

CAT/3/12
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 75/88
T.A. No.

198

DATE OF DECISION 25.7.89

Shri Virendra Kumar

Petitioner Applicant.

Applicant in person.

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri M.L. Verma

Advocate for the Respondent(s)

COPAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

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. Whether it needs to be circulated to other Benches of the Tribunal? *No*

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI.

Regn. No. OA 75 of 1988

Date of decision: 25.7.89

Virendra Kumar

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Applicant

Vs.

Union of India

Respondents

PRESENT

Applicant in person.

Shri M.L. Verma, counsel for the respondents.

CORAM

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman.

(Judgement of the Bench delivered by Hon'ble Mr.B.C.Mathur, Vice-Chairman)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri Virendra Kumar, former Assistant Director, Central Water Commission, Delhi, against the impugned orders dated 23.2.87 passed by the Under Secretary, Central Water Commission, denying the applicant retirement benefits for the services rendered from 31.5.65 to 26.5.73 with the Central Water Commission.

2. The applicant had joined the Central Water & Power Commission (Water Wing) as Assistant Director on 31.5.1965 and was confirmed in substantive capacity with effect from 31.5.67. Subsequently, he joined the National Industrial Development Corporation, a Government of India Undertaking, as Engineer (Structural) on 27.5.1971 after being relieved from the C.W.P.C. and keeping the lien for a period of two years. He informed the Chairman, Central Water & Power Commission, of his intention for permanent absorption in the NIDC after the expiry of two years of lien period on 26.5.1973 and applied to the C.W.P.C. for grant of retirement benefits as per the CCS (Pension) Rules 1972 vide his letter dated 25.5.1981. He has sought retirement benefits, namely, pension/service gratuity, death-cum-retirement gratuity for the length of service rendered by him in the C.W.P.C.

from 31.5.65 to 26.5.1973 (expiry date of his lien). According to the applicant, his file has been misplaced by the C.W.P.C. but he continued to follow his case personally and sent a reminder on 7.2.1985 for expediting his case and for payment of compound interest at the rate of 15% from July 1973 till the amount was paid to him. He was informed on 7.2.85 that his case was under consideration. Subsequently, he was informed on 23.2.1987 that he was not entitled to any pensionary benefits (Annexure A-1 to the application).

3. The respondents in their reply have stated that the applicant on his selection to the post of Engineer in the NIDC was relieved of his duties from C.W.P.C. He was not absorbed in the NIDC permanently even after the expiry of the lien period i.e. 27.5.1973. As per rules, the applicant is not entitled to any pensionary or gratuity benefits as the service rendered by him with the Central Water Commission is less than 10 years. It has been brought out by the respondents that the applicant was appointed in a substantive capacity inadvertently with effect from 31.5.1967 vide Department of Irrigation's Notification dated 7th November, 1978 when he was no longer in service in the C.W.C. as he had been relieved of his duties in C.W.C. on 26.5.71. to join the National Industrial Development Corporation from where he resigned from service on 19.4.77. It has been stated that the applicant was appointed in the NIDC as a fresh/direct candidate in response to a Press Advertisement and not in public interest. The applicant was entitled to retain his lien for a period of two years in C.W.C. on payment of leave salary pension contribution either by himself or by NIDC, but none paid these contributions. The resignation of the applicant from the NIDC and he being relieved from there with effect from 19.4.77 will amount to resignation from Government service and is entitled for forfeiture of earlier service under Government and loss of the pensionary benefits. The respondents have stated as the applicant had not been absorbed permanently in the NIDC and had resigned

from there which amounts to resignation from Government service which clearly debars him from any advantage of the earlier Government service. Para 4(iv) of the Ministry of Finance's O.M. dated 8th April, 1976 (Annexure III to the counter) clarifies this position. Para 4(i) of the same O.M. also clarifies that where a Government servant at the time of absorption has less than 10 years' service and is not entitled to pension, the question of proportionate pension will not arise; he will only be eligible to proportionate service gratuity in lieu of pension and to D.C.R. Gratuity based on length of service. Para 5 of the same O.M. provides that permanent transfer of Government servants who apply in response to a Press advertisement for posts in autonomous bodies/public sector undertakings which are wholly or substantially owned by the Government of India is not treated as in the public interest and the Government has no liability to pay any retirement benefits or for carry forward of leave for the period of service rendered under the Government. This position was, however, further reviewed and it was decided that a permanent Government servant who has been appointed in an autonomous body financed wholly or substantially by Government on the basis of his own application shall, on his permanent absorption in such a body with effect from 21.4.1972 or thereafter be entitled to the same retirement benefits in respect of his past service under the Government as are admissible to a permanent Government servant going on deputation to an autonomous body and getting absorbed therein, except carry forward of leave.

