

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**O.A. NO.** 433 OF 1990.~~**T.A. NO.**~~DATE OF DECISION 15-12-95Shri M.B.L. Sharma, PetitionerMr. B.B. Gogia, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent sMr. N.S. Shevde, Advocate for the Respondent (s)

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The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

The Hon'ble Mr.

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgment ?
 4. Whether it needs to be circulated to other Benches of the Tribunal ?
- no

Shri M.B.L. Sharma,
Deputy Chief Controller,
Western Railway, Ahmedabad.
Legal heirs.

- 1) Smt. Gayatri Devi Sharma
- 2) Shri Dinesh M. Sharma
- 3) Shri Jogesh M. Sharma
- 4) Shri Umesh M. Sharma
- 5) Shri Bhymesh M. Sharma
- 6) Shri Romesh M. Sharma
- 7) Smt. Gita M. Sharma
- 8) Smt. Sunita M. Sharma
- 9) Smt. Rita M. Sharma

Address: 111/3-A Ashraya,
Adipur, Kutch .

..... Applicants.

(Advocate: Mr. B.B. Gogia)

Versus.

1. The Divisional Railway Manager,
Western Railway,
Pratapnagar, Vadodara.
2. Union of India, through:
The General Manager,
Western Railway,
Churchgate, Bombay.
3. The Secretary,
Railway Board,
Rail Bhavan, New Delhi.

..... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.No. 433 OF 1990

Date: 15/12/95

Per: Hon'ble Mr. V. Radhakrishnan, Admn. Member.

Heard Mr. B.B. Gogia and Mr. N.S. Shevde, the learned advocate for the applicant and the respondents respectively.

2. The applicant, who was working with the Railways as Deputy Chief Controller, was appointed on deputation to Food Corporation of India for a period of two years upto 23.3.1975 when he was drawing deputation allowance. Subsequently he was permanently absorbed in the F.C.I. with effect from 24.3.1975. The applicant was sanctioned a pension of Rs. 321/- per month with effect from 24.3.1975 based on the

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average emoluments for three years from 24.3.72 to 23.3.75, but while determining the pension the Railways did not taking into account the deputation (duty) allowance paid to the applicant during the period of deputation in the F.C.I from 24.3.73 to 23.3.75. According to the applicant, the representations made by him were not replied to and the last representation was made on 31.12.89, Annexure A-25. Accordingly the applicant has approached this Tribunal praying for relief namely;

"Deputation (Duty) allowance paid to the applicant for being on Deputation with the Food Corporation of India from 24.3.73 to 23.3.75 should be included in the emoluments for determining pension and the pensionary benefits viz; pension, family pension, commutation of pension and death-cum-retirement gratuity etc. granted accordingly."

3. The respondents have taken preliminary objection to the applicant's application as being time-barred. According to them, the applicant was informed suitably regarding his request and hence repeated representation by the applicant does not extend time-limit. They have also filed reply to the O.A. They have admitted that the applicant was sent on deputation to F.C.I on 24.3.73. On the expiry of the period of deputation his request for absorption in F.C.I and retirement from Railways was sanctioned pension at the rate of Rs. 321/- per month. They have stated the pension has been worked out in accordance with the Rules. According to them, the deputation allowance drawn by the applicant during his deputation period in F.C.I cannot be included as pay for the purpose of determining the pension payable to him. They have stated that the substantive pay

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drawn by the applicant in the Railways can only be taken into account as per rules. According to the Sub Rule-1 of Rule 506 of Railway pension Manual:

"(i) Local allowances such as bad climate allowance and deputation (local) allowance or deputation (duty) allowance drawn on deputation to non-Government Department or or bodies.

(emphasis supplied)

As the Food Corporation of India is a corporate body and not a Government Department, the deputation allowance drawn from that body cannot be taken into account.

