

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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O.A. ~~XXXX~~ No. 1751 of 1992 Decided on: 13th March 1996

Shri D.N. Chopra Applicant(s)

(By Shri Jog Singh Advocate)

Versus

U.O.I. & Others Respondent(s)


(By Shri M.L. Verma Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter *yes*
or not?
2. Whether to be circulated to the other *no*
Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1751 of 1992

New Delhi this the 13th day of March, 1996

HON'BLE MR.K. MUTHUKUMAR, MEMBER (A)

Shri D.N. Chopra
S/o late Shri Balak Ram Chopra
R/o BW-56-D, SFS Shalimar Bagh,
Delhi-110 052.

...Applicant

By Advocate Shri Jog Singh

VERSUS

Union of India and Others

1. Secretary,
Ministry of Energy,
Department of Coal,
C.G.O. Complex,
Paryavaran Bhawan,
Lodhi Road,
New Delhi.
2. Coal Controller,
1, Council House Street,
Calcutta.
3. The Accountant General (A&E)
Punjab,
Chandigarh-160 017. ...Respondents

By Advocate Shri M.L. Verma

ORDER

Hon'ble Mr. K. Muthukumar

The applicant is aggrieved that the respondents have rejected his request for counting the period of service rendered by the applicant under the Government of India and allowing it to be reckoned as service under the Coal Board which was later on converted into a public sector undertaking and grant him the pro-rata pensionary benefits and, therefore, has prayed that the impugned orders of the respondents dated 30.10.1989, Annexure 12, 31.1.1990 Annexure 14, 31.12.1990 Annexure 15 and 7.11.1991 Annexure 18 be quashed.

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2. For the proper appreciation of the case it is necessary to give facts of the case in brief. The applicant was a permanent UDC in the office of the Accountant General, Punjab (the third respondent) and was officiating as SAS Accountant and he had put in almost 12 years of service when he was appointed as Assistant Accounts Officer on probation for a period of 2 years after proper selection in the then Coal Board with effect from 13.1.1966 after tendering his resignation from the office of the third respondent as was the requirement at that time. Subsequently, by the order of the Coal Board dated 25.4.1973 he was also confirmed and later was promoted as Accounts Officer and then later on as Senior Account Officer in March, 1992. With the enactment of the Coal Mines (Conservation of Development) Act, 1974, the employees of the Coal Board were initially absorbed in the Coal Mine Authority, which subsequently became Coal India Limited and the applicant along with other officers of the coal board were transferred to the services of the Coal India Limited, a company registered under the Company Act, 1860. At the time of such transfer, the terms and conditions of service of the erstwhile employees of Coal Board were issued by the Central Government, Department of Coal by their order dated 21.3.1977. In terms of this order it was specified that such of those employees who had completed 10 years or more of service as on 31.3.1975 would be treated as if they had retired from the Government and would be entitled to receive pensionary benefits under the Coal Board pension and Gratuity Rule and for this purpose they had to exercise option within a period of

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6 months in the manner prescribed in the aforesaid order . In respect of officers who had put in less than 10 years of service as on 31.3.1975 it was specified that the period of their service in the Coal Board shall be treated as the period of service rendered by them in the Coal India Limited as if the Coal India was in existence at that period and erstwhile Coal Board should be eligible to receive employers share of contribution to the PPF alongwith interest of 2% per annum upto 31.3.1975 and the employer's share will be credited by the Coal India Limited, to their P.F. Account. Although the applicant had joined the erstwhile Coal Board with effect from 13.1.1966, he was not given the benefit of counting his past service under the Central Government under the third respondent and he was treated as an employee of the Coal Board having rendered less than 10 years of service as on 31.3.1975 in terms of the aforesaid order. Subsequently, Government of India, Department of Personnel issued a comprehensive order in their Notification dated 29.8.1984 regulating the cases of Central Government employees going to Central Autonomous Bodies or vice-a-versa and employees of Attonomous Bodies moving to another Central Govrnment Autonomous Bodies. It is made clear in the aforesaid order that the benefits under this order will be available only in cases of employees going over to Central Autonomous Bodies and the Central Autonomous Bodies will not include a Public Sector Undertaking.

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3. Subsequently,^{4.} the Government issued further orders by their order dated 12.9.1985, the portion as relevant to the present case is reproduced below:-

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"5. Where no terminal benefits for the previous service in such cases will be counted as qualifying service for pension only if the previous employer accepts pension liability for the service in accordance with the principles laid down in this Office Memorandum. In no case pension contribution/liability shall be accepted from the employees concerned.

6. These orders will be applicable only where the transfer of the employee from one organisation to another was/is with the consent of the organisation under which he was serving earlier, including cases where the individual had secured employment directly on his own volition provided he had applied through proper channel/with proper permission of the administrative authority concerned."

