

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A.No.1782/90

DATE OF DECISION 2.5.91

SHRI A.R.HALASYAM

-- APPLICANT

VS

UNION OF INDIA & ORS.

-- RESPONDENTS

C O R A M

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

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

FOR THE APPLICANT

-- IN PERSON

FOR THE RESPONDENTS

-- SHRI P.H.RAMCHANDANI

1. Whether Reporters of local papers may be allowed to see the judgement? Y

2. To be referred to the Reporter or not? Y

J U D G E M E N T

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

The applicant now serving as General Manager (Finance) in Maruti Udyog Ltd. has filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order dated 5th October, 1989 (Annexure-A) issued by the Assistant Controller General of Defence Accounts (Administration), denying him the benefit of the judgement of the Principal Bench, Delhi in O.A.No.615/87 dated 5th May, 1989 cannot be extended to the applicant.

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2. By way of relief, the applicant prays that the applicant's settlement dues may be paid to him in terms of the revised pay scale given effect from 1.1.1986, in as much as the detailed terms and conditions governing the applicant's absorption in Maruti Udyog Ltd. were issued on 9.1.1986.

3. The facts of the case are that the applicant joined the Indian Defence Accounts Service in June, 1964. On 6th September, 1985, the applicant joined as General Manager (Finance) in Maruti Udyog Ltd. on immediate permanent absorption basis and he was relieved from the parent department on the same day but the detailed terms and conditions could not be issued till 9th January, 1986. Before this date, the Fourth Pay Commission's recommendations were made applicable w.e.f. 1st January, 1986. The Fourth Central Pay Commission brought in wide ranging and substantial benefits not only in the Pay and Allowances of the Central Government Employees but also the retirement benefits namely, gratuity, pension etc. If these benefits are made applicable to the applicant, the applicant will be first timed in the revised scale of pay w.e.f. 1.1.86

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and consequently will be entitled larger amount of retirement benefits in terms of such benefits as ~~xxx~~ D.C.R.G. and pension. The applicant has relied on decision of the Principal Bench in C.A. No.615/87-Shri S.K. Sharma Versus Union of India decided on 5th May, 1989 wherein it was decided that the date of permanent absorption of Shri S.K. Sharma in the HUDCO shall be taken to be the date of issue of detailed terms and conditions, i.e., in the reported case, on 28.6.1985 and that he shall be entitled to all retirement benefits on this basis. It was further held that the period from 4.2.1985, i.e., from the date of joining in HUDCO till the date of issue of detailed terms and conditions shall be treated on deputation.

4. The applicant herein made representation citing the above case, but to no effect. Hence this application for the aforesaid relief.

5. The respondents contested the application submitting that the application in fact attacks the order dt. 9.1.86. The challenge to order dated 5.10.1989 is only a course to get ^{over} only the limitation. The applicant had severed his relation with the parent department on 6th September, 1985 forenoon, and in the order issued by the department relieving him it was clearly mentioned that the applicant

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may join the new post on immediate absorption basis.

The cause of action, therefore, arose on the aforesaid date. It is further stated that the case of applicant cannot be equated with that of Shri Sharma, applicant in O.A. No.615/87 on the following grounds.

1. In the case of Shri Sharma, the appointment was for a period of two years in the first instance while in the case of the applicant, there was no condition of initial period as such and the absorption was to take effect with immediate effect.
2. Shri Sharma had requested before 19th March, 1985 the Ministry to give effect to his retirement from 1st April, 1985, but there is no such circumstance in the present case.
3. The link of Shri S.K. Sharma from the Central Govt. Employees' Group Insurance Scheme was not severed from 4.2.85, but from a later date, i.e., 28.6.1985. In the case of the applicant, all links with the Central Govt. stood severed from the date preceding the date of his permanent absorption, i.e. 6.9.1985.
6. In Shri Sharma's case, reliance has been placed on three factors by the Tribunal :-

(i) Absorption was initially for a period of two years in the first instance on immediate absorption basis.

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(ii) The contribution from the applicant towards Central Government Employees' Insurance Scheme was recovered till 28-6-1985; and on the other hand in the case of applicant he was allotted Staff No. 127132 in Maruti Udyog from the date of his appointment on immediate permanent absorption basis with effect from 9-9-1985 and applicant had acquired the lien in Maruti Udyog Ltd. on the same date.

6. The respondent has also referred to Rule 37 CCS (Pension) Rules 1972 which lays down that "a Government servant permitted to be absorbed in service under a Corporation or Company wholly or substantially owned or controlled by the Government on or under a body controlled or financed by the Government shall be deemed to have retired from service from the date of such absorption." It is therefore prayed that the application be dismissed as devoid of any merit.

7. We have heard the learned counsel of the parties at length and have considered the matter carefully. As the point taken by the learned counsel for the respondents is that the application is barred by limitation as the applicant has in fact assailed the order dated 9th January, 1986, the present application has been filed on 11-12-1989, and so, the application is hit by Sec.21 of the Administrative Tribunals Act, 1985. The applicant had made representation on 21st

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of August, 1989 (Annexure E) and in the said representation the applicant has desired that the period intervening between 6th September and 8th January, 1986 be treated as a period spent on deputation in the Maruti Udyog Ltd, where the applicant has been absorbed on immediate basis permanently with effect from 6-9-1985. The relief claimed in the present application by the applicant is that the recommendation of the Fourth Pay Commission effective from 1-1-1986 be made applicable to him, inasmuch as, the terms and conditions governing applicants' absorption in Maruti Udyog Ltd. were determined and issued only on 9-1-1986. There is no reference of memo dated 5th October, 1989 in the relief clause. The memo dated 5th October, 1989 is only a communication of the order to the applicant on his representation dated 21st August, 1989. In fact the applicant after the receipt of the memo dated 9th January, 1986 should have come within time before the Tribunal as in Para 1 of this memo (Annexure-C) clearly states that the permanent absorption of the applicant in Maruti Udyog shall take effect from the forenoon of 6th September, 1985. In Section 21 of the Administrative Tribunals Act, 1985 a Tribunal shall not admit an application if the same is made after the expiry of one

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year from the date of the cause of action or grievance or six months from the date of the representation. Thus the present application is barred by limitation.

8. The applicant has not prayed for condonation of delay caused in filing this application. The applicant has actually assailed the order dated 5th October, 1989, which was passed on the representation of the applicant dated 21st August, 1989. In this representation (Annexure E) the applicant has requested that the benefit of the case of Shri S.K. Sharma C.M.D. HUDCO be accorded to him. This case was decided in May, 1989. In this Shri S.K. Sharma's case the Principal Bench of C.A.T. held that the date of retirement and permanent absorption shall take effect from the date of issue of the formal order of retirement. The judgement of S.K. Sharma's case was passed taking the judgement of J. Sharma versus Union of India/364/86. The respondents in their reply to above representation have distinguished the case of S.K. Sharma from the case of the applicant and have given the reasons in the order dated 5th October, 1989 (Annexure A).

9. We have gone through the facts of S.K. Sharma's case (supra) and we find that the facts of S.K. Sharma

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are different. inasmuch as the appointment of S.K.Sharma was on immediate absorption basis initially for a period of two years but in the present case the absorption of the applicant has been immediately on permanent basis and not for initially period of two years. The broad lines of distinction have also been referred to in para 5 of the judgement as stated by the respondents. We are in agreement with the same.

10. In view of the above facts we find that the present application is hopelessly barred by limitation and is dismissed leaving the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA) 2/5/91
MEMBER (A)

I. K. Rasgotra
(I.K. RASGOTRA) 2/5/91
MEMBER (A)