4. During the argument Mr. Gogia for the applicant drew reference to the Food Corporation Act, 1964. According to Section 3(1): "With effect from such date as the Central Government may by notification in the Official Gazette, specify in this behalf, the Central Government shall establish for the purpose of this Act Corporation known as the Food Corporation of India". According to Section 5, the Central Government has got powers of fixing the capital of the Corporation. As per Section 7, The board of directors of the Corporation shall consist of inter alia three directors from three different Ministries of Government of India. Section 12 provides for the appointment of Secretary of the Corporation from Central Government and as per Section 13 the Food Corporation will undertake activities as prescribed the Central Government. In view of these and other similar provisions Mr. Gogia pointed out that as the F.C.I has been established by the Government of India, it should be considered

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as government body and as such deputation allowance drawn by the applicant should be taken into account for the purpose of calculation of pension as provided in Rule 506 of Railway Pension Manual.

5. Mr. Shevde, the learned advocate for the respondents pointed out that F.C.I cannot be considered to be Government Department as it is a statutory Corporation established by Act of Parliament and as such Rule 506 of Railway Pension Rules excludes counting of deputation allowance from the F.C.I for calculation of pension. In this connection he brought to the notice decision of Supreme Court in the case of V.S.Murthy V/s. Union of India & Ors. (AIR 1992 SC 1746) wherein question was regarding whether for calculating the pension the amount paid by way of deputation allowance by the Hindustan Organic Chemicals Limited to the appellant, who was on deputation from Railways is to be included. The Hon'ble Supreme Court decided that the appellant was not receiving his pay while on deputation in HOCL from the general revenue of the State or from any Company working as Railways. The Hon'ble Supreme Court examined the question as to whether the revenue of the HOCL could be general revenue of the State. In this connection reference was made to Rule 2003 as under:


"Rules 2003(F.R.9)(8) and 2003(F.R.9)(9) of the IRE Code define foreign service and general revenues and lay down as follows:

Rule 2003 (F.R.9)(8): Foreign Service means service in which a railway servant receives his substantive pay with the sanction of Government (a) from any source other than the general revenues or (b) from a company working as State Railway."

"Rule 2003(F.R.9)(9): General Revenue mean the revenues of the president and includes the revenues of a State and the Railway Fund (when established)".

A plain reading of the above definition shows that "foreign service" means service in which a railway servant receives his pay and allowances, while on deputation, from any source other than from a company working as State Railway or from General revenue of the State and expression 'general revenue' means the revenues of the president and includes the revenues of a State and the Railway Fund, if established.

The appellant was not receiving his pay while on deputation with the HOCL from the general revenue of the State or from any company working as State Railway. Even if HOCL is a Government of India enterprise, it can only be treated to be a Government of India undertaking but its revenues cannot be said to constitute the general revenue of the State within the meaning of Rule 2003(F.R.9)(supra) and, therefore, it is erroneous for the appellant to contend that the pay and allowances received by him while on deputation to HOCL were being drawn from the general revenue of the State. His service with HOCL was unmistakably foreign service and in the matter of calculation of his emoluments for computation of terminal benefits on his quitting the railway service, the provisions relatable to foreign service were to be applied to his case".

 Accordingly it was decided that the allowance received by the appellant as deputation duty allowance from HOCL was rightly excluded from being taken into account for reckoning as emoluments for the purpose

of calculation of pension of the appellant by the Railways.

6. It would therefore, appear from the above quoted judgment that a person on deputation ^{to} a Government undertaking like HOCL cannot count the deputation allowance for purpose of calculation of his pension. Here in this case the applicant was not on deputation to ^a Government undertaking but he was ^{on} ~~from~~ deputation to ^a Corporation set up by an Act of parliament. The judgment will therefore, apply with more ^{force} ~~source~~ in this case as the revenues of the Food Corporation of India cannot be deemed to be the general revenues of the State. Accordingly the deputation allowance drawn by the applicant from the Food Corporation of India cannot be included in the emoluments for calculation of pension. Accordingly we see no merit in this application and it is dismissed. No order as to costs.



(V. Radhakrishnan)
Member(A)

vtc.