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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
(Circuit Bench at Lucknow)  
Registration O.A. No.332 of 1986

Radhika Raman ..... Applicant

Versus

Union of India & Others ..... Respondents.

Hon. Ajay Johri, A.M.

Hon. G.S.Sharma, J.M.

(By Hon.Ajay Johri, A.M.)

The applicant in this application filed under Section 19 of the Administrative Tribunals Act XIII of 1985 retired from the U.P. Civil Secretariat Lucknow, where he was working as Under Secretary, in 1978. Prior to his appointment in the U.P. Civil Secretariat the applicant had worked on the post of Upper Division Clerk in the General Staff Branch of the Army Headquarters. He had joined the post on 14.5.1942 and worked there till 16.3.48. Thereafter he joined the post under U.P. Govt. on the forenoon of March 17, 1948. The applicant's case is that though he had put in 5 years 11 months and 3 days service under the Govt. of India yet he was denied any gratuity or any benefit of that service after his absorption in the U.P. Govt. He has claimed that <sup>his</sup> ~~such~~ service with the Army Headquarters should

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be counted for his pensionary benefits. His representations made to the Govt. for the benefits after exchange of volume of correspondence between the U.P. Govt., Govt. of India and the C.D.A. (Pensions)'s office were rejected by the impugned order dated 4.2.85 issued by the Chief Administrative Officer, Ministry of Defence, Govt. of India, respondent No.3. The request was rejected on the ground that the counting of the service of the applicant could not be acceded to as it was not covered by the existing ~~orders~~. According to the applicant the Govt. of India's orders issued under Departmental of Personnel letter of 31.3.82 (Annexure-12 of the application) were not applied to his case because they were applicable with prospective effect <sup>by and</sup> to those who had retired after the issue of the letter denying its benefits to those who had retired earlier. The applicant's claim is that all employees of the Central Government who had rendered temporary service should fall within one and the same classification and an artificial segregation cannot be made by making the orders prospective and applicable to only those who retired <sup>by on or</sup> after 31.3.82. He has prayed for the relief that the order dated 4.2.85 may be quashed and the Govt. of India's decision circulated by their letter of 31.3.82 arbitrarily fixing the date for the grant of

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benefit may also be modified so that the benefit becomes applicable even to those employees who retired earlier and that service from the period 14.5.42 to 16.3.48 be counted for pensionary benefits and he be paid the arrears on this account in his pension and gratuity alongwith interests at market rates.

2. The respondents in their reply to the application have not denied the facts that the applicant had served under the Army Headquarters as a temporary employee between the period 14.5.42 to 16.3.48 and that his name was struck off from the Army Headquarters' strength w.e.f. 16.3.48 when he was released for joining the U.P. Govt. where he joined on 17.3.48 against the permanent post. According to the respondents the relief sought by the applicant are not admissible to him as per rules. They have said that the orders for counting of temporary service for pension purposes were issued by the Department of Personnel on 31.3.82 and are applicable only to those officers who retired on that date or thereafter and since the applicant had retired on 13.3.78 his case was not covered under the Rules. At the relevant time, when he got transferred the rules and regulations that were in vogue, did not permit any such benefit. They had examined the matter in consultation with

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C.D.A. (Pensions) Allahabad and Ministry of Defence and since the applicant was holding a temporary post the service rendered by him was not considered countable towards pensionary benefits.

3. We have heard the applicant in person and Shri K.C. Sinha, the learned counsel for the respondents. The applicant's contentions raised before us were that he had applied to the U.P. Govt. through proper channel and he resigned this post on his absorption by the U.P. Govt. and the U.P. Govt. had also made a reference in 1964 asking the Army HQrs. if they would agree to the benefit of past services being given to the applicant. The application was opposed by the learned counsel for the respondents on the ground that the applicant was a temporary employee. He had no lien on the post and his name was struck off when he got selected by the U.P. Govt. and for temporary employees the benefit of counting of past service <sup>was</sup> ~~is~~ not available. We have also gone through the replication submitted by the applicant.