4. The matter was again reconsidered by the Government and further relaxation in respect of of the O.M. dated 29.8.1984 was issued by their orders dated 22.2.1988 by which the benefits of the O.M. dated 29.8.1984 were extended to all those who retired prior to the issue of the aforesaid orders and who are otherwise eligible for the benefit of counting of service thereunder. The applicant avers that in terms of these orders he is entitled to pro rata retirement benefits taking into account the service rendered under the third respondent prior to 1976 as the erstwhile Coal Board had pension scheme and he was entitled to pension had the Coal Board remained as an Autonomous Body without becoming Public Sector Undertaking and, therefore, in terms of the orders governing the terms and conditions of the employees who were transferred to the Limited Company

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he should have been considered as an employee who had completed more than 10 years reckoning his past service of 12 years from 1954 to 1966 under the third respondent and, therefore, the applicant contends that he should be entitled to receive pensionary benefits on this total service under para (a) of the Ministries OM dated 21.3.1977 (Supra), Annexure 7.

5. The respondents have strongly contested the claim of the applicant. They have averred that the case of the applicant for pro rata pensionary benefits counting his service rendered was examined with reference to the O.M. dated 22.2.1988 and the O.M. dated 09.8.1984 referred to above. It was held that these orders were to take effect from the date of issue and are applicable only to those employees, who retired from Government Autonomous Bodies. The respondents maintain that although the office of the AG, Punjab had agreed to discharge their pensionary liabilities for pro rata pension, the orders of 1984 are not applicable in his case as he had not retired from Central Government/ autonomous Bodies, as provided in the orders and, therefore, even by 22.2.1988 order, he was not eligible for pro rata pensionary benefit thereon. In regard to the contention of the applicant that another employee who was working in the office of the Coal Superintendent, Dhanbad was similarly absorbed in the erstwhile Coal Board and was given the benefit of past service under the Coal Superintendent, Dhanbad, the respondents have stated that while absorbing him in the erstwhile Coal Board, the respondents have specifically issued orders mentioning that his past service in the Coal Board

will be counted for ^{6.}leave, pension etc., the applicant's cannot claim similar benefit as there was no such order in this behalf and, therefore, the respondents have rightly rejected his representation.

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6. I have heard the learned counsel for the parties and have carefully perused all the relevant records.

7. The limited point of controversy in this case is regarding the entitlement of the applicant for consideration of his service rendered under the Central Government prior to his appointment in the Coal Board. The appointment in the Coal Board is admittedly on the basis of an application by the applicant through his erstwhile department in the Central Government. The answering respondent No.3 in their reply have admitted that the applicant was relieved from their office on 10.1.1966 (After-Noon) and had joined the erstwhile Coal Board on 13.1.1966 as an Assistant Accounts Officer. The consolidated instructions in regard to the transfer of the Central Government servants to Central Autonomous Bodies to another Central Autonomous Body were issued in the Government of India O.M. dated 29.8.84 referred to in the application. The respondents contend in their reply that while the case of the applicant for pro rata pensionary benefits and counting his service rendered in AG, Punjab before joining the Coal Board was examined in consultation with Department of Pension and Pensions Welfare, it was held that the O.M. dated 29.8.84 provided for counting of past service as qualifying service towards pension in case

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of a employee who had not^{.7.} received any terminal benefits for the previous service only if the previous employer accepted pension liability for the service and these were to take effect from the date of issue of the orders and were applicable only to those employees who retired from Government/Autonomous Bodies. In as much as the applicant did not retire from a Central Autonomous Body but only from a Public Undertaking which is specifically excluded from the purview of the definition of Central Government Autonomous Body, the applicant would not be entitled although previous employer had accepted the pension liability for the previous service.

8. Para 2 and 3(a)(i) of the O.M.(Supra) in so far as it is relevant in this particular case is reproduced below:-

"2. A number of Central autonomous/statutory bodies have also introduced pension scheme for their employees on the lines of the pension scheme available to the Central Government employees. It has, therefore, been urged by such autonomous/statutory bodies that the service rendered by their employees under the Central Government or other autonomous bodies before joining the autonomous body may be allowed to be counted in combination with service in the autonomous body, for the purpose of pension, subject to certain conditions. Similar provisions for employees of autonomous body going over to Central Government have also been urged. In other words, the suggestion is that the benefit of pension based on combined service should be introduced.

3. This matter has been considered carefully and the President has now been pleased to decide that the cases of Central Government employees going over to a Central autonomous body or vice versa and employees of the Central autonomous body moving to another Central autonomous body may be regulated as per the following provisions:-

(a) In case of Autonomous bodies where Pension Scheme is in operation -

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(i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employees of the autonomous bodies who are permanently absorbed under the Central Government.

The Government/autonomous body will discharge its pension liability by paying in lump sum as a one-time payment, the pro rata pension/service gratuity/terminal gratuity and retirement gratuity for the service up to the date of absorption in the autonomous body/Government, as the case may be. Lump sum amount of the pro rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time."

Subsequently, the Government issued another O.M. dated 12.9.1985 to clarify as follows:-

"Various Ministries and Department of Government of India may accept pension liability in all these cases where Central Government employees move to Central Autonomous Bodies with proper permission and discharge the same in the prescribed manner. For this purpose, 'Proper Permission' means that Government servant applies for the post in autonomous body through 'proper channel' and he resigns with due intimation that he is doing so to take up assignment in autonomous body or the Government servant is relieved of his duties by the Government department/office to take up assignment in an autonomous body. Pension liability may also be accepted in past cases provided the Government servant took up the assignment in autonomous body with proper permission".

