

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No.1367/88

New Delhi this the 16th Day of November, 1993.

Hon'ble Sh. B.N. Dhoundiyal, Member(A)

Sh. J.K. Dewan
S/O Sh. Girdhari Lal Dewan
R/O E-63, Greater Kailash Enclave-I, ... Petitioner
New Delhi-110 048.

(By advocate Sh. V. Prasad)

versus

1. Director General of Works,
C.P.W.D., Govt. of India,
Nirman Bhavan, New Delhi.
2. Executive Engineer,
'C' Division, C.P.W.D.,
I.P. Bhawan, New Delhi. ... Respondents

(By advocate Sh. M.L. Verma)

ORDER(ORAL)

This O.A. has been filed by Sh. J.K. Dewan who voluntarily retired from the post of Asstt. Engineer, CPWD for calculating his last pay and other pensionary benefits by taking into account the pay drawn by him while working in the office of the Central Provident Fund Commissioner.

The applicant was working as Section Officer, CPWD on 1.10.1975 when he was deputed to the office of Central Provident Fund Commissioner. After the expiry of deputation period of 4 years he was not relieved by the Central Provident Fund Commissioner and had to work for more than 11 years. His over stay was not regularised resulting in great agony to him and denial of promotion in the parent department. He submitted an application for voluntary retirement on 4.2.1986 and also applied for leave. He reported to the office "Director General of Works" on

1.12.1986 and the Director General of Works did not agree to post the applicant in Delhi and the applicant applied for voluntary retirement on 1.12.1986 as also leave concurrent with the notice period. The voluntary retirement was accepted only on 19.10.1987. At the time of the filing of the O.A. he had not received his retiral benefits but the latest position has been given by him in the rejoinder. This shows that the amount released as leave salary gratuity commutation of pension and monthly pension are much less than actual due. The whole basis of calculation is what his pay would have been in the parent department rather than the last pay drawing in the office of the Provident Fund Commissioner from where he proceeded on leave and then retired. He has prayed that the respondents be directed to pay him pension with effect from 19.10.1987 @ Rs.1,940/- p.m. and his claims of gratuity, leave encashment, commutation etc. also be calculated on the basis of his emoluments drawn in the office of the Provident Fund Commissioner.

In the counter filed by the respondents, the main averments are these. An amount of Rs.51,929/- has already been paid to the applicant as GPF. As the applicant had been on deputation for abnormally long period was difficult to locate or restructure the record. This is why grant of other pensionary benefits were delayed. Ex post facto approval was issued on 12.2.1988 for regularising the extended period of deputation. They have denied that another resignation was submitted by the applicant on 4.2.1986 though a notice for voluntary retirement on this date was received, which could not be finalised as the issue regarding regularisation of his deputation with EPF

Sw

Organisation was still pending. He was relieved from the EPF Organisation on 24.11.1986 vide order dated 24.10.1986. He was required to report himself for duty in Nasik Central Sub-Division. He never joined on this post and gave a notice for voluntary retirement on 01.12.1986 on attaining the age of 50 years. He also requested for 60 days HPL. His notice for voluntary retirement was not accepted because issue of regularisation of his over stay with EPF Organisation could not be decided by that time. Ultimately he was allowed to retire w.e.f. 19.10.198.

Heard the learned counsel for both the parties. The learned counsel for the respondents had drawn our attention to a letter dated 11.11.1993 from the D.G. CPWD stating that all dues pending i.e. DCRG, commutation of pension, GPF, leave encashment and withheld gratuity of 10,000/- has been paid. However, as pointed out by the learned counsel for the applicant, the remaining issue is as to what should be average emoluments to be taken into account in fixing the pension of the applicant and consequently of the other pensionary benefits. He has also drawn our attention to Govt. of India decision No.4 vide O.M. dated 30.12.1983 appended to Rule 34 which lays down the procedure for determining the emoluments for all purposes of pension in case of Government servant who retired without returning to the parent department. The relevant portions of the decision are extracted below:-

"The emoluments for the leave period for the purpose of calculation of retirement benefits should be taken as what they would have been, had he not been absent from duty from the post he was holding under the borrowing Department before he proceeded on such leave."

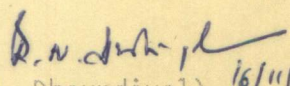
3
DW

14.

A perusal of the counter shows that the applicant had not joined the department being relieved from the Provident Fund Commissioner Department. His leave was followed by retirement.

In the facts and circumstances of the case, the application is partly allowed and the respondents are directed to fix his pension and other pensionary benefits in accordance with the Decision no.4 appended to Rule 34 of the 34 CCS(CCA) Pension Rules. This exercise should be carried out within a period of four months from the date of receipt a copy of this order. The respondents are also directed to pay interest on delayed payment of gratuity and other dues in accordance with the rules.

There shall be no orders as to costs.


(B.N. Dhoundiyal) 16/11/93

Member(A)

/vv/