

No  
pension

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

37

O.A. No. 598 OF 1987  
~~TAX NO.~~

DATE OF DECISION 30th November, 1992.

Shri Dr.R.S. Dinesh Petitioner

Shri Girish Patel Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr.N.V.Krishnan : Vice Chairman

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 ? ✓

35

Dr. R.S.Dinesh,  
Ex-Chemist in Indian  
Bureau of Mines,  
Nagpur,  
Residing at M - 56/332,  
Pragatinagar,  
Ahmedabad.

...Applicant.

( Advocate : Mr. Girish Patel )

Versus

1. The Controller General,  
Indian Bureau of Mines,  
New Secretariat Building,  
Nagpur.
2. Union of India  
Through :  
The Secretary,  
Ministry of Steel & Mines,  
New Delhi.
3. Pay & Accounts Officer,  
Indian Bureau of Mines,  
Nagpur.

...Respondents.

( Advocate : Mr. Akil Kureshi )

O P I N I O N  
O.A.NO. 598 OF 1987

Date : 30.11.1992.

Per : Hon'ble Mr.N.V.Krishnan : Vice Chairman

As the Hon'ble Members of the Division Bench,  
who heard this case in the first instance, could not agree  
on the judgment to be delivered in this O.A., it was referred  
to the Hon'ble Chairman of the Central Administrative Tribunal,  
who has referred the matter to me for giving my Opinion under  
Section - 26 of the Administrative Tribunals Act, 1985.

6

...3...

34

2. To understand the difference of opinion between Hon'ble Shri R.C.Bhatt, Judicial Member and Hon'ble Shri M.M.Singh, who have recorded their respective judgments dated 11.09.1991, and 23.09.1991, it is necessary to set out briefly the facts of the case.

3. According to the particulars furnished by the applicant, he was a Technical Assistant in the S.M.Medical College, Agra under the Government of Uttar Pradesh from 15.11.1962 to 15.08.1963. Thereafter, he left service to study for his M.Sc. degree . He joined the Government of India on 20.7.1964 as a Research Assistant in the Indian Agricultural Research Institute (IARI) under the Ministry of Food and Agriculture. The IARI was subsequently registered as a society under the Societies Registration Act, 1860, and converted into an autonomous body from 01.04.1966. All Government employees working in the IARI prior to 1.4.1966, were continued and kept on foreign service, without deputation allowance, after this date and were given an option to be absorbed in the new autonomous organization. The applicant was absorbed in the autonomous body from 16.7.1968 (S.No. 21 of Document - A- 14 letter of the Ministry of Agriculture to the Accountant General). He was promoted as Senior Research Assistant from 10.10.1969, and he continued till 09.03.1970. He joined the Government of India again on 10.3.1970 in the Indian Bureau of Mines ( I.B.M. ) i.e., 20.3.72 (Document-A-1) and he went on deputation Respondent No.1. He was confirmed on the Oil and Natural Gas Commission (ONGC) from 19.4.1973 to 25.8.1975, with lien on

63

I.B.M. As he did not return to the I.B.M., he resigned and got absorbed in the O.N.G.C. on 26.8.1975. In these circumstances, he claims that he is entitled to pension from the Government of India for the entire period from 15.11.1962 to 25.08.1975.

4. The learned Members of the Division Bench are agreed that the applicant has no case, whatsoever, in respect of the period 15.11.1962 to 19.7.1964 i.e. before he joined the IARI under the Government of India. The respondents have admitted that the applicant is entitled to terminal benefits for the period from 10.3.1970 to 25.8.1975, when he worked in the I.B.M. They have denied any liability in respect of the period from 20.7.1964 to 9.3.1970, when he was employed in the I.A.R.I.

5. It is in regard to this period that the learned Members of the Division Bench who heard the case could not agree about the final decision.

6. It is evident from the particulars given in para-3 Supra that the applicant served twice under the Government of India viz firstly, in the IARI from 20.7.1964 to 16.7.1968 including the period of his foreign service, from 1.4.66 to 16.7.68 in the re-constituted autonomous body of IARI and secondly, in the IBM from 10.3.1970 to 25.3.1975. It is because of this interruption that the respondents contended that the only retiral benefits which the applicant is entitled to on his permanent absorption in the ONGC from 26.8.75



34

ix

is for the period from 10.3.70 to 25.3.75 when  
and  
he was in the IBM, 7 when he was continuously in the  
service of the Government of India.

