

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

(8)

O.A. No. 162/87
XXXNo.

199

DATE OF DECISION 11 - 1 - 1991

Shri P.D. Gakhar Petitioner

Shri B.B. Srivastava Advocate for the Petitioner(s)

Versus
Union of India & anr. Respondent

Shri Jagjit Singh Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. JUSTICE AMITAV BANERJI, CHAIRMAN.

The Hon'ble Mr. I.K. RASGOTRA, MEMBER(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *for Ad*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

AB
 (AMITAV BANERJI)
 CHAIRMAN

(Q)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. O.A. 162/87.

DATE OF DECISION: 11-1-1991

Shri P.D. Gakhar.

.... Applicant.

Versus

Union of India & anr.

.... Respondents.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Applicant.

.... Shri B.B. Srivastava,
Counsel.

For the Respondents.

.... Shri Jagjit Singh,
Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman)

In this Application, the applicant Shri P.D. Gakhar, a retired Divisional Superintending Engineer(Railways), has claimed for a direction to the respondents to count his service from 21.5.1951 to 13.8.1956 under the Central Government for pensionary benefits in the Railways. He has also claimed to direct the respondents to re-compute his pension and other pensionary benefits based on the total service and to pay arrears of pension and other pensionary benefits to him along with interest thereon at the market rate from 1.2.1984 to the date of payment. In this Application, there are two respondents viz., The Secretary to the Government of India, Railway Department, Ministry of Transport, Rail Bhavan, New Delhi and the General Manager, Northern Railway, Baroda House, New Delhi.

The applicant states that he joined as temporary Assistant Engineer under the Indian Railway w.e.f. 14.8.1956 and was posted in North-East Railway. Prior to his joining in the Railways, he had worked in the Bhawalpur State Irrigation Department (Now in West Pakistan) from 3.12.1944 to 10.2.1948. Subsequently, he had joined U.P. Irrigation Department on 11.4.1948 and continued till 30.4.1951. Thereafter, he had joined Central Water & Power Commission (Hirakud Dam Project) as Supervisor on 21.5.1951 and continued till 10.8.1956. In this D.A., he has claimed that his service as Supervisor in the C.W.P.C. from 21.5.1951 to 10.8.1956 should be added for the purpose of pensionary benefits.

The applicant had joined the Railways on 14.8.1956. There was a gap of only three days between the leaving of C.W.P.C. and joining the Railways, which were spent in journey from Hirakud to Gorakhpur. The applicant retired from the Railways on 31.1.1984. The applicant states that the Government of Orissa, Department of Irrigation and Power vide their letter dated 20.1.1984 had furnished all the requisite information asked for by the Respondent No. 2. This showed that his application for joining the Railways was forwarded to the U.P.S.C. by the then Administrative Officer of Hirakud Project during July, 1956. The applicant joined Hirakud Dam Project on 21.5.1951 and for more than five years served there, which was then under the control of the C.W.P.C., Govt. of India.

The Hirakud Dam Project came under the control of Orissa Government from 1.4.1960 and hence the question of bearing proportionate liability of pension of the applicant may be considered by the C.W.P.C. The applicant further states that in spite of thorough search, there was nothing to indicate that any payment of gratuity was made to the applicant. This could be ascertained from the C.W.P.C. His 5 years service in the Hirakud Dam Project was not counted towards his service in the Railways. He made 14 representations and these were addressed to the General Manager, Northern Railway, Chief Engineer, (Const.), Northern Railway, Secretary, C.W.P.C, New Delhi, General Manager(P), Northern Railway, Minister of Irrigation, Minister, Administrative Reforms and Pensions and Deputy Secretary, Government of Orissa, Bhubneswar. Being aggrieved, he has filed the present O.A. on 6.1.1987. In support, he has filed the various applications made by him.

The respondents in their reply have taken two preliminary objections; firstly, the C.W.P.C (Hira Kud Dam Project) has not been made party to the O.A. although it was necessary party; secondly, the claim of the applicant is that he has worked in the Hira Kud Dam Project from 21.5.1951 to 13.8.1956 and as such the required information was not forthcoming from the concerned department, no decision for counting the previous service was taken by the answering respondents. It was further

stated that the information supplied by the Government of Orissa, Department of Irrigation and Power vide their letter dated 20.1.1984 was not complete as no pensionary liability had been accepted by the State Government. Further, there was no intimation about the terminal gratuity having been paid to the employee. These are the pre-requisite conditions for counting of the previous service for pensionary benefits.

