

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
DELHI ~~XXXXXX~~ BENCH

O.A. No. 284 1987.
TAX NO.

DATE OF DECISION 5.7.91

Shri A.K. Poddar

Petitioner

Mr. G.N. Oberoi

Advocate for the Petitioner

Versus

Union of India & ors.

Respondent

Mr. P.P. Khurana

Advocate for the Respondent

CORAM :

The Hon'ble Mr. P.H. Trivedi

: Vice Chairman

The Hon'ble Mr. T.S. Oberoi

: Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*

T.S. Oberoi
(T.S. OBEROI)
m (J)

A.K. Poddar,
2/216, Dakshinpuri Extn.,
New Delhi - 110 062. .. Applicant
(Advocate - Mr. G.N. Oberoi)

Versus

1. Union of India,
Ministry of Energy,
Shastri Bhavan,
New Delhi - 110 001.
2. Central Electricity Authority,
Seva Bhavan,
R.K. Puram,
New Delhi - 110 066.
3. National Thermal Power Corp.,
Badarpur Division,
New Delhi - 110 044. .. Respondents
(Advocate - Mr. P.P. Khurana)

Judgments cited : 1. AIR 1989 SC 485 - M.S. Co-op. Fed. Ltd. v. S.P. Khade
2. AIR 1985 S.C.1016 - Usha Rani v. State Industrial Court, Indore.

CORAM : Hon'ble Mr. P.H. Trivedi .. Vice Chairman
Hon'ble Mr. T.S. Oberoi .. Member (J)

O.A. No. 284 of 1987

JUDGMENT

Date :

Per : Hon'ble Mr. P.H. Trivedi .. Vice Chairman

In this application, under section 19 of the Administrative Tribunals Act, 1985, the applicant Shri A.K. Poddar has asked for a declaration that the applicant remained and is a Central Government employee on Foreign Service with Badarpur Thermal Power (B.T.P.) Station as he was not absorbed by B.T.P. and for a direction to

the respondents to refix pay under revised pension rules, 1986 and to grant payments and arrears from 1984 and to grant full pensionary and terminal and allied benefits on his retirement on 28.2.1986 and from 1.3.1986 to grant full pension, DCRG, Commutation of Pension, Leave Encashment, Group Insurance, Final Settlement of G.P. Fund, Retirement Transfer Grant under the rules. He has also claimed interest at the rate of 18% p.a. due to the delay exhibited by the respondents. Reply has been filed by respondent No. 1 and 3. Briefly, the case of the applicant is that he was appointed on 25.11.1960 in the scale of Rs. 60-130 as Compounder - Pharmacist in the Rehabilitation Ministry under the Dandakaranya Project, was declared surplus and relieved on 31.3.1977 and posted at Badarpur Thermal Power Station (BTPS) on 6.4.1977, in the pay scale of Rs. 330-480. While he was allowed to cross E.B. on 5.5.1976, he was not declared permanent although he claims that some of his juniors were made permanent. He made a representation to the office of Prime Minister in reference to which a reply from Central Electricity Authority dt. 6.11.1986 at Annexure V is received by him.

2. In reply, respondents No. 1 and 3 have admitted that the applicant has retired from the post of Pharmacist in National Thermal Power Corporation (N.T.P.C.) but have not admitted that he was on foreign service from the Govt. of India, Central Electricity Authority. The respondents' case is that the applicant was transferred from the Central Surplus Staff Cell and absorbed against the post of Pharmacist Grade I in BTPS by Government orders dt. 24.3.1977 and 23.5.1977 read with BTPS order dt. 29.5.1977 after he joined BTPS on 6.4.1977. He was never declared permanent against any post by the Central

