

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 950/87.
T.A. No.

198

DATE OF DECISION July 3, 1989.

Shri T.S.Assudani

Petitioner

Shri N.D. Batra & Shri K.L.Bhandula

, Advocate for the Petitioner(s)

Versus

Union of India & Ors

Respondent s.

Shri M.L.Verma,

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. B.N.Jayasimha, Vice-Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
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? //

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 950/87

Date of Decision July 3, 1989

T.S. Assudani

... Applicant

vs.

Union of India & Ors

... Respondents

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman

Hon'ble Mr. B.N. Jayasimha, Vice Chairman

For the Applicant

... Shri N.D. Batra and
Shri K.L. Bhandula,
Advocates

For the Respondents

... Shri M.L. Verma, counsel

JUDGEMENT BY: Hon'ble Mr. Justice Amitav Banerji, Chairman.

In the present case, the Applicant, Shri T.S. Assudani worked as an Instructor in the Central Water and Power Commission (Water Wing), Kota. He was declared quasi-permanent on 1.7.1985 and then transferred to Technical Training Centre, Kakrapara, Nagarjunasagar and then to Nangal on promotion. He was thereafter transferred to the Salal Hydro Electric Project which was under the same Ministry i.e. Ministry of Irrigation and Power. Thereafter, he was relieved of his duties w.e.f. 30 September, 1974 with instructions to report for duty to the Chief Engineer, Salal Hydro Electric Project, Jyotipuram. The Applicant joined on 4.10.74 and he was adjusted against the post of Supervisor in the same pre-revised scale of pay of Instructors (Rs. 425-640) and subsequently was promoted as Senior Supervisor Grade II in the scale of Rs.550-900 in November, 1983.

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The Applicant after joining the Salal Project had represented to the Chairman, Central Water and Power Commission (CP&WC) to create a supernumerary post to provide a lien to him to enable him to claim pensionary and retirement benefits on superannuation or taking voluntary retirement. This application was made in January, 1979. The Central Water Commission (CWC) intimated to him after 8 months that the applicant's lien had been terminated when the Technical Training Centre was closed on 31st March, 1973. The Applicant pointed out that this was factually incorrect as no order terminating the Applicant's lien had been communicated to him and in his representation to the CWC this was never responded to. He has always been treated as Central Government employee. The Project authorities were making deductions from his salary to the Central Government Insurance Scheme and General Provident Fund whereas the Project employees were contributing to a Contributory Provident Fund. The Applicant had also been paid medical reimbursement as Central Government employee.

Subsequently, the Salal Hydro Electric Project was handed over by the Government of India to the National Hydro-Electric Power Corporation (NHPC) w.e.f. 15.5.1978. On 31.12.83, the NHPC issued an Office Order regarding Project transfer of Salal Employees, both regular and work-charged (directly recruited/appointed by the Central Government) to the

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NHPC w.e.f. 1.4.1983. The Applicant was keen to be absorbed in the NHPC but had misapprehensions about the pensionary benefits with regard to his service under the Central Government prior to 1.4.1983. He submitted an Application to the Chairman, CWC indicating his willingness to be absorbed in the NHPC provided he was given the benefits of service 22 years rendered under the Central Government and to recommend his case for absorption to NHPC. There was no response to this letter. The NHPC, however, issued Office Order dated 7.4.84 that the applicant among others had not exercised his option to NHPC and accordingly the Applicant shall continue to be in the Salal Project on the existing terms and conditions except that the benefits, if any, already extended under the NHPC's rules will not be available to them. The Office Order issued made it clear that all those who have exercised their option in favour of their services being transferred to NHPC stood transferred to the NHPC.

On 6.8.1986, the Deputy Manager (Personnel) PSC, wrote to CWC to issue transfer orders for repatriation to the parent office for the three officials including the Applicant who had not exercised their option for absorption in the NHPC. The Applicant contended that he had indicated his willingness for absorption in the NHPC provided he was given appropriate retirement benefits on the basis of continuous service w.e.f. 11.8.61. He had never been declared surplus to the requirement of the Salal Project.

