect of his previous pensionable service rendered under Government and that the Government's liability in respect of the officer's pensionable service under them will be extinguished by payment of an amount equal to what Government would have contributed had the officer been on Contributory Provident Fund terms under Government, together with simple interest thereon at 2 per cent for the period of his pensionable service under Government, which is to be credited to his Contributory Provident Fund account with the autonomous body as an opening balance on the date of permanent absorption. The aforesaid decision will apply, however, only where the permanent transfer from Government service to an autonomous body is in the public interest and the transfer is to a Government or quasi-Government Corporation and not to a private institution. It is also provided therein that the concession may not be claimed as a matter of right but may be sanctioned at the discretion of Government in

individual cases where it is merited. In the letter dated 14.4.87 (Annexure 6A) and letter dated 2.9.87 (Annexure 6B), both from the office of C.D.A. (P), Allahabad and addressed to the respondents, it is stated that the case has to be dealt with under the provisions of O.M. dated 5.11.1964. The Government have, however, not agreed with this interpretation and have stated in their counter-affidavit that the case is covered by the O.M. dated 10.11.60. We are also inclined to agree with the stand of the respondents in regard to the applicability of O.M. dated 10.11.60. A careful reading of the O.M. dated 5.11.64 does show that this is applicable to Government employees who, to put it properly, stand transferred to autonomous organisations consequent on the conversion of the Government Department into an autonomous body; it is not meant to be applied to those Government servants who do not stand transferred as such on the date of conversion of the Government Department into an autonomous body. The words "transferred to an autonomous organisation consequent on the conversion of a Government Department into such a body" clearly show that the act of transfer of services is as a result of conversion. The conversion of ONGC from a Government Department under the Ministry of Steel, Mines & Fuel, into a statutory autonomous organisation took place with effect from 15.10.59. The applicant's husband was not an employee of ONGC when it was a Government Department; he had gone on deputation to that Department from his parent organisation e.g., A.F.H.Q. Even after conversion of ONGC from a Government Department into an autonomous body, he continued to be on deputation and his lien was maintained till 7.8.65. His status on absorption in the ONGC with effect from 8.8.65 also underwent a change inasmuch as he was taken

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as a temporary employee of the Commission with effect from the date of absorption, which is clear from the Office Order dated 16th December, 1965 issued by the Directorate of Administration, O.N.G.C., Dehra Dun (Annexure 1). If his services had stood transferred on the date of conversion of the O.N.G.C. into an autonomous body, the status of a permanent employee would not have been changed. We, therefore, hold that the provisions of O.M. dated 5.11.64 were not applicable to the husband of the applicant and his case was to be governed by the provisions of O.M. dated 10.11.60. The respondents, in their counter-affidavit, have also admitted that the terminal benefits in this case are payable in terms of the O.M. dated 10.11.60.

10. It is surprising that the respondents did not take any action in accordance with the provisions of O.M. dated 10.11.60. Though the applicant, in her rejoinder, has denied that her husband had opted for the rules of ONGC, yet she has not produced any evidence in support of her contention. The respondents have specifically stated in their counter-affidavit that the applicant's husband ^{opted for the} ~~adopted~~ the service conditions in ONGC. They have also not filed any document in support of this. However, the fact that the applicant's husband, on his retirement on superannuation from ONGC, received the terminal benefits from the ONGC under the ONGC rules without any protest, would show that he had in fact opted for the ONGC rules. Admittedly, the ONGC did not have the pension scheme and, therefore, the applicant's husband, on retirement from the ONGC, was not sanctioned any pension. The applicant, therefore, cannot claim family pension after the death of her husband. She is not entitled to family pension under the provisions of Rule 54 of the CCS (Pension) Rules also.

