

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

Date of Decision: 29.05.1992

DA 475/91

S.N. SETH

... APPLICANT.

Vs.

UNION OF INDIA

... RESPONDENTS.

CORAM:

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

For the Applicant

... Shri Sant Singh,
Counsel.

For the Respondents

... Shri K.E. Moses,
proxy counsel for
Mrs. Raj Kumari Chopra,
Counsel.

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

✓ 2. To be referred to the Reporters or not ? Yes.

JUDGEMENT

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

The applicant joined Press Information Bureau, Ministry of Information & Broadcasting, New Delhi on October 21, 1940. He was confirmed as Superintendent w.e.f. June 1, 1960. The applicant was selected for the post of Administrative Officer in Oil & Natural Gas Commission (ONGC) by the UPSC and his application was duly forwarded by the parent department. He joined

ONGC on November 24, 1959. The applicant was permanently absorbed in ONGC w.e.f. June 17, 1965 and his formal resignation was accepted by the Ministry of Information & Broadcasting. Thus, the applicant held continuous permanent appointment in the Central Govt. from October 21, 1940 to June 17, 1965. The applicant retired on superannuation on February 28, 1979 from ONGC.

2. The applicant made representation for the grant of pensionary benefits for the services he has rendered under the Central Govt. but his claim was not accepted by the order dated 19.9.1989 and order dated 1.6.1990 from the Ministry of Information & Broadcasting, Govt. of India, New Delhi.

3. The applicant has prayed that he may be granted pension under the latest Govt. orders, in view of the great hardship to him, particularly at his old age and a lumpsum amount may kindly be sanctioned to him to meet his day to day requirements.

4. The respondents contested the application and stated that the applicant applied for the post of Administrative Officer in ONGC on his own volition in response to press advertisement. He was relieved of his duties on 23.11.1959 and his administrative lien was kept for two years on the post of Supdt.

On being absorbed permanently on ONGC as Administrative Officer, he had resigned from government service which was accepted w.e.f. 17.6.65. The applicant had also earlier represented for payment of retirement benefits and the case was referred to the Department of Personnel, Public Grievance & Pension but they could not agree to his request as the concept of payment of pro-rata pension on absorption in a Central PSU has been introduced w.e.f. 16.6.1968. It is admitted to the respondents that ONGC has paid leave and pension contribution regularly upto 17.6.65. It is stated that since the applicant has applied to the post of Administrative Officer in ONGC in response to press advertisement, the absorption could not be treated as in the public interest to make him eligible to receive the benefits under Department of Expenditure O.M. dated 10.11.1960 i.e. Central Govt. contribution as if he was on CPF term with the Govt. with 2% simple interest thereon. The question of grant of any pro-rata pension does not arise as the same was introduced w.e.f. 16.6.67. The respondents have also referred to the judgement delivered by C.I.T Madras Bench TA 12/88 decided on 14.6.88 on the ground that the payment of pro-rata pension is a new incentive and it has been given effect from the date of issue of the OM dated 16.6.67. Thus, the respondents denied the claim of the applicant.

5. The applicant has filed rejoinder reiterating various points raised in the OA. At the time when the applicant joined ONGC, the ONGC was converted an autonomous body w.e.f. 15.10.59. The applicant has referred to the case of R.L. Marwaha Vs. UOI & ors. reported in 1987 Vol.4 ATC P.584 where the Hon'ble Supreme Court has held that fixation of a date for grant of benefit must have the nexus with the object said to be achieved.

6. I have heard the learned counsel for both the parties at length and have gone through the records of the case. It is not disputed that the applicant has served with the Central Govt. from 1940 to June, 1965 and that the ONGC where the applicant has joined as Administrative Officer and the application was forwarded by the parent department gave fully contribution of leave and pension to the Central Govt. till the date the applicant resigned and permanently absorbed in ONGC. In fact, the relief claimed by the applicant is for the grant of pro-rata pension. Pro-rata pension claim by the applicant cannot be granted because of the incentive was given by the OM of Ministry of Finance, Department of Expenditure dated 16.6.67. There is no scope for the learned counsel for the applicant to argue on the benefit of this OM earlier to 1967 in the Judgement of

the Madras Bench in TA 12/88 decided on June 14, 1988.

A copy of which is annexed to the counter.