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The stand taken by the CWC is that the Applicant was originally appointed as Instructor in the Technical Training Centre and was declared surplus on the closure of the Training Centres and was relieved of his duties from the CWC in the year 1974 when he was appointed as Supervisor in the Salal Hydro Electric Project and he was not on the strength of the CWC. Consequently, his case for absorption did not arise. The CWC accordingly passed on the problem of the Applicant to the Ministry of Water Resources, the decision of the latter had not been communicated.

The Applicant's case is that he was never declared surplus by the CWC nor his services were ever terminated on the closure of the Training Centres. He was transferred to the Salal Hydro Electric Project under the same Ministry. The employees of Salal Project were Central Government employees and were paid from the Consolidated Fund. The Salal Project was a departmental project, administered, controlled and supervised by the Central Government till the project was handed over to the NHPC on agency basis on 15.5.78, along with the staff. The Applicant as also other employees similarly placed continued to be Central Government employees till they were formally absorbed in the NHPC in terms of the order dated 31.12.83. As the Applicant had not been absorbed in the NHPC, the Central Government continues to be liable for the pensionary and other benefits admissible under the Rules. The Applicant also pointed out

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that there were 4 other employees who were employed under the Central Water and Power Commission (PW) and who were transferred to Salal Hydro Electric Project under similar circumstances were absorbed in the NHPC in the year 1980-81 while the Applicant had been denied similar treatment. Similarly Shri N.K. Duggal of Scooter India Limited was also absorbed in the NHPC before 1983. This constituted discrimination against the Applicant and others similarly placed in the context of Articles 14 and 16 of the Constitution. The date of superannuation of the Applicant was 31st July, 1987. The Salal Hydro Electric Project prepared pension papers of the Applicant and forwarded them to the Central Water Commission on 29.10.86 for further necessary action. The CWC returned the papers to them stating that CWC were liable for terminal benefits only from 11.8.61 to 30th September, 1974. Thereupon, the Salal Project authorities brought the problem to the notice of the Head Office who took up the matter with the CWC and the matter remained there.

The Applicant filed this OA on 3rd July, 1987 i.e. before his retirement and prayed that the respondents be directed to give the Applicant retirement/pensionary benefits on retirement on superannuation on 31st July, 1987 and also prayed for other consequential benefits as well as the cost of proceedings.

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In short, the case of the Applicant is that he had served as a Central Government employee from 1961 to July, 1987. He had been deputed from one project to another and he had continued throughout as a Central Government employee and, therefore, was entitled to full retiral benefits, treating his service to be continuous from 1961 to 1987.

In their reply, three preliminary objections were taken; firstly, that the Application was misconceived and not maintainable under law; secondly, the Application was barred under Sections 20 and 21 of the Administrative Tribunals Act and thirdly, the Principal Bench had no jurisdiction to try the matter as the National Hydro-Electric Power Corporation is an autonomous body and there is no Notification providing for entertaining the service matters of employees of NHPC by the Tribunal under Section 14 of the Act. On the merits, it was stated that original appointment of the Applicant came to an end on the closure of the Technical Training Centre, Nangal Township. The post of Instructor which the Applicant was holding was abolished and virtually he was facing retrenchment on the closure. But the Government found an alternative employment for him to save him from actual retrenchment and he was adjusted against the post of Supervisor in the Salal Hydro Electric Project. This was entirely a different post to that of Instructor which he held in the Technical

Training Centres. On his appointment in the Salal Project, his earlier connection with CW&PC was severed once for all. It was, however, admitted that the Applicant had been allowed to draw TTA and other advances in order to mitigate his financial hardships. It was also stated had he not agreed to the adjustment after the closure of the Technical Training Centre he would have been retrenched w.e.f. 15.11.74. It was further stated that a supernumerary post could not be created once the post was abolished. He was only a quasi-permanent employee and he was entitled to terminal benefits only. It was denied that the Applicant was never declared surplus by the CWC nor his services were ever terminated. It was stated that the Applicant ceased to be an employee of the CWC when he was adjusted in the Salal Hydro Electric Project. The CWC was only liable to pay terminal benefits to the Applicant since he was a quasi-permanent Instructor from 11.8.61 to 30th September, 1974. The payment for terminal benefits for the said period was under the process of preparation. The NHPC have categorically denied that he had ever given his willingness for absorption in the NHPC. The respondent's stand is that the Applicant originally was a quasi-permanent employee and he did not acquire any right as a permanent

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employee and whatsoever benefits he was entitled to under the Rules were up to the period 15.11.74 and that too for terminal benefits only. Further, the CWC or CW&PC were not liable for payment for any subsequent period. It was the NHPC but the Applicant had not been absorbed there also.

