

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

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D.A.NO. 177/93.

DATE OF DECISION 3.9.1993.SHRI N.B. JAIN, PetitionerSHRI S.C. LUTHRA, *Shri P. Khokha* Advocate for the Petitioner(s)

Versus

Union of India & Others RespondentSHRI P.H. RAMACHANDANI WITH Advocate for the Respondent(s)  
SHRI J.C. MADAN,**CORAM**

The Hon'ble Mr. B.S. Hegde, Member (Judicial)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

**J\_U\_D\_G\_E\_M\_E\_N\_T**

[Delivered by Hon'ble Shri B.S. Hegde, Member (Judicial)]

The applicant has filed this application under  
Section 19 of the Administrative Tribunals Act, 1985  
against the action of the respondents in neither granting  
nor refusing the sanction and payment of pro-rata and  
other pensionary benefits on permanent absorption of the  
applicant to National Thermal Power Corporation (N TPC)

despite various representations made to them.

2. The applicant joined the Central Government in C.P.W.D. in the year 1972 and worked for a period of three years and in the year 1975, he joined the Military Engineering Service as Assistant Executive Engineer on the basis of combined Engineering Services Examination held by UPSC in 1974. In the year 1981, the applicant in response to an open advertisement, applied to NTPC for the post of Senior Engineer (Civil) through proper channel and after having been selected, joined that organization in October, 1987 retaining the lien in the MES for an initial period of two years which was further extended for one year. In October, 1984, he was permanently absorbed after termination of his lien in the parent department .

3. The main contention of the applicant is that he has put in 12 years of service before his final absorption in the NTPC and he is entitled to pro-rata pension from the respondents and other retiral benefits, on completion of 10 years of Government service. The applicant was denied these benefits presumably on the assumption that the applicant was not declared permanent as Assistant Executive Engineer although



he was made quasi-permanent w.e.f. 1978 and he also successfully completed his probation in 1978 itself. At the time of absorption in NTPC, the applicant was informed that his case of confirmation would be considered along with the general case of confirmation of AEEs and the benefits, if any, flowing therefrom would be granted. The question of confirmation of AEEs was held up due to the court case between Direct Recruits and Departmental Promotees. He has been making correspondence to the competent authorities but no response so far has been received by him. He further urged that in view of the O.M. dated 28.3.1988 by the Department of Personnel on the subject of confirmation according to which the confirmation was delinked from the availability of permanent vacancies in the grade. Further, as per clause 4.4 on 'Pension of the O.M. all the persons who have completed the probation in the first appointment should be declared as permanent and the present distinction between permanent and temporary employee for grant of pension and other pensionary benefits ceased to exist.

*ASMT*

4. The stand of the respondents, in their reply, stated that the applicant could not be confirmed as the case pertaining to seniority list of AEEs in MES was subjudice in various courts and the seniority list is no more subjudice.. The clear vacancy position of AEEs in MES will be available only after the confirmation DPC is done in the grade of EEs and the consequent release of resultant permanent vacancies in the cadre of AEEs. The confirmation of EEs can be done on finalisation of promotion DPC of EEs which was pending with UPSC. The applicant's case for confirmation would be considered if he comes within the zone of available permanent posts at the time of his release from MES on permanent absorption in NTPC w.e.f. 30th November, 1983. Further, while granting lien to the applicant while joining NTPC, it was made clear that in the event of his failure to rejoin MES by 20th October 1984, his lien stands terminated automatically. Since, he did not revert back to the parent department, his lien was terminated w.e.f. 20th October, 1984 and the question of allowing the applicant to be absorbed in the NTPC could not arise at this stage. Further, the respondents



had never given permission to the applicant to seek absorption in the NTPC. The applicant's service can be counted from 9th November 1972 to 20th October 1981 which is less than 10 years of service.

