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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

RA 193/94
in
OA 3177/92

New Delhi this the 26th day of July, 1996.

Inder Kanwar Gupta,
Manager (Engg.),
DSIDC,
122-A/20, Gautam Nagar,
New Delhi-49.

..Review Applicant.

By Advocate Ms. S. Janani.

Versus

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

By Advocate Shri Girish Kathpalia.

ORDER

Hon'ble Shri R.K. Ahooja, Member(A).

This application seeks review of the order dated the 19th January, 1994 in O.A. No. 3177/92.

2. Before examining the grounds adduced for review, it will be relevant to state the history of the case briefly. The applicant was working as Sectional Officer (Civil) in the Flood Control Department of Delhi Administration. He applied for the post of Assistant Engineer in DSIDC, a public sector

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undertaking of Delhi Administration. The applicant filed suit No. 469/80 in the court of Sub Judge, Delhi which was later transferred to the Principal Bench as TA 295/86. That case was decided on 20.5.1988 with a direction that the applicant is to be treated as holding the post of Sectional Officer in a substantive capacity w.e.f. 8.6.1977 and he will be entitled to all consequential benefits flowing from such declaration. The applicant was given substantive appointment in DSIDC w.e.f. 23.1.1979. After the decision in TA 295/86, the applicant submitted his claim for grant of pensionary benefits and opted to draw commuted pro-rata pension. Failing to secure his claim with the respondents, the applicant filed O.A. 3177/92 claiming pensionary benefits on the basis of his service from 9.8.1965 to 23.1.1979 from the Flood Control Department. The application was partly allowed and disposed of with the direction to the respondents to revise the pensionary benefits of the applicant and take into account the service rendered by him on the post of Sectional Officer from 9.8.1965 to 24.1.1978 and his pension be fixed as well as DCRG on that basis.

2. The applicant in the Review Application submits that the Tribunal erroneously concluded that Govt. servant on being selected for appointment in a Public Sector Undertaking on the basis of his application would be allowed to retain lien on his permanent post in the parent office for a period of only two years although the rules have been amended in 1972 to provide for the extension of further one year

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in exceptional cases. The orders of the Tribunal have, therefore, resulted in the loss of pensionary benefits for one year's service between 1978 and 1979.

3. I have heard the learned counsel on both sides. The learned counsel for the applicant draws my attention to Rule 37 of the Pension Rules, which state as follows:

"A Government servant who has been permitted to be absorbed in a service or post in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government shall, if such absorption is declared by the Government to be in the public interest, be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Government applicable to him".

The orders applicable in respect of the applications for transfer to other offices (quoted in Annexure-P-II of the Review Application) state that as per Ministry of Home Affairs O.M. dated 27.7.1968, permanent Govt. servants who are selected for appointment were allowed to retain their lien on their permanent posts in their parent offices for a period of two years (to be extended by one more year in exceptional cases) or till they are permanently absorbed in the undertaking whichever is earlier. The applicant having been absorbed only w.e.f. 24.1.1979 in DSJDC his lien would be deemed to have continued in DSJDC

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till he was absorbed as lien could be extended for third year in exceptional circumstances. The learned counsel submitted that in the order under review notice was taken of the provision for extension of lien by one year and hence the direction given was that the lien will be regarded only upto 24.1.1978 i.e. for a period of two years and the pensionary benefits will be decided on that basis. The learned counsel also submitted that the concerned department had decided to grant him extension of one year and the Respondent No. 3 had sought contribution towards pension, leave salary, etc. from DSIDC. For this purpose, she sought that the records of Respondent No. 3 may also be summoned.

4. The Respondent No. 3 have denied that they have taken such decision and have produced the relevant record. I find on perusal of the record as well as the order in O.A. 3177/92 that there is no ground whatsoever justifying any review of the order. The applicant had specifically claimed his pensionary benefits from 9.8.1965 to 23.1.1979. It was, however, found that in TA 295/86, decided on 20.5.1988, the Bench had already held that the respondents had conferred quasi permanency on the applicant from 10.8.1968 by the order dated 14.11.1977. It was also noted that before that date on 24.1.1976, the applicant was relieved to take up the appointment with DSIDC. In TA 295/86, it was also observed that the applicant had held lien in the parent

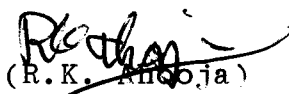
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department for a period of two years from that date. In O.A. 3177/92, it was observed that the judgement in TA 295/86 had become final and the lien of the applicant stood determined ~~w.e.f.~~[✓] 24.1.1978 and only upto that period the applicant can claim retirement benefits from the respondents, i.e. Delhi Administration.

5. It is, thus, clear that the order in O.A. 3177/92 was based on the judgement in T.A. 295/86 which had become final. The provision regarding extension in lien in exceptional cases was already available at that time and in case the applicant was not satisfied, it was for him to agitate the matter at the appropriate time. The issue of ~~claim~~^{lien &} having been finally settled in TA 295/86, the judgement in O.A. 3177/92 had to be based on the same.

6. I find no error whatsoever as claimed by the applicant in this order which would warrant any review. There is also nothing that I can find on the record submitted by Respondent No. 3 which would indicate that they have taken a decision to extend the lien ~~for~~ the 3rd year. That, in any case, one way or the other, is neither germane nor pertinent to the issue at hand.

7. Therefore, finding no merit whatsoever in the review application, the same is dismissed. There is no order as to costs.


(R.K. Anand)
Member(A)

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