9. Admittedly, on the basis of the reply of the respondents, it is evident that the applicant had taken up the assignment in the erstwhile Coal Board with proper permission as clarified in the O.M. cited above. It is no doubt true that the purview of the aforesaid order applies to Central autonomous body, as

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defined in the above O.M.⁹ which does not include the Public Undertaking, in the context in which the aforesaid order was passed to consider the claim for reckoning the service under the Government for purposes of counting that service in the autonomous body for purposes of service from that body which presupposes that the concerned official had retired from autonomous body where the pension scheme is in operation. But subsequently by the O.M. dated 31.1.1986 separate orders were issued which, inter alia, included the benefit of counting past service of the Government for purposes of retirement benefits Para 4.1 of that order which is relevant here is reproduced:-

"(4)(i) Resignation from Government service with a view to secure employment in a Central public enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation".

Then again, by the O.M. dated 31.3.1987 it was provided as follows:-

" At present the terms and conditions of permanent absorption of Central Government employees in the Central Autonomous Bodies are regulated by the instructions contained in the Ministry of Finance (Department of Expenditure), O.M. No.26 (18)-E.V (B) /75, dated the 8th April, 1976, as amended from time to time. The terms and conditions of those Government servants who are absorbed in the Central Public Sector Undertakings are regulated by the instructions issued vide Department of Personnel and Training, O.M. No.28016/5/85-Estt. (C) dated the 31st January, 1986. Since there were certain disparities in the terms and conditions of absorption in the two organisations, the question of bringing about parity has been under the consideration of Government. The President is now pleased to decide as follows:-

(i) The terms and conditions of absorption of Central Government employees in the Central Autonomous Bodies will be applicable to those permanently absorbed in the public sector undertakings. In both the cases the instructions laid

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down in the Department of ^{10.} Personnel & Training, OM No.28016/5/85-Estt. (C) dated the 31st January, 1986, referred to above, will apply."

10. In the case of the applicant it is an admitted position that the erstwhile Coal Board initially was converted into Coal Mines Authority and was subsequently converted into a public undertaking. It is also an admitted position that the previous Government employer, namely, the AG, Punjab had agreed to discharge the liability for pro rata pension for pensionary service rendered by the applicant under him. In view of the instructions contained in the O.Ms. dated 31.1.1986 and 31.3.1987, the contention of the respondents that the benefit of the O.M. of 29.8.84 will not be applicable to the applicant in as much as he had not retired from Government or Central Autonomous Body is not tenable, firstly for the reason that the subsequent instructions contained in the O.M. dated 31.1.1986 and 31.3.1987 clarified the position adequately by which the service rendered by the applicant will have to be counted towards pension as was made available to him under the Coal Board when he became eligible for pension at the time of transfer of the employees of the Coal Board to the Coal India Limited. The paragraphs of the O.M. dated 22.2.1988 which are relevant, are extracted below:-

" The undersigned is directed to say that vide para.7 of the instructions issued vide the Department of Personnel and Administrative Reforms, O.M. No.28/10/84-Pension Unit, dated the 29th August, 1984 (published in Swamysnes as Sl.No.118 of October, 1984), on the above subject these instructions are effective from the date of issue, i.e., 29th August, 1984. It is further stipulated therein that the revised policy as enunciated thereunder would be applicable to those employees who retired from Government/Autonomous Body service on or after the issue of these orders.

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2. It has been held by the Supreme Court of India in its judgment, dated the 12th August, 1987, in Writ Petition No.3739 of 1985 - case of Shri R.L. Marwaha v. Union of India and Others, that paragraph 7 of the Government Order cannot be used against persons in the position of the petitioner to deny them the benefit of the past service for purposes of computing the pension.

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3. The question regarding implementation of the Supreme Court judgment has been under consideration of the Government. The President has now been pleased to decide that the benefit under the instructions contained in the orders, dated 29.8.1984, should also be extended to all those who had retired prior to the issue of said orders and who are otherwise eligible for the benefit of counting of service thereunder."

11. By the issue of the orders dated 29.8.1984, 12.9.1985, 31.1.1986, 31.3.1987 and the aforesaid O.M. dated 22.2.1988, it is fairly clear that the applicant is eligible for the benefits of counting past service in the Government, as provided thereunder.

12. In the result, the application succeeds and is allowed. The respondents are directed to determine the pensionary benefits of the applicant on his transfer to the service of the Coal Board of India after counting the period of service rendered by the applicant under the Government under the respondent No.3 before joining the Coal Board and for this purpose, the respondent No.3 is also directed to discharge the liability of pro rata retirement benefits of the applicant for the services rendered by him under the said respondent. It is also provided that the aforesaid direction may be complied with within a period of 6 months from the date of receipt of a copy of this order.

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