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Government and as per the terms and condition of his appointment he stood absorbed in the service of NTPC w.e.f. 1.4.1978 by virtue of agreement dt. 12.4.1978 between the Union of India and NTPC. The respondents, therefore, do not admit that the applicant is an employee of the Union of India but was deemed to have been absorbed in the service of NTPC w.e.f. 1.4.1978 because he was declared surplus in 1977 and was absorbed in NTPC. The respondents do not admit that he was entitled to any pensionary benefit for the service in the Government for which he is not qualified. There is no pension scheme in NTPC and therefore, NTPC has no obligation to pay any pension to the applicant. The applicant was informed that consequent to his submitting unconditional option for service in NTPC, he is entitled to terminal benefits as are admissible to some categories of employees in service in NTPC.; The applicant first gave his unconditional acceptance for absorption in the service of NTPC but subsequently, withdrew it and insisted that he is entitled to pensionary benefits and as a result he has not been paid any benefits admissible to him under the NTPC Regulations. The respondents have treated the applicant as NTPC employee w.e.f. 1.4.1978 which is the date when NTPC took over management of BTPS. NTPC has informed the applicant that retirement benefits as per NTPC Rules and Regulations are accepted as liability of payment by NTPC to the applicant but it is the applicant who has not accepted this stand. Time and again the applicant has been asked to accept his absorption in the service of NTPC since such unconditional acceptance is a necessary pre-condition for payment of terminal benefits to him.

3. Before proceeding further, the question of jurisdiction of this Tribunal regarding the service of t

applicant under NTPC needs to be disposed of. The respondent have taken the plea in their reply that this Tribunal has no jurisdiction over NTPC that no notification extending jurisdiction of this Tribunal to NTPC under section 14(2) of the Administrative Tribunals Act, 1985 has been shown to have been issued by the applicant. This plea would have been rightly taken, had any part of the applicant's claim been founded on the basis of his being an employee of NTPC. The applicant's claim is that he has continued to be an employee of the Central Government and his retirement benefits are to be paid by the Central Government or by NTPC as a result of the arrangement made by the Central Government with NTPC. Similarly as he claims retirement benefits only from his date of retirement and he has shown to have made his application in the time allowed for it, neither jurisdiction nor bar of limitation can be held to be against the applicant.

4. It is not disputed that the applicant was declared surplus and was on the rolls of the Central Government surplus staff cell by the order dt. 24th March, 1977 and was transferred to absorb against the post of Pharmacist Grade I (Rs. 330-430) in BTPS w.e.f. 31st March, 1977 and that he reported for duty on 6.5.1977. The management of the BTPS was transferred to the NTPC by agreement between the Government of India and NTPC dt. 12th April, 1978 a copy of which has been annexed. The relevant part of the agreement governing personnel is as below:

"h)(i) To deploy Govt. personnel working in the said Project and Station as on 31.3.1978 either in Badarpur or in any other Project of NTPC, on such terms and conditions as may be agreed upon between the Govt. and the NTPC.

(ii) Personnel transferred to NTPC on deputation by the Government of India would be governed by the terms of deputation.

(iii) Personnel transferred finally to NTPC would be given terms and conditions of service by NTPC not inferior to or less favourable than those enjoyed by them as on 31.3.1970."

The agreement recognised three distinct categories to regulate dealing with the personnel obtained from the Government. The first sub clause empowers NTPC to deploy them. The second clause states that personnel transferred to NTPC on deputation would be governed by the terms of the deputation and the third clause safeguards that the personnel transferred finally to NTPC would be given terms and conditions by NTPC not inferior or less favourable than those enjoyed by them as on 31.3.1970. The respondents have not produced any documents whatsoever regarding deputation of the applicant or terms thereof or for any transfer finally to NTPC of the applicant, in particular or any class of Government servants in general, to which the applicant belongs to lay any basis for construing that any action pursuant to the said clauses of the Agreement was taken by the Government. As stated by the authorities, no doubt on 5th November, 1985, the applicant signified his unconditional absorption for absorption in NTPC with retrospective effect. On 16th/17th February, 1987, NTPC wrote to the applicant that he was neither the Central Government employee nor was he an BTPS employee on deputation or transferred and as such on transfer of the management to NTPC, he has no other alternative to get absorbed in the service of NTPC w.e.f. 1.4.1978 for which NTPC had not received any communication of willingness and for that reason his case for absorption could not be finalised. The applicant has produced letter dt. 17.4.1981 giving option by him to be absorbed from 1st December, 1980 and of letter dt. 6th June, 1981 asking the applicant for giving option. The applicant by his letter purported to be of dt. 5.4.1982 has stated that he would lose his pensionary benefits and therefore either he should be absorbed according to his option or be returned back to ^{the same date} C.E.A. This letter bears ^{as} produced, but is said to be of 5.4.1982. On 29.12.1983 by a letter, the applicant has

