

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:518/2000, 426/2000 and
79/2000

DATE OF DECISION: 7th Feb., 2002

Shri M.G. Nagarkar and others Applicant.

Shri K.R. Yelwe Advocate for
Applicant.

Verses

Union of India and others Respondents.

Shri M.I. Sethna Advocate for
Respondents

CORAM

Hon'ble Shri S.L.Jain, Member(J)

(1) To be referred to the Reporter or not? No

(2) Whether it needs to be circulated to No
other Benches of the Tribunal?

(3) Library. Yes

S.L.Jain
(S.L.Jain)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:518,2000

February
the 7th day of JANUARY 2002

CORAM: Hon'ble Shri S.L.Jain, Member (J)

1. M.G. Nagarkar
Residing at Type III-E-4
TAPS colony, Post TAPS,
Tal: Palghar,
Dist. Thane.Applicant in
OA 518/2000
2. R.A. Chowdhary
Residing at
Chetak -6, TAPP 3 &4
Colony P.O. TAPP
District : Thane,
Maharashtra.Applicant in
OA 426/2000
3. M.G. Nagarkar
Residing at
Type B-22/2.
TAPP. Tal Palghar
Dist. Thane.Applicant in
OA 79/2000

By Advocate Shri K.R. Yelwe.

V/s

1. Union of India through
the Secretary to the
Government of India,
Department of Atomic Energy
Chhatrapati Shivaji Maharaj Marg.
Mumbai.
2. The Secretary
Department of Atomic Energy
Government of India,
Anushakti Bhavan,
Chhatrapati Shivaji
Maharaj Marg. Mumbai.
3. The Chairman
Managing Director
Nuclear Power Corporation Ltd.,
16th floor, WTC, Mumbai.Respondents.

By Advocate Shri M. I. Sethna.

P-102

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ORDER

{Per S.L.Jain, Member(J.)}

OA 518/2000

All these three OAs. . . are taken together for consideration as they are being argued by the same Advocates, with their consent, as one and the same question of law along with other questions which arise for decision in all the OAs.

2. This is an application under Section 19 of the Administrative Tribunals Act 1985 for a direction to the respondents to pay deputation allowance as admissible under FR 35 read with OM dated 9.12.1986, 5.1.1994 and 11.3.1998 with effect from date on which had he exercised his option not be absorbed in NPCIL or from the date on which the last option was granted, after the judgement of the Supreme Court vide OM dated 24.12.1997 expired with effect from 16.2.1998 with interest.

3. The applicant belongs to SC Community. In the year 1987, the Central Government set up Nuclear Power Corporation of India Ltd., which was incorporated on 4.9.1987 and commenced its business with effect from 17.9.1987. The manpower for the said corporation has been initially drawn from the Department of Atomic Energy as under:

(a) personnel of the Nuclear Power Board including those belonging to the centralised Administrative and Accounts Cadre, borne on its rolls and

(b) personnel of Atomic Power Projects and Atomic Power Station under the control of the above said Nuclear Power Board and whose pay and allowances were paid by those units as on 7.9.1987.

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4. The applicant was working in Tarapore Atomic Power Station and is covered by Clause (b) of para 3 of the order. The said personnel of the Nuclear Power Project Board and Atomic Power Project and Atomic Power Stations under its control stood transferred on deputation to the Nuclear Power Corporation with effect from 17.9.1987. The terms of deputation of these personnel are as stated in letter No.8/3(1)86-PP-III dated 4.9.1987 (Annexure A -7). The terms and condition for employment of personnel of the corporation was to be finalised within a period of 12 months from the date of issue of memorandum dated 4.7.1989 in terms of para 3.10. During the said period of 12 months of his deputation from 4.9.1987 he was not paid any deputation allowance and even thereafter.

5. The Department of Atomic Energy (DAE) vide their Memo No. 1/3(18)/93-PSU-1/635 dated 26.5.1994 asked the employees to submit their option or exercise their option before 16.9.1994. The second option was granted after about 8 years vide their Memo No. 1/3(18)/93-PSU-1/1172 dated 26.9.1995 and the same was to be exercised on or before 31.10.1995. In pursuance of the orders of the Supreme Court on the Special Leave Petition filed by the Union / Association, third option was granted to the employees vide their Memo No. 1/12(1)/95-PSU-I/Vol.V dated 24.12.1997 and the same was to be exercised on or before 16.2.1998.

