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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

ORIGINAL APPLICATION NO. 224/2008
JODHPUR, THIS THE 13th DAY OF AUGUST, 2009

CORAM:

HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER

K.K.D. Parashar S/o Sh. Tulsi Ramji Parashar, aged about 91 years, by caste Brahmin resident of 15/126, Chopasni Housing Board, Jodhpur, Ex-employee Civilian Store Keeper (CSK), Gr.II of Indian Air Force, PA 4736.

....
.... Applicant.

(By Advocate: Mr. Manoj Bhandari, for the applicant)

VERSUS

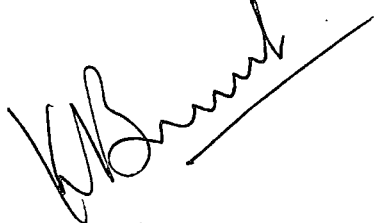
1. Union of India
Through The Secretary, Ministry of Defence
Raksha Bhawan, Government of India,
New Delhi.
2. The Air Chief Marshal, Chief of Air Staff,
Air Headquarters, New Delhi.
3. The Air Officer I/C Pers.(PC-3), Air Headquarters,
Vayu Bhawan, New Delhi.
4. The Air Officer Commanding (PC),
Central Air Command, IAF, Bamrauli,
Allahabad (UP).
5. The Air Officer Commanding (PC)
No. 4, Wing, IAF, Agra (UP).
6. The Principal Controller of Defence Accounts (Pensions)
Draupadi Ghat, Allahabad (UP).

.... Respondents

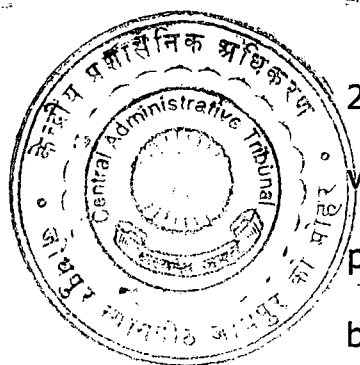
(By Advocate: Mr. Mahendra Prajapat, proxy for Mr. Ravi Bhansali,
for respondents)

ORDER
[BY THE COURT]

The applicant is 92 years old and he seeks for the retiral benefits relating to his service in the Air Force. The case of the applicant is that he was selected through proper channel as a Stores Officer in the O.N.G.C. which is a public sector undertaking of the Central Government. While working in the Air Force, he was



granted deputation and appointed on Foreign Service Terms and relieved from duties by the Indian Air Force, Agra w.e.f. 04.05.1962. The lien of the applicant had subsisted till 01.04.1966. Therefore, the applicant would contend that his lien subsists from 23.08.1945 till 01.04.1966. On selection to O.N.G.C., he had submitted a technical resignation in order to join a new service when he was being confirmed by the O.N.G.C. but apparently, the Air Force authorities had insisted that he must issue an unconditional resignation and therefore vide letter dated 24.08.1964, he applied for an unconditional resignation w.e.f. 01.05.1964 which is apparently received on 14.01.1965. It was accepted by the competent authority w.e.f. 20.09.1965.



2- Suffice it to say that after having examined the matter at various levels His Excellency, the President of India, vide his proceedings was pleased to sanction the pro rata pensionary benefits to the applicant and in pursuance thereof, the Government of India, the Ministry of Defence, vide letter No. Air H.Q./230743/ Gen/PC-3/2174 /US(L)/D (Air-III) dated 22nd December, 2005 issued sanction subject to the fulfillment of the terms and conditions contained in the O.M. 4(6)/85- P&PW(D) Dated 3rd January, 1995 as amended from time to time. It is advised that the same Circular is connected with the issue of unconditional or conditional resignation. The order Annex. A/5 dated 27.12.2005 make a mention of order dated 22.12.2005 and points-out that all the required documents in 18 series were considered by the Government before taking a decision to grant sanction for pro-rata pension for the period 23.08.1945 to 04.05.1962 but, the Office of

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the Dy. C.D.A. (Vayu Sena),³⁻ New Delhi, vide its letter No. G1/C/AF/121/5 /07/V dated 10.09.2007 noted that the claim of the applicant is not acceptable in view of the fact that he has tendered his resignation to join O.N.G.C. without any condition of claiming benefits of his past service in the Indian Air Force. The case of the applicant is that on compulsion, he may have given unconditional resignation letter but he relies on Rule 26 Sub Rule (2) of the Civil Service Regulations on Forfeiture of Service on Resignation which says that, "A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies". Therefore, whether conditional or not, the case of the applicant may not come under the ambit of the objection raised by the Dy. C.D.A (VS), as he had accepted appointment in O.N.G.C. on promotion and other attendant consequences. It is further made clear by the Government of India decision; that which is available as per GI., M.F. letter No. 35 (15)-E,(V)/60 dated 21.9.1960 and also Article 418 Sub Clause (b) of Civil Service Regulations Rule 26 (2) for pension. The relevant portion is extracted below :



"(1) When resignation a technical formality and when it subsists – A Government servant intending to apply for a post or posts outside his parent office / department under the Government of India should have his application forwarded through the competent authority under whom he was serving at the time of applying for the post. Such an authority should either forward the application or withhold it according as the exigencies of public service may indicate but it should not forward the application conditionally, for example, that in the event of the applicant coming out successful, he will be required to resign his post before taking up the new one. Once the application has been forwarded unconditionally and the person concerned is offered the post applied for, he should be relieved of his duties to join the new post as a matter of course and the question of his resigning the post held by him in such circumstances should not arise.

