

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 1742/91

Date of Decision : 23.10.1992

Shri S.P. Dair

...Applicant

vs.

Union of India & Ors.

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Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Applicant in Person

For the Respondents

...Shri R.S. Aggarwal, Counsel

1. Whether Reporters of local papers may be allowed to see the Judgement?

2. To be referred to the Reporter or not?

JUDGEMENT

The applicant, earlier served in the Army, RIASC till 27.8.1944 and thereafter served in Defence Accounts Department till 8.4.1948 and was retrenched from the same. He appears to have served in the Indian Air Force. After that the applicant was selected in the Income-Tax Department, Delhi on the basis of direct recruitment as LDC. While the applicant was working in Income-Tax Department, Delhi, IAC-II and was officiating as Head Clerk against the leave vacancy, went on deputation to Oil and Natural Gas Commission (ONGC) and joined there on 2.4.1957. He was permanently absorbed in ONGC w.e.f. 13.3.1964 and he retired on superannuation from the same organisation on 31.1.1984.

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The case of the applicant is that had he continued to serve in the Income-Tax Department, he would have got full pension as per Government Rules. But since he was absorbed in ONGC in public interest, his case needs consideration for Government pension. He has further stated that the Income Tax Department transferred his GPF credit to the ONGC after his absorption in ONGC, but did not make any reference regarding pensionary benefits as contained in the Ministry of Defence OM No.F-2(6)Ev(a) 62 dt. 5.11.1964 and ONGC also failed to take an option from the applicant as required under the existing rules.

2. The applicant has filed the present application on 17.7.1991 along with a supplement and in the supplement application, the applicant has claimed the relief that a lump sum amount against the Government contribution equal to Government contribution plus interest amounting to Rs.6,000 be sent to the ONGC as opening balance plus interest of 20 years and even the interest due to him after retirement in January, 1984 to January, 1991 may kindly be sanctioned to him or any other amount which may be decided, be ordered to be paid to him. The applicant made representations and he was informed on 28.7.1989 that his case is required to be regulated under the Ministry of Finance

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OM dt. 16.11.1960 and his request for grant of pension to CPF retiree, who had retired prior to 1.1.1986 cannot be accepted. The applicant was further informed by the letter dt. 21/24.12.1990 by the Commissioner of Income-Tax that the applicant is not entitled to get any further Government's liability as mentioned in the OM dt. 10.11.1960. The same information was given to the applicant by ONGC by the Memo dt. 20.12.1990. Thus the request of the applicant was turned down. Hence the present application has been filed.

3. Respondent No.2, Chief Commissioner of Income Tax has contested the application and stated that the applicant rendered the service in the Income Tax Department for the period from 25.2.1949 to 2.4.1957 and thereafter he joined ONGC. The answering respondents have also relied on the circular dt. 10.11.1960. Since the Government of India (Income Tax Department) has made contributions of leave salary and pension to ONGC, hence Income Tax Department is not obliged to make any further payment.

4. I have heard the applicant in person and the learned counsel for the respondents at length. As regards the grant of pension to the applicant, the applicant is not governed by the OM of 1964. OM of 1964 No.F-2(6)-Ev(a)-64 which is on the subject of settlement of pensionary terms in respect of Government employees transferred to an autonomous organisation consequent on the

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conversion of a Government department into an autonomous body. Here a Government servant has opted to retain the service conditions as under Government and the autonomous body has no pension scheme on their side, Government would pay them pension, but recover the capitalist value from the autonomous body on the retirement of the individual concerned. Where the concerned Government servant opts to be governed by the rules of the autonomous body and the rules of that body provide for CPF benefits, Government would pay to that body CPF benefits and interest thereon for the period of service under them in terms of the Ministry of Finance OM No. 2(33)/Ev(A)-60 dt. 10.11.1960. It is also provided that the Government would have no objection in extending the benefits of these orders to the Government employees, who have been transferred to autonomous bodies before the issue of these orders. The conversion of ONGC from Government department under the Ministry of Steel Mines and Fuel into a statutory autonomous organisation took place w.e.f. 15.10.1959. The applicant had gone on deputation to the department from his parent organisation, i.e., Income Tax Department. Even after conversion of ONGC from Government department into an autonomous body, the applicant continued to be

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on deputation and his lien was maintained till 13.3.1964.