7. X The applicant contends that the period  
of service under the autonomous body of IARI from  
17.7.68 to 9.3.70 is also service under Government  
of India so as to make his service from 20.7.64 to  
25.3.75 continuous under the Government of India.

According to him, when the IARI became an autonomous  
body it was clarified that the incumbents drawn from  
Government of India and working in the now body, will  
have all the benefits of Central Government employees.  
He also relied on Document A-2, in this connection,  
which enclosed a copy of the Ministry of Finance  
O.M. No.4/(9)-E.V.(B)/65-II, dated 22.1.1966. That  
O.M. grants benefits of service rendered under the  
Government of India in respect of employees who join  
autonomous bodies like CSIR etc and Central Universities,  
without break in service. For our purposes, it is  
sufficient to reproduce below the opening sentence  
of this O.M.

" Under existing orders, service of  
scientific employees coming over to  
Government from Central Autonomous  
Organisation without break, counts  
for pension, subject to the condition  
stipulated in this Ministry's O.M.No.  
F.3(25)-E.V.(A)/60 dated the 28th March,  
1960."

Q



The O.M. then proceeds to say that the same benefits will be extended in the reverse direction if a Central Government scientific employees gets absorbed in an autonomous organisation and the service under Government will count for pensionery/ terminal benefits. In view of the extract quoted above, the applicant contends that the respondents are liable to count the period of service under the reconstituted IARI from 17.7.68 to 9.3.1980 for pensionery ~~xxx~~ purposes.

8. The applicant has made the following efforts to get a favourable decision from the respondents.

i.) By a letter dated 12th March, ~~1974~~ 1974 (document A-6) addressed to the first respondent (i.e. Controller, Bureau of Mines), he ascertained whether he was entitled to prorata pension and gratuity benefits in terms of Department of Personnel vide letter No.08.1.72 , Establishment (C) ~~Est.~~ dated 21.4.1972, on his permanent absorption in O.N.G.C. Apparently, a reply was given to him on 29.3.1974, as seen from para-6.6 of his application, but a copy of that reply has not been filed. There is also no reference to this letter in the reply of the respondents to the O.A. They have however, dealt with this issue on merits in the reply, reference to which will be made separately.

U

49

whatever be the reply, the applicant was apparently satisfied with it because he took the irrevocable decision of getting absorbed in the O.N.G.C. from 26.5.1975 and resigned from the I.B.M.

ii) After the applicant was absorbed in the O.N.G.C. the first respondent apparently, took up with the second respondent (i.e. the Ministry of Steel and Mines), the question of giving to the applicant prorata pension and gratuity on his absorption in the O.N.G.C. Government informed the first respondent by the letter dated 1st October, 1986, a copy of which is enclosed to the Document No.A.10 - as follows :

"I am directed to refer to your letter No. A-19011/102/85-Estt.A.Vol.II dated 11.6.1986 on the above subject and to say that the Department of Pension and Pensioners' Welfare who were consulted in the matter have indicated that since Dr.Dinesh had worked in the I.A.R.I., a Central Autonomous body during the period from 20.7.64 to 9.3.70, he cannot have the benefit of service rendered in the I.A.R.I. for the purpose of getting pro-rata retirement benefits in terms. Department of Personnel and



51

Administrative Reforms O.M. No.28/10/84 -

Pension Unit dated 29.8.84 which were given effect from the date of issue of these orders."

On receipt of this letter, the first respondent again wrote to Government on 26.11.1986, (Document - A-10) and requested them to directly inform the applicant about their decision. A copy of this letter was also endorsed to the applicant along with a copy of Government's letter dated 1.10.1986.

iii). On receipt of this letter dated 26.11.1986, (Document-A-10), the applicant made a representation directly to Government on 15.12.1986 (Document-A-~~18~~) raising two contentions as follows :

(a) Reliance by Government in its letter dated 1.10.86, on the Department of Personnel and Administrative Reforms O.M. dated 29.8.1984, is inappropriate because that memorandum came into force only from the date of its issue i.e. 29.8.1984, whereas the applicant was permanently absorbed in the O.N.G.C. in August, 1975. Therefore, his case should be decided on the basis of the rules and instructions then in force.

ll



52

(b) His claim should have been considered in terms of O.M. No.26-(18-5 V.B./75 dated 8th April, 1976, "which runs parallel to the directions in O.M. No.2 (57)/68/BPE (S.M.) dated 26.4.1969", and directs that "Government servants on absorption in public Enterprise may be paid pension/gratuity dues immediately on their absorption". He also contended that at the material time circular No.50/72 circulated by communication No.1 210/(2)/70 Gen. dated 9th May, 1972 was applicable to his case.

