

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 131/2000

DATE OF DECISION: 1 /03/2001

Shri M.N.Ray

Applicant

Shri M.K.Nair

-----Advocate for
Applicant.

Versus

Union of India & 4 Ors.

-----Respondents.

Shri R.K.Shetty

-----Advocate for
Respondents.

Hon'ble Smt. Shanta Shastry, Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to
other Benches of the Tribunal?
3. Library.

Shanta S
(SHANTA SHAstry)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:131/2000
DATED THE 14th DAY OF FEB, 2001
March

CORAM:HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

Mrigendra Naik Ray,
S/o.Late Manindra Nath Ray
Residing at
A-14 LIL Hsg. Co-op.Soc. Ltd.,
Plot 40/41, Sector - 15,
Vashi, Navi Mumbai - 400 703.
Presently employed at
Nuclear Power Corporation India Ltd,
Vikram Sarabhai Bhavan,
Anushaktinagar,
Mumbai - 400 094.

... Applicant

By Advocate Shri M.K.Nair

V/s.

1. Union of India
Through
Secretary, Ministry of Defence,
South Block,
New Delhi.
2. Engineer-In-Chief,
Military Engineering Service,
Army Head Quarters,
Kashmir House,
New Delhi.
3. Chief Engineer
Southern Command,
Pune.
4. Chief Engineer(Navy)
26, Assaye Building,
Colaba, Mumbai.
5. Commander Works Engineer,
(Navy) Bhandup,
Mumbai - 400 078.

... Respondents.

By Advocate Shri R.K.Shetty

(ORAL) (ORDER)

Per Smt.Shanta Shastry, Member(A).

The applicant in this OA has sought the following reliefs.

- i) Interest amount due and payable on delayed payment on leave encashment amounting to Rs.22523/- w.e.f. 28/8/1990 till date of filing of OA.

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- ii) A detailed statement regarding the applicant's qualifying service period and the benefits in lieu thereof after effecting proper correction and entry in records.
- iii) Differential gratuity payment for the period in excess of gratuity approved for the period of 12 years 7 months and six days vide the P.P.O. C/ENGR/720/1996 and corrigendum PPO issued vide G1/C/SB/120/2-P7/XV dated 8/4/97 full length of service 17 years six months and 19 days and interest on the amount approved already (Rs.21875) till date.
- iv) Interest payment on the commutation amount of Rs.1,89,057 for the period from 27/8/90 till date.

2. The brief facts of the case are that the applicant was initially employed in Central Water Commission under the Ministry of Irrigation between 31/1/73 to 29/1/77. Thereafter he was employed in Calcutta Metropolitan Development Authority under the State Government of West Bengal during 1/2/1977 to 16/1/98. Then he joined as Assistant Engineer(BSR) in the M.E.S at Garisson Engineer, Ishapore, Calcutta on 17/1/78 and remained in M.E.S till 27/8/90 till he was absorbed in the Nuclear Power Corporation of India Ltd w.e.f. the same date.

3. According to the applicant he had put in a total service of 17 years six months and 19 days when he joined the NPCIL. He was entitled to retiral benefits for this period. On his making an application his case was processed initially treating it as a case of normal resignation. However approval of the President

had to be obtained to treat his past service in the M.E.S as pensionable service. Further, by a notification issued in the Central Government Gazette, it was notified that he had ^{been} relieved from M.E.S w.e.f. 16/8/90 whereas he had been relief^{ed} on 23/8/90. The gap had to be rectified and also regularised. After repeated letters, representations and constant pursuing by the applicant, finally sanction approved of the Government of India was given on 27/2/1976 to absorb him in the NPCIL from 27/2/1996. On being asked to give his option he gave the same on 2/4/96 without loss of time. He opted for lumpsum amount due in lieu of Monthly Pension. He also asked for interest for the delay at bank rate. Interest was denied on 13/5/96. The pension papers were sent on 7/8/96 and the P.P.O. was issued on 31/10/96. Actual payments of pensionary benefits were made as follows:-

Leave encashment

Rs.11,261 vide letter dated 4/9/99.

Rs.11,263 vide letter dated 20/12/99

Gratuity

Rs.21,875 vide PPO dated 31/10/96

(counting qualifying service as 12 years 7 months and 6days)

Commuted value of Pension

Rs.1,89,057 paid on 8th May, 1997 vide P.P.Os dated 31/10/96 and 8/4/97.

