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

Date of Decision: 24.04.92

OA 559/91

PARMINDER SINGH

... APPLICANT.

Vs.

INDIAN COUNCIL OF
AGRICULTURAL RESEARCH

... RESPONDENTS.

CORAM:

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

For the Applicant

... Shri P.P. Khurana,
Counsel.

For the Respondents

... Shri R.S. Aggarwal,
Counsel.

1. Whether Reporters of local papers may
be allowed to see the judgement ? *Y*

2. To be referred to the Reporters or not ? *N*

JUDGEMENT

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

The applicant is aggrieved by the order dt.

21.3.1989 whereby he was refused release of the prorata
retirement benefits even after acceptance of his
resignation w.e.f. 1.6.1984 by the letter of the
respondents dt. 21.7.1986. The applicant has claimed
the relief of the pensionary benefits due to him for
having put in 13 years of service in ICAR. The present
application has been filed on 27.2.1991.

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2. The facts of the case are that the applicant joined as Junior Stenographer on 4.8.1970 with the respondents and he worked there till 2.3.1983 after having been promoted as Personal Assistant Grade-II on 16.8.1972. There after the applicant was selected as a Special Assistant in National Textiles Corporation (NTC) and was allowed to retain his lien on the post of Personal Assistant. NTC did not agree to the contribution of leave salary and pension, so the applicant himself has to pay the respondents (Annexure A1). The applicant was declared permanent on 25.8.1984 (Annexure A2) w.e.f. 1.7.1975. There after the applicant joined the new assignment as Secretary in the United Nations Children Fund on 30.7.1984 and now stands permanently absorbed there. Before joining the said post, the applicant informed the respondents (Annexure A3). The applicant submitted a resignation on 1.6.1984 (Annexure A4) which was accepted by the respondents by the letter dt. 21.7.1986 (Annexure A5). The applicant has been praying for the grant of pensionary benefits for the period of service rendered with the respondents, but to no effect. The applicant also deposited a sum of Rs. 2850 on account of payment of leave salary and pension contribution for the period from 3.3.1983 to 31.5.1984. But even after

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the deposit of the same, he was informed that retirement benefits will become payable to him only on 16.8.2002 (Annexure A-12) i.e. from the earliest date from which the applicant could have retired from the Council, had he been in service in terms of Government of India OM No.25-1-EV/83 dt.8.9.1983.

3. The respondents contested the application and took the preliminary objection of limitation as the order dt.21.3.1989 has been challenged in the application filed in February, 1991, i.e. two years after, while the period of limitation prescribed is one year under Section 21 of the Administrative Tribunals Act, 1985. The other objection taken by the respondents is that as per the OM dt.8.9.1983, the prorata retirement benefits in such case become payable either from the earliest date from which the employee could have retired voluntarily under the rules applicable to him (e.g. on attaining the age of 50-55 years or on completion of 30 years' qualifying service, had he remained in the service of the Council as the case may be) or from the date of absorption in the new organisation, whichever is later. The date of birth of the applicant is 29.10.1953. Being a Class-III employee, he

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attains the age of 50 years on 20.10.2003. He entered in the service in the ICAR Headquarters on 16.8.1972.

Had he served ICAR for a period of 30 years, he could have become eligible for voluntary retirement on 16.8.2002. The earlier date between the two is 16.8.2002. As such, he will become eligible to receive prorata retirement benefits w.e.f. 16.8.2002.

4. The applicant filed the rejoinder and stated that the application is not barred by time as the applicant has prayed for the payment of pensionary benefits only and he had a continuing cause of action. It is further stated that prorata retirement benefits will become payable as per OM No.4(12)/85/P&W dt.31.3.1987 and the applicant is entitled for prorata pension on the severance of his links with the respondents.

5. I have heard the learned counsel for the applicant and none appeared on behalf of the respondents. It is not disputed that the applicant has been on deputation w.e.f. 2.3.1983 to NTC. It is also not disputed that the applicant had been promoted as Personal Assistant Grade-II, while on deputation in the parent cadre w.e.f. 1.7.1975. Thereafter

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the applicant joined UNICEF on 13.4.1984 and he got himself relieved from NIC from the afternoon of 23.4.1984. Subsequently, the applicant has tendered his resignation from the permanent post of Personal Assistant Grade-II from the forenoon of 1.7.1984 and his resignation has also been accepted vide order dt. 21.7.1986. It is also not disputed that the applicant was directed to deposit his contribution upto 31.5.1984 towards leave salary and pension and the applicant has also deposited the same vide receipt dt. 28.12.1988 (Annexure AII). Firstly, the applicant has resigned from his appointment with the respondents and the resignation has been accepted w.e.f. 1.6.1984, but he has not been allowed the benefits because of the OM No. 25-1-2V/83 dt. 8.9.1983. The learned counsel for the applicant could not show how the applicant is not governed by the aforesaid OM. On the other hand, the ~~xxxxxxxxxxxxxxxxxxxxxx~~ respondents have taken shelter of the OM dt. 31.3.1987.

6. The OM dt. 8.9.1983 issued by the Ministry of Finance clearly lays down that the pro-rata retirement benefit in a case like that of the present applicant will become payable either from the earliest date from which the employee

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could have retired voluntarily under the rules applicable to him (e.g. on attaining the age of 50/55 years or on completion of 30 years' qualifying service, had he remained in the service of the council, as the case may be) or from the date of absorption in the new organisation whichever is later. The applicant's counsel has only referred to the fact that the link of the applicant has severed by the earlier employer, i.e., the Government of India and the applicant is entitled to pro-rata pensionary benefits on the severance of the links with the respondents.

In fact, in the case of the applicant, there is no date of absorption because the applicant had joined the services with NTC on transfer on deputation from the post of Personal Assistant Grade-II in the ICAR. From NTC, the applicant has gone to UNICEF. If the resignation ~~of~~ ^{from the} service is taken in the technical sense under Rule 37 of the CCS(Pension) Rules, 1972, then the applicant is entitled to the grant of ^{retirement} ~~benefits~~. But these in a normal course shall be available to the applicant only in accordance with the OM of 1983, referred to above. Thus the impugned letter dt.31.3.1989 (Annexure A12) does not suffer from any legality. The applicant has not shown any other order, rule or notification under which he is entitled to pro-rata retirement benefits after the acceptance of resignation of the applicant w.e.f. 1.6.1984 by the order dt.21.7.1986.

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The respondents have not disputed the claim of the applicant for pro-rata grant of pension for the service rendered from 4.8.1970 till such time he has worked and his lien was retained, i.e., 1.6.1984 though he ceased to work in ICAR from 2.3.1983.

7. In view of the above discussion, the present application is devoid of merit and is, therefore, dismissed leaving the parties to bear their own costs.

AKS

J. P. Sharma
(J. P. SHARMA)
MEMBER (J) 22.4.92