The Government of Orissa has desired that the matter be referred to C.W.P.C. as per paragraph 5 of the aforesaid letter dated 20.1.1984. The Government of Orissa had taken a stand that Hira Kud Dam Project was under the Central Water and Power Commission, Government of India and it came to the control of Orissa Government from 1.4.1960 and, therefore the matter be referred to the Ministry of Irrigation.

Accordingly, the matter was referred to the Ministry of Irrigation, Sharam Shakti Bhawan, Rafi Marg, New Delhi for furnishing the requisite information. The Ministry of Water Resources, Govt. of India, intimated vide their letter dated 26.12.1984 that no record of the applicant was available with them. They also added that the proportionate pensionary liability in respect of portion of service rendered in Hira Kud Dam Project was to be borne by the Government of Orissa. Further, the respondents referred the matter to C.W.P.C. who vide their letters dated 15.4.1984/23.2.1987 stated that Hira Kud Dam Project was under the direct charge of the Ministry at the time of transfer of the project to

the Government of Orissa. The respondents, however, took the stand that neither the C.W.P.C. nor the Government of Orissa supplied the requisite information/accepted the liability of proportionate pensionary benefits in this case. It is further stated that unless and until the concerned departments where the applicant alleged to have served, send the requisite information, no decision can be taken by the answering respondents. According to the Railways, the position has become difficult as the applicant has not made the C.W.P.C. and the Government of Orissa as party to the present proceedings.

It is evident from the above that the Hira Kud Dam Project was within the command and control of the C.W.P.C. until 1960 when it was transferred to the Government of Orissa. The applicant's claim is that he has served in the Hira Kud Dam Project from 21.5.1951 to 13.8.1956. It is also not in dispute that the Hira Kud Dam Project was under the aegis of the C.W.P.C., which is a Central Government Organisation. The question, therefore, to be considered is whether the State Government is at all involved in this matter. The papers of the Hira Kud Dam Project were transferred to the Orissa Government when they took over from the Hira Kud Dam Project in 1960. The service record of the applicant may be available with the State Government but in reality the State Government of Orissa is not liable in any event to bear any part of the pensionary benefits of the applicant. The Hira Kud Dam Project was a part of the C.W.P.C., which was a Central Government Organisation. Consequently, the C.W.P.C.

Ministry of Irrigation, was to bear the proportionate liability of pensionary benefits.

The question is who has to pay the gratuity for the applicant's service in the Hirakud Dam Project. Reference may be made to the Railway Board's order dated 13.11.1982 along with the copy of the Ministry of Home Affairs, Personnel and Administrative Reforms O.M. No. 3(20) PEN/A-79 dated 31.3.1982. Reference may also be made to the letter (Annexure R-II), dated 21/28 September, 1983. This letter was written by the General Manager, Northern Railway, New Delhi to the Secretary, Irrigation Department, Government of Orissa, Bhubneshwar. The relevant portion of the same reads as follows:

"Shri Gakhar was released by Hirakud Dam authorities on his appointment as Ty. Assistant Engineer on the Railways.

As per Ministry of Home Affairs Office Memorandum No.3(20)/PEN(A)/79 dated 31.3.1982 (Copy enclosed), a decision has now been taken by the Government of India, in consultation with the State Governments, that the proportionate pensionary liability in respect of temporary service rendered under the Central Government and State Governments to the extent such service would have qualified for grant of pension under the rules of respective Governments will be shared by the Governments on a service share basis so that the Government servants are allowed the benefit of counting their qualifying service both under the Central Government and the State Governments for grant of pension by the Government from where they eventually retire. The gratuity, if any received by the Government Employee for temporary service under the Central or State Governments will, however, have to be refunded to the Govt. concerned".

It is evident from the above that the difference of proportionate amount of gratuity and pensionary benefits for the service rendered to the C.W.P.C. Hirakud Dam Project is to be borne by the State Government. The General Manager, Northern Railway, New Delhi has also written to the Chairman, Central Water Commission, New Delhi vide Annexure R-IV, in which it is stated that the Government of Orissa had replied vide their letter dated 20.1.1984 stating that no records were available to ascertain if payment of gratuity to the applicant had been made and this may be ascertained from the C.W.P.C., Government of India.

