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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

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DATE OF DECISION 30.5.86

Shri S Saha

Petitioner

In person

Advocate for the Petitioner(s)

Versus

Ministry of Irrigation

Respondent

Shri M.L. Verma,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. H.P. BAGCHI, JUDICIAL MEMBER

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

JUDGEMENT

The petitioner has come up under Section 19 of the Administrative Tribunals Act, 1985 praying that his past service with the Central Water Commission (CWC) should qualify for of retirement benefits on his absorption in the National Hydroelectric Power Corporation (NHPC).

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2. The brief facts of the case which are not in dispute are as follows. The petitioner started service in the CWC as a Research Assistant from 30.1.1970 and was declared permanent in the post of Design Assistant with effect from 4.8.79. His application was duly forwarded by the CWC and the Ministry of Irrigation for the post of Assistant Manager (Civil) on 6.7.1982. The petitioner got the offer of appointment ~~on~~ on 17.7.82 and on 22.7.82 he requested for release orders to join the NHPC. On being refused the release orders he resigned from the CWC on 21.8.82 and was relieved on 27.9.82. According to him as he had to join the NHPC early ~~on~~ ⁱⁿ pain of losing the offer he had to get his release from the CWC as a last resort by submitting the resignation and ^{to him} joined the N.H.P.C. on 8.10.82. His resignation was finally accepted by depriving him of any pensionary and other retirement benefits for the service rendered with the CWC. The petitioner's contention is that he was forced to submit resignation as he was not getting release orders from the CWC and since he got the appointment in the Corporation by applying through proper channel, retirement benefits ~~on~~ a pro-rate basis should be payable to him. The respondents case is that since the petitioner resigned from the CWC he had forfeited his past service for pension and the provisions of the Central Civil Service (Pension) Rules for counting Government service for the purpose of pension apply only to those Government servants who are permanently absorbed in the Public Sector Undertakings.

3. We have heard the arguments of the petitioner and the learned counsel for the respondents and gone through the papers closely. It is admitted that the application of the petitioner was ^{by the respondents} forwarded to the N.H.P.C. ~~as~~ ^{by the respondents} on 4.8.82. The N.H.P.C. ~~as~~ ^{by the respondents} as a pre-condition to the appointment insisted that he should get a release order from the Central Water and Power Commission. When this

was not given he was orally asked to resign and on 21.8.1982, he submitted his resignation in which he hoped to be given all benefits. The learned counsel for the respondents insists that since he himself resigned his resignation should entail forfeiture of his past service. We are unable to accept this position. The applicant did not resign voluntarily but was forced to resign as his previous application for release was turned down. It was a Hobson's choice for him. &

4. Considering that the application to the N.H.P.C. was duly forwarded by the Central Water and Power Commission which is a Public Sector Undertaking wholly owned by the Government of India, a liberal view has to be taken in this case. This is further enforced by the fact that in the Department of Personnel & Training O.M. No 28016/5/86-Estt.(C) dated the 31st January, 1986 (Annexure RIII to the counter affidavit) in sub-para (4), it has been indicated that :

"Pensionary benefits : Resignation from Government service with a view to secure employment in a Central public enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the Government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation."

5. The learned counsel for the respondents has argued that this provision will not be applicable to the petitioner as he had resigned before 6.3.1985 from which date the aforesaid O.M. has been made applicable. Be that as it may, the above will show that in principle, there is nothing wrong in the petitioner's plea that his resignation should not automatically entail forfeiture of Government service.

The petitioner's case is further reinforced by the Department of Personnel & A.R. O.M. of 21.4.1972 (Annexure R-IV to the counter-affidavit). Para 2 of this O.M. may be quoted as follows :-

"The question of the retirement benefits which may be provided to the above category of permanent Government servants on their permanent absorption in the public sector undertakings along, has been under the consideration of Government for some time. It has now been decided that a permanent Government servant, who has been appointed in a public sector undertakings on the basis of his application shall, on his permanent absorption in such public sector undertakings, be entitled to the same retirement benefits in respect of his past service under the Government as are admissible to a permanent Government servant on deputation to the public sector undertaking on his permanent absorption therein. Thus, permanent Government servants, who have been or are appointed in public sector undertakings on the basis of their applications in response to press advertisements, circulation of vacancies, etc. and who are absorbed hereafter on a permanent basis in the undertaking(s) in which they have been so appointed will also be governed by the orders in respect of payment of retirement benefits issued by the Ministry of Finance, Bureau of Public Enterprises, in their O.M. No 2(90)/68-BPE(GM), dated 8.11.1968, No 2(57)/68-BPE(GM) dated 26.4.1969, No.2(57)/68-BPE(GM), dated 24.7.1971 and No 2(57) 68-BPE(GM), dated 3.1.1970."

6. The learned counsel for the respondent has tried to neutralise the benefit of the aforesaid O.M. to which the petitioner is entitled by saying that the applicant was not permanently absorbed and that the absorption under Rule 37 of the Civil Service regulations should be in the public interest. We do not agree with these two contentions. The words 'permanently absorbed' cannot be taken in its literal sense so far as public sector undertakings are concerned. Nobody can be permanently absorbed in the public sector undertakings which follow a system of tenure appointments or appointment for three to five years at the higher levels and at the lower levels one can be removed from service with prescribed notice. To our mind, the words 'permanent absorption' have been used with the limited purpose of distinguishing cases of deputationists from organised Services from others who enter the public sector undertakings as new entrants or after severing all connections with their parent Service. For instance, an IAS officer when he resigns from the IAS after two years of deputation, he is deemed to have opted for permanent

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absorption in the public sector undertaking. That does not, however, mean that he has developed an inviolate right to remain in the undertaking which cannot remove him under any circumstances. In this case also, on his resignation from the Central Water and Power Commission, the applicant can be deemed to have opted for permanent absorption in the same manner as an IAS officer is deemed. As regards, the contention of "permanent absorption in the public interests", the O.M. of 21.4.1972 by giving retirement benefits to the permanent Government servants on their permanent absorption in the public sector undertakings can by implication be deemed to have declared all such permanent absorption as in the public interest.

7. The contention of the respondents that since the petitioner resigned on 27.9.1982 and joined the N.H.P.C. on 8.10.1982, on ~~that~~ the date of his joining he was not in Government service, should not to our mind be over wrought. The gap of eleven days was unavoidable because he had to join at a distant station. Even if he had been sent on deputation, this gap should be covered by the joining time.

8. In the circumstances of the case and for the reasons aforesaid, we allow the application and direct that retirement benefits for his past service should be allowed to the applicant on the basis of ^{the} DPAR's O.M. No. 8/1/72-Est.(C), dated 21.4.72. There will be no order as to costs. Judgement pronounced in open court.

(H.F. BAGCHI)
JUDICIAL MEMBER

30.5.86

(S.P. MUKERJI)
ADMINISTRATIVE MEMBER