

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No.1119 of 1993

New Delhi this 18th May, 1994.

CORAM:

Hon'ble Mr.S.R.Adige, Member(A)

Shri R.K.Tiwari,
s/o Late Shri S.K.Tiwari,
aged about 67 years,
retired as Deveopment Officer
from NSIC Limited, New Delhi
R/o J-3/196, DDA FLATS, KALKAJIApplicant.
NEW DELHI.

By Advocate Shri S.S.Tewari

Versus

Union of India through:

1. Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Secretary,
Department of Pension & Pensioner's Welfare,
Ministry of Personnel, Public Grievances &
Pension,
North Block,
New Delhi.
3. Director of Ordnance Services,
Army Headquarters, DHQPO,
New Delhi-10.
4. Officer-In-Charge,
Army Ordnance Corps Records,
Trimulgherry P.O.
Secunderabad Dn.
5. Commandant,
CCD
Delhi Cantt-10Respondents.

By Advocate Shri Jog Singh

ORDER

The applicant Shri R.K.Tewari joined the Army Ordnance Corps as a IDC on 2.10.44. He continued to serve there till 4.11.59 and went on deputation (Foreign Service terms) to the National Small Industries Corporation Ltd., New Delhi on 5.11.59, but continued to retain his lien in his parent department. By order dated 9.1.65 (Annexure-C), the

NSIC informed the applicant's department that the applicant had given his consent for his permanent absorption with them w.e.f. 31.12.64 and sought respondents' concurrence along with remittance of equal amount to what Govt. would have contributed had he been on CPF terms under /Govt. together with simple interest thereon at the rate of 2% for the period of services rendered by him under the Govt., for being credited to his CPF. It was also stated that remittance of leave salary and pension contribution be discontinued. This was followed by letter dated 26.7.65 (Annexure-C) forwarding the applicant's resignation letter dated 31.12.64 and seeking the respondents' concurrence in his permanent absorption in NSIC Ltd together with transfer of the retirement benefits admissible to the applicant for the services rendered by him under the Govt. in terms of Finance Ministry's O.M. dated 10.11.60 (Annexure-C). By order dated 19.9.65 (Annexure-B), consequent to the acceptance of the applicant's resignation, his lien was terminated w.e.f. 31.12.64. The applicant retired from NSIC Ltd. on 30.6.84. The sanction of the GOI for permanent absorption of the applicant in NSIC Ltd w.e.f. 1.1.65 as well as payment of retirement benefits in the shape of employer's share of CPF with interest @ 2% p.a. was accorded on 19.9.88 (Annexure-D).

2. The applicant claims that he represented for payment of pension etc. to which he received a reply/ dated 19.4.91 (copy ^{Ann. A} not filed) pursuant to which he made another representation dated 19.1.92 (Annexure-E). He also represented to Hon'ble Prime Minister on 8.4.92 in reply to which he received a letter dated 7.7.92 (Annexure-A) stating that no fresh points had been brought out

by him and as per Defence Ministry's letter dated 19.4.91 at the time of the applicant's absorption in NSIC Ltd, no prorata retirement benefits were admissible to the applicant and so the applicant was not entitled to prorata retirement benefits.

3. The applicant now claims retirement benefits, with interest @ 18% p.a. for delayed payment, on the ground that he should be deemed to be in service with the Defence Department till his date of retirement i.e. 30.6.84. He states that if he was permanently absorbed in NSIC Ltd, his CPF should have been consolidated with the employer's share with the CPF w.e.f. 1.1.65 but the same was not done till 19.9.88 much after his retirement.

4. In their counter affidavit, the respondents contend that the applicant's prayer is inadmissible in terms of the Govt.'s instructions prevailing at the time of the applicant's absorption in NSIC Ltd. They state that the admissible terminal benefits have already been paid to him. They further stated that he was relieved of his duties in the Defence Ministry on his appointment in NSIC w.e.f. 5.11.59 with the direction to remain on proforma strength of Defence Ministry with lien on permanent post till permanent absorption in NSIC Ltd. His lien was terminated on 31.12.64 vide D.O.No.II, No.149/65. Regarding permanent absorption of the applicant w.e.f. 1.1.65, instructions were issued by the Defence Ministry vide letter dated 19.9.88 and CPF Schedule of the applicant for the terminal benefits from 2.10.44 to 31.12.64 with interest @ 2% p.a. was calculated and contingent bill dated 15.10.90 for Rs.2703/- was forwarded to the applicant vide letter dated 3.11.90, but the applicant did not sign the same.

5. In his rejoinder, the applicant states that the respondents have conceded that the applicant was **their** on/proforma strength. As on the date he retired i.e. 30.6.84, there was no order of absorption in existence and he is entitled to the benefits of Finance Ministry's O.M. dated 16.6.67, which he claims, is applicable to all such cases in accordance with the Hon'ble Supreme Court's ruling in the case of 'T.S.Thiruvengam Vs. The Secretary to Govt. of India, Ministry of Finance & Others' AIR 1993(1) SC 758.

6. A perusal of the judgment in Thiruvengadam's case (Supra), indicates that it is on all fours with the present case. That judgment refers to the operative portion of the O.M. dated 16.6.67 which reads as under:-

- (i) "A permanent Government servant with not less than ten years' qualifying service on absorption in public undertaking was eligible for prorata pension and death-cum-retirement gratuity based on the length of his qualifying service under government till the date of absorption. The pension was to be calculated on the basis of average emolument immediately before absorption."
- (ii) The pro-rata pension, gratuity, etc., admissible in respect of the service rendered under the government was disbursable only from the date the government servant would have normally superannuated had he continued in service."

It then goes to hold that all those Central Government **who were** employees/absorbed in public undertakings either before June 16, 1967, or thereafter, and were serving the public undertakings, are entitled to the benefits provided under the Memorandum dated June 16, 1967.

7. It is not denied that the NSIC is a Public Sector undertaking and following the ratio of the judgment in Thiruvengadam's case (Supra), this application is allowed to the extent stated below:-

15

- 5 -

The applicant would be entitled to prorata pension and death-cum-retirement gratuity based on the length of qualifying service from 2.10.44 till ⁱⁿ 31.12.64, when his lien was terminated consequent upon the acceptance of his resignation from the Government service vide order dated 19.9.65 (Annexure-B), and his absorption in NSIC Ltd. The pension will be calculated on the basis of average emoluments drawn immediately before absorption. The applicant would also be entitled to interest @ 12% p.a. on the total sum payable from the date of his representation, i.e., 25.2.1991 till the date of actual payment.

8. These directions should be implemented within four months from the date of receipt of a copy of this order. No costs.

S. R. Adige
(S. R. Adige)
Member (A)

/ug/