(iv). It is not clear whether the applicant received any reply from the second respondent to his Document - A-8 representation. It appears that the applicant took up the matter again with the first respondent in July, 1987 and among other things, he was informed by letter dated 22nd September, 1987, (Document No. A-11) as follows :

"The Ministry has again clarified that you had been working the IARI during the period from 20.7.64 to 9.3.70 and the IARI became an autonomous body w.e.f. 1.4.66. As such in view of the provisions contained in the Department of Personnel and Training O.M.NO.

28/10/84-Pension Unit dated 29.8.84, you



57

- 10 -

cannot be granted the benefit of service rendered in IARI for the purpose of getting pro-rata retirement benefits from 1.4.66. Since the Govt. has not agreed to give the benefit of service rendered in IARI and the grant of pro-rata pension benefits and gratuity, it is regretted that your request for the grant of pro-rata pension and gratuity cannot be agreed to.

However, you are only entitled for the benefit of service gratuity etc. for the service rendered in IBM as the IBM service is less than 10 years."

9. As his requests were not acceded to, this application has been filed seeking the following reliefs :

- "(A) Quashing and setting aside the decision of the respondents dated 26.11.86 and 1.10.86 ;
- (B) restraining the respondents from acting and implementing upon the decision dated 1.10.86 and 26.11.86 ;
- (C) directing the respondents to declare the applicant as eligible for pro-rata pension, DCRG and carry forward of leave and also directing him the benefit of the same as explained in the calculation sheet"

5

10. It is to be noted at this stage that the applicant's contention so far has been that the O.M. dated 29.8.1984 of the Department of Personnel and Administrative Reforms (referred to by Respondents in Document-A-10 and A-11), did not apply to his case as he was absorbed in the ONGC in August, 1975, while this O.M. became effective from the date of its issue. However, when the applicant filed a rejoinder on 1.8.1991, he took a somersault and cited this very memorandum dated 29.8.1984 to support his claim for granting him reliefs, contending that this memorandum also applies to persons who had retired earlier, as held by the Supreme Court in R.A.Marwah Vs. Union of India and Ors. (1987 2 LLJ Supreme Court 536).

11. This contradictory conduct of the applicant is also matched by that of the Respondents for, it is clear from the Government order dated 1.10.1986, (enclosure to Document-A-10, reproduced in para <sup>u 8</sup> 8/(11) above) and Document A-11 (reproduced in para 8 (iv) above), that the respondents took the stand that it is in view of the provisions of the Departmental of Personnel and Training O.M. dated 29.8.1984, that the service rendered in the IARI could not be considered for pensionary benefits. However, in their written reply, the respondents have not shown how the request made by the applicant becomes inadmissible under the provisions of this O.M. Further, at the hearing of the case, the learned counsel for the respondents submitted that this O.M. as a matter of fact, will not even



55

- 12 -

apply to employees absorbed in public sector undertakings, like the applicant, as has been <sup>made</sup> clear in para-4 of that office memorandum. The merit of this contention will be taken up for consideration later.

12. In their reply, the respondents admit their liability to pay terminal benefits due to the applicant on his absorption in the ONGC, in regard to his earlier government service. The only dispute is about the length of such service. The respondents have restricted this benefit to the period of service under the I.B.M. i.e. from 10.3.1970 to 28.5.1975, only. No benefit has been given for the prior service from 20.7.1964 to 09.3.1970, under the IARI, when it was a government organization upto 31.3.1966 <sup>and</sup> an autonomous body thereafter.

13. The respondents justify this decision as follows :

(i) There were no rules on 10.3.1970, which required Government to count service in autonomous body for the purpose of civil pension on absorption in Government.

(ii) In Ministry of Finance O.M. NO. 26, (18) - E.V. (B) - 75, dated 08.04.1976, (stated to be enclosed as Annexure-R-3, but not enclosed), instructions were issued regarding Government servants absorbed in autonomous bodies which enabled the prior Government service to be counted for pensionary benefits.\*

...13...



49

(iii) Corresponding benefit was conferred with effect from 08.09.1983, on persons working in autonomous bodies who were later absorbed in Government service by the Ministry of Finance O.M. No.25 (1) E/V/83/ dated 08.09.1983, (stated to be enclosed as R-4, but not enclosed). In such cases, the service rendered in the autonomous body was given weightage for reckoning terminal benefits.

