

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

Regn. No. OA-502/89

Date of decision: 16.2.1993.

Shri A.D. Luthra

.... Applicant

Versus

Director General,
Employees State
Insurance Corporation

.... Respondents

For the Applicant

.... Shri S.C. Mehta, Advocate

For the Respondents

.... Shri G.R. Nayyar, Advocate

CORAM:-

HON'BLE SHRI P.K. KARTHA, VICE CHAIRMAN(J)

HON'BLE SHRI B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be

allowed to see the judgement? *Yes*

2. To be referred to the Reporters or not? *Yes*

JUDGEMENT

(of the Bench delivered by Hon'ble Sh. P.K. Kartha

Vice Chairman(J)

The applicant, who has worked in the Employees State Insurance Corporation ('ESIC' for short), filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the benefit of monthly pension scheme to him with effect from the date of his retirement from ESIC on 17.3.1977. In addition, he has prayed for all consequential

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benefits, including interest w.e.f. 18.3.1977 to 22.2.1987 on gratuity due to him and w.e.f. 18.3.1977 to 5.2.1987 on the monthly accumulated value of pension. He has also prayed for transfer of Earned Leave due to him, or its encashment in lieu thereof together with interest w.e.f. 18.3.1977 till the date of payment.

2. We have gone through the records of the case and have heard the learned counsel for both the parties. The applicant has worked as an Upper Division Clerk in the E.S.I.C. from 13.6.1962 to 17.3.1977. He applied for the post of an Accountant in the Project and Equipment Corporation of India Ltd. through proper channel. Consequent upon his selection, he submitted his resignation and was relieved on 17.3.1977. He joined Project and Equipment Corporation of India Ltd. on 18.3.1977. He worked there upto 29.7.1983 and thereafter joined Maruti Udyog Ltd., which is another Government of India undertaking where he was absorbed permanently.

3. The applicant who has rendered about 15 years' service in the E.S.I.C., has contended that he is entitled to all the terminal benefits such as pension, gratuity and transfer of accumulated E.L. in accordance with the Government of India's Rules as applicable to the employees of the E.S.I.C.

4. On 21.3.1978, the applicant made a representation

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requesting for retirement benefits as he was a permanent L.D.C. covered under Pension Rules and as he had rendered 15 years of service. He again sent a reminder to the ESIC through his letter dated 10.10.1984, which was after six years of his earlier representation. He sent several other representations on 13.9.1985, 25.1.1986, and 22.10.1986. He has stated that the respondents ultimately sanctioned a sum of Rs. 2,929/- towards gratuity on 20.2.87 and the commuted value of pension for Rs. 15,025/- on 5.2.87. According to him, there was a delay of ten years which caused considerable harassment and financial loss to him by way of loss of interest.

5. The applicant has stated that the respondents did not obtain his option for receiving the monthly pension and D.C.R.G. under the Government of India Rules and unilaterally decided to pay lump sum commuted value of pension. He has alleged that they forced him to accept the aforesaid amounts in full and final payment of pensionary benefits by their O.M. dated 29.4.1986. It was only after the issue of the aforesaid sanctions that he was sent for medical examination in June, 1986 and a medical report was received on 10.9.1986.

6. The respondents have stated in their counter-affidavit that as the applicant duly accepted the retirement benefits sanctioned on 29.4.1986, the application is barred by

limitation. Apart from this, they have contended that he has been given the retirement benefits as admissible under the Rules. With regard to the transfer of accumulated E.L., they have stated that this is admissible only in the case of absorption of deputationists in public sector undertakings, which was not so in the instant case where the applicant had gone to a public sector undertaking of his own volition after resigning from the E.S.I.C.

7. The respondents have stated that the benefit of retirement of employees of autonomous/statutory bodies going to other autonomous/statutory bodies or public sector undertakings, was introduced by Government of India O.M. dated 8.9.1983. Till then, the applicant was not entitled to those benefits and that is why he remained silent upto 10.10.1984 and did not make any representation after the request made in his letter dated 21.3.1978 for keeping his lie in retrospectively w.e.f. 18.3.1977 was rejected by the respondents on 22.9.1978 as 'inadmissible'. After the receipt of his letter dated 10.10.1984, the respondents examined whether the applicant was entitled to these benefits, particularly when he had switched over to another public sector undertaking in the meantime. This issue was decided only on 30.1.1986 after consultation with the Government of India. Thus, according to them, there was no undue delay in payment of retirement benefits.

8. After the hearing was concluded, the learned counsel for the respondents has filed a memorandum dated 10.9.84 issued by the ESIC whereby the Office Memorandum issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms on 29.8.1984, was made applicable to the employees of the ESIC. These orders were to take effect from the date of issue of the Memorandum, i.e., 29.8.1984. According to the said memorandum, the pension liability of the Government/autonomous body will be discharged by paying a lump sum amount as a one-time payment for the period of service rendered upto the date of absorption in the autonomous body/Government, as the case may be. The lump sum amount of the pro rata pension will be determined with reference to the commutation table laid down in the C.C.S. (Commutation of Pension) Rules, 1981.

9. On 9.10.1986, the applicant had given an option to the following effect:-

"I request that my pension may please be commuted with reference to Rule 37-A (a) (b) and I surrender the right of drawing 2/3 of my pension. The above undertaking has also been given in my applications for pension which should have been treated as implied. However, requirement, as desired, has been fulfilled".

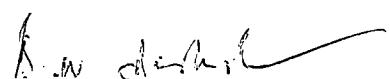
10. Rule 37-A of the C.C.S. (Pension) Rules, 1972 deals with payment of lump sum amount to persons on absorption in or under a Corporation, Company or body. Rule 37-A provides, inter alia, that where a Government servant referred to in Rule 37, elects the alternative of receiving the Death-cum-Retirement Gratuity and a lump sum amount in lieu of pension, he shall, in addition to Death-Cum-Retirement Gratuity, be granted a lump sum amount not exceeding the commuted value of 1/3 value of his pension as may be admissible to him in accordance with the provisions of the Civil Pension (Commutation) Rules and terminal benefits equal to the commuted value of the balance amount of pension left after commuting 1/3 of pension to be worked out with reference to the commutation tables obtaining on the date from which the commuted value becomes payable subject to the condition that the Government servant surrenders his right of drawing 2/3 of his pension.

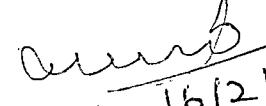
11. As the applicant had exercised the option to receive lump sum amount envisaged in Rule 37-A of the CCS(Pension) Rules, we are of the opinion that his claim for payment of monthly pension on pro rata basis, is not well-founded. We also do not see any undue delay in releasing the lump sum amount to the applicant as the same became applicable only after the ESIC adopted the Government Rules on the subject by their Memorandum dated 10.9.1984.

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12. The claim of the applicant for carrying forward of his Earned Leave or its encashment, is also not legally tenable as this benefit is available only in cases where a Government servant is transferred to a statutory/autonomous body in public interest permanently.

13. In the light of the above, we see no merit in the present application and the same is dismissed. There will be no order as to costs.


(B.N. Dhoundiyal) 16/2/93
Administrative Member


16/2/93
(P.K. Kartha)
Vice-Chairman (Judl.)