

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.672/91

Date of decision: 27.11.1992.

Shri U.V. Uttamchandani ...Petitioner

Versus

C.P.W.D. & Others ...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner Shri G.D. Gupta, Counsel.

For the respondents Shri M.L. Verma, Counsel.

1. Whether Reporters of Local Papers may be allowed to see the judgement? ~~Yes~~ No
2. To be referred to the Reporter or not? Yes


(I.K. Rasgotra)
Member(A)

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For the petitioner

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For the respondents

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J U D G E M E N T (ORAL)

(HON'BLE MR. I.K. RASGOTRA, MEMBER (A)).

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The petitioner has had a chequered career in the Government before he joined the Delhi University on 16.6.1978, on being relieved from National Seeds Corporation Limited on 5.6.1977. He joined Central Public Works Department (CPWD for short) as Junior Engineer on 13.9.1962 and moved over to the Western Railway as Design Assistant w.e.f. 16.2.1963 in continuation of his previous service after applying

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through proper channel. From Western Railway where he served upto 1.2.1965, he applied for the post of Assistant Engineer in CPWD through proper channel and on selection joined on 2.2.1965. He went on deputation to National Seeds Corporation on 6.3.1975 and remained there till 5.6.1977. During the period when he was with the National Seeds Corporation he applied for the post of Executive Engineer in the Delhi University in response to an open advertisement. He was selected and joined Delhi University on 16.6.1978 where he is now working as Superintending Engineer. It has been stated that although he was relieved from the National Seeds Corporation on 5.6.1977, he did not go back to CPWD. There is also some discrepancy about the date on which he joined the Delhi University. According to the counter-affidavit filed by the respondents he joined the Delhi University on 6.2.1976 without the knowledge and approval of the CPWD whereas the petitioner says that he joined Delhi University on 16.6.1978.

2. The petitioner has prayed for the following reliefs:

- (1) To set aside/quash the impugned communication dated July 30, 1990 and also letters dated 22.2.1989 and 29.10.1988

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(2) To direct respondents to give all due and consequential benefits to the petitioner of his entire past service of 13 years and 9 months as mentioned above by transferring the same to the University of Delhi so that the petitioner can avail the benefits, pension and gratuity after his retirement.

The above orders which have been prayed to be set aside, have been passed by the respondents rejecting the prayer to grant him pensionary benefits for the service rendered by him before he joined Delhi University where he is now serving as Superintending Engineer.

3. The short question for decision is whether the petitioner is eligible for counting his service rendered prior to his joining the Delhi University for the purpose of retirement benefits etc.

4. Shri M.L. Verma, learned counsel for the respondents submitted that the petitioner was sent to National Seeds Corporation on the condition that his lien would be retained for two years and would expire on 5.9.1977. Thereafter, instead of reporting ^{back} to the CPWD, the petitioner joined the Delhi University of his parent without the knowledge of department, even though he had

been declared quasi-permanent on 21.7.1975 retroactively from 2.2.1968. It was, therefore, contended that the petitioner was not eligible for treating the service rendered prior to joining Delhi University, as qualifying service for pension and other retirement benefits.

4. Shri G.D. Gupta, learned counsel for the petitioner urged that the lien of the petitioner could not have been terminated without his consent or alternatively till he acquired lien elsewhere in accordance with the Rules. Since the limited issue before us whether the petitioner is entitled to reckon his past service in various Government departments for retirement benefits, we are not required to go into the other issues like quasi-permanency or his joining Delhi University with/without the clearance of the CPWD. Shri G.D. Gupta further brought to our notice that the petitioner has been confirmed in the CPWD retrospectively vide office order No.55 of 1992 dated 18.5.1992 w.e.f. 1.12.1987. The petitioner was, therefore, a permanent employee of the respondents department viz. C.P.W.D. during the period in question. This fact is not disputed by the respondents.