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Accordingly the amended article is intended to cover the cases where even though the applications were forwarded by the competent authority, the applicant had been asked for one reason or the other to resign his post before taking up the new one. The above position holds good whether the Government servant held the post in permanent or temporary capacity, before resigning the post.

Situations may arise where the application of a Government servant was not forwarded and the Government servant resigned his appointment of his own volition with a view to his taking up the new post or where it was not possible to forward his application in the public interest but the Government servant had volunteered to resign his post or where the conditions of service in an office demand as a matter of policy that the Government servant should resign his post in the event of his taking up another post outside. In all such cases, it has been held that resignation of public service will subsist and entail forfeiture of past service.

It has been decided that in cases where Government servants apply for posts in the same or other departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a 'technical formality'. The pay in such cases may be fixed under FR 27.



[GIMF, Letter No.35(15)-E,V/60, the 21st September, 1960, to the Secretary to the Government of Orissa, Finance Department, Bhubaneswar and G.I.M.F., Memo No. 3379-E IIII (b)/65, dated the 17th June, 1965.

According to Ministry of Home Affairs Memo No. 60/37/63-Ests, (A) dated the 14th July, 1967 permanent / quasi- permanent Central Government servant appointed under another Central Government department has to resign from his parent department unless he reverts to that Department within a period of two years (three years in exceptional cases) of his appointment in the other department. The Government of India have been considering whether this resignation should entail forfeiture of past service for purpose of leave and pension of the Government servant concerned. It has been decided that such a resignation should be deemed to be resignation within the meaning of Article 418 (b) of CSRs [Rule 26 (2)] for pension. As a consequence of this decision, continuity of service benefit should be allowed in the matter of leave also."

[Extract from M.H.A., O.M. No. 8/5/68-Ests.(C), dated the 19th December, 1969].

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3- Further vide Air Headquarter⁻⁵⁻ letter No. 23043 / Gen / PC-3 / 10.1.2008, the Air Force Station, Agra, took up the matter once again and explained that at the time of resignation from Indian Air Force in 1965 no such benefits of pro-rata pension were admissible and therefore, the condition mentioned earlier, is irrelevant in the matter of the applicant and as the applicant had been representing the issue with the Department for the last ten years the Air Force requested that pro rata pension to the individual may be released without any delay vide Annex. A/10 produced along with the application.

4- Hon'ble the Supreme Court of India in (1985) 1 SCC 429 - **State of Kerala and Ors. Vs. M. Padmanabhan Nair** held that prompt payment of pension is the duty of the Government failing which the Government is liable to pay penal interest on the pension and specific direction was passed in this case that the gratuity should be paid on the date of retirement or on the following day and pension should be paid on the expiry of the following month. It further held that the concerned official/officer be held responsible to suffer the loss occasioned. In (2008) 3 SCC 44 - **S.K. Dua s. State of Haryana and Anr.** Hon'ble Supreme Court held that on the basis of Articles 14, 19 and 25, retirement benefits are not a bounty and with-holding the same was a colourable exercise of power, thus, pension should be paid immediately. The Apex Court further held that payment of retiral benefits flows from the provisions of Articles 14, 19 and 21 even if there are no specific entitlement in the rules. The Para No. 14 of the said judgement is reproduced below :



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"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retrial benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

This position has been accepted by several other co-ordinate rulings of the Apex Court as well as Hon'ble High Court of Rajasthan.

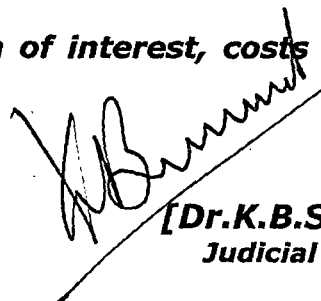
5- On a cumulative consideration of all these facts, I hold that applicant is entitled to the following reliefs :

(i) He is entitled to Pension, Gratuity and all other retiral benefits for his service w.e.f. 23.8.1945 to 4.5.1962.

(ii) In view of the age of the applicant, the respondents are directed to release the above said benefits of the applicant within thirty days from the receipt of this order.

(iii) The applicant is entitled to receive Interest @ 12% p.a. from 22.12.2005 till such date of payment which is the date of Annex. A/5 which also shall be paid to him within thirty days from the date of receipt of this order.

(iv) In view of imposition of interest, costs are not being imposed.


[Dr.K.B.Suresh]
Judicial Member



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