(iv) The most important ground taken is that the applicant had already been given terminal benefits by the IARI for the entire service rendered under it from 20.7.1964 to 09.03.1970, and therefore, there is no question of giving any benefit for this period once again. In this connection <sup>it</sup> is stated in para 11.2. of the respondents reply as follows : -

"The matter was referred to IARI to verify the service and also to indicate their willingness for sharing their proportionate pensionary liability as per provision of para-20 to 24 of Appendix-18 of the C.C.S. (Pension) Rules, 1972, or they should agree to transfer the liabilities of employers share of CPF with interest, vide letter No. A-19011/102/75-Estt.A.Vol.III, dt.2-3-82, and 16.10.84. The IARI, Pusa, New Delhi, finally informed vide letter No.6/10/86/P-I, dt.11-8-86 that he had resigned in that organisation. The ICARI which is superior authority of IARI, vide letter No.

6



57

F.19 (16)/86-RR.IV, dt.9.4.86, accorded sanction for the payment of terminal gratuity as per CCS (Temporary Service) Rules, 1965, for the service rendered by the applicant in IARI."

The applicant has filed a detailed rejoinder but there is no denial therein of the above averments of the respondents that he has already been given the terminal~~x~~ benefits by the IARI.

13. In his judgment dated 11.9.91, the Hon'ble Judicial Member, came to the conclusion that the entire service from 24.7.1964 to 9.3.70, rendered in the IARI is eligible to be counted for grant of pro-rata retirement benefits the O.M. dated 29.8.1984, He relied on the extract~~re~~produced in Marwaha's case to come to the conclusion that if a Government servant is absorbed in an autonomous body or vice versa, the pensionary liability shall be discharged by the authority under whom the earlier service was rendered - i.e. Government or the autonomous body, as the case may be, before absorption. The Supreme Court made this O.M. applicable to all employees irrespective of (R.L. Marwaha Vs. Union of India and Others, 1987, IIL.L.J.536(SO when they retired), in their judgment in Marwaha's case. Therefore the learned Judicial Member came to the following conclusions :

" Reading this judgment, it is clear that the Hon'ble Supreme Court held in this decision that as there has been a continuous mobility of personnel between the Central Govt. department and autonomous bodies, like

62

58

the ICAR, both ways and the Govt. thought, and rightly so, that it would not be just to deprive an employee who is later on absorbed in the service of the autonomous body, like the ICAR, the benefit of the service rendered by him earlier in the Central Govt. for purposes of computation of pension and similarly the benefit of service rendered by an employee who is later on absorbed in the Central Government service, the benefit of the service rendered by him earlier in the autonomous body for purpose of computation of pension. Applying the ratio of this decision to the present case before us, the reasoning given by the respondents in the impugned decisions page-37 and 39 as well as in the reply that as the applicant had worked in IARI a Central autonomous body during the period from 20th July, 1964 to 09th March, 1970, he cannot have the benefit of service rendered in the IARI for the purpose of getting pro rata retirement benefits in terms required to be rejected. We hold that the applicant is entitled to the benefit of service rendered in the IARI from 24th July, 1964 to 09th March, 1970 for the purpose

ll



of getting pro rata retirement benefits and as observed above, admittedly, he served under the department of Central Govt. from 10th March, 1970 to 24th August, 1975 as per reply para - 5 of the respondents. His services from 20th July, 1964 to 24th August, 1975 ~~not~~ being not less than 10 years, he is entitled to get a pro-rata retirement benefits. The impugned decisions at page-37 and 39, therefore, shall have to be quashed and set aside as prayed in para - 7 (a) of the application and the respondents shall have to be restrained from acting and implementing those decisions as prayed in para - 7 (b) of the relief."

Accordingly he granted the reliefs as mentioned above.

14. The learned Administrative Member has rejected the application by his judgment dated 23.10.1991, on the following grounds :

(1) The applicant, being an employee of the ONGC, cannot file this application because the Tribunal's jurisdiction has not been extended to the ONGC by any notification issued under Section-14(2) of the Administrative Tribunals Act -1985.

50

(ii) The applicant sent a letter (Document-A-6) on 12.3.74, to the first respondent for clarification whether he was entitled to pro-rata pensionary benefits for the period from 15.11.1962, till his absorption in the ONGC. Admittedly, he received a reply on 29.3.1974, which he has not exhibited. If he had any grievance in respect of that reply, the cause of action arose then and therefore, this O.A. is barred by limitation.