withdrawn his option and given reason for it as NTPC not absorbing him. On 31st March, 1984, NTPC has informed him that the case of the applicant is closed and no further action is proposed to be taken. On 3rd July, 1984, the applicant has written that he is to retire in the month of February, 1986, he would like to submit his papers for pension and other benefits. His stand is that his case is governed by regulation 2 and 4 of C.S.R. By a letter dt. 6/7th January, 1987 produced by the applicant, Ministry of Home Affairs has informed the applicant that NTPC does not have any pension scheme and that as he has retired without opting for absorption into the service of NTPC w.e.f. 28.2.1986 till retirement he was not an employee of NTPC. Subsequently, the applicant has sought to file certain documents among which are a letter from NTPC dt. 19/20 May, 1989 to Under Secretary C.E.A. Production of these documents was contested by the respondents during hearing.

5. During the hearing respondents No.3 took the stand that the petitioner stood absorbed in NTPC and NTPC were ready and willing to give him retirement benefits according to the scheme, but this was subject to the applicant's giving his unconditional willingness for absorption and completing formalities for signing certain papers without which it could not be brought about. Respondents have also taken the stand that the personnel have been transferred to NTPC and thereupon Government have no liability to the applicant and pensionary and terminal benefits could only be discharged then by NTPC in terms of the service rendered by the applicant according to the scheme of NTPC for retirement, benefits.

6. Respondents, Union of India or Respondent 1, or

Central Electricity Authority Respondents 2 have not placed before us any material about the status of the employee rendered surplus, placed on the Surplus Staff Cell, and transferred/absorbed in BTPS nor taken any plea that such surplus staff on being absorbed or transferred ceases to be a government servant or has no ^{rights} ~~regrets~~ against the government on that being done.

7. The whole question, therefore hangs upon what right the applicant had against the Government regarding his service with the Government and whether his service was passed on to the NTPC as the employee of NTPC and not of Government. We have not been shown any order of transfer of the applicant to NTPC by either Government of India, C.E.A. or by N.T.P.C. The terms of the agreement between BTPS or Government of India and NTPC provide for deputationist being governed by the terms of deputation and those transferred being safeguarded by the clause that their conditions would not be inferior to those which governed them while they were in the service of Government. This clause clearly requires that the terms of deputation or terms of transfer together with the specific order of deputation or transfer of the applicant are required to be produced by BTPS or Government of India to establish whether the applicant is to be regarded as deputationist or as a transferee official. On the other hand, the applicant has given notice to the NTPC that he would not like to forego his pensionary benefits; that the absorption offered to him was not according to his option in terms of the date from which he should be absorbed and that such absorption was withdrawn by him before it was finalised by respondents No. 3. The applicant further has claimed that he was on foreign service from the Government of India. This claim has not been fully established by the applicant by any specific order to treat him as deputationist or for placing his services on conditions of foreign service.

Be that as it may be, the applicant is entitled to take the stand that his status as a Government of India employee has not been translated into that of NTPC employee at any stage, and that there is no basis laid that his status as Government Servant was ever altered, modified or severed.