In the rejoinder, the Applicant pointed out the two Office Orders dated 11th August and 18th August, 1987 ~~which were~~ passed after the retirement from service. By the order dated 11th August, 1987 the Applicant was deemed to have been retrenched from the post of Instructor in the Technical Training Centre, Nangal Township w.e.f. 30th September, 1974 since the Technical Training Centre had been closed w.e.f. 15.11.74. By the Office Order dated 18th August, 1987 the respondent had sanctioned payment of terminal gratuity amount ^{ing} to Rs. 7,280/-, considering the Applicant had been retrenched from Central Government service from 30th September, 1974(AN). The Applicant pointed out that the aforesaid two orders have been passed after about 13 years of the events, which were illegal, discriminatory, violative of the principles of rules of natural justice and also against the doctrine of promissory estoppel. He has prayed that the two orders be also quashed. It was further pointed out that even if it was assumed that the order dated 18th August, 1987 was valid and effective, this would not affect the claim for retirement benefits as a Central Government employee.

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The Applicant had always been considered as a Central Government servant. The order of absorption clearly indicated that those who had not exercised their option in favour of the NHPC would continue on the same terms and conditions but if they had received any benefits under the terms of the NHPC, they would have to return the same. In view of this, it was urged that the Applicant continued to be a Government servant throughout and the orders dated 11th and 18th August, 1987 confirm the position that the Applicant was a Central Government employee.

We have heard Shri N.D. Batra and Shri A.L. Bhandula for the Applicant and Shri M.L. Verma for the respondents at some length. We find that the Applicant who initially joined CWC in 1961 and was appointed as Instructor in the Central Water and Power Commission (Water Wing) at the Technical Training Centre, Kota though initially a quasi permanent staff but he was transferred to the Technical Training Centre, Kakrapara and then to Nangal on promotion. The first question is how long a person in employment can be continued on quasi-permanent basis? He joined in 1961 and according to the Office Order issued by the CWC his services in the CWC stood transferred w.e.f. 30th September, 1974. The respondents' case is that throughout this period he was quasi-permanent. This is untenable. The Applicant had been transferred from one place to another, even being promoted, he was

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getting regular pay and increments and still the respondents would like us to proceed on the basis that throughout this period he was a quasi-permanent. We have not been shown the original order of appointment under which he was being treated as quasi-permanent. Even if he was a temporary Government servant, his services had not been terminated at any stage following the C.C.S. (Temporary Service) Rules. Another feature to be noticed here is that if he was to be retrenched in 1974 on the closure of the Technical Training Centre, some correspondence should have been there to show that the Applicant was being provided another placement for his services when the Technical Training Centre under the CWC had ended. We do not find any such correspondence on the subject on the relevant file. Subsequently, the stand taken by the CWC was that his services would be deemed to have been retrenched from 15.9.1974. To augment their argument, they even passed an order dated 11th August, 1987 i.e. after the Applicant had reached the age of superannuation, showing that his services were terminated in the Training Centre/CWC from 15.9.74. This is indeed a strange way of terminating the service of a Central Government servant.

If a department or an organisation under the Central Government is sought to be closed, due and proper notice has to be served on the employees giving them the option

to join another organisation and if they did not agree to it, they are placed in the Surplus Cell and if within six months they are not deployed elsewhere, they would be finally retrenched with retrenchment benefits. In the present case our attention has not been drawn to any single paper which shows that the services of the employee were brought to an end. On the contrary, CWC issued an order dated 4 Nov. 1974: "The Technical Training Centre, Nangal Township will be closed down on 15.11.74. The existing staff at present working at Nangal will be transferred to other projects." (Emphasis supplied)

