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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2293/91
~~XXXXXX~~

DATE OF DECISION 18.2.93

Shri P.S. Sharma **Petitioner**

Shri K.K. Rai **Advocate for the Petitioner(s)**

Versus

Ministry of Defence through its
Secretary and Others **Respondent s**

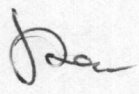
Mrs. Raj Kumari Chopra **Advocate for the Respondent(s)**

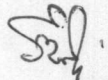
CORAM :

The Hon'ble Mr. S.P. Mukerji, Vice-Chairman

The Hon'ble Mr. J.P. Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? y
2. To be referred to the Reporter or not ? y
3. Whether their Lordships wish to see the fair copy of the Judgement ? L


(J.P. SHARMA)
MEMBER (J)


(S.P. MUKERJI)
VICE-CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO. 2293/91

DATE OF DECISION : 18.2.93

Shri P.S. Sharma

...Applicant

Versus

Ministry of Defence through
its Secretary and Others

...Respondents

CORAM

Hon'ble Shri S.P. Mukerji, Vice-Chairman

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

For the Applicant

...Shri K.K. Rai, Counsel

For the Respondents

...Mrs. Raj Kumari Chopra,
Counsel

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant joined Ministry of Defence in MES as Superintendent (B/R) Grade II on 2.11.1963 and obtained quasi-permanent status after three years, i.e., w.e.f. 2.11.1966. The applicant applied for the post of Assistant Engineer in Central Ware Housing Corporation where he joined after being relieved from MES w.e.f. 15.11.1976. After joining the Central Ware Housing Corporation as Assistant Engineer, the applicant applied to the Ministry of Defence for pro-rata grant of pension for the period he has worked in MES and also sent reminders on 4.2.1988, 20.2.1988, 31.3.1988 and 4.5.1989. The applicant was informed that he should submit his case for pension with respondent No.1 and the

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applicant again submitted the same with reminders sent on 2.8.1989 and 28.12.1990. The applicant was informed by the respondents vide letter dt.18.1.1991 regarding the decision taken on 10.1.1991 by Engineer-in-Chief Branch, Army Headquarters, New Delhi. The said order is reproduced below:-

"2. Min. of Defence have given the following decision :-

"In absentia confirmation of employee who resigned from service is not in order. If a person wishes to better his prospects even while he is temporary, he should not expect to be given special consideration by way of protecting his rights for confirmation in a post which he thought fit to leave.

Deptt. of Personnel & Training Estt(D) section's OM No.18011/2/88/Estt.- (D) dated 09 Aug.88 have also directed for cancellation of erroneous confirmation which was passed in contravention of existing Rules/instruction."

3. In view of above documents received vide your letter under reference are returned herewith."

2. In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order dt.10.1.1991 passed by the respondents Nos.1 and 2 having the grievance that the respondents are seeking to withdraw the confirmation granted to him vide letter dt.5.9.1986 confirming him w.e.f. 1.4.1976 and also ^{consequently} refusing pre-rata pension.

3. The applicant has averred in the application that confirmation was granted to him in the period when he was in

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actual employment of the respondents. If the applicant has not been confirmed in due course of time before joining the Central Ware Housing Corporation, then he is not at fault. His confirmation w.e.f. 1.4.1976 goes to show that he was in every case eligible on the availability of permanent vacancy and that he was considered by the duly constituted DPC for confirmation. The mere fact that the order of confirmation was issued on 5.9.1986 should not be taken as a ground that the applicant could have been confirmed from a retrospective date. In fact the confirmation orders are always passed subsequently giving confirmation in the appointment with retrospective date on the availability of the vacancy.

4. The respondents contested the application and stated that the applicant has been confirmed ⁱⁿ ~~absentia~~ and that was an erroneous order of confirmation which has been rightly ordered to be withdrawn by the impugned order dt.10.1.1991. It is further stated that absentia confirmation could be possible in those cases where the officers hold a lien on the specific point of time when confirmation is considered. It is further

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stated that the OM dt.9.8.1988 of DOP&T empowers the Government to cancel the erroneous confirmation order provided such order is made in contravention of the existing Rules/instructions whether statutory or administrative or executive. The applicant left the Department for joining Central Ware Housing Corporation on deputation and was relieved on 15.11.1976. At that time he was permanently absorbed in Central Ware Housing Corporation. When the applicant left the department, he was not a permanent employee of the department. It is further stated that unless an individual is a permanent Government servant, he is not entitled to pro-rata pensionary benefits. In view of this, it is stated that the order of withdrawal of confirmation is justified and also ^{order of} ~~non~~ grant of pro-rata pension to the applicant.

5. The applicant has also filed rejoinder reiterating the same facts. It is stated that reference to the OM annexed as Annexure RJ-3 to the counter is not applicable to the case of the applicant. The applicant was given confirmation not for a date when he was not in service. He was accorded confirmation for the period when he had really worked.

6. We have heard the learned counsel for the parties at

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length and have gone through the record of the case. The issue involved in this case is whether a person can be confirmed while on deputation in another organisation and is absorbed there subsequently? In the present case, the applicant's lien was retained in the department, Ministry of Defence till November, 1979. While the applicant was on deputation, he was asked by the letter dt.7.1.1988 (Annexure B) to deposit pension/leave salary, contribution to the Government treasury for the period from 16.11.1966 to 15.11.1979. In pursuance to this letter, the applicant has deposited a sum of Rs.4010.40 by the letter dt.3.1.1988 to the Government treasury. A challan of the deposit has also been enclosed with the said letter. It is subsequent to this that the present order of confirmation dt.5.9.1986 (Annexure A) was issued. Along with the rejoinder, the applicant has also filed general order of confirmation of some Superintendent (B/R) II with effect from the date shown against each of them (Annexure RJ4) dt.4.9.1985. This goes to show that one Harbans Lal Sharma was confirmed from 1.4.1976 and his lien was terminated from 31.10.1979. This actually goes to show that even some of the officers whose lien was retained in the department were confirmed from earlier date by the subsequent order by CANG.