8. The remaining question is whether in terms of the nature and length of service of the applicant he is entitled to pensionary benefits and if so to what extent. He does not claim more than the quasi permanent status and admittedly holds no lien on any post in the Government. In his case, therefore, instruction of the Ministry of Home Affairs dt. 24th November, 1983 (Rule 2) and Govt. of India's O.M. dt. 13th January, 1986 on pages 472 and 473 of Swamy's Pension Compilation would apply. For facility of reference these O.Ms are reproduced below :-

SECTION VII

(1)

Pensionary terms consequent on the conversion of Government Department/Office into an Autonomous Body or Public Undertaking

(Govt. of India, Ministry of Per.& Trg.
O.M. No. 4(8)/85-P & W dated the 13th January, 1986)

In supersession of the Ministry of Finance (Department of Expenditure), Office, Memorandum No. F.2(8)-E.V(A)/62 dated 5th November, 1964 (Not printed), it has now been decided that the pensionary terms in respect of Government employees who are transferred to an autonomous body/public undertaking on the conversion of a Central Government Department/Office into an autonomous body or a public undertaking would be governed by the following conditions:-

(a) The permanent Government servants shall have an option to retain the pensionary benefits available to them under the Government rules or be governed by the rules of the public undertaking/autonomous body. This option shall also be available to quasi-permanent and temporary employees after they have been confirmed in the autonomous body/public undertaking.

(b) The Government servants who opt to be governed by the pensionary benefits available under the Government shall at the time of their retirement be entitled to pension etc. in accordance with the Central Government rules in force at that time.

(c) The Government employees who opt to be governed by the rules of the autonomous body or public undertaking shall become liable to the rules of the autonomous body or undertaking from the date of their transfer. For the service under the Government, they will receive following retirement benefits :-

(i) Permanent Central Government employees who have completed 10 years or more service will receive pro rata retirement benefits.

(ii) Permanent Government servants with less than 10 years service, quasi-permanent employees and temporary employees shall be entitled to Provident Fund Contribution for the period of their service under the Government with simple interest at the rate of 6% per annum as opening balance in their CPF a/c with the undertaking.

(d) The retirement benefits would become payable either from the earliest date from which Government servant could have retired voluntarily under the rules applicable to him (except 20 years of qualifying service) or from the date of transfer to the undertaking/corporation whichever is later.

2. If, no conversion, an autonomous body adopts Pension Scheme as applicable to Central Government servants, the service under Government will qualify towards pension under the autonomous body, instead of the benefits mentioned in para 1 above. "

9. A perusal of the above rules clearly shows that the pensionary benefits have been made applicable to those who are temporary or quasi-permanent Government servant and who were on service on 1.1.1986.

10. As discussed above, the applicant has retired on 28.2.1986 and until that date, he has to be treated as having continued in service in the Government and therefore, the pensionary benefits in quasi permanent capacity are available to him. Regarding pensionary benefits available on absorption in a public undertaking instructions on pages 436 and 437 have been cited but these are not applicable as it is being held that the applicant is not to be regarded as having been absorbed in the service of NTPC.

11. The applicant has cited AIR 1985 SC 1016 Smt. Usha Rani v. State Industrial Court, Indore and AIR 1989 SC 485 M.S. Co-op. Fed. Ltd. v. S.P. Khade, to show that withholding or delaying of payment of pensionary benefits or grant of temporary status are unfair labour practices. Learned counsel for the applicant has also cited 1980 (3) SLR 422 Baleshwar Dass v. State of U.P. to show that the distinction of a temporary, quasi permanent or permanent service or whether lien is held or not are artificial distinctions when Government servants are made to render very long years of service and the mere fact of not declaring them permanent when there is no other circumstance against their being so declared unfairly deprives them of pensionary benefits and the state should in such circumstance not withhold such benefits or rights earned by the Government servant. The case of Baleshwar Dass does not give unconditional, unreserved or absolute right to the Govt. servant and in the case of the applicant cannot be ~~the~~ stretched unduly in his favour. After all the facts are that the applicant was placed on the surplus cell and that he was passed on to BTPS and in terms came to be employed with NTPC. There might have been, therefore, no way in which the applicant could have taken in the Govt. service, had he pressed for his repatriation. There is reason to believe that there was some oversight on the part of the concerned authorities in the Government in completing the formalities regarding transferring the applicant to the NTPC. For their omissions, no doubt the applicant cannot be penalised and the applicant is entitled and is being upheld in his claim to be treated as Government servant until his retirement, on that ground. It is only necessary to point out that the circumstance in which temporary or quasi permanent service was held to be substantially equal to that of permanent service