4. According to the applicant there was delay of 9 years in payment of leave encashment, a delay of six years in gratuity payment and a delay of 5 years six months.* The applicant noticed that the respondents had not taken into account the service rendered by the applicant in the Central Water Commission and the State Government prior to joining the M.E.S. The applicant has

therefore been denied gratuity and commutation value of pension for this period. The same is required to be paid to the applicant with interest. The applicant has submitted details of the amounts due alongwith interest at 12%. Alongwith compound interest, the total of all the amounts put together is given as Rs.2,49,467/- . The relevant calculations are given in the statements at Exhibits AD to AG.

5. The respondents submit that whatever dues were required to be paid have been paid to the applicant as soon as approval was received and sanction was given by the Ministry of Defence. The P.P.O. was issued on 31/10/96 after receipt of his option. His absorption in NPCIL was sanctioned vide letter dated 27/2/96 by the Ministry of Defence and not w.e.f. 27/8/90. All his claim, his dues including prorata pension and commutation value have been paid vide order dated 21/5/97. There has been no wilful delay on the part of the respondents. As soon as the sanction was issued they have promptly paid the dues after obtaining the option from the applicant.

6. The applicant himself is responsible for the delay if any. He did not submit any application seeking to count his previous service rendered in the Central and State Government. He has no locus standi to claim it now. He left the M.E.S on his own. He cannot claim interest. Besides respondents don't have details of his previous service.

7. The applicant however contends that the delay in sanctioning his absorption and accepting of his resignation has been entirely due to the indifferent approach of the respondents. He has pursued the matter vigorously right from the beginning of his entry into the NPCIL. He had resigned technically. He had kept his superiors informed about his joining the NPCIL, they had

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relieved him. The applicant therefore maintains that he is entitled to receive interest on the delayed payments.

8. In regard to the previous service rendered in the Central Water Commission and the Calcutta Metropolitan Development Authority the applicant has stated that he had given complete details of his previous service when he joined the M.E.S. He had filed attestation form also. Further the Central Record Office Office of Chief Engineer, Delhi zone has enumerated the salient features of his case and has given the details of service rendered by the applicant in Central Water Commission and the Calcutta Metropolitan Development Authority vide his letter dated 23/10/96. He also forwarded Folder No.1 containing service documents pertaining to the service rendered in Central Water Commission and Calcutta Metropolitan Development Authority and MES and another Folder No.II relating to prorata Pension/gratuity claim in respect of the applicant. It cannot therefore be said that the respondents don't know anything about his previous service. On the issuing of the P.P.O, the C.R.O has drawn attention to the fact that the previous service in Central Water Commission and Calcutta Metropolitan Development Authority had not been taken into consideration. He has therefore advised to count that service for terminal benefits wide his letter dated 4/11/96. He again submitted the documents which were relevant in this connection alongwith service book. Thus it is evident that the respondents were fully aware of this.

9. The applicant has rebutted the Respondent's averment that his absorption in NPCIL has been sanctioned only from 27/2/98 and not from 27/8/90. The sanction letter of 27/2/96 itself has mentioned in para 2 that the permanent absorption will take effect from 27/8/90(AN).

10. In view of this position he is entitled to count his full qualifying service of 17 years 6 months and 19 days and to receive all the dues with interest thereon from 27/8/90. i.e. six months after the date of issue of sanction of his absorption.

11. I have heard carefully the arguments and rival contentions.

According to me the applicant's claim for retiral dues could not be settled promptly because a decision had to be taken on whether to treat his resignation from MES as a technical resignation or not. Secondly delay was also due to condonation of the gap in service of three days. Also sanction of the President was required for his final absorption. Considering the repeated efforts made by the applicant to get the necessary sanction, in my view, the applicant cannot be blamed. While one can understand that it does take some time to settle such matters I cannot digest that it should have taken nearly six years to take a decision to treat his resignation as technical resignation and to condone the break in service. I cannot therefore accept the stand of the respondents that there has been no delay on their part. It has been clearly stated in the sanction letter dated 27/2/1996 in para 5 that the amount of retirement gratuity and lumpsum amount in lieu of pension wherever opted shall be payable immediately after the date of his permanent absorption. The applicant therefore deserves to be paid interest on the dues from 27/8/98 till the actual payment date.