6. The applicant claims that he continued to be on deputation till 16.2.1998, he is entitled as a deputationists both under the Nuclear Power Corporation Ltd., rules and Department of Atomic Energy rules. The applicant claims that the

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respondents have taken abnormally long time for giving option to the employees, left with 2 1/2 years of service, the delay on the part of the respondents being inordinate delay. The applicant is not able to get any job during his last 2 1/2 years of service. In response to the option granted by the Department of Atomic Energy vide their Memo No.BBIPR/OPTION/98/N-20 dated 7.1.1999 has been indicated by his letter dated 12.2.1999 that he does not want to be absorbed in the Nuclear Power Corporation of India Ltd., (NPCIL) and wanted to be repatriated to the Department of Atomic Energy (DAE). Vide letter No. TAPS/Adm./P&IR/7(3)/98 dated 16.9.1998 his name has been sent to the surplus cell of the Ministry of Home Affairs for being deployed in any other section or department of Government of India. The applicant is continued in the NPCIL for administrative convenience and other exigencies. Hence this OA for the above said relief.

7. The claim of the applicant is being resisted by the respondents stating that no notification as contemplated under Section 14(2) of the Administrative Tribunals Act. 1985 had been issued to bring respondent No.3 within the jurisdiction of the Tribunal. Therefore as far as respondent No.3 is concerned, the Tribunal has no jurisdiction to pass any order against respondent No.3. It is further stated that OA is barred by limitation.

8. The Atomic Energy and mineral resources necessary for its production from Item No. 6 of the List I - Union List under Seventh Schedule to the Constitution of India, whereby Parliament has enacted the Atomic Energy ACT 1962. The Central Government

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has been vested with the exclusive power to produce, develop, use and dispose off atomic energy. In the year 1987 the provisions of the Atomic Energy Act 1962 were amended and enabling provisions were incorporated in the Act whereby the Central Government was empowered to produce, develop, use and dispose off Atomic Energy either by itself or through any authority or corporation established by it or by a Government Company. To achieve the targetted goal within a short span of time and to operate on a commercial scale, the respondent No.1 decided to set up the respondent No.3 i.e. Nuclear Power Corporation of India Ltd. (hereinafter referred as NPCIL) as a Public Limited Company registered under the Companies Act 1956 and wholly owned by the Central Government. Consequent upon the incorporation of NPCIL all the officers and staff of the Nuclear Power Board (hereinafter referred as NPB), a constituent unit of DAE, respondent No.1 which controlled all the Atomic Power Projects and Atomic Power Stations, were transferred on en masse deputation to Nuclear Power Corporation (hereinafter referred as NPC) with effect from 17.9.1987 vide DAE OM No.8/3(1)/86-PP.III dated 4.9.1987 (Annexure A 7). It was contemplated that on finalisation of the terms of service by the new Corporation, the employees so transferred on en masse deputation shall be given an option for permanent absorption in NPCIL. NPB was converted into NPCIL and all the employees who were on the pay rolls of NPB on the crucial date i.e. 17.9.1987 were transferred on en mass deputation to NPCIL. Such employees continued to attend to the same functions, without any change, whatsoever, adversely affecting them.

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9. The Atomic Energy Commission in its meeting held on 31.3.1994 approved of the package of service conditions to be offered to the deputationists transferred on en masse deputation to NPCIL. Accordingly the DAE OM dated 26.5.1994 was issued and circulated along with its enclosures to all the DAE deputationists by the respondent No. 3 vide offer of absorption dated 15.7.1994 (Annexure R 1), option to be exercised by 16.9.1994. The said OM dated 26.5.1994 was challenged by different group of employees before Principal Bench, New Delhi, which was dismissed vide order dated 31.8.1995. The said order was challenged before the Apex Court, SLP was dismissed vide order dated 11.3.1996 (Annexure R 2 and R 3). In compliance with the direction made by the Apex Court another option to the deputationist was provided vide OM dated 24.12.1997 (Annexure A -7). In accordance with this OM the last date for exercise of the option was 16.2.1998, which was subsequently extended upto 15.2.1999 vide OM No. XI/3(8)/98-Power/Vol. VI/28 dated 6.1.1999 (Annexure R 4). The process of exercise of option is complete, more than 95% of the deputationist have exercised their option by joining the service of NPCIL as Corporation employees. The respondents are taking steps to deploy the employees who have not exercised the option or the employee who have opted for 'surplus pool' in other Government departments in accordance with the extant rules.