7. As regards the grant of benefit of the OM of November 10, 1960 issued by the Ministry of Finance, Department of Expenditure, which is applicable to the case of the applicant if his permanent transfer from Govt. service to autonomous body is in the public interest. The relevant para of the said OM is reproduced below:-

"Sub:- Permanent transfer of Govt. Servants of Government-Companies corporations-grant of retirement benefits.

The Govt. of India have had under consideration the question whether a Govt. servant who is deputed or transferred to service under a body corporate owned or controlled by Govt., 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 Govt., 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 Govt. would have contributed had the officer been on Contributory provident Fund terms under Govt., together with simple interests thereon at two percent for the period of his pensionable service under Govt. may be credited to his contributory Provident Fund Account with the autonomous body as an opening balance on the date of permanent absorption and Govt's liability in respect of the Officer's pensionable service under them treated as extinguished by this payment.

2. The aforesaid decision will apply, however, only where the permanent transfer from Govt. service to an autonomous body is in the public interest and the transfer is to a Govt. or quasi-Govt. Corporation and not to a private institution. In all other cases Govt. will not accept any liberty to pay any retirement benefits for the period of service rendered by the Officer before his transfer.

3. The concession may not be claimed as a matter of right but may be sanctioned at the

discretion of Govt. in individual cases where it is merited.

4. In so far as person serving in the Indian Audit and Accounts Departments are concerned, these orders have been issued after consultation with the Comptroller and Auditor General of India."

8. The respondents, in the reply have also in para-5 of the counter have admitted that if the absorption is in public interest then the benefit under Department of Expenditure OM dated 10.11.60 i.e. the Central Govt. contribution as if he was on CPF term with the Govt. with 2% simple interest thereon can be granted. There is a similar judgement in OA 1915/89 decided by the Principal Bench on July 30, 1990 Smt. Mundresh Bala Nagar Vs. UOI where there was a similar employee in the Armed Forces Headquarters, working as UDC was selected for appointment as Head Assistant in ONGC and went there in March, 1959 and was ultimately absorbed in ONGC on 8.8.65 and retired from there on 31.12.77. In that case, the legal heir of the applicant nor the applicant was paid for the period his service under the Govt. as also for the period for deputation for which the Govt. demanded and received pension and leave salary contribution from the ONGC, has not been paid any pension or gratuity or family pension etc. The Tribunal in its judgement allowed the claim of the legal heir of the employee Shri Nagar in the following manner :-

"The respondents shall sanction and pay pensionary benefits to the legal heir(s) of the deceased employee for the period

of service put in under the Govt. and which qualifies for pensionary benefits, within two months, comprising the following:-

- (a) An amount equal to what the Govt. would have contributed had the officer been on contributory Provident Fund terms under the Govt.;
- (b) Simple interest at the rate of 2 percent per annum on the above amount for the entire period of pensionable service put in by the late husband of the applicant under Govt. prior to his permanent absorption in the ONGC; and
- (c) Compound interest at the rate applicable to the CPF Account in the ONGC for the period from 8.8.65 till the date of payment, on the amount comprising (a) and (b) above.

The period of two months for compliance of the above directions will count from the date of receipt of a copy of this order by respdts. We, however, leave the parties to bear their own costs."

I am in fully agreement with the judgement of the Division Bench.

9. Of course, the applicant has come very late before this Tribunal and the present application has been filed in February, 1991. But since the applicant is an old man and payment of pension is a continuing cause of action, the application is allowed and disposed of as follows:-

The respondents shall sanction and pay pensionary benefits to the applicant for a period of service put in under the Govt. and which qualifies for pensionary benefits:-

- a) An amount equal to what the Govt. would have contributed had the officer been on Contributory

Provident Fund terms under the Government;

- b) Simple interest @ 2% per annum on the above amount for the entire period of pensionable service rendered by the applicant under the Govt. prior to his permanent absorption in ONGC;
- c) Compound interest at the rate applicable to the CPF amount in the ONGC for the period from 8.8.65 till the date of superannuation from ONGC on February 28, 1979, on the amount comprising (a) & (b) above. The applicant is not entitled to any compound interest after that because he has not applied for pensionary benefits to the respondents in time.

The period of three months for compliance of the above directions will count from the date of receipt of a copy of this order by the respondents.

In the circumstances, parties are left to bear their own costs.

J. P. Sharma
(J. P. SHARMA)
MEMBER (J) 28.5.72