(iii) The 29.8.84, O.M. of the Department of Pension and Training does not apply to the applicant, because it <sup>only</sup> applies to absorption in organisations which have a pension scheme. The applicant has not established that in the ONGC a pension scheme was in force. The evidence on record shows that only a Contributory Provident Fund scheme is followed. Therefore, this O.M. does not apply to the applicant.

(iv) In Marwaha's case, the Supreme Court has held that the O.M. dated 29.8.84, will not only apply ~~to~~ from the date it was issued, but there is no justification to deny the benefit of this order to those who had retired before the date of its issue.

10



(5)

The applicant had "resigned from Government of India service from 25.8.87" (sic. 25.8.75), meaning thereby he had not retired from Government service, but resigned. Hence the O.M. is not applicable in this case.

(v) Lastly, it was concluded that the liability to pay the leave salary and pension contribution was that of the ONGC. Reliance is placed on the Document A-5 representation dated 22.1.1973, sent by the applicant to the ONGC in which he made a reference to the advertisement issued by the ONGC, for the post of Senior Chemist, which stated as ~~follow~~ follows :

"In case of permanent Government servants, who are allowed to retain a lien on their permanent post in their parent offices in terms of Ministry of Home Affairs O.M. dated 22nd, 1966, the leave salary and pension contribution will be paid by the Commission. In the event of their permanent absorption in the commission they will be entitled for retirement benefits in terms of department of Personnel O.M. NO.8-1-72 Estt(C) dated April 21, 1972."

6

The ONGC has admittedly, not been impleaded as a party. He left undecided the question whether, if the ONGC had been impleaded, any relief would have been given by the Tribunal.

In the Circumstances he did not find any merit in the application and he dismissed it.

15. When the case was heard by the Division Bench earlier, none appeared to argue the case of the respondents. That was unfortunate because the respondents could have then forcefully brought to the notice of the Bench certain matters, which were brought to my notice. I have had the benefit of ~~xxx~~ hearing in detail the counsel of both sides. I have carefully perused the records and given my anxious consideration to the rival contentions made.

16. The first question is whether the O.M. dated 29.8.84, referred to in the impugned letter dated 1.10.1986, (enclosure to Document - A/10) and in Document-A-11, can be applied to the case of the applicant, as has been done by the Hon'ble Judicial Member relying on the judgment in Marwaha's case. A copy of this O.M. is not on the case file. It was

5

produced before me by the learned counsel for the respondents and is referred to as R-5. (Annexure-R/1 to R/4, stated to be filed by the respondents, have not been filed). Shri Akil Kureshi, the learned counsel for the respondents pointed out that this O.M. regulates "the case of Central Government employees going over to a central autonomous body or vice-versa" as stated in para-3 of the O.M. Para-4, thereof reads as follows

"4. Central autonomous body" means body which is financed wholly or substantially from cess or Central Government grants. "Substantially" means that more than 50 per-cent of the expenditure of the autonomous body is met through cess or Central Government grants. Autonomous body includes a Central statutory body or a Central University but doesnot include a public undertaking.

Only such service which qualifies for pension under the relevant rules of Government /Autonomous body shall be taken into account for this purpose."

He contended that the ONGC in which the applicant was absorbed is not a Central autonomous body but is a "public undertaking" and hence this O.M. cannot regulate the liabilities of the Central Government on the absorption of the applicant in the ONGC.



54

17. Shri Sharad Pandit, the learned counsel for the applicant could not seriously dispute this description of the ONGC as a public undertaking.

18. I have examined this matter. Even if para-4, of the ~~above~~ O.M. had not made it clear that an autonomous body ~~excludes~~ a public undertaking, the ONGC will still stand excluded as it is not covered by the definition given above. For, to those who study the central budgets carefully, it ~~now~~ would be evident that the ONGC is neither financed wholly nor substantially from cess or Central Government grants. As a matter of fact, ONGC has been ~~lending~~ its surplus funds directly or indirectly, to the Central Government for the past several years. That apart, it, like several other such ~~orgs~~ organisations controlled by the Government of India is a public undertaking, the hall mark of which is their total commercial nature. Therefore, this O.M. has no application to a person who is absorbed in the ONGC. I have only to add that perhaps, the Hon'ble Members of the Division Bench would also have come to this conclusion, had the full text of the O.M. dated 29.3.1984, been shown to them and para - 4 , thereof brought to their notice. It appears that only the extracts of that O.M. reproduced in Marwah's judgment were seen by the Division Bench. ~~xxxx~~ That is also the reason why the Hon'ble Administrative Member had to express his uncertainty about the matter in para-4 of his judgment, where ~~he~~ states "Presuming that a public sector undertaking is to be taken as an autonomous body".

