

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 886/2000

Date of Decision : 6.6.2002

Dr.(Smt.)Nalini Raja Applicant

Shri S.P.Saxena Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri R.R.Shetty Advocate for the
Respondents

CORAM :

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

- (i) To be referred to the reporter or not ? yes
- (ii) Whether it needs to be circulated to other ~~No~~ Benches of the Tribunal ?
- (iii) Library yes

S.L.JAIN
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.886/2000

Thursday this the 6th day of June,2002.

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

Dr.(Smt.)Nalini Raja,
Ex-Scientific Officer,
R/at 554, Pocket-E,
Mayur Vihar Phase-2,
New Delhi.

...Applicant

By Advocate Shri S.P.Saxena

vs.

1. Union of India
through The Secretary,
Department of Atomic Energy,
Anushakti Bhavan, C.S.M.Marg,
Mumbai.
2. The Secretary to the
Government of India,
Department of Atomic Energy,
Anushakti Nagar, C.S.M.Marg,
Mumbai.
3. The Director,
Bhabha Atomic Research Centre,
C.S.M.Marg, Mumbai.
4. The Dy.Establishment Officer,
Bhabha Atomic Research Centre,
(Personnel Division),
C.S.M.Marg,
Mumbai.

...Respondents

By Advocate Shri R.R.Shetty

..2/-

S.L.Jain

O R D E R (ORAL)

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

The applicant seeks the following reliefs :-

"8.(a) This Hon'ble Tribunal be pleased to order and direct the Respondents to produce the records and proceedings relating to the Applicant's appointment on 14.11.1969 till the date of her compulsory retirement on 9.11.1986 and further records relating to the applicant.

(b) This Hon'ble Tribunal be pleased to call and declare that the applicant to her credit has put up a total service from the date 14.11.1969 (the date she was selected and appointed as Scientific Assistant (B) under the Respondents) to 12.8.1971 and the period of the Applicant's Training School service from 13.8.1971 to 31.7.1972 and from 1.8.1972 till 8.11.1986 to be counted and treated as qualifying service for the purpose of retirement benefits and hence be pleased to order or direct the Respondents to treat the applicant having put in service from 14.11.1969 till 8.11.1986 as qualifying service for the retirement benefits and pay the same to the applicant as per Monthly Pension Scheme.

(c) This Hon'ble Tribunal be pleased to hold and declare that the applicant is entitled to exercise her second option to switch over to Pension Benefits Scheme as she is authorised to do so by virtue of the order and direction from the Respondents dated June 9, 1983 which is annexed herein to this petitionas Exhibit A-4 and hence nS{ed to order and direct the Respondents to consider and treat the applicant as having opted the Pension Benefit Scheme under the Respondents and hence be pleased to direct to grant the applicant all the benefits for service during the period 14.11.1969 till 8.11.1986 under the said Pension Scheme within the stipulated period.

(d) The Hon'ble Tribunal be further pleased to pass any other and further orders under the facts and circumstances of this O.A. as justice, equity and good conscience demand.

(e) . The cost of this application be provided in favour of the Applicant more so the impugned actions of the Respondents when read in the context of O.A.72/1993 smacks of malafide and wilful harassment of the applicant."

2. The facts which are not in dispute are that the applicant was selected and appointed as Scientific Assistant (B) w.e.f. 14.11.1969 in Spectrographic Division of the Respondent No.3. Thereafter, the applicant applied through proper channel for BARC Training School (15th Batch), was selected and relieved from Scientific Assistant (B) duties on 12.8.1971 to join Respondent No.3 Training School vide its letter No.N-939/Spect/Estt.XI/4442 dated 16.10.1971. On completion of training joined the DRP of the Respondent as S.O. (SC1) on 1.8.1972 and came to be posted as SO/SD. The applicant went on leave from July, 1983 and could not join duties back till 8.11.1986 and even thereafter. (As per applicant, it was on account of genuine and reasonable medical causes and domestic problems). On account of the said fact, disciplinary proceedings were initiated against her and penalty of removal from service was imposed on her on 15.1.1992. OA.NO.72/93 which was decided vide order dated 25.11.1998, the punishment of removal was converted into compulsory retirement. The period of absence commencing from 9.11.1986 to 15.1.1992 was treated as 'dies-non'.