However, in the present case, the services of the applicant were not transferred on the date of conversion of ONGC into an autonomous body as he was permanently absorbed w.e.f. 13.3.1964 and continued to be on deputation to ONGC. Thus the provisions of OM dt. 5.11.1964 were not applicable to the applicant. His case was to be governed by the provisions of OM dt. 10.11.1960. This position has also been admitted by the respondent No.2 in his counter-affidavit.

5. The OM dt. 10.11.1960 reads as under :

"The Govt. of India have had under consideration the question whether a Government servant who is deputed or transferred to service under a body corporate owned or controlled by Government, or whose services are lent to such a body, should, in the event of his permanent absorption in service under that body, be allowed any retirement benefits in respect of his previous pensionable service rendered under Government, and if so, to what extent and in what form. After careful consideration, the President has been pleased to decide that in such a case, subject to what is stated in paragraph 2 below, an amount equal to what Government would have contributed had the officer been on Contributory Provident Fund terms under Government, together with simple interest thereon at two percent for the period of his pensionable service under Government may be credited to his Contributory Provident Fund Account with the autonomous body as an opening balance on the date of permanent absorption and Government's liability in respect of the officer's pensionable service under them treated as extinguished by this payment."

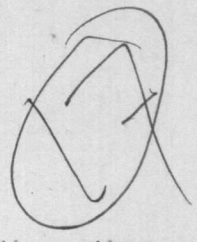
6. The ONGC in the communication dt. December, 1990 to the applicant has clearly informed in the aforesaid letter in para-2, which is as follows :-

"The matter was earlier examined. Since ONGC (Terms & Conditions of Appointment & Service) Regulations, 1975, were framed with previous approval of the Central Govt. as well as the Commission and are applicable to all employees of the Commission except those mentioned in sub-clause (a)&(b) of Clause (1) of Regulation 3 of the aforesaid Regulations and since pensionary terms are not contained in these Regulations, the employees employed in the Commission prior to its conversion as statutory body, are not entitled

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to pensionary benefits. Moreover, once such employees joined the membership of CPF without any objection and have been getting the benefits of CPF, their request for grant of pension at this stage being not legally tenable, cannot be accepted."

The case of the applicant that he was not given an option cannot be accepted at this late stage because he continued to draw all benefits while serving ONGC in various capacities till his superannuation in January, 1984. The applicant cannot go back to that period and assert that he is prepared to return all benefits he has received provided the whole service is counted and he is given the pensionary benefits with effect from the date of retirement from ONGC, i.e., from January, 1984. This point has also been considered in the latest decision of the Hon'ble Supreme Court, Krishan Kumar vs. Union of India, reported in 1990 (4) SCC 207. In the case of Smt. Lakshamm Vs. Union of India, reported in 1992 (19) ATC 333, it was held that an employee governed by CPF scheme cannot claim pension in respect of his earlier service after such a long period, though this was the case of a widow of a Government employee. The Hon'ble Supreme also rejected the claim of All India Service Pensioners' Association (Civil Appeal No.897/87) decided on 25.4.1991, that even a pensionary matter, if there are delay and laches and the claim is barred by limitation, that cannot be allowed and the appeal of Union of India was allowed.

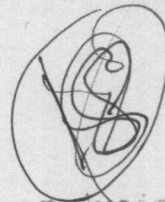


7. Now only the question that remains is whether the applicant can be given the benefit of the circular of 10.11.1960 (supra). The respondents in their letter dt. 24.12.1990 have specifically quoted in para-v that the applicant in his representation dt. 27.12.1988 has stated as follows :-

"I do not remember my GPF number in Income-tax Deptt., Delhi Range II, but was paid by the I.A.C. Range II, New Delhi and even on deputation/foreign service with the ONGC my leave salary/pension contributions were paid as far as I remember."