5. The question under consideration is whether the applicant is entitled for a pro-rata pension and whether he has completed 10 years of service in the Central Government before his absorption in NTPC. In this connection, the Learned Counsel for the applicant draws my attention to the respondents letter dated 4.4.1986 which reads as follows :-

" On receipt of concurrence of Army Headquarters vide their letter No. 64024/331/EIB dated 31st March, 1986 for termination of lien, Shri N.S. Jain, Sr. Engineer (Civ. Design), KBM Group, Project Engg. is hereby permanently absorbed in the services of NTPC Ltd. with effect from 21.10.1984(FN)."

*Alm*

Therefore, the contention of the respondents that before absorption, the respondents had not given permission to seek absorption in the NTPC, does not appear to be correct.

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The mere fact that the applicant was allowed to join NTPC and keeping his lien in the parent department itself is not sufficient to indicate that he had gone there with the prior permission of the parent department and kept his lien in the parent department for a period of three years. So far as he keeps his lien in the parent department, that service will have to be counted for the purpose of pro-rata pension. It is true that respondents had extended his lien initially for a period of two years and further one year. He relinquished his lien after 1984 as he did not revert back to the parent department. Once he is absorbed in the Corporation, the question of keeping his lien hardly arises. Regarding maintainability, the applicant has been making correspondence to the respondents and they have been giving intermitent replies that the matter is under consideration and did not reject his contention.

6. In this connection, the counsel for the applicant relied on the two decisions, one delivered by the Tribunal on 3.11.1989 and the other by the Supreme Court of India [JT 1993(1)SC 609 - T.S. Thiruvengadam vs. UOI]. In the Supreme Court decision it was held that the object of



bringing into existence the revised terms and conditions in the Memorandum dated June 16, 1967 was to protect the pensionary benefits which the Central Government servants had earned before their absorption in the public undertakings. Restricting the applicability of the revised memorandum only those who are absorbed after coming into force in 1967 of the said memorandum, would be defeating the very object and purpose of the revised memorandum. It is not disputed that the appellant, along with other Central Government employees, was sent on foreign service to the public undertaking in the year 1961. He was absorbed in the year 1964. All those, who joined foreign service along with the appellant but were absorbed after June 16, 1967, had been given the benefits under the revised Memorandum. Denying the same to the appellant would be contrary to fairplay and justice. Therefore, all those Central Government employees who were absorbed in public undertaking 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. Rule 37 of the Central

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Civil Service (Pension) Rules, 1972 also provides that a Government servant who has been permitted to be absorbed in service in a Central Government public undertaking in public interest, be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits in accordance with the orders of the Government applicable to him. It is not disputed that the appellant was permitted to be absorbed in the Central Government public undertaking in public interest. The appellant, as such, shall be deemed to have retired from Government service from the date of his absorption and is eligible to receive the retirement benefits. In the instant case, it is not disputed that according to their own records except the lien period, the applicant has put in 9 years service and the respondents through out their correspondence taking a stand that the fact of confirmation of the applicant in the cadre of AEEs would be considered as and when the court cases are cleared and completion of the DPC proceedings etc. In view of the O.M. issued by the Department of Personnel and the decision of the Supreme Court in this regard,

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it is not necessary for them to grant the pro-rata pension depending upon the confirmation of the individual. So far as he keeps his lien, that service shall have to be counted till he relinquishes the same. Therefore, it is incumbent upon the respondents to add three more years service to the applicant to count for the purpose of pro-rata pension and in that event of the matter, he will be entitled to get pro-rata pension. In the facts and circumstances of the case, I am of the view, that the applicant has made out a case for pro-rata pension and the plea of the Department that it is time-barred is not tenable and the pensionary benefits are <sup>a</sup> recurring cause, besides, that the respondents have not rejected his representation at any point of time and only stated that the subject matter is under consideration and that plea is not sustainable. Accordingly, the respondents are directed to pay the applicant pro-rata pension. Undisputedly, he has put in nearly 12 years of service and under Rule 37 of CCS (Pension) Rules, 1972, the applicant is entitled to get the same. After successful completion of his

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probation period which he did in this case.

Accordingly, I direct the respondents to immediately pay to the applicant pro-rata pension and other consequential benefits as admissible under the rules within a period of 3 months on receipt of this order. No costs.

(B.S. HEGDE)  
MEMBER (J)

*B.S. Hegde* 3/9/93