

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

O.M. No.2594/1993

New Delhi, dated the 8th May, 1995

Hon'ble Shri J.P.Sharma, Member (J)

Hon'ble Shri K.Muthukumar, Member (H)

Shri Adarsh Kumar Handa
Ex-Asstt, Director (Safety)
r/o W.Z. 3398, Mahindra Park,
Shakur Basti Delhi-34

... Applicant

(Present in person.)

Vs.

1. Union of India,
through the Secretary,
Ministry of Labour, Shram Shakti
Bhawan, Rafi Marg, New Delhi.
2. Shri R.T. Pandey,
Deputy Secretary,
Ministry of Labour,
Shram Shakti Bhawan, Rafi Marg,
New Delhi.
3. The Director General,
FASLI, Sion, Bombay.
4. Shri A.Alagar,
Director General,
FASLI Sion, Bombay
(Former DIC, RLI Madras)
5. Shri G.Vaidyanathan
Director DG, FASLI,
Bombay (Former DIC RLI,
Madras)
6. Director-in-Charge,
RLI-Madras

... Respondents

(By Advocate Shri N.S. Mehta, Senior
Counsel)

O R D E R (ORAL)

Hon'ble Shri J.P.Sharma, Member (J)]

The applicant before joining in the Public
Sector Undertaking i.e. D.E.S.U. was employed as Assistant

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Director (Safety) in the Ministry of Labour, where he joined on 28-1-1985 and remained in active service till 24-12-1990. Applicant has certain grievances of non payment of dues by the applicant department i.e. Union of India, Ministry of Labour and he has filed this application under Section 19 of the Administrative Tribunals Act, 1985 on 8-12-1993 which was subsequently amended on 22.12.1994. Applicant had claimed for the following reliefs:-(para 5 of O.A.):-

- (a) Retirement gratuity on the basis of basic pay of Rs 2500/- for whole six years with interest beyond three months upto one year @ 7% and after one year @ 18%.
- (b) He has also claimed for service gratuity in lieu of pension for the whole six years on the basic of Rs 2500/- and for claiming an amount of Rs 15000/- alongwith similar rate or interest.
- (c) He has also claimed for Leave Encashment for 32 days on the basic pay of Rs 2500/- amounting to Rs 2813/- with 18% interest.
- (d) He has also claimed for Group Insurance Savings Fund account which was credited in his account, though the applicant has stated that this amount has wrongly been typed.
- (e) He has also claimed for T.A. lump sum grant etc.
- (f) He has also claimed for GPF amount which was credited in his account with interest @ 18%.

The applicant has also prayed for grant of the following reliefs:-

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- (a) The respondents must be directed to release the payment of dues with interest @ 18%
- (b) Grant Rs 5,000/- as damages caused because of rise in price.
- (c) Grant compensation of Rs 50,000 to the applicant for mental agony caused to the applicant and his mother because inaction of the respondents.
- (d) Grant lump sum cost of the petition as Rs 5,000/-

2. Notice was issued to the respondents. The respondents have not filed a reply to amended O.A., inspite of several opportunities have been afforded to them. Shri N.S. Mehta, Sr.Counsel stated that inspite of his best efforts the department concerned has placed before him only the same reply which was furnished to him on the unamended O.A. and so he cannot claim for any further time to file reply to the amended O.A. We, therefore, take the reply already filed by the respondents in the unamended O.A. The applicant has also filed a rejoinder to the reply already filed earlier to the unamended O.A.

3. We have considered the arguments of both the parties and heard the applicant at considerable length of time, We take the claim by the applicant one by one.

4. The applicant prays for grant of service gratuity in addition to Death Cum Retirement Gratuity. The contention of the applicant is that his resignation from the post of Assistant Director (Safety) was technical one as he joined the service with D.E.SU. Public Sector

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Undertaking is fully owned by the Central Government

because of his selection by UPSC when he applied through proper channel. The applicant, therefore, referred to O.M. dated 31-1-1986 on the subject which relates to Permanent Transfer of Central Government Servants to the Central Public Sector Undertakings. The basis of the applicant's contention is letter dated 19.10.1990 from the DDG DG FASLI SION, Bombay to RLI Madras (Annexure-2). It is written therein that the resignation tendered by the applicant is to be considered in terms of O.M. dated 31-1-1986 (A copy of O.M. has also been filed by the applicant as Annexure A-3 to the amended O.A.). The respondents could not show any other OMs of DOPT under which the applicant could get the benefits after submitting his resignation when he is deemed to be retired from Govt. service. The relevant pensionary benefits quoted in para 4 of the O.M. reads as follows:-

- (i) "Resignation from Government service with a view to secure employment in a Central Public enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the Government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation.
- (ii) The officers eligible for pension should exercise an option within six months of the date of his resignation for either of the following two alternatives:-

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(A)

(a) Pro rata monthly pension and death-cum-retirement gratuity as admissible under the relevant rules.

(b) Pro rata gratuity and a lump sum amount in lieu of pension worked out with reference to the commutation tables applicable on the date of resignation.

