

Central Administrative Tribunal
Principal Bench.

22

O.A. No. 1666/93

New Delhi on this 3rd day of September, 1996.

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

J.P. Vaish,
Dy. General Manager (Civil),
Rail India Tech. & Eco. Services Ltd.,
Bajaj House, 97, Nehru Place,
New Delhi. ... Applicant.

By Advocate Shri D.R. Roy.

Versus

1. Union of India, through
The Secretary,
Ministry of Railways, Rail Bhawan,
New Delhi.
2. General Manager/Northern Railway,
Baroda House,
New Delhi.
3. Divisional Railway Manager,
Northern Railway, Lucknow Division,
Lucknow. ... Respondents.

Present - none.

O R D E R

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

The grievance of the applicant is that he has not been given due pensionary benefits treating him as a pensioner on 31.12.1985 in accordance with the Department of Pension and Pensioners' Welfare O.M. dated the 16th April, 1987.

2. The brief facts of the case are that the applicant who was a regular employee with the respondents, went on deputation to the RITES and was absorbed there in public interest by order dated 22.2.1985 with retrospective effect from 1.11.1993. The applicant had assailed this order in O.A. 1052/89 which was decided on 21.2.1992, along with the main O.A. 617/87 (copy placed on record).

JP.

In this judgement, the Tribunal quashed the impugned order and the respondents were directed to consider the applicants for permanent absorption in the RITES on or after the actual date of acceptance of their resignation from the parent department and give them all the consequential benefits. In the case of the applicant since the order of absorption was issued by the respondents on 22.2.1985, he would be deemed to have resigned from the parent department on that date.

3. The respondents have stated that the applicant was paid pension from 1.11.1983 and thereafter 100% commutation of pension has also been allowed after he made the request on 6.12.1985 and after completion of the formalities. The respondents submit that although he was placed on the panel of Permanent Way Inspector vide letter dated 28.4.1984, since he was on deputation to RITES, no orders for his promotion were issued at that time and he was later considered as having been absorbed on 1.11.1983 and paid pension with effect from that date. They also submit that neither notice of the O.A. filed by the applicant (O.A. 1052/89) was served on them, nor copy of the judgement nor did the applicant contact the Respondent No.3 in any manner for implementation of the judgement dated 21.2.1992. They have, therefore, stated that since the applicant had been absorbed in RITES on 1.11.1983 and they had directed for payment of all retirement dues to him by letter dated 22.2.1985 which has been received by the applicant without demur, he is not entitled for any further reliefs, as claimed in this application. They have also referred to their letter dated 28.6.1988 and the fact that the applicant has not only received pension with effect from 1.11.1983 in

18-

accordance with law but also has been paid 100% of commutation of pension. As regards the promotion, they have submitted that the applicant is for the first time claiming promotion in this O.A. In the circumstances, they have denied /any further relief, as prayed for, is due to the applicant.

4. The respondents have not stated that they had filed an appeal against the judgement in O.A. 617/87 which had also disposed of the O.A. filed by the applicant (O.A. 1052/89). Therefore, these judgements have become final and binding. Accordingly, the applicant will have to be treated as having resigned from the service of the respondents from the date of actual acceptance of the resignation which in this case is from 22.2.1985 and will be entitled to get his pensionary benefits from this date in accordance with law.

5. In para 8 of the judgement in O.A. 617/87, it has been noted that the respondents had raised objection of limitation in these cases which had been rejected. This also shows that the respondents were very much aware of this judgement, but have not implemented it. In the circumstances, the delay is on the part of the respondents in not implementing the earlier judgement, and delay in filing this application is ~~not~~ condoned. Admittedly, the applicant was in the promotion panel of Permanent Way Inspector Grade-I by letter dated 28.4.1984 and, therefore, he will be entitled to the grant of proforma promotion and consequential benefits in accordance with law and

V2

to this extent the application succeeds.

6. Regarding the other claim of the applicant for refixation of the date of retirement as on 1.1.1986, the same has no basis, having regard to the judgement of the Full Bench of this Tribunal in B.K. Anand Vs. Union of India (OA 1477/89, decided on 3.8.1993, Full Bench Judgements of CAT (1991-1994), Vol.III, 225, Bahri Brothers). In this case, the Tribunal held as follows:

"9. In the light of the above discussion, we answer the questions referred to us as follows:

- (1) A retiree having been permanently absorbed in a public sector undertaking or autonomous body and having opted for 100% commutation of pension before 1.1.1986, although the actual payments have been effected after 31.12.1985, is not entitled to the benefit of the order contained in O.M. No. 2/1/87-PIC-I dated 16.4.1987.
- (2) The clarification contained in paragraph 4 of the order of the President bearing No. 2/1/87-P&PW (PIC) dated 8.3.1988, governs the cases covered by paragraph 10 of the order of the President bearing No.2/1/87-PIC dated 16.4.1987.
- (3) The clarificatory order dated 8.3.1988 cannot be ignored and has to be given effect to".

Having regard to the above facts and judgement, the applicants claims that he is a pensioner on 31.12.1985 and for benefits under the O.M. dated 16.4.1987 are rejected. There is also no material on record for payment of family pension and this is also, therefore, rejected.

7. In the result, the application is partly allowed as given in paragraphs 4 and 5 above. The respondents to take necessary action for payment of revised pension. They are directed to grant 12% interest per annum on the

18/

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amounts so due with effect from 21.4.1992.

8. The above directions will be carried out within three months from the date of receipt of a copy of this order, failing which the respondents to pay interest @ 18% per annum on the amounts due till the date of actual payment.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'