(5)

19. In this view of the matter, with great respect, I am unable to agree with the conclusions arrived at by the learned Judicial Member.

20. I have carefully perused the judgment of the Hon'ble Administrative Member, the substance of which has been given in para - 15 Supra. With great respect, I am unable to agree with the grounds relied upon by him for disposing the application, but, nevertheless, I agree with his conclusion that the application has to be dismissed, but for entirely different reasons, in respect of the major relief sought by him relating to pension.

21. Briefly stated, my views ~~th~~about the grounds given in the learned Administrative Member's judgment, as briefly set out in para - 14, Supra, are as follows :

(1) The Tribunal's jurisdiction is not ousted merely because the applicant is an employee of the ONGC, over which its jurisdiction has not been extended by notification under Section-14 (2) of the Act. This objection ~~was~~ is valid if the application had sought relief from the ONGC. The relief sought is in respect of a service matter concerning the Government of India. Hence, the Tribunal has jurisdiction in this case.

(40)

(ii) The application is not barred by limitation, because in the letters dated 31-10-1986, of the first respondent (enclosure document A-10), and dated 22-9-1987, (Document A-21), a new ground has been taken to reject the applicant's claim, viz., that it cannot be allowed under the Department of Personnel O.M. dated 29-8-1984. This gives a fresh lease of life to this cause of action and hence the application is not barred by limitation.

(iii) O.M. dated 29-8-1984, (Ex. R-5) reproduced in section <sup>IV</sup>~~X~~ (page 439) in Swamy's Pension Compilation Tenth Edition, is not limited to an autonomous body which has a pension scheme. Para 3 (b) of the O.M. states how benefits should be given if the absorption is in an autonomous body where a pension scheme is not in operation.

(iv) It cannot be held that the O.M. dated 29-8-1984 (Ex. R-5) will not apply to the applicant as he resigned from the I.B.M. and did not retire from it, without a more detailed examination of the issue in the light of Rule 37, of the Central Civil Services (Pension) Rules- 1972, and Government of India decision No.2 (Department of Personnel) O.M. No. 28/16/4/76 - Estt (c) dated 25-3-1977 (reproduced in Swamy's Pension Compilation, Tenth Edition) under that Rule which could have resulted in a different conclusion.

(v) The last ground that it is the liability of the ONGC to pay pensionary benefits and therefore ONGC should have been impleaded. This is only for the period upto 24-8-75, when the applicant was on deputation to the

(2)

ONGC. This liability has already been discharged by the ONGC and therefore, the respondents are willing to pay to the applicants the terminal benefits in respect of the service in IBM from 10.3.70, to 24.8.75, including the period of deputation from 19.4.1973 to 24.8.1975, to the ONGC, before his absorption in that organization. The present claim of the applicant has therefore, been rightly made against the Government of India.

22. I might have felt it necessary to indicate the rules/instructions which should apply to this case if that was found necessary to dispose of this case, because there is a plethora of instructions on the subject. "Swamy's Pension Compilation (Tenth Edition) reproduces these instructions in Appendix - 18. It is seen therefrom that the Ministry of Finance O.M. dated 8.4.76, (referred to in the respondent's reply as Annexure-R-3, but not furnished) was issued as a consolidated instruction superseding all the existing instructions on the subject. It contains references to subsequent instructions by which modifications have been made, but does not refer to any of the instructions earlier to 8.4.76, which were in force prior to 8.4.76, and were continued or superseded from that date. Hence, it has not been possible to look into the instructions dated 28.3.1960, referred to in Document-A (2) or the other instructions referred



to in the application or in the Document-A-8, representation. These constraints or short comings are, however, of no consequence, because I do not feel that in the circumstances of this case there is any need to deal with this aspect any further. For, it is the unrefuted contention of the respondents that the applicant has, already been paid his terminal dues for the service rendered by him in the IARI for the period from 20.7.64 to 9.3.70, and therefore, he cannot have any further claim, on Government on this account. This is a valid stand and the application is liable to be dismissed on this ground alone.

23. In the circumstances, my opinion is as follows :

(a) This application lies to the Tribunal and it is not barred by limitation.

(b) The O.M. dated 29.3.84, of the Department of Personnel is not applicable to this case, because, the ONGC in which the applicant was absorbed is not — — — — — a "Central autonomous body" ~~as defined~~ as defined in para-4 of that O.M. Hence, the applicant is not entitled to any relief based on that O.M.