Our view in this matter finds support from the fact that the Applicant on being adjusted to the Salal Project, which was then under the NHPC, was considered as a Central Government servant in the same rank and pay as he was drawing in the Technical Training Centre. He continued to receive his pay and emoluments, his increments, service benefits as that of a Central Government employee. He continued as such even when the Salal Project was transferred to the NHPC. The NHPC had certainly given a notice to all its employees to exercise their option for absorption in the NHPC. Reference may be made to the Office Order dated 31st December, 1983 (Annexure X) which reads as under:

"1. It has been decided that:

- (i) All the employees (both regular and work-charged) directly recruited/appointed by the Central Government and who still continue to work at Salal Project shall be considered by NHPC for transfer w.e.f. 1.4.83 in the same capacity, with the same tenure of appointment and on the same status (i.e. regular/work-charged) as held by them on the said date, to the Corporation as its project staff or as its Central cadre staff

as the case may be, according to the policy of the Corporation.

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(v) All the employees mentioned at para 1(i) above shall be allowed to exercise an option for such transfer.

(vi) Those who do not opt for transfer shall continue on their existing terms and conditions except that the benefits, if any, already extended to them under the Corporation's Rules will not be available to them.

2. The employees recruited/appointed or after 1.4.83 and upto the date of issue of this office order will also be eligible to the dispensations as indicated in clause (i) to (v) para 1 above.

3. The employees as mentioned in para 1(i) and 2 above, may exercise their option in the prescribed proforma which should reach the Chief Engineer, Salal project within 15 days from the date of issue of this office order. Employees whose options are not received within the said stipulated period, will be regulated as per provisions contained in para 1(vi) above."

The above provision makes it clear that those who did not opt for transfer shall continue on their existing terms and conditions and it was made further clear in paragraph 3 that the employees whose options were not accepted within the specified period will be regulated as per paragraph 1(vi) above. It further showed that those who did not exercise their option would continue with the NHPC on the same terms and conditions opted before. It may be taken that the Applicant did not exercise an unqualified option. He had asked for absorption with the condition that his services from 11.8.61 be considered for the purpose of pension and retiral benefits. There was no communication that

this was acceded to or declined at that time. Consequently, he continued in service as before.

We have seen that the Applicant's service between 1961 to 1974 was that of any other Central Government servant. That service was sought to be terminated by an order dated 11th August, 1987 after his superannuation. In our opinion, no legal effect can be given to this order passed 13 years after the Applicant had been transferred from the project in which he was working then. It may be remembered that he had been provided joining time and had also been given advance to meet the expenses on transfer. An employee who was being retrenched would be given neither of these benefits. Consequently, the order dated 11th August, 1987 is of no effect as far as the Applicant is concerned. He would continue to be treated as a Government servant also in the Salal project and even after the NHPC took over the Salal project. Even assuming that he had not exercised an unqualified option for joining the NHPC his status would not change at all in view of the provisions of paragraph 3 of the order dated 31st December, 1983. It is also clear that he continued in that position until his superannuation on 31st July, 1987.

We are, therefore, not prepared to hold that he was entitled only to terminal gratuity as had been ordered ^{the} to be paid to him by order dated 18th August, 1987 for

his services in the CWC till 15.9.74. He was a Central Government servant and he continued throughout as such till his superannuation. In our opinion, orders dated 11th August and 18th August, 1987 are liable to be quashed. We are conscious of the fact that in the OA, quashing of these orders had not been asked for as it could not be because these orders had been passed later and the OA had been filed on 3rd July, 1987. We are also conscious of the fact that the Applicant had not made an MP for the amendment of reliefs in the OA. But these two orders dated 11th and 18th August, 1987 were ~~very~~^{much} pressed by the respondents in support of their case. In view of our finding that the Applicant was a Central Government servant throughout, these orders dated 11th and 18th August, 1987 be set aside and a direction is given to the respondents to pay the Applicant his retirement/pensionary benefits on retirement on superannuation on 31.7.1987 within a period of three months from the date of the receipt of a copy of this order. We, however, leave the parties to bear their own costs.

B.N. Jayasimha
(B.N. Jayasimha)
Vice Chairman(A)

AB
(Amitav Banerji)
Chairman
3.7.1989.