4. A copy of the Govt. of India, Department of Personnel O.M. No.3(20)/10/Pension(A)/79 dated 31.3.82 has been placed by the applicant at Annexure-12 of the application. This O.M. gives a decision on the

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question of sharing on a reciprocal basis, the proportionate pensionary liability in respect of those temporary employees who had rendered temporary service under the Central Govt./State Govt. prior to securing posts under the various State Govt./Central Govt. on their own volition in response to advertisements or circulars and who <sup>or were</sup> ~~are~~ eventually <sup>or</sup> absorbed in their new posts. The decision conveyed said that to the extent such service would qualify for grant of pension under the rules of the respective Govt. proportionate pensionary liability in respect of the temporary service would be shared by the Govts concerned, on a service-share basis so that the Govt. servants are allowed the counting of their qualifying service for the grant of the pensionary benefits under the Govt. from where they retired. The gratuity benefit received by the Govt. employee for the temporary service under the Central/State Govts was however to be refunded by him to the Govt. concerned. This O.M. divided the Govt. servants in three categories. The first category was of those who had been retrenched and secured on their own employment under the other Govt. either with or without interruption. The second category was of those who while holding temporary posts applied for posts under the other Govt. through proper channels.

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with proper permission and the third category was of those who while holding temporary posts applied for posts under the other Govt. directly without permission and resigned their previous posts to join the new appointments. The benefits of this letter were allowed to the first and second categories and in cases falling under category 2 if an employee was required for an administrative reasons, for satisfying a technical requirements, to tender a resignation <sup>or from</sup> ~~from~~ a temporary post held by him before joining a new appointment, a certificate to this effect that such resignation has been tendered for administrative reasons was required to be issued by the authority accepting the resignation. This O.M. further said that the orders came into force with effect from the date of issue and cases of all such Govt. servants retiring on this date and thereafter will be regulated accordingly.

5. It is this fixation of a cut off date which is under challenge in this application because it is obvious that there has been no break between the date the applicant resigned the service under Central Govt. and took over <sup>or appointment under</sup> ~~the~~ the U.P. Govt. and it has not been said that this resignation was a cause of denial of the benefits to the applicant. What has been ~~the~~

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~~20/00~~ emphasized in the reply by the respondents is that the orders contained in the O.M. of 31.3.82 were not applicable to the applicant because he had retired in 1978 and the orders only have prospective effect.

6. In 1987 S.C.C.(L&S) 350 R.L. Marwaha Versus Union of India & Others the Hon'ble Supreme Court in connection with Govt. servants holding pensionable posts absorbed by autonomous body where also pension scheme was in operation had held that denial of the benefit to those who had retired prior to the date from which the scheme became applicable was discriminatory. In this case the petitioner had served the Central Govt. on temporary basis and had joined the service of I.C.A.R. an autonomous body on the day he left the service of the Central Govt. Both the posts were pensionable. When he retired in September, 1980 he demanded that his pensionary benefits be computed by counting the period of service put in by him in the Central Government department as part of the qualifying service in view of the O.M. dated 20.8.84. This was denied and he was accorded pensionary benefits by reckoning his qualifying service only from the date he had joined the Department, on the ground that as he retired before the issue of the O.M., he was not

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entitled to the benefit in view of the prospective effect given to the O.M. by para 7 thereof. The Hon'ble Supreme Court while allowing this petition had observed that the Govt. order cannot be used against persons in the position of the petitioner to deny them the benefit of the past service. The observations made by the Hon'ble Supreme Court in para 8, 9 and 10 of the judgement were as follows :-

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" 8. There is no dispute that the ICAR though it is a body registered under the Societies Registration Act, 1960, is a body which is sponsored, financed and controlled by the Central Government. There has been a continuous mobility of personnel between Central Government departments and autonomous bodies, like the ICAR both ways and the Government 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 Government 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 purposes of computation of pension. If that was the object of issuing the notification then the benefit of such notification should be extended to all pensioners who had rendered service earlier in the Central Government or in the autonomous body as the



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case may be with effect from the date of the said government order. Now let us take the case of a person who had rendered service under the Central Government between January 1, 1953 and July 1, 1955 but who has retired from service of the ICAR in 1985. There is no dispute that such a person gets the benefit of the service put in by him under the Central Government for purposes of his pension. But another pensioner who has put in service under the Central Government during the same period will not get similar concession if he has retired prior to the date of the government order if paragraph 7 of that order is applied to him. The result will be that whereas in the first case there is pensionary liability of the Central Government in the second case it does not exist although the period of service under the Central Government is the same. This discrimination arises on account of the government order. There is no justification for denying the benefit of the government order to those who had retired prior to the date on which the government order was issued. The respondents have not furnished any acceptable reason in support of their case, except saying that the petitioner was not entitled to the benefit of the government order because the order says that it would not be applicable to those who had retired prior to the date on which it was issued. In the absence of any explanation which is worthy of consideration it has to be held that the classification of the pensioners who were working in the government/autonomous bodies into two classes merely

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on the basis of the date of retirement as unconstitutional as it bears no nexus to the object to be achieved by the order.