(c) The applicant had already received from the IARI the terminal benefits in respect of his service in that body from 20.7.64 to 9.3.70. Therefore, the applicant cannot claim that the Government of India should again include this period for reckoning the pensionary benefits payable to the

5

applicants. The respondents have now <sup>u</sup>no responsibility in regard to this period.

(d) The applicant is entitled to get service gratuity and D.C.R.G. for the period 9.3.70 to 24.8.75, as ~~ad~~ admitted in para-16 of the respondent's reply and this liability shall be discharged by the respondents, if not already done.

(e) He is also entitled to the benefit of 129 days ~~earned~~ leave in respect of which the respondents have stated in para-10 of their reply that the leave salary for 129 days earned leave can be sent to the ONGC, provided the ONGC is agreeable to take the liability of this carry forward of leave. It is open to the applicant to pursue this matter further with the respondents for a final decision. It --- is made clear that in case the ONGC does not take this liability the applicant shall be paid the leave salary in lump sum, by the respondents.

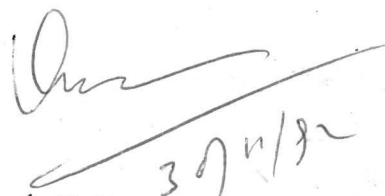
(f) Subject to the observations at (d) and (e), the application deserves to be dismissed.

24. It is with great respect I have disagreed with the judgment of the Hon'ble Judicial Member and I have also, for all practicable purposes, disagreed with the judgment of the Hon'ble Administrative Member. Normally, in such a circumstance, I would have referred the matter to the Hon'ble Chairman of the Tribunal for further directions,

u

but in this case in view of certain special circumstances, I am of the view that the time is not ripe for such a reference. It is to be noted that my opinion is based on certain aspects which have not been considered by the Hon'ble Members of the Division Bench, because they were not brought to their notice. Therefore, it is only proper that the Division Bench may consider this opinion with a view to examining whether it is possible to render a judgment on the basis of the views held by a majority of the Members, who have heard the case. It is only if the Division Bench finds that ~~xxx~~ this is not possible that it may consider making a reference to the Hon'ble Chairman for further directions.

25. Hence, I direct the Registry to place this matter before the Division Bench, after serving a copy of this Opinion on the parties.

  
( N.V. Krishnan )  
Vice Chairman

AIT

O.A./598/87

6

Date	Office Report	Order
(2) 06/08/92		<p>Present : Mr. Sharad Pandit for Mr. Girish Patel, Adv./App.</p> <p>Mr. Akil Kureshi, Adv./Res.</p> <p>For want of time the matter is adjourned. Call on afternoon of 14/08/92.</p> <p><i>[Signature]</i> ( R. C. BHATT ) Member (J)</p> <p><i>[Signature]</i> ( N. V. KRISHNAN ) Vice Chairman</p> <p>vmu</p>
(1) 14/08/92		<p>Present : Mr. Sharad Pandit for Mr. Girish Patel, Adv./App.</p> <p>Mr. Akil Kureshi, Adv./Res.</p> <p>Mr. Akil Kureshi seeks short adjournment. Call on 20/08/92, after noon.</p> <p><i>[Signature]</i> ( R. C. BHATT ) Member (J)</p> <p><i>[Signature]</i> ( N. V. KRISHNAN ) Vice Chairman</p> <p>vmu</p>
20.8.92		<p>Present: Mr. Sharad Pandit for Mr. Girish Patel, Adv./App.</p> <p>Mr. Akil Kureshi, Adv./Res.</p> <p>Matter is part-heard. Call on 27.8.1992, afternoon.</p> <p><i>[Signature]</i> (N.V. Krishnan) Vice Chairman</p>