3. The applicant claims that her services w.e.f. 14.11.1969 till 8.11.1986 be treated as qualifying service for the purpose of pensionary benefits and she is entitled to pension. The ground for entitlement to pension is that she has not exercised

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the second option which was to be exercised by her in view of Annexure-'A-4' (OA.page 19). Para 2 and 3 of the same Annexure is worth mentioning which is extracted below :-

"2. As the post to which you have been appointed in a substantive capacity is pensionable, you will be deemed to have opted for pensionary benefits, unless you opt, in writing, to retain Contributory Provident Fund benefits, by sending your option in the attached Form to the Accounts Officer, Bhabha Atomic Research Centre, within three months from the date of issue of DAE's Notification. You are requested to ensure that the option reaches the Accounts Officer within the stipulated period of three months, i.e. on or before July 4, 1983. The option received after this date will be treated as time barred and will not be accepted as valid. A copy of the option may also please be forwarded to the Deputy Establishment Officer concerned.

3. Incidentally I may mention that you are entitled to one further option during the course of your entire service to change over to pensionary benefits or to Contributory Provident Fund Benefits as you may deem more advantageous to you."

4. The learned counsel for the applicant argued that she failed to exercise the second option and alleged second option dated 23.6.1988 cannot be treated as the second option in view of the letter dated 12.8.1988 and the fact that once she exercised the option for Contributory Provident Fund, the fact that vide letter dated 23.6.1988 for retaining the Contributory Fund cannot be termed as exercise of option while the learned counsel for the respondents argued that on 23.6.1988 the applicant has exercised the second option.

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5. The learned counsel for the applicant argued that in view of the order passed by the Tribunal in OA.No.72/93, as the applicant was penalised to the penalty of compulsory retirement, she was having no option/opportunity to exercise the option, the intention of the Tribunal was to give benefit to the applicant of pensionary benefits, therefore, she is entitled to exercise the option even after the order dated 25.11.1998. I am not convinced that the order of the Tribunal was intended to give option to the applicant to exercise option for pensionary benefits. What the Tribunal decided is only that order of removal is substituted to the order of compulsory retirement. The penalty of removal was not justified in the opinion of the Tribunal therefore compulsory retirement was substituted. By the said fact, the right of the applicant is not revived to exercise the option, if she has exercised the option or she failed to exercise the option.

6. Vide letter dated 23.6.1988, the applicant has exercised the option for retaining the Contributory Provident Fund which is said to have been withdrawn by letter dated 12.8.1988 (Ex.'A-8' page 73). The respondents have not passed any order on the said two letters. Failure to pass the said order would not give a right to the applicant to exercise a fresh option.

7. The learned counsel for the applicant pointed out Ex-'A.(c)' dated 11.8.2000 where the respondents have stated that "Please note that the 1st option exercised by you was on 21.6.1983 subsequent to your confirmation vide No.5(5)/83/SR&W/726 dtd. 9.6.83 for retaining CPF which stands valid even now."

S. J. Srinivas

..6/-

It is in consonance that the respondents failed to pass order in respect of letter dated 26.6.1993 and 12.8.1988. Failure of the respondent even if treated in respect of second option, still after an order of the Tribunal in OA.NO.72/93 the right of the applicant is not revived.

8. . . . In view of the above findings, question of treating the period w.e.f.14.11.1969 to 1.8.1972 as qualifying service has no material bearing. The learned counsel for the respondents relied on an order passed by this Tribunal in OA.No.895/99 in the case of Dr.Nand Kishore Porwal vs. Union of India dated 15.6.2001 wherein it is held that the training period cannot be treated as qualifying service. He further relied on a decision of Govt.of India dated 6.6.1989 available at page 50 of CCS (Pension) Rules and argued that question of treating the period of training as qualifying service is only available to Group 'C' and 'D' employees. The applicant was Group 'C' employee has joined training after resignation. In view of the said fact, the applicant cannot be treated as Group 'C' employee (Training period) as such, the applicant is not entitled to even treat the training period as qualifying service. Services rendered by her as Scientific Assistant (B) which terminated after resignation cannot also be counted for qualifying service.

9. In the result, OA. has no merit. It is liable to be dismissed and is dismissed accordingly. No order as to costs.

S.L.Jain
(S.L.JAIN)

MEMBER (J)

mrj. *Order/Judgement despatched*
to Applicant, Respondent(s)
on 24.6.02

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