11. Rule 37 of the CCS (Pension) Rules, 1972 provides that "A Government servant who has been permitted to be absorbed in a service or post in or under a corporation or company

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wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government shall, if such absorption is declared by the Government to be in the public interest, be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Government applicable to him." The orders of the Government applicable to him as already discussed above, and on the admission of the respondents, ~~xxxxxx~~ were contained in O.M. dated 10.11.60. In supersession of all orders issued on the subject of 'Permanent Transfer of Central Government Servants to Autonomous Bodies', salient features of the existing instructions were issued in the Government of India, Ministry of Finance O.M. No.26(18)-E.V(B)/75, dated the 8th April, 1976. The provisions of these consolidated orders are applicable to the permanent Central Government employees permanently absorbed in the Central Public Sector Undertakings also where the permanent absorption in the public sector undertakings has taken place prior to 8th November, 1968. Those who were deputed or transferred to a body corporate owned or controlled by Government or whose services were lent to such a body, and they were absorbed permanently in service under that body with effect from a date prior to 16.6.1967 have to be paid an amount equal to what Government would have contributed had the officer been on contributory provident fund terms under Government together with simple interest thereon at 2% for the period of his pensionable service under Government. The interest as above has to be calculated on the total balance of contribution for the entire period of pensionable service of the Government servant rendered prior to his permanent absorption in an autonomous body. The amount is to be

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credited to his C.P. Fund account with the autonomous body as an opening balance on the date of permanent absorption. In the cases of those absorbed after 17.8.1964, the credit was to be given either after the Government servant had rendered five years service under that body (including any period of service rendered immediately before permanent absorption) or on the date on which he would have retired had he continued in Government service, whichever was earlier. This condition is also fulfilled in the case of the applicant's husband.

12. The only question which remains to be determined is whether the absorption of the applicant's husband in the service of the ONGC was in public interest or not. The respondents, in their counter-affidavit, have nowhere stated that in this case, the absorption was not in public interest the mere fact that the applicant was asked to resign before getting permanently absorbed in the service of ONGC, cannot be taken to mean that the absorption was not in public interest. In any case, if the absorption was not in public interest, a declaration to that effect should have been made by the Government when the applicant's husband was allowed to be absorbed in the service of ONGC and his lien was terminated. The distinction between absorption in "public interest" and ^{on} "own volition" was abolished vide orders contained in the Department of Personnel O.M. No.28-16/4/76-Ests. (C), dated the 25th March, 1977.

13. It is true that in the O.M. dated 10.11.60, the manner of extinguishing the Government's liability in respect of the officer's pensionable service under them, has been stated in para 3 thereof to be a "concession" which cannot be claimed as a matter of right but may be sanctioned at the discretion of the Government in individual cases where it is merited, yet we are of the considered view that at this stage it would not at all be proper and

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equitable for the respondents to deny to the applicant's husband the benefit of the provisions of O.M. dated 10.11.1960, which on their own admission, is applicable to him. Any such decision, in our view, would be arbitrary and violative of Article 14 of the Constitution. Retirement benefits which accrued to the applicant's husband for pensionable service under the Government and which was approximately 22 years, cannot be taken away except in accordance with the provisions under the law. The fact that the respondents realised as late as in 1986 from the ONGC leave salary and pension contribution for the deputation period also shows that they had every intention of sanctioning the retirement benefits to the applicant's husband for the service rendered by him under the Government. Audit authorities had also recommended in their two letters already referred to above for sanction of the retirement benefits for the service rendered under Government.

14. In view of the above discussion, the application is partly allowed as per the following directions: -

The respondents shall sanction and pay pensionary benefits to the legal heir(s) of the deceased employee for the period of service put ⁱⁿ under the Government and which qualifies for pensionary benefits, within two months, comprising the following: -

- (a) An amount equal to what the Government would have contributed had the officer been on Contributory Provident Fund terms under the Government;
- (b) Simple interest at the rate of 2 per cent per annum on the above amount for the entire period of pensionable service put in by the late husband of the applicant under Government prior to his permanent absorption in the ONGC; and

Clerk.

(c) Compound interest at the rate applicable to the CPF Account in the ONGC for the period from 8.8.1965 till the date of payment, on the amount comprising (a) and (b) above.

The period of two months for compliance of the above directions will count from the date of receipt of a copy of this order by the respondents. We, however, leave the parties to bear their own costs.

(Signature)
30/7/90
(P.C. JAIN)
Member(A)

(Signature)
30/7/90
(P.K. KARTHA)
Vice Chairman (J)

30.7.1990.