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This order of confirmation also goes to show that certain persons have been confirmed even after the ir superannuation or death. Thus the contention of the learned counsel for the respondents that the confirmation can only be done when the incumbent is in active service with the department cannot be accepted particularly in the circumstances when the lien of the person concerned has been retained in the department and the date of confirmation relates to the period when such incumbent has actually worked in the department. From another angle also, the confirmation cannot depend on the sweet will of the respondents. The learned counsel for the applicant has referred to the case of Shiv Kumar Sharma Vs. Haryana State Electricity Board, reported in 1988(3) ATC 792 where the Hon'ble Supreme Court observed as follows :-

"The archaic rule of confirmation, still in force, gives a scope to the executive authorities to act arbitrarily or mala fide giving rise to unnecessary litigations. It is high time that the Government and other authorities should think over the matter and relieve the Government Servants of becoming victims of arbitrary actions..."

The learned counsel has also referred to the case of S.B.Patwardhan Vs. State of Maharashtra, reported in 1977(3)SCC 399 where the Hon'ble Supreme Court held as follows :-

"Confirmation is one of the inglorious uncertainties of Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. A glaring instance widely known in a part of our country is of a distinguished member of the judiciary who was confirmed as a District Judge years after he was confirmed as a Judge of the High Court. It is on the record of these writ petitions that officiating Deputy Engineers were not

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confirmed even though substantive vacancies were available in which they could have been confirmed. It shows that confirmation does not have to conform to any set rules and whether an employee should be confirmed or not depends on the sweet will and pleasure of the government."

7. In view of the above specific law on the point, the respondents cannot pass any order to the detriment of the concerned person subsequently if such an order results to his prejudice. In the present case, the applicant was duly confirmed in his turn by the order dt.5.9.1986 but when he applied for pre-rate grant of pension, the aforesaid order was desired to be cancelled. This earlier confirmation cannot be said to be erroneous because the applicant has a vested right to stand confirmed in any case from the date when one of his juniors has been confirmed if he is otherwise found fit. During the course of the arguments, the learned counsel for the applicant pointed out that the case of the applicant was considered by duly constituted DPC for confirmation along with others and he was found fit. An administrative order, therefore, subsequently cannot undo the recommendations of the DPC which has already been accepted. If any other view is taken of the matter that the confirmation made be withdrawn, then such an act shall be arbitrary in as much as the person standing junior to the confirmed person will gain an advantage over such confirmed person.

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8. The applicant has gone from Central Government Department to the corporation, i.e., Central Ware Housing Corporation, which is wholly owned by the Central Government. The applicant was earlier sent on deputation and his lien was duly retained in the parent department upto November, 1979.

Thereafter he was absorbed under relevant instructions with the consent of the parent department in the Central Ware Housing Corporation. Thus the applicant cannot be put to a disadvantageous position because the respondents have every right to object to the absorption of the applicant in the Central Ware Housing Corporation where he has earlier gone with the consent of the parent department on deputation. Even otherwise also if a person has gone on deputation, as the applicant was, on the relevant date and any advantage has accrued to him junior in the parent department, then the person who is on deputation is entitled to the same advantage if otherwise found fit. Same is the case here. Thus the order of confirmation dt.5.9.1986 is the order passed after due consideration by the respondents, i.e., Engineer-in-Chief, Western Command, Chandi Mandir and cannot be withdrawn.

9. In view of the above facts and circumstances, the application is allowed with the following directions :-

The impugned order dt.10.1.1991 (Annexure R2) is quashed and the applicant shall be deemed to be confirmed employee of respondent No.1 and shall be entitled as per extant

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Rules to payment of pro-rata pension. The respondents are directed to comply with the above directions within a period of three months from the date of receipt of a copy of the judgement. In the circumstances, the parties shall bear their own costs.

J. P. Sharma

(J.P. SHARMA)
MEMBER (J)

18.2.83

AKS

S. P. Mukerji

(S.P. MUKERJI)
VICE-CHAIRMAN

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MP 1600/93 in OA 2293/91

01.06.93

Present: Sh. K.K. Rai, Counsel for the petitioner

Mrs. Rajkumari Chopra, counsel for the respondents

MP 1600/93 has filed by the respondents in the main OA No. 2293/91 which is decided on 12.2.93. In the said decision; the impugned order dated 10.1.91 was quashed and the petitioner was deemed to be confirmed employee of the respondents No.1. Accordingly, the petitioner was held to be entitled to the payment of pro-rata pension as per extant rules. The respondents were, therefore, directed to comply with the above directions by way of giving pro-rata pension within a period of 3 months from the date of receipt of a copy of the judgement. A copy of the judgement was sent to the respondents by the Registry on 02.03.93.

In the MP, the respondents have prayed for further time for 6 months or upto 31.10.93 to implement this judgement. After consideration of the matter, we are of the opinion that the respondents should implement the judgement as expeditiously as possible but within 30.09.93. The MP is disposed of accordingly.

(J.P.Sharma)

Member (J)

(I.K. Rasgotra)

Member(A)