4. The applicant in his rejoinder denied the respondents contention that the applicant was not absorbed in the NIDC even after expiry of the lien period i.e. 27.5.1973. It has been made clear by the Ministry of Finance that "deputation on one's own volition" will also entitle him to all retirement benefits where the date of deemed retirement after expiry of lien period falls after 21.4.1972. According to the applicant, the respondents failed to fix leave salary/pension contribution and cannot blame applicant/NIDC for non-payment of the same. The applicant

had sent a letter to the C.W.C. prior to the expiry of two years lien period seeking grant of permission for fulfilment of the technicality of permanent absorption in NIDC w.e.f. 27.5.73. but the respondents have not produced any documents to show that he was not absorbed permanently. Neither the CWC nor the NIDC ever asked the applicant to revert back to his parent organisation after the expiry of the lien period which cannot be extended beyond two years. The applicant has also claimed that his resignation from the NIDC was a technical formality since his application had been routed through proper channel to other undertaking and on selection thereof the NIDC had asked for resignation for administrative reasons.

5. The applicant has stated that the Ministry of Finance letter dated 21st September, 1960 and another letter dated 17th June, 1965 (Annexure enclosed with the rejoinder) clarify that once the application of an officer has been forwarded unconditionally and the person concerned is offered the post applied for, he should be relieved of his duties to join the new post as a matter of course and the question of his resigning the post held by him in such circumstances should not arise. Accordingly, the amended Article 418(b) is intended to cover cases when even though the applications were forwarded by the competent authority, the applicant had been asked for one reason or the other to resign his post before taking up the new one. Government decided that in cases where Government servants apply for posts in the same or other departments through proper channel and on selection are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under the rules, be given for purposes of fixation of pay in the new post treating the resignation as a 'technical formality'.

6. The question of limitation under the Administrative Tribunals Act 1985 has not been raised by the respondents in this case. Even otherwise, the case has been got alive as it is seen that the Central Water Commission in their letter dated

4.6.83 had informed the applicant that apparently he was not entitled to pensionary benefits, but he was asked to elucidate his case and if nothing was heard from him by 15.7.1983, the matter would be treated as closed. The applicant made a representation on July 11, 1983 and his case was rejected in 1987.

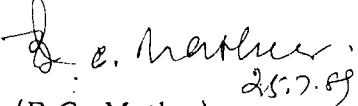
7. The learned counsel for the respondents emphasised that as the applicant had resigned from the NIDC, it would be deemed to be a resignation from Government service and, therefore, no pensionary benefit can be given to him. He also said that since the applicant had resigned his post in Central Water Commission and had actually joined the NIDC on the basis of an advertisement like a direct recruit, his case was not covered as one under public interest and, therefore, no pensionary benefit could be given to him. He also said that since the applicant had ~~done~~ ^{rendered} less than 10 years service in Government, he was not entitled to any pension and said that no case has been made out by the applicant for giving him any benefit.

8. We have gone through the pleadings in this case and carefully considered the arguments of the applicant and of the learned counsel for the respondents. Clearly, as the applicant had served for less than 10 years at the time of his absorption in the public undertaking, he is not entitled to any pension, but according to the Central Civil Services (Pension) Rules, 1972, he would be ^{entitled} ~~liable~~ to proportionate service gratuity in lieu of pension and to Death-cum-Retirement Gratuity based on length of service. He would also not be entitled to leave encashment. We, therefore, hold that while no pension or leave encashment is to be paid to the applicant, he should be paid service gratuity and the DCRG as admissible under the Central Civil Service (Pension) Rules.

9. As far as the interest on delayed payment is concerned, although normally an officer is entitled to interest charges on delayed payment of gratuity etc., we feel that as the applicant has failed to come to the court immediately and

has been pursuing this case only with the Department, no interest charges may be paid to him by the respondents, but the amount of gratuity due to him should be calculated and paid within three months from the date of receipt of these orders. There will be no orders as to cost.


(Amitav Banerji)
Chairman


(B.C. Mathur)
Vice-Chairman