12. I find that in the matter of counting of his previous service with the Central Water Commission/Calcutta Metropolitan Development Authority the letter from the CRO is quite eloquent and clear. It cannot be ignored. Therefore this previous service also needs to be ~~needs~~ to be taken into account for

purposes of pension/commutation, of pension and gratuity. Accordingly I order the additional prorata pension and gratuity for the aforesaid period of five years and odd which was left out.

13. In the facts and circumstances of the case the respondents shall pay to the applicant interest at the rate of 10% p.a. on the dues already paid from 27/8/90 till date of actual payment including leave encashment, commuted value of pension and gratuity.

14. The respondents shall also treat the previous service rendered in the Central Water Commission and Calcutta Metropolitan Development Authority as qualifying service to be counted for pension/commutation and gratuity. Interest on the same shall be payable from 27/8/90 till date of actual payment at the rate of 10% p.a.

15. The payments shall be made within a period of four months from the date of receipt of a copy of this order.

In the result the OA is allowed. No costs.

Shanta Shastray
(SHANTA SHAstry)
MEMBER(A)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Contempt Petition No.91/2001
in Original Application No.131/2000

26th July, 2002

CORAM:HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT, VICE CHAIRMAN
HON'BLE SMT SHANTA SHAstry, MEMBER

Mr. Mrigendra Nath Ray,
33 Satpura BARC residential complex,
Anushaktinagar, Mumbai - 400 094 ... Applicant

By Advocate Dr. Balakrishnan with
Shri M.K.Nair

v/s.

1. Lt. general Hari Unniyal,
Engineer-in-Chief,
Military Engineering Service,
Army Head Quarters,
Kashmir House,
New Delhi
2. Maj. Gen. N.P. Aul,
Chief Engineer,
Southern Command,
Pune
3. Brig V.K. Sharma,
Chief Engineer(Navy),
26, Assayee Building,
Colaba, Mumbai
4. V.K. Maini,
Commander Works Engineer,
(Navy), Bhandup
Mumbai - 400 078.
5. Mr. M.S. Hashmi, IDSE E.E,
Garrison Engineer(Navy),
Mankhurd, Mumbai. ... Respondents

By Advocate Shri R.R. Shetty
for Shri R.K. Shetty

(ORDER)

By Order dated 1/3/2001 in OA No.131/2000, a direction was given to the respondents to pay the applicant interest at the rate of 10% p.a. on the dues already paid from 27/8/90 till the date of actual payment including, leave encashment, commuted value of pension and gratuity. A further direction was that the

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respondents shall treat the previous service rendered in the Central Water Commission and Calcutta Metropolitan Development Authority as qualifying service to be counted for pension/commutation and gratuity. Interest on the same shall be payable from 27/8/90 till date of actual payment at the rate of 10% p.a. The Contempt Petition No.91/2001 has been filed by the applicant in the aforesaid OA stating that the respondents have not implemented the order of this Tribunal in spite of expiry of the period within which the order was to be implemented and of rejection of the prayer for extension of time to implement the order. On notice being issued, the respondents have submitted that they have complied with the directions of the Tribunal and have made the payments. The applicant further submits that though the payments have been made, still the computation of the commuted value of pension has been done by adopting commuted pattern of 13.880 instead of 15.1 which is not correct and the applicant needs to be paid more on the basis of commutation factor 15.1.

2. The applicant however admits that he has received all the payments otherwise as per the calculations made by the respondents.

3. We have heard the learned counsel for the applicant as well as the respondents. We find that the respondents have complied with the directions of this Tribunal. If according to the applicant there is any mistake in computation, that cannot be a ground for continuing of the contempt petition. If there is any mistake in the calculations, the same can be taken up by the applicant with the respondents through a representation and if he is still aggrieved, that would give the applicant a fresh cause of action, which could be pursued according to law and rules but that will not amount to contempt.

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4. We are therefore discharging the Contempt notice, dropping the contempt proceedings and the CP is accordingly dismissed.

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(SMT. SHANTA SHAstry)
MEMBER(A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE CHAIRMAN

abp

order/Judgement despatched
to Applicant(s)
on 14-8-02