The contention of respondent No.2 is that in view of the circular, the applicant is not entitled to get any further Government's liability for pensionary benefits for his service rendered in the Income Tax Department from 1949 to 1964. However in the impugned letter dt. 24.12.1990, respondent No.2 has not clearly stated as to whether they had made any contribution equal to what Government would have contributed had the official been on contributory terms under Government and deposited as an opening balance with the autonomous body on the date of permanent absorption ~~or~~ thereby ² extinguished the liability of the pensionary benefits for the period of service rendered by the applicant in the Government of India in the Income Tax Department. In the reply filed by the Income Tax Department, it is surprising that every aspect of the matter has not been touched and almost in one single

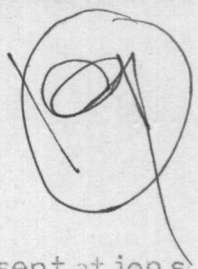
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~~case~~ certain facts have been alleged, but without producing any **data** as to whether any such amount towards Contributory Provident Fund in terms of the OM of 1960 has been credited in the account of the applicant in the CPF scheme in ONGC. When respondent No.2 has admitted that the case of the applicant is governed by the circular dt. 10.11.1960, then it was desired from them to show from the records as to whether any amount has been deposited in the opening balance of the **CPF** account of the applicant in ONGC. Neither any such averment has been made in the reply nor any such fact has been argued by the learned counsel for the respondents during the course of hearing.

8. The applicant has referred to a similar decision in the case of Smt.Mundresh Bala Nagar Vs. Union of I_ndia (OA 1915/89) decided by the Principal Bench on 30.7.1990. In this reported case also, the husband of the applicant who was earlier working in AFHQ as UDC went on deputation to ONGC in March, 1959, i.e., before that organisation became an autonomous body in October, 1990. The benefit of that OM of 1960 was to be given to the widow of the said employee. In view of this fact, the applicant cannot be denied that much benefit though he has come quite late for the redress of the grievance to the Tribunal. The contention

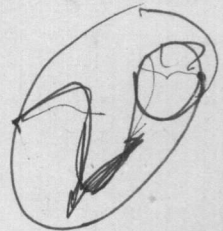
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of the applicant that he had been making representations and in July, 1989, he was informed that his case is governed by the OM dt. 10.11.1960. His record was also sent by the Directorate of Administration, ONGC to the Chief Commissioner of Income Tax, Delhi. It is after the receipt of the record of the applicant by the Income Tax Department that the impugned letter dt. 24.12.1990 was issued by the Income Tax Officer, Pay and Housing, New Delhi. In this impugned letter also, it is nowhere stated that a contribution towards the CPF for the service rendered by the applicant in the Central Government has been credited in the account of the applicant in ONGC. What is mentioned is that the applicant has admitted that certain amount of contribution towards leave salary and pension were made to ONGC. But this admission of the applicant in any of the representations dt. 27.12.1985 will not deprive him of the benefit of the OM of 1960. (Supra)

9. In view of the above discussion, the applicant has made out a case that he is entitled to a matching contribution by the Government in view of the OM of 1960 (supra), which has not been done in his case and that is not evident from the reply filed by respondent No.2 nor from any other document available on record.

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10. In view of the above discussion the application is partly allowed with the direction to respondent No.2 that an amount equal to what the Government had contributed had the officer been on the Contributory Fund terms under the Government with simple interest @12% p.a. on the amount for the entire period of pensionable service put in by the applicant under Government prior to his permanent absorption in ONGC w.e.f. March, 1964, be paid to him within a period of three months from the date of receipt of a copy of this judgement. Since the applicant has come quite late, so he shall not be allowed any further interest on that amount if the amount is well paid within a period of three months from the date of receipt of a copy of this judgement. If the said amount is not paid within three months, the applicant shall be entitled to interest @12% p.a. from the date after three months, as said above. In the circumstances, the parties shall bear their own costs.

J. P. Sharma
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(J.P. SHARMA)
MEMBER (J)