We have also perused the Department of Personnel and Administrative Reforms O.M. No. 3(20)Pen.(A)/79, dated the 31st March, 1982. Vide paragraph 2(2) of the Memorandum, the benefit of counting of temporary service under the State/Central Government has been allowed to the Government employees "who while holding temporary posts under Central/State Governments apply for posts under State/Central Governments through proper channel with proper permission of the administrative authority concerned". The said O.M. does not envisage or lay down any formulation for apportionment of pension etc.

Having heard learned counsel for the parties, we are satisfied that this is a fit case in which we must issue certain directions to the respondents. There can be no dispute that the applicant has not served in the C.W.P.C. Hirakud Dam Project

The applicant had been permitted by the Hira Kud Dam Project to join the Railway service. It, therefore, proved that he was employed in the Hira Kud Dam Project. It is also a fact that at the time of joining the Railways, the State Government of Orissa had not taken over the Hira Kud Dam Project. Consequently, the transfer of the applicant was from one Central Government Department to other Central Government Department and the applicant's service with the C.W.P.C. was to be borne by the Central Government for calculating the pensionary benefits of the applicant.

The position regarding payment of pension, gratuity etc. has been clearly defined in the Ministry of Finance O.M. No. F.2(117)/76/SC dated the 26th December, 1977 and Joint Controller-General of Accounts O.M. No. S.11031/1/78 T.A./725 dated the 23rd February, 1979. The relevant extract from the said O.M. is reproduced below:

"No allocation of pensionary liability between Departments of Central Government. The rules in regard to allocation of sharing of the liability on account of pensiona

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charges of Government servants with service under more than one Department among the Departments of the Government of India including Railways, Posts and Telegraphs and Defence Departments contained in Appendix 3-B II and B IV to Account Code, Volume I, have been under review of the Government of India for some time. After consideration of the various issues and keeping in view the need for simplifying inter-departmental adjustments it has been decided to dispense with the system of allocation of pension. The liability for pension including gratuity will be borne in full by the Department to which the Government servant permanently belongs at the time of retirement. No recovery of proportionate pension need be made from other Central Department under whom he had served. (Emphasis supplied by us)

It has been decided to extend the above provisions to the Union Territory Government with or without legislature. Accordingly, there will be no allocation of leave salary/pension contribution among Central Govt. departments including Railways, P.&T., Defence and Union Territory Governments with or without legislature."

It has also been clarified by Ministry of Finance vide their O.M. No. S.11031/1/80/TA/1494 dated the 21st April, 1980 that "the above provision shall also cover cases of all Government servants (temporary/quasi-permanent/permanent) who have rendered technical resignation on their selection for service in another department (including Railways/P&T/Defence Departments) within the Government of India and hence the question of allocation of pension (or incidence of leave salary) between such Departments would not arise."

It is, therefore, clear from the above that the applicant is entitled to receive pension and pensionary benefits including gratuity for the period of 5 years service

rendered in C.W.P.C. and it has to be paid by the Railways itself because he was retired from the Railways.

The only other question that remains for consideration is whether the applicant has been paid his gratuity by the C.W.P.C. Hira Kud Dam Project. The applicant's stand is that he has not been paid and in any case he is not aware of any thing having been paid on this account. If any amount has been paid as gratuity to the applicant by the Hira Kud Dam Project, the applicant would not be entitled to the same. In case he has not been paid, then he would be entitled for the same to be paid by the respondents. In any case, if some amount has been paid by the previous employer, then in that event, the applicant should execute a bond to refund the amount to the Railways. We are, therefore, satisfied that the proper order to be passed in this case is to allow the Application and direct the respondents to calculate the pension and pensionary benefits according to the rules taking into consideration his previous service from 21.5.1951 to 13.8.1956 as part of service to the Central Government and pay the difference between the total amount

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due to the applicant and paid meanwhile to him within a period of three months from the date of receipt of a copy of this order.

The applicant would also be entitled to payment of interest from the date of filing the Application dated 6.1.1987 to the date of payment at the rate of 12% per annum. We order accordingly.

There will be no order as to costs.

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(I.K. RASGOTRA)
MEMBER (A)

Ab
11.1.91
(AMITAV BANERJI)
CHAIRMAN

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