\*K



Date	Office Report	Order
27.8.92 (1)		<p>Present: Mr. Sharad Pandit for Mr. Girish Patel Adv./App.</p> <p>Mr. Akil Kureshi, Adv./Res.</p> <p><i>At the request of the applicant counsel,</i> This case will be heard <del>by me</del> on 3.9.92.</p> <p><i>afternoon,</i> after, second sitting if any of the Division Bench is over on that afternoon.</p> <p><i>ll</i></p> <p>(N.V. Krishnan) Vice Chairman</p> <p>*K</p>
3-9-92		<p>Mr. Sharad Pandit for Girish Patel Adv/App.</p> <p>Mr. Akil Kureshi Adv/App.</p> <p>Call on 14-9-92 in afternoon after second sitting if any of Division Bench is over on that afternoon.</p> <p><i>ll</i></p> <p>R.C. Bhatt ) Member (J)</p> <p>(N.V. Krishnan) Vice-Chairman.</p> <p>*AS.</p>
27/11/92 <del>30/11/92</del>	<p>Judgment is to be Pronounced on 30.11.92</p> <p><u>Asnit</u></p> <p>S.O.C.S)</p>	<p><del>O.A./598/87</del></p> <p><del>Subj - Stone for the applicant</del> <del>Mr. Akil Kureshi Adv/App.</del></p> <p><del>Opinion pronounced in open court</del></p> <p><del>(N.V. Krishnan)</del> <del>Vice-Chairman</del></p>

(62)

Date	Office Report	Order
14/9/92		<p>Present ; Mr. Sharad Pandit, for Mr. Grish Patel advocate for the applicant.</p> <p>Mr. Akil Kureshi. Adv./ Res.</p> <p>The matter is adjourned to 17th Sept. in afternoon 3.30 p.m.</p>

*(Signature)*  
(N.V. Krishnan)  
Vice Chairman

\*SS

Present : Mr. Sharad Pandit proxy  
for Mr. Girish Patel.

Adv./Appt.

Mr. Akil Kureshi. Adv./Res

Heard.

Reserved for orders.

*(Signature)*  
(N.V. Krishnan)  
Vice Chairman

\*SS

O.A. 598/87




Present:- Alone for the  
applicant.  
Mr. Akil Kureshi  
Adv./Resdt.

Opinion pronounced  
in open court

*(Signature)*  
Col. V. Krishnan  
Vice - chairman

30.11.92

O.A. 598/87

Date	Office Report	Order
10.04.95		<p data-bbox="833 407 1620 471">Present: Sh. Girish Patel, counsel for the applicants.</p> <p data-bbox="987 458 1620 497">Mr. Akil Kureshi for the respondents</p> <p data-bbox="833 484 1620 625">Adjourned to 11.04.1995 on the request made by Mr. Anant Yagnik on behalf of Mr. Girish Patel.</p> <p data-bbox="954 664 1279 703">Call on 11.4.1995</p> <div data-bbox="727 741 1620 909"><div data-bbox="727 741 1052 909"> (V. Radhakrishnan) Member (A)</div><div data-bbox="1052 741 1312 909"> (N.B. Patel) Vice Chairman</div><div data-bbox="1312 741 1620 909"> (S.C. Mathur) Chairman</div></div>

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

(64)

QA No.598/87

THE 11TH DAY OF APRIL, 1995

Dr. R.S.Dinesh  
Ex-Chemist in Indian  
Bureau of Mines,  
Nagpur,  
Residing at M-56/332  
Pragatinagar  
Ahmedabad

.....

APPLICANT

(BY ADVOCATE SHRI GIRISH PATEL)

Vs.

1. The Controller General  
Indian Bureau of Mines  
New Secretariat Building  
Nagpur.
2. Union of India  
Through:  
The Secretary  
Ministry of Steel & Mines  
New Delhi.
3. Pay & Accounts Officer  
Indian Bureau of Mines  
Nagpur.

(BY ADVOCATE SHRI AKIL KURESHI)

ORDER (ORAL)

JUSTICE S.C.MATHUR:

The applicant seeks withdrawal of his Original Application to enable him to make fresh representation to the Central Government in the light of certain Office Memoranda including the one dated 29.8.1984 which were not brought to the notice of the Central Government when the earlier representation was made by the applicant. The applicant has sought liberty to file fresh application in case the representation is rejected by the Central Government.

2. We have heard the learned counsel for both the parties. In our opinion, the prayer made deserves consideration.

3. In view of the above, the prayer is allowed and the Original Application is dismissed as withdrawn with liberty to the applicant to approach the Tribunal


2


63


again in case he fails to get redress from the Central Government. The interim order, if already operating, shall stand discharged.

4. The learned counsel for the applicant has stated that the applicant shall make representation within 15 days. In case, such a representation is made, the Central Government shall dispose of the same within three months from the date of receipt of the representation. The decision of the Central Government shall be communicated to the applicant within next 15 days.

5. There shall be no order as to costs.

  
(V. RADHAKRISHNAN)  
MEMBER (A)

  
( N.B. PATEL )  
VICE CHAIRMAN

  
( S.C. MATHUR )  
CHAIRMAN

SNS