5. I have heard the learned counsel for both the parties and considered the matter carefully. The consolidated instructions incorporated in Appendix-XII annexed to CCS Pension Rules (Swamy's Pension Compilation Twelfth Edition) page 381/ refers to the provisions which cover the

controversy raised in this case. Instruction No.5 which reads as follows, as is germane in this matter:-

"5. Permanent transfer of Government servants who apply in response to a Press advertisement, etc., for posts in autonomous bodies/public sector undertakings whether incorporated or not, which are wholly or substantially owned by the Government of India is not treated as in the public interest and the Government has no liability to pay any retirement benefits or for carry forward of leave for the period of service rendered under the Government. However, on the position being reviewed further, it was decided that a permanent Government servant who has been appointed in an autonomous body financed wholly or substantially by Government on the basis of his own application shall, on his permanent absorption in such body with effect from the 21st April, 1972 or thereafter be entitled to the same retirement benefits in respect of his past service under the Government as are admissible to a permanent Government servant going on deputation to an autonomous body and getting absorbed therein, except carry forward of leave.

Distinction between absorption under 'public interest' and 'own volition' removed. The concession allowing pro rata retirement benefits

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to the Government servants who have been appointed in a Public Sector Undertaking on the basis of their applications, on their permanent absorption in such Public Sector Undertakings, in respect of their past services under the Government as were admissible to Government servants on deputation to the Public Sector Undertakings on their permanent absorption therein was made available only to those Government servants who got permanently absorbed in the Public Sector Undertakings on or after 21.4.1972, whereas the Government servants who were on deputation in public interest, were entitled to pro rata benefits on their permanent absorption in the Public Sector Undertakings even prior to 21.4.1972 but after 6.11.1968. Government servants getting absorbed on their own volition are also not entitled to carry forward leave at their credit.

Thus, there still remained a distinction between the Government servants who got absorbed in the public interest and the Government servants getting absorbed on their own volition for the purpose of grant of pro rata retiring benefits. The question of removing this distinction had been under the consideration of the Government for some time. It has now been decided that there should be

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no distinction between the two types of deputationists getting absorbed in Public Enterprises, subject to the condition that the period of leave to be carried forward should be restricted to 120 days in the case of absorption of deputationists who initially joined the enterprise on their own volition. This will apply to all cases of absorption of Government deputationists in Public Enterprises, who had earlier joined the concerned undertakings on their own volition, provided that in cases of such absorptions which took place on or after 8.11.1968 but prior to 21.4.1972, the benefit of proportionate pension should be allowed only from 1.8.1976."

It is clear from the above instructions that the distinction between absorption in 'public interest' and under 'own volition' has been done away with by the Government vide Department of Personnel OM No.28-16/4/76-Ests.(C) dated 25.3.1977. In accordance with these instructions permanent transfer of a government servant who applied in response to a press advertisement for a post in autonomous/public sector undertaking which is wholly or substantially owned by the Government of India is no different from the transfer in 'public interest' in which case it was necessary for the petitioner to apply for the post through proper channel. The petitioner on absorption in such a body w.e.f. 21.4.1972 or thereafter will be entitled to the same

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retirement benefits in respect of his past service under the Government as are admissible to permanent government servants going on deputation to autonomous body and getting absorbed there except carry forward leave. Since the distinction between 'public interest' and 'own volition' has been removed, the petitioner accordingly shall be entitled to claim pro-rata retirement benefits for the service rendered prior to his absorption in Delhi University.

6. In view of the above instructions, I am of the opinion that the petitioner is entitled to pro-rata retirement benefits for the service rendered by him in various government departments/public undertaking prior to joining Delhi University. The competent authority before sanctioning the counting of the service rendered by the petitioner in the various Government departments and National Seeds Corporation would no doubt check up the qualifying service of the petitioner to be reckoned as per this order and pass appropriate orders in accordance with the relevant rules, if there has been some periods of discontinuity in the course of his movement from one job to the other.

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7. The period of leave to be carried forward shall also be regulated in accordance with the relevant instructions, as extracted above.

8. In the facts and circumstances of the case and subject to the observations made in the preceding paragraphs regarding verification of qualifying service and passing of appropriate orders in regard to period(s) of discontinuity during the movement of the petitioner from one job to the other, the respondents are directed to reckon the past service of the petitioner for the purpose of his retirement benefits on a pro-rata basis. Since the instructions of the Government contained in OM No.F.2(117)/76/SC dated 26.12.1977 regarding the simplified procedure for allocation of pension liability cover only the departments of the Central Government and not the autonomous bodies the respondents are further directed that they shall pass on their respective share of retirement benefits to the present employer of the petitioner, in accordance with the rules as expeditiously as possible but preferably within six months from the date of communication of this order.

9. There will be no order as to costs.

I. K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)