

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO. 2479/89

DATE OF DECISION : 13.04.92

SHRI UMADEO

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

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

FOR THE APPLICANT

... SHRI M. CHOUDHARY

FOR THE RESPONDENTS

... SHRI A.K. SIKRI

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

JUDGEMENT

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

The applicant retired as Assistant Registrar, DRI has prayed for grant of pensionary benefits from the date of superannuation, i.e., w.e.f. 12.11.1973 and assailed the order dt.12.12.1988 whereby the representation of the applicant dt.7.10.1988 was rejected informing the applicant that he is not entitled to draw pensionary benefits w.e.f.12.11.1973 in terms of para-4 of Government of India, Ministry of Personnel and Public Grievances and Pension (Department of Pension and Pensioners' Welfare) O.M. No.28/2/85-P-PW dt.22.2.1988.

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2. The applicant has prayed for payment of pension in respect of the period from 13.11.1973 to 28.3.1984 and interest on the same with all arrears.

3. The applicant joined the Office of Controller of Military Accounts as Treasury Clerk at Ravalpindi in April, 1941. In December, 1948 the applicant came on deputation to Ministry of Rehabilitation, New Delhi. The applicant was working in the Refugee Handicrafts as Accountant-cum-Cashier and that establishment closed w.e.f. 31.3.1952. Thereafter the applicant was appointed w.e.f. 29.1.1953 as Assistant Settlement Officer. The applicant was declared quasi permanent on 1.7.1959. The applicant was declared surplus and was placed in the Surplus Cell and subsequently was selected for appointment as Assistant Secretary, Indian Lack Cess Committee, Ranchi w.e.f. 11.9.1961 under the Ministry of Food and Agriculture. He was confirmed in ICAR w.e.f. 1.4.1971. A little before his retirement, the applicant requested the Government of India for allowing him to continue in service for pension, but his request was turned down. His claim was accepted for pension for his service from April, 1941

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to September, 1961 and the applicant was not covered by the Department of Personnel order dt. 29.8.1984. On the basis of the judgement of the case of R.L. Marwah decided by the Hon'ble Supreme Court on 12.8.1987, the Government of India issued order on 22.2.1988. By this order, it has been specified that the arrears of pension, if any, which became due to the concerned pensioners would be dispersed to them w.e.f. 29.8.1984, i.e., the date of the Government order. The contention of the applicant is that had he claimed the benefit of service rendered in the ICAR from 11.9.1961 to the date of superannuation, his case would have been slightly identical with that of Shri Marwah. However, his request was turned down by the impugned order and the applicant has been granted pension w.e.f. 29.8.1984 by taking into account the period from 14.4.1941 to 7.9.1961 during which period the applicant worked under Government of India and the period from 11.9.1961 to 12.11.1973 during which he worked in ICAR. The applicant has not been granted pension in respect of the period from 12.11.1973 to 29.8.1984 and so he has prayed the same relief in this application under Section 19 of the Administrative Tribunals Act, 1985.

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4. The respondents contested the application and took the preliminary objection that the application is barred by time as the applicant has claimed the payment of pension in respect of the period from 13.11.1973 to 28.3.1984. It is further stated that ⁱⁿ ICAR before the introduction of the pension scheme, the scheme of CPF was applicable. On the introduction of the pension scheme, the staff of the respondents ICAR were requested either to opt for CPF or the pension scheme. The applicant opted for CPF scheme (Annexure R1).

Accordingly on retirement, the applicant was not entitled to pension. The applicant was, therefore, paid ICAR's share of contribution towards CPF by the respondents which he accepted as well. Although the applicant was not entitled to pensionary benefits, but taking into consideration the hardships to him, in view of the repeated representations, the matter was taken up by the Department of Pensions to grant him the benefit in accordance with the CM dt. 2.8.1988 in relaxation of normal rules. He was accordingly sanctioned pensionary benefits in accordance with the said Memo which could be given only w.e.f. 29.8.1984. This grant of pension is only on compassionate ground. Further the relief sought by the applicant for payment of arrears of pension prior to 29.3.1984 and interest thereon is not covered under the

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relevant rules/instructions. Thus it is said that the applicant has no case.

5. It is further said that the applicant resigned from his appointment in Military Accounts Department. Resignation entails ~~for future or past service~~ ^{forfeiture of}. As such the question of counting his past service in the Military Accounts Department does not arise. Further the applicant was appointed as a fresh recruit in the Indian Back Cess Committee. As such the past service cannot be counted (Annexure R2). Secondly under the rules, service rendered by the employee under the Government who go over to the service of autonomous body does not count towards pension except in the case of essential employees. As the applicant came from the Government service to ICAR, the services rendered by him in the Ministry of Rehabilitation cannot be considered towards pension. Subsequently the Department of Personnel issued OM dt. 29.8.1984 (Annexure R4) and according to the provisions of the OM, the service rendered by the employees in Central Government absorbed in autonomous bodies can be counted in the autonomous bodies subject to certain conditions. However, the provisions of the OM could not be made applicable to the

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applicant's case as it was applicable to the persons who have retired on or after the date of issue of the said OM dt.29.3.1984. Thus according to the respondents, the applicant has no case.