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9. We do not also find much substance in the plea that this concession being a new one it can only be prospective in operation and cannot be extended to employees who have already retired. It is true that it is prospective in operation in the sense that the extra benefit can be claimed only after August 29, 1984 that is the date of issue of the government order. But it certainly looks backward and takes into consideration the past event that is the period of service under the Central Government for purposes of computing qualifying service because such additional service can only be the service rendered prior to the date of issue of the Government order. By doing so the government order will not become an order having retrospective effect. It still continues to be prospective in operation. Whoever has rendered service during any past period would be entitled to claim the additional financial benefit of that service if he is alive on August 29, 1984 under the government order but with effect from August 29, 1984.

10. In the result we hold that paragraph 7 of the government order cannot be used against persons in the position of the petitioner to deny them the benefit of the past service for purposes of computing the pension."

In the applicant's case also the final O.M. issued on 31.3.82 was after a lot of correspondence between

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the Govt. of India and the State Govts. in respect of counting the service of temporary employees who had rendered service with either of them and thereafter who joined service with the other bodies. The purpose of the O.M. was to give the benefit of such temporary service. The ratio of the dicta laid down by the Hon'ble Supreme Court in Marwaha's case will be equally applicable to the applicant's case.

7. In D.S. Nakara and Others Versus Union of India 1983(2) SLR 2 46 where the eligibility for liberalised pension scheme on the basis of the date of retirement as mentioned in the memorandum came under challenge. The Hon'ble Supreme Court strick down the discriminatory portion and the benefits were granted to all pensioners governed by 1972 rules. The observations made by the Hon'ble Supreme Court in para 49 and 65 were as follows :-

" 49. But we make it abundantly clear that arrears are not required to be made because to that extent the scheme is prospective. All pensioners whenever they retired would be covered by the liberalised pension scheme, because the scheme is a scheme for payment of pension to a pensioner governed by 1972 Rules. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensioners and those who retired subsequent to that date. In case of pensioners who retired prior to the specified date, their pension would be computed afresh and would

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be payable in future commencing from the specified date. No arrears would be payable. And that would take care of the grievance in retrospectivity. In our opinion, it would make a marginal difference in the case of past pensioners because the emoluments are not revised. The last revision of emoluments was as per the recommendation of the Third Pay Commission (Raghubar Dayal Commission). If the emoluments remain the same, the computation of average emoluments under amended Rule may raise the average emoluments, the period for averaging being reduced from last 36 months to last 10 months. The slab will provide slightly under higher pension and if someone reaches the maximum the old lower ceiling will not deny him what is otherwise justly due on computation. The words "who were in service on 31st March, 1979 and retiring from service on or after that date" excluding the date for commencement of revision are words of limitation introducing the mischief and are vulnerable as denying equality and introducing an arbitrary fortuitous circumstance and can be severed without impairing the formula. Therefore, there is absolutely no difficulty in removing the arbitrary and discriminatory portion of the scheme and it can be easily severed.

65. That is the end of the journey. With the expanding horizons of socio-economic justice, the Socialist Republic and Welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively

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low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria; being in service and retiring subsequent to the specified date for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible/rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of being in service on the specified date and retiring subsequent to that date in impugned memoranda, Exhibits P.1 and P.2 violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under: In other words, in Exhibit P.1, the words :

" that in respect of the Government servants who were in service on the 31st March, 1979 and retiring from service on or after that date."

and in Exhibit P.2, the words:

" the new rates of pension are effective from 1st April, 1979 and will be applicable to all service officers who became/become non-effective on or after that date."

are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of

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retirement. Omitting the unconstitutional part, it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. Let a writ to that effect be issued. But in the circumstances of the case, there will be no order as to costs. Order accordingly."

8. Since the dispute in applicant's case is also in regard to the application of the O.M. of 31.3.82 and in view of the Supreme Court's observations in cases cited above, an arbitrary date cannot be fixed and a benefit made available for the purpose of counting temporary service cannot be denied to those who retired prior to 31.3.82. We direct the respondents to revise the pension payable to the applicant in accordance with the Govt. order of 31.3.82, giving him the benefit of the <sup>or qualifying</sup> service rendered by him with the Central Govt. while computing his qualifying service for pension. The applicant would be entitled to recover the difference between the pension which he has drawn and which will be fixed now with effect from the date of issue of the O.M. i.e. 31.3.82. He will