10. The respondents have submitted para wise comments stating the facts that the applicant who was working in DAE was deputed to respondent No.3 consequent upon a policy decision taken by the

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Government, NPB was closed down and all the employees on its pay rolls on the relevant date were transferred to the Government Company i.e. NPC on en masse deputation basis. The options were offered to the employees on deputation to the Corporation:

- (i) to get absorbed in the service of the Corporation.
- (ii) to remain on permanent deputation with the Corporation.
- (iii) to revert back to the DAE /surplus pool.

There was also a deemed option clause which contemplated that any employee who failed to make a specific option would be deemed to have opted for reversion to DAE / surplus pool. Hence prayed for dismissal of the OA alongwith with costs.

11. In O.A. No.426/2000 ^h The applicant has sought the relief to quash and set aside order dated 23.9.1994 with a direction to pay admissible deputation allowance since 17.9.1987 to 20.6.1988 at the rate of 5% of basic pay and w.e.f. 21.6.1988 at the rate of 15% of the basic pay along with interest and exemplary cost amounting to Rs.40,000/-.

12. In OA.NO.79/2000 the applicant seeks relief to restore the increment granted to the applicant in terms of Memorandum No.TAPS/2/963/73 dated 20.12.1991 but arbitrarily discontinued w.e.f. 1.9.1996 in pursuance of Memo No.TAPS/ADM/ESTT/7/96 dated 19.9.1996, extend the benefits of LTC encashment under the Nuclear Power Corporation India Limited (LTC) Rules in pursuance of clause 3.6 (a) of the terms of deputation stipulated in Memo dated 4.9.1987 from the date it was withdrawn, extend the benefits of canteen subsidy under the Nuclear Power Corporation India Limited, canteen subsidy Scheme with effect from 1.1.1998,

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restore the benefits of Hostel subsidy under the Nuclear Power Corporation India with effect from the date it was withdrawn, grant the memonto in token of appreciation of his service of 25 years of service along with interest on delayed payment and enquiry into the circumstances leading to arbitrary withdrawal of benefits.

13. The reliefs sought by the applicants in all the three OAs. are to be provided as per their claim by Nuclear Power Corporation India Limited. In OA.NOs.518/2000 and 79/2000, the Respondent No.3 is the Chairman, Managing Director, Nuclear Power Corporation Ltd. while in OA.NO.426/2000 the 3rd Respondent is Project Director, Nuclear Power Corporation Ltd. The respondents have raised the plea that no Notification as contemplated under Section 15 (3) of the Administrative Tribunals Act 1985 has been issued in respect of Respondent No.3 which gives the jurisdiction to the Tribunal. Therefore, as far as Respondent No.3 is concerned, the Tribunal has no jurisdiction to pass any order against Respondent No.3.

14. In OA.NO.1295/93, this Bench (D.B.) in case of Raj Jamnadas Jumrani vs. Union of India & Ors. has held that the Nuclear Power Corporation Ltd. has not been notified under Section 15 of the Administrative Tribunals Act. This Tribunal lacks the jurisdiction to give any such direction. There is no change of the position in this respect even after pronouncement of the same order. In absence of any jurisdiction in respect of Respondent No.3 against whom the applicants have grievances, this Tribunal is not competent to decide the matter in dispute.

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15. It is true that the applicants have arrayed Respondents No.1 & 2 as Union of India through the Secretary to the Government of India, Department of Atomic Energy and the Secretary, Department of Atomic Energy but as none of the grievances can be settled by these two Respondents No.1 & 2, I have no option except to dispose of the OAs. with the directions to the applicants to agitate the matter in an appropriate forum which has jurisdiction to decide the matter. No order as to costs.

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(S.L.JAIN)

MEMBER (J)

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