6. I have heard the learned counsel of the parties at length and have gone through the record of the case. It is not disputed that the applicant himself has given his option of 13.12.1974 with reference to the Memo dt.12th December and the applicant opted for ICAR contributory Provident-cum-Gratuity Scheme. It means that the applicant has not opted for pensionary benefits. The applicant was consequently informed by the letter dt.28.11.1973 that the case for counting of his past service rendered in Ministry of Rehabilitation for the purposes of pension etc. cannot be acceded to. Again the applicant was informed by the Memo dt.28.3.1985 (Annexure R2) that in so far as service rendered by him under ICAR is concerned, he has been paid Rs.10,867 as ICAR contribution towards CPF as he had opted for Council's CPF scheme. So he has no claim for pension so far as ICAR service is concerned. Thus the applicant has been agitating the matter time and again and he has been informed finally in 1985. The present application has been filed by the applicant on 7.12.1988 though the defects ^{in the application removed} ~~were found~~ on 11.2.1989. There

(12)

is no reason whatsoever of coming so late before the Tribunal for a cause of action which has arisen even 3 years before, i.e., in 1982 from the date of commencing of the Administrative Tribunals Act, 1985. The objection taken by the respondents that the application is barred by time holds ground in view of Section 21(1)(b) of the Administrative Tribunals Act, 1985. According to the law laid down by the Hon'ble Supreme Court, in the case of Dr. S. S. Rathore Vs. State of M.P., AIR 1990 SC p-10, repeated representations do not extend the period of limitation. In the rejoinder, the applicant only stated that his claim has been finally turned down on 12.12.1988, but communication dt. 12.12.1988 was issued to the applicant on the representation dt. 7.10.1988. While the applicant has been clearly informed much earlier by the letter dt. 28.3.1985 (Annexure R2) that he is not entitled to any pensionary benefits so far as ICAR & DARE are concerned. That is a well speaking order. As such the present claim of the applicant is barred by time.

7. However, since it is a pensionary matter, it is also to be considered on merit in the light of the OM dt. 22.2.1988 on the subject of mobility of personnel between Central

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Government departments and autonomous bodies-counting of service for pension. The instructions issued by the OM are effective from the date of issue, i.e., 29.8.1984. It is further stipulated in the OM that this revised policy is in modification of the OM dt. 29.8.1984 (Annexure R4 to the counter). By this OM of 1988, it was decided at the pleasure of the President that the benefit under the instructions contained in the order dt. 29.8.1984 should be extended to all those, who retired prior to the issue of the said orders and who are otherwise eligible for the benefit of counting of service thereunder. It is further stipulated that the arrears of pension, if any, which became due to the concerned pensioners would be dispersed to them w.e.f. 29.8.1984 and further they would not be entitled to get any relief in respect of the period prior to 29.8.1984. Now it is because of this modified provision of the OM dt. 29.8.1984 (Annexure R4) that the case of the applicant has been considered on the relaxation of rules. The applicant cannot, therefore, harbour any grievance on that account. The learned counsel for the respondents has rightly argued that the applicant is trying to take undue advantage of the leniency shown by the respondents in all these bonafides to help the applicant. Firstly, the applicant was not entitled to the pensionary benefits as he had not opted for the scheme (Annexure R1), yet his case was considered in the light of the OM dt. 29.8.1988 in relaxation of the normal rules.

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3. Thus on merits also, the applicant has got no case.

9. The learned counsel for the applicant could not show any relevant circular or instructions which covers the case of the applicant. The learned counsel wants only to rely on the decision of R.L.Marwah's case (W.P. No.3739/85) decided on 12.8.1987 by the Hon'ble Supreme Court. In that case only it was held that para-7 of the Government Order of the OM dt.29.8.1984 (Annexure R4) against persons in the position of the petitioner to deny them the benefit of the past service for the purpose of contributing the pension. Para-7 of the OM of 1984 provided that these orders will take effect from the date of issue and the revised policy as enunciated above will be applicable to those employees who retire from Government/autonomous service on or after the issue of these orders (Emphasis Applied). Thus even according to the judgement in the case of R.L. Marwah, the OM dt.22.2.1988 gives the benefit to the applicant only w.e.f. 29.8.1984, i.e., the date of issue of that OM. The applicant cannot be placed in a better position than those who are already governed by the OM dt.29.8.1984.

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10. In view of the above, the present application is devoid of merit and is dismissed leaving the parties to bear their own costs.

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J. P. Sharma -
13.4.92
(J. P. SHARMA)
MEMBER (J)