

(92)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.3177/92

HON'BLE MR J.P. SHARMA, MEMBER (J)

New Delhi this the 19th day of January, 1994

Shri Inder Kumar Gupta,
Manager (Engg),
D.S.I.D.C
122-A/20 Gautam Nagar, New Delhi. Applicant
(Advocate :Ms S. Janani)

Versus

Union of India through

1. The Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Delhi Administration through
The Chief Secretary,
5, Alipur Road, Delhi-63.
3. Chief Engineer,
Irrigation and Flood Control,
Delhi Administration, ISBT, 4th Floor,
Kashmiri Gate, New Delhi-6.
4. The Secretary, (Irrigation)
Delhi Administration,
Old Secretariat, Delhi. Respondents

(Advocate :Shri Vinay Sabharwal)

ORDER

(Hon'ble Mr J.P. Sharma, Member (J))

1. The applicant was working as Sectional Officer (Civil) with effect from 9th August, 1965 in the Food Control Department, Delhi Administration. He applied for the post of Assistant Engineer in D.S.I.D.C. Department and consequent upon the selection in that post he was relieved of his duties with effect from 24th January, 1976. He filed suit No.469/80 in the court of Sub judge Delhi which ^{was} transferred to the Principal Bench and

registered as TA 295/86. That case was decided on 20th May, 1988 and direction was issued to the respondents that the applicant is to be treated as holding the post of sectional Officer in a substantive capacity with effect from 8th June, 1977 and he will be entitled to all consequential benefits flowing from such declaration. The applicant was given substantive appointment in D.S.I.D.C. with effect from 23rd January, 1979. The applicant thereafter submitted his claim after the judgment in TA 295/86 for grant of pentionary benefits and opted to draw commuted pro-rata pension. The applicant was not paid pentionary benefits whereby he filed C.C.P. but during the pendency of the CCP his pension was considered for the period of service rendered in Delhi Administration from 9.8.1965 to 24.01.1976. He was also granted DCRG of Rs. 1545/- for the similar period. The C.C.P. was dismissed on 29th September, 1989 with the direction to the respondents to consider the applicant's claim to enhanced pension and D.C.R.G.. Thereafter, the present application has been filed and prayed the grant of the following reliefs :-

- (a) Pensionary benefits at the rate of Rs.139/- per month and D.C.R.G. to the tune of Rs.4622/- for the period of service from 9.08.1965 to 23.01.1979 with effect from 24.01.79 onwards.
- (b) Commutation of monthly pension as on 24th January, 1979 amounting to Rs.9708/-.
- (c) Leave salary benefit.
- (d) Interest on the aforesaid amount from 24.01.79 till the date of payment.

2. A notice was issued to the respondents who contested the application and took the preliminary objection that the application is barred by time. It is stated that the period from 24.01.76 to 23 January, 1979 was period not on deputation. The applicant was never sent on deputation by the respondents to DSIDC. The applicant directly applied to the DSIDC and joined the service on 24th January, 1976. It is, therefore, stated that the applicant is not entitled to any further claim of enhanced pension and DCRG.

3. I heard the learned counsel for both the parties at length and gone through the record of the case. The Government of India, Department of Personnel issued O.M. No.28-16/4/76-Estt(C) dated 25 March, 1977 whereby the distinction between absorption in public interest and own volition was removed. It was decided that there should be no distinction between the type of deputationist getting absorbed in public enterprises subject to the condition that period of leave to be carried forward should be restricted to 120 days, in the case of absorption of deputationist who initially joins the enterprise on their own volition.

4. The case of the applicant is that he has joined the DSIDC department. Therefore, the respondents, where he was working as Sectional Officer for all practical purposes he is entitled to the benefit to the service rendered earlier i.e. from 09.8.1965 till he got substantive appointment in DSIDC. The respondents have already considered his claim for grant of pension and gratuity opted for the period in service in the parent

department upto 24th January, 1976. He wants that his service upto 23rd January, 1979 be got accounted for when he got substantive appointment while in DSIDC. Going through the judgement of T.A. 295/86 decided on 20.05.1988 the Bench held that the respondents (Delhi Administration) conferred quasi permanency on the applicant to the post of Sectional Office with effect from 10th August, 1968 by the order dated 14th November, 1977. It is further observed that before that date on 24.01.1976 he was relieved to take up the appointment with DSIDC. The Bench also observed that the applicant held lien in the parent department for the period of 2 years from that date referring the Govt of India's instructions under Article 67 of Civil Service regulations for a quasi permanent employee while he takes up a post in public sector undertaking should be treated as on 'foreign service; with the undertaking for a period of 2 years and is to be given the same treatment as permanent employee. The permanent employees are allowed to retain lien on their permanent post in the parent office for a period of 2 years or till they are absorbed in the undertaking, whichever is earlier. This judgement has become final. In view of this fact the lien of the applicant stood determined with effect from 24.01.1978, and only upto that period the applicant can claim retirement benefits from the respondents, Delhi Administration. The applicant, therefore, cannot claim the accounting of his service with the Delhi Administration upto 24th January, 1979.

5. The applicant also while claiming the benefits from the parent department for pro-rata grant of pentionary benefits cannot claim any benefit of this period from the DSIDC.

6. In view of the above facts and circumstances the application is partly allowed and disposed of with the direction to the respondents to revise the pentionary benefits of the applicant and take into account the service rendered by the applicant on the post of Sectional Officer from 09.8.1965 to 24.01.1978 and his pension be fixed as well as D.C.R.G. on that basis.

7. The applicant is also entitled to any leave salary benefit upto the maximum limit permissible under extant rules. The parties to bear their own costs. The respondents to comply with the directions in four months.

J. P. Sharma
(J.P. Sharma)
Member (J)