5. The applicant has argued that his case should be considered both for grant of service gratuity as well as DCRG. In this connection, the applicant has also referred to rule 49 and 50 of the CCS Pension Rules, 1972. Rule 49 regarding amount of pension and sub clause-1 says in the case of Govt.servant retiring in accordance with provision of this rule before completing of qualifying service of 10 years, the amount of gratuity shall be calculated at the rate of half months emoluments in every completed six months of the qualifying service. In fact, this is a compensation to such a Govt.servant who is not entitled to pensionary benefits having not put in more than 10 years of service.

6. However, when we go through the O.M. dated 31-1-1986 we would find that such Govt. servant, who has resigned from the Central Government and reemployed with Public Sector Undertaking given only two alternatives referred to above. The applicant asserts that in this O.M. the pro rata pension should be taken as a grant of service gratuity to the applicant. The applicant

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is entitled only to the service gratuity as defined

in rule 49 and not DCRG as mentioned in rule 50. Under

O.M. dated 2-1-1987 PIC 11 the service gratuity of

qualifying service less than 10 years shall be

calculated of half month emoluments after 6 months

period of service. The applicant has in their mind

that DCRG should be addition to service gratuity.

As stated above he cannot claim both. DCRG is admissible

on the retirement equal to 1/4 monthly emoluments

of each 6 months period of qualifying service subject

to maximum of $16\frac{1}{2}$ times emoluments. The respondents

shall calculate the service gratuity amount and pay

to the applicant. However, if the retirement is taken

as one on superannuation in that case the applicant

may also be considered for grant of Death-Cum-Retirement

Gratuity. The counsel for the respondents, however,

could not cite any OM that the applicant shall not be

deemed to have retired from service in view of the OM

of 31-1-1986 (Supra). The applicant also could not

show any precedent or rule in that regard. We leave

the matter for to the respondents who can take the opinion
of the nodal Ministry in that regard.

7. The other claim of the applicant is leave

encashment as per rule as he was 32 days of outstanding

leave on his credit. We have gone through the relevant

provision of Rule 39 (D) of the C.C.S. Leave Rules,

1972. If a Govt. servant retires, he may be granted

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by the authority competent to grant leave, cash equivalent in respect of earned leave at his credit cessation of on the date of service, to the extent of such leave at his credit, subject to maximum of 200 days.

Since the resignation from the parent service is technical, he is entitled to encashment of the whole of the E.L. i.e. 32 days and not half. The respondents to pay the balance amount also.

8. Regarding the amount of contribution towards in the CGEIS and GPF. Respondents shall pay the amount as per records on the basis of monthly deductions from the applicants salary with all accrued dues provided that the applicant undertakes to complete all necessary formalities. Applicant is also entitled to interest on the amount of GPF according to rule till the date of payment, only if there is no mandatory provision to transfer the GPF to the office where applicant has joined. No such mandatory provision has been shown to us.

Applicant has also prayed for grant of T.A. etc. and other allowances after submitting the resignation in the Central Government and joining in DESU. We do not see any rule/instructions/notification or Govt. decision whereby any Govt. servant who was earlier with the Central Government

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and later joined the Public Sector Undertaking of his own willingness, is entitled to the same benefits. The applicant claims is that he has retired from the Central Government by virtue of O.M. dated 31.1.1986 and, therefore, he cannot be said to have been transferred to the new service.

Applicant has also claimed compensation from the respondents, amounting thousand of rupees. It is open to the applicant to pray for such relief in the proper forum if so advised, as the Tribunal has no jurisdiction in fortious matter.

9. The present application is partly allowed with the following directions:-

(i) Applicant shall be granted service gratuity at the rate of half months for emoluments every completed year of six years service put in with the Central Government with 10% interest. On the service gratuity the amount already paid to the applicant shall be deducted from this amount.

(ii) The respondents shall re consider the claim of the applicant in Consultation with Department of Pension and Pensions Welfare whether his deemed Retirement under OM of 31.1.1986 entitles him to any DCRG or not.

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If answer is yes he should be paid the same with 10% interest.

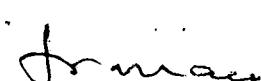
(iii) The applicant shall be paid leave encashment as per rule as said above for whole of 32 days E.L and not half.

(iv) Applicant shall be paid Group Insurance Saving Fund as per rule provided if the applicant fulfil the necessary formalities within a period of one month. After the all formalities, payment be made within a further period of one month.

(v) The respondents also to calculate the amount outstanding in the GPF account of the applicant and paid to him if there is no mandatory rule to transfer this GPF to the new organisation i.e. D.E.S.U. The amount be paid to the applicant after filling the necessary forms as per rules within a period of three months from the date of receipt of a copy of this order. The upto date Interest on the GPF amount be also paid as per Rules.

(vi) The prayer for interest on other claims is disallowed. Since the applicant partly succeeds in the O.A, he will bear his own cost.


(K. Muthukumar)
Member (A)


(J.P. Sharma)
Member (J)