

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 933/91
T.A. No.

199

(5)

DATE OF DECISION 30th January, 1992.

Shri Harish Kumar Jain Petitioner

Shri Ashok Aggarwal Advocate for the Petitioner(s)

Versus
Union of India & Anr. Respondent

Shri N.S. Mehta Advocate for the Respondent(s)

CORAM

The Hon'ble Mr.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

Sharma

(J.P. SHARMA)
MEMBER (J)

Chakravorty

(D.K. CHAKRAVORTY)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

Regn. No. OA 933/91

Date of decision: 30th Jan., 1992. (6)

Shri Harish Kumar Jain

..... Applicant

Vs.

Union of India & anr.

..... Respondents

CORAM: THE HON'BLE MR. D.K.CHAKRAVORTY, MEMBER(A)
THE HON'BLE MR. J.P.SHARMA, MEMBER(J)

For the Applicant

..... Shri Ashok Aggarwal,
Counsel.

For the Respondents

..... Shri N.S.Mehta,
Counsel.

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. J.P.SHARMA, MEMBER(J))

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed the order dated 15.11.90 issued by the Director General of Civil Aviation on the subject of grant of pro-rata benefits to the applicant/informing him that since he has resigned from Government service on 11.10.71. (AN) on his own accord before taking up new appointment in Air India, no pro-rata retirement benefits could be granted to him under the existing orders. The applicant has prayed for the relief that the respondents be directed to grant retirement/termination him all pro-rata/benefits that he is entitled to including pension/provident fund, gratuity etc. for the period of his service under the Union of India with effect from 1.8.76.

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2. The facts of the case are that the applicant was initially appointed as Assistant Aircraft Inspector in the Civil Aviation Department at Barrackpore on 6.9.60. He was subsequently posted in the same capacity in the office of the Controller of Aeronaautical Inspection, Bombay with effect from 5.4.1961. He was confirmed in the grade with effect from 11.12.1963. In December, 1970, in response to a Press advertisement, the applicant applied for the post of Cadet Flight Engineer in Air India through his department. The applicant was informed by his parent department that he would have to resign his appointment in this department in the event of his selection. The applicant, however, applied and he was ultimately selected as Cadet Flight Engineer in Air India. The Air India in their letter dated 8.9.1971 clearly stated that "it is not possible for us to accept him (Shri Jain) on deputation basis nor on foreign service basis. He will have to resign from his present post and join this Corporation as a Cadet Flight Engineer". Thus the applicant has accepted the new appointment in Air India and ^{he was} never sent on deputation/nor on foreign service basis. The applicant knowing well

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the consequences submitted his resignation from the parent department which was accepted with effect from 11.10.71(AN). The case of the applicant is that at the time when he joined the Air India he had to his credit more than 10 years qualifying service entitling a Government servant for pensionary benefits from the parent department under the extant rules.

3. The applicant, in November 1985, made a representation to that effect and was informed by the order dated 2.2.1987 rejecting his representation that since he has resigned from Government service on 11.10.71 (AN) on his own accord before taking up the new appointment in Air India which was not to be in public interest. So, no pension/retirement benefits can be granted to him. He made further representations one after the other. Ultimately his representation was rejected for the second time on 15.11.90 by the impugned order (Annexure F). The main ground taken by the applicant is that by the Memorandum dated 2.1.1966 it is laid down that if a permanent Government servant is selected for appointment in public sector undertakings or autonomous semi-Government organisation, on the basis of his application for such post, he should be allowed to retain a lien on his permanent post

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in his parent office for a period of two years or till he is permanently absorbed in the undertaking etc. whichever is earlier. It is further laid down that since transfer in such cases is not to be in public interest, the Government will not accept any liability to pay any retirement benefits or for carry forward of leave for the period of service rendered under the Government. However, if the Government servant is not permanently absorbed within a period of two years from the date of appointment in the public sector undertakings/autonomous semi-Government organisation in the manner stated above, he should immediately on expiry of the said period of two years, either resign from Government service or revert to his parent office. The applicant has stated that his application was forwarded through proper channel for getting an appointment in the Air India, so the Office Memorandum dated 25.3.1977(Annexure-C) applies to his case. It is stated that as per the provisions of this Memorandum in cases where such absorption took place on or after 1.8.1968 but prior to 21.4.72, the benefit of proportionate pension should be allowed only from 1.8.1976. It is stated that the applicant was absorbed in the Air India on 11.10.71 and that his case is covered by the provisions of the aforesaid Memorandum. It is stated that by

definition a deputation ^{ist} is someone who is deputed by higher authority and in case of persons such as the applicant that is persons who joined the public sector on their own volition such a term has no meaning. It is further stated that it does not mean that the said OM is not applicable to the category of persons who joined the Public Sector on their volition. The OM does not distinguish between the persons who resigned from Government service at the time of joining the public Sector Undertaking and those who retained a lien on their Government post while joining the Public Sector

Undertakings. While interpreting the legal position the applicant has further referred to in his application, the Office Memorandum dated 31.1.1986 (Annexure -E). According to the applicant, this OM clarified that with effect from 6.3.1985 no Government servant would be allowed to join the Central Public Sector Enterprises on deputation.