for counting for pensionary benefits cannot be stretched to the applicant's case. The fact that the applicant was appointed in a quasi permanent capacity w.e.f. 1.7.1964 and retired on superannuation on 28.2.1986 and that on 1.2.1986 he had completed more than 10 and 20 years of service in quasi permanent capacity brings him well within the scope of Rule 2 for extension of pensionary benefits before and after it was extended to those who had rendered 10 years of service in temporary or quasi permanent capacity. Even if, it is regarded that the pensionary benefits are only for the period ending with the applicant being taken on the books of NTPC and on the basis of the NTPC's contention that the applicant had to be absorbed w.e.f. 1.4.1978, the applicant would have completed 17 years of service. The respondents' reasoning clearly was that rule 2 referred to would have applied to the applicant only if the applicant has completed 20 years of service which was not the case if his absorption had taken place w.e.f. 1.4.1978. If only quasi permanent service were counted, the applicant would have completed only 13 years of service in quasi permanent capacity on 1.4.1978 and as relaxation of 10 years' service is made applicable only from 1.1.1986, the applicant could not have claimed any pensionary benefits. No doubt, for these reasons, the applicant also gave his option to be absorbed w.e.f. 1.12.1980 by his letter dt. 17.4.1981 and the respondent No. 3 repeatedly pressed the applicant to agree to be absorbed only from 1.4.1978 stating that he had no other option. We must hold that the procedure and practice adopted by NTPC is very highhanded and we are constrained to say that it has some element of exploitation. No Govt. servant can be allowed 'option in one breath and confronted with a no-option situation in another. It would have been different matter if Govt. had transferred the applicant and defined the term of his

transfer and closed the door of repatriation upon ~~to~~ the applicant. We do not opine whether it was legally possible to do so ~~nor~~ is it necessary to comment upon a course which in any case was not taken by the Government. It was up to NTPC ~~NTPC~~ to have asked the Government to define the terms of transfer but it does not seem to have done so. In such circumstance when the applicant was asked to give his option it was right and proper for the applicant to have defined the terms which ~~his~~ option was stipulated and as that stipulation was not accepted and terms of absorption with regard to the date of 1.4.1978 was not found acceptable the applicant was within his rights to refuse it. Respondent themselves have written to the applicant that his option should be with regard to ^a certain date namely 1.4.1988, that because it was not so expressed, his case was closed.

~~¶~~ That ~~No~~ offer of retirement benefits in terms of what respondents considered the applicant as being entitled to on their construction of the applicant's having been absorbed in the service of NTPC were ever offered to him. In the circumstances we must uphold ~~that~~ the applicant's right not to opt for absorption in the service of NTPC.

12. In the result, the application succeeds to the extent of the applicant's being entitled to the pensionary benefit as being in the service of the Government in the same capacity in which he was transferred to BTPS to be continued ~~was~~ during period even when ~~they were~~ placed at the disposal of NTPC. The pensionary benefits be therefore calculated on that basis under the Rules applicable to the applicant. We would leave it to the Government to calculate such pensionary benefits in terms of such Rules in the circumstances of this case as ~~was~~ ^{is} interpreted in the judgement. It would be proper to direct that such calculation be made within

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four months from the date of this order. In view of there being room for legitimate and bonafide difference of opinion about the status of the applicant as a Government servant for entitlement of pensionary benefits, we do not direct any interest to be paid on the claim of the applicant. However, if there is further delay beyond the period allowed for calculation of the dues of the applicant, interest at the rate of 15% be allowed to the applicant, for the period of delay, ~~from three months~~ from the date of the judgement. In the circumstances the case, parties to bear their own costs.

Abes 5.7.91
(T.S. OBEROI)
Member (J)

P.H. Trivedi
(P.H. TRIVEDI)
Vice Chairman