

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH NEW DELHI

O.A. No. 881/1992

New Delhi, dated the 16th Jan., 1995

(19)

CORAM

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri Sukhjit Singh
r/o WZ 202, Gali No.1
Krishna Puri, P.O. Tilak Nagar,
New Delhi-18

... Applicant

(None for the applicant)

v/s

1. Union of India, through
Secretary,
to the Govt. of India, Ministry of
Home Affairs, New Delhi-1
2. Chief Secretary,
Delhi Administration,
Alipur Road, Delhi.
3. Director, Civil Defence,
Home Guard Training College Complex,
Near Shivaji College, Raja Garden,
New Delhi.
4. The Commandant,
505, Army Base Workshop, Delhi Cantt.

... Respondents

(By Advocate Shri Arun Bhardwaj, with
Pratap Singh, D.R. on behalf of respondents
1 to 3)

(By Advocate Shri M.K. Gupta, counsel for
the respondent No. 4)

ORDER (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant who was serving with
respondent No.4 i.e. the office of the Commandant 505,
Army Base Workshop, Delhi Cantt. w.e.f. 13.1.1948 was

discharged by them on 13.9.1965/ ^{after} appointment as a Instructor

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on purely temporary and adhoc basis with respondent No.3 i.e. Director, Civil Defence. The respondent No.3 did not count his services with them for a period of about 17 years on the ground that he did not hold a permanent post with them. While he was serving with respondent No.3, they had terminated his services as Instructor vide order dated 29.1.1970 under Rule 5 of the CCS(Temporary Services) Rules, . The applicant made several representations to respondent No.3 for granting him benefit of gratuity and for release of Provident fund dues alongwith other outstanding pensionary dues which were transferred from Army Base Workshop to his G.P.F. account. Having received no reply, hence this OA claiming the following reliefs.

- (A) Release pension alongwith arrears accruing thereon, with interest from February, 1970 to date.
- (B) Gratuity benefits, alongwith interest accruing thereon to date ;
- (C) P.F. deposits, including the previous deposits with the Army Base Workshop with interest accruing to date.
- (D) Outstanding salary dues for the month of January 1970 alongwith salary for one month notice period with interest and to pass any other or further orders as is deemed fit and proper in the circumstances of the case, with costs of these proceedings.

2. On the last date of hearing, the learned counsel for the applicant, Shri P.P.S. Ahluwalia was heard at length. Since this is an old part heard case, Shri M.K. Gupta and Shri Arun Bhardwaj were heard in/reply today after calling out the case twice. None was present for the applicant.

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3. In their reply filed by the respondents 1 to 3, they have referred to the judgments of the learned Sub Judge, Delhi dated 6-9-1980 and the judgment of the Additional District Judge, Delhi dated 30-4-1982. In the suit for declaration filed by the applicant before the Sub Judge, 1st Class Delhi, one of the issues framed was whether the plaintiff was a quasi permanent employee when he was terminated from service by order dated 29.1.70. The suit was dismissed on 6-9-80 on merits and it was held that the plaintiff was temporary and not confirmed in employment and was not entitled to any relief. In the appeal filed by the applicant against this judgment before the Addl. District Judge, Delhi, the same question, namely, whether the plaintiff was a permanent or quasi -permanent employee was considered. The Appellate Court vide the order dated 30-4-1982 confirmed the judgment of the Trial Court and held as follows:-

* Thus absolutely, there is nothing on record to show that the plaintiff was quasi permanent or permanent and as such the plaintiff has no right to claim of enquiry or charge sheet etc. His services admittedly have been terminated without assigning any reason. Accordingly, the findings of the learned trial court that services of the plaintiff, have been rightly terminated and he was not permanent employee or quasi permanent employee are affirmed and thus this appeal having no merits is hereby dismissed with costs.

4. The stand taken by respondent No.3 is that the applicant had joined them as Instructor on a

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purely ad hoc and temporary basis and his services were regularised vide order dated 22.2.1967. Thereafter, his services had been terminated under the provisions of Rule 5 of the CCS(Temporary Services) Rules, 1965 with one month pay in lieu of notice. The earlier service put in by him with respondent 4 was not counted since Respondent 4 had not allowed/to retain his ^{him} lien. They have also pointed out that the judgments referred to above have confirmed that the applicant was not holding a permanent/quasi permanent post and therefore the plea of the applicant to grant pension and gratuity is not maintainable.

5. In the reply of the respondent No.4 they have confirmed that the applicant was appointed as Rifle Fitter Mate w.e.f. 13.1.1948 and reclassified as Rifle Fitter w.e.f. 18.7.1952. He was relieved to take up the above appointment as Instructor with respondent No.3 on 1.10.1965. They state that the applicant's IOFWP fund assesses of Rs 2373.11 lying with them was transferred to AGCR vide his Account No.DLH-CR NO 1050 dated 12.2.1970 and transferred to respondent No.3 as is clear from applicant's own representations (Annexure 'A'- 'D'). Learned counsel for respondent No.4 states that the applicant being a purely temporary Govt. employee at that time cannot count the benefit of his services with them, for pension. In the circumstances learned counsel submits that no amount is due from respondent No.4 to the applicant.

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6. I have carefully considered the arguments of the learned counsel for the parties and perused the records.

7. There is no dispute on the fact that the applicant had not served 20 years at the time the impugned order of termination was passed on 29.1.70 by respondent No.3. As regards his service with respondent No.4, the facts are also not disputed that he had not been declared permanent or quasi permanent during the period of his service with them. benefits to be entitled to claim pensionary /as admissible to a permanent govt. employee. In the absence of any such rules, he is not entitled to gratuity and other pensionary benefits as per the extant rules applicable to him at the time of his termination from service w.e.f. 29.1.1970.

8. Regarding applicant's claim for the outstanding salary for one month in lieu of notice period, learned counsel has referred paragraph 4(e) of the reply filed by the respondents. In this they have stated that the salary of the applicant for the period of Jan., 1970 was drawn and he was directed on 2.2.70 to collect it ^{he} but since/did not turn up, the salary was refunded to the treasury. From the reply it is evident that the applicant has failed to collect his January, 1970 salary in time and he will, therefore, not be entitled to any interest on this amount. However, it is made clear that

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if the applicant makes a suitable application to respondent No.3 within one month from the date of receipt of a copy of this judgment, the respondent shall make the payment of the one month's salary for Jan., 1970 in accordance with law/rules.

9. The same directions shall apply to the payment of any outstanding amount of GPF which shall be claimed by the applicant in the prescribed form. The applicant shall be entitled to be paid his provident fund amounts as per the rules.

10. Subject to the above directions, this application is dismissed. No costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)