They would all be required to join only on immediate absorption basis. The OM further states that such persons would not forfeit their retirement/terminal benefits for service rendered under the Union of India, if otherwise eligible for such benefits.

In view of the above, the applicant claimed the relief of being granted the pension/retirement benefits which accrued to him for putting in more

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than 10 years service with the respondents.

4. The respondents contested the application and stated that the applicant, while applying for the post of Cadet Flight Engineer in Air India, was specifically informed that he ~~will~~ ^{have} to resign his appointment in his parent department in the event of his selection. Consequently, on the selection of the applicant in Air India, the applicant was offered the post of Cadet Flight Engineer on the specific condition that "it is not possible for us to accept him (Shri Jain) on deputation basis nor on foreign service basis. He will have to resign from his parent post and join this Corporation as a Cadet Flight Engineer." This position was made clear to the applicant during his interview as well as after his medical examination. As a consequence to that, the applicant had submitted his resignation from Government service from the post of Air-Craft Inspector and his resignation was accepted with effect from 11.10.71 (AN). In 1987, the applicant requested for grant of pro-rata benefits but his representation was rejected. The OM of March 25, 1977 (Annexure 'C') according to the respondents applies to only the cases of absorption of Government deputationists in Public Enterprises.

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Since the applicant was not at all on deputation to the Air India so, the question of his absorption as such does not arise and the said OM does not apply to him. The OM dated 31.1.1986(Annexure E) is effective from 6th March, 1985, so the case of the applicant is not covered under this Memo. In view of this, it is stated that the applicant is not entitled to any relief.

5. We have heard the learned counsel of the parties at length and gone through the records of the case carefully.

6. The first contention of the learned counsel of the applicant is that since the applicant has completed 10 years of service, he is entitled to retirement benefits arising out of the spirit of the extant rules. However, a person who has resigned from service cannot claim as of right the retirement benefits and in case/the applicant, he has clearly admitted that while applying on the basis of a Press advertisement for the post of Cadet Flight Engineer in Air India a specific condition for forwarding his application was that since Air India did not accept any person on deputation basis so, he would have to resign from the parent department. The applicant, therefore, tendered his resignation.

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His going over to the Air India and leaving the parent department cannot be said to in the public interest. The applicant had been informed as early as in 1987 on his representation /not that he/is entitled to pro-rata benefits by the letter dated 2.2.1987. The present application has been filed in April, 1991. Under Section 21 of the Administrative Tribunals Act, 1985, the applicant should have come before the Tribunal within one year from the date of this order i.e. the applicant should have been filed by Feb.1988. The applicant, however, made another representation and also sent reminders to which he was again replied by the impugned order dated 15.10.90 and the communication in the letter is the same as communicated to him in the letter dated 2.2.1987 which the applicant has himself quoted in his representation dated 12.8.1989 (Annexure F, page 2 in the last but one para). As per the decision of the Hon'ble Supreme Court in Dr.S.S.Rathore Vs.State of Madhya Pradesh reported in AIR 1990 SC 10, repeated representations do not give a fresh cause of action and cannot in any manner enhance the period of limitation as prescribed under Section 21 of the Administrative Tribunals Act,

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1985. Thus the present application is not within limitation. Another judgement of the Hon'ble Supreme Court where the provisions of limitation are strictly adhered to is State of Punjab Vs. Gurdev Singh, reported in 1991(4) SCC 1.

7. However, we have already considered his case on merits. It is admitted by the applicant that he is not on deputation nor on foreign service. The applicant wants to make out a case that since his application was forwarded by the parent department, he may be treated as if he has gone with the active permission of the parent department and since joined the Corporation of Public Enterprise or autonomous body wholly owned by the Government of India will amount to immediate absorption as laid down in the Office Memorandum dated 31.1.1986. So his resignation in the parent department is only a technical formality. However, this is not so. The OM dated 31.1.1986 is effective from 6th March 1985. The case of the applicant has to be governed, if at all, by the Office Memorandum of 25th March, 1977(Annexure 'C') and this OM does not cover the case of the applicant at all because the applicant has not been sent either on transfer or on deputation basis on foreign basis.

8. It is admitted by the applicant that at the time when he applied for the post of Cadet Flight Engineer in Air India, he was expressly informed that in the event of his selection, he would have to resign from the Government service and the applicant has accepted that. The applicant was subsequently at the time of interview and after the medical examination sounded that note and information. So now the applicant cannot take another stand in view of the provisions of estoppel ~~acquiescence~~. The applicant has further relied upon the case of D.S.Nakra & Ors. Vs. Union of India reported in 1983(1) SLJ 131. The facts of this case are totally different. In the case of D.S.Nakra, the applicant was taken as a class by itself and any discrimination to any section of that was held to be discriminatory and arbitrary. In the case of the applicant, he has joined another service in i.e./Air India after resigning from the Government service and according to the extant rules to his knowledge and having been well informed, he resigned from the Government service disentitling him for any retirement benefits.

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9. We find that the present applicant is devoid of any merit and is accordingly dismissed.

There will be no order as to costs.

J.P.Sharma
(J.P.SHARMA) 30.1.92
MEMBER(J)

D.K.Chakravorty
(D.K.CHAKRAVORTY)
MEMBER(A) 30/1/92

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