

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO.658/2001
DATED THE 3rd DAY OF JULY, 2002

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

E.R.Srinivasan,
JN-4, Building No.11/9,
Sector 10, Vashi,
New Bombay - 400 703.

... Applicant

By Advocate Shri N.Jayaraman

V/s.

1. Union of India through the
Comptroller & auditor General of India,
10., Bahadur Shah Zafar Marg,
New Delhi - 110 002.
2. The Accountant General (A & E)-I,
Maharashtra,
101, Maharshi Karve Road,
Mumbai - 400 020.
3. The Chairman Cum Managing Director,
Hindustan Organic Chemicals Ltd,
Harchandrai House, 81, Maharishi Karve Road,
Marine Lines, Mumbai - 400 020.
4. The Secretary to the Government of India,
Ministry of Personnel, Pension
and Public Grievances, Central Secretariat,
North Block, New Delhi -110 001. ... Respondents

By Avocate Shri Vinod Joshi

(ORDER)

Per Smt.Shanta Shastry, Member(A)

The applicant has approached this Tribunal seeking pensionary benefits for the service rendered by him in the Union of India. The applicant's request for the pensionary benefits was rejected by the decision conveyed vide the impugned letter dated 26/9/2000. He has therefore sought to quash and set aside the aforesaid letter and the decision not to grant pensionary bernefits. He has prayed for a declaration that he is eligible

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for grant of pensionary benefits for the service rendered under the Union of India with a direction to the respondents to grant the pensionary benefits w.e.f. 1/1/66 alongwith interest @ 12%.

2. The brief facts of the case are: the applicant joined as UDC in the Office of the Accountant General, Bombay on 8/8/1951. He was deputed to Hindustan Organic Chemicals Ltd as Assistant w.e.f. 4/7/1962. He was thereafter absorbed in the Hindustan Organics Chemicals Ltd vide order dated 22/3/1966 w.e.f. 1/1/1966 as Assistant.

3. The applicant made a representation to the Accountant General on 23/3/1982 for pro rata retirement benefits on account of his absorption in the Hindustan Organic Chemicals Ltd for service rendered in the Government. His request was rejected on 20/4/1982 stating that the Accountant General as Competent Authority had taken a decision not to treat the absorption of the applicant to be in public interest. The applicant submitted details of his basic pay, etc while he was a Government servant vide letter dated 12/12/1988. He was again informed on 5/10/90 repeating the earlier decision of the Accountant General and also that the benefits of the Government of India OM dated 10/11/1960 cannot be claimed as a matter of right. It was further stated that the respondent no.2 had decided not to re-open the case after 22years. The applicant retired from service of the Hindustan Organic Chemicals on superannuation on 31/12/90. He again made a representation to respondent no.1 to consider granting him pensionary benefits vide his letter dated 10/10/91. Again his request was rejected on the ground that his absorption in the Public Sector undertaking was prior to 16/6/1967. The

applicant made another representation on 9/6/1993 bringing to the notice of the Government the decision of the Supreme Court of India in the case of Thiruvengadam wherein it is stated that he is entitled to retirement benefits equal to what the Government would have contributed had he been on contributory provident fund terms with two percent simple interest thereon. It was pointed out that under Rule 37 once a government servant was absorbed in public interest in the public sector undertaking, no classification was permissible in the rule between pre and post 1967 government servants and have directed the Finance Ministry to grant all the benefits to Mr.Thiruvengadam under the 1967 memorandum and finalise the same. All the arrears of pension and other arrears will be paid to him with 12% interest. In this context a letter was written by respondent no.2 to Hindustan Organic Chemicals Ltd seeking certain information regarding the terms and conditions of absorption of the applicant, copies of Service Book, orders of absorption, etc vide letter dated 6/8/1996. The Hindustan Organic Chemicals furnished the requisite information on 4/9/96. Again the respondent no.1 informed the applicant on 27/11/96 that the applicant's absorption in Hindustan Organic Chemicals was not in public interest and therefore OM dated 3/1/1995 of the Department of Pension and Pensioner's Welfare was not applicable in his case. Applicant made a further representation on 7/9/98 to the Additional Secretary, Ministry of Personnel and Public Grievances followed by a reminder. His request was rejected on 18/11/98 in consultation with the Office of the Comptroller of Auditor General of India on the ground that his absorption in the

Public Sector Undertaking was of his own volition and therefore his request was not covered under the Department of Pension and Pensioners Welfare OM dated 3/1/95 and also applicant was told that it is for the parent department to decide the issue. The applicant wrote another letter to the Comptroller Auditor General of India on 11/3/1999 followed by a reminder. The respondent no.2 again rejected his request stating that his absorption in Public Sector Undertaking was not in public interest. Applicant preferred another representation to the Accountant General on 19/1/2000 followed by a further representation. On 26/9/2000 he was informed that Pensionary benefits were not admissible in his case and the case had to be finally treated as closed.

4. Being aggrieved by the reply dated 26/9/2000, the applicant has approached this Tribunal. It is the contention of the applicant that he was selected for deputation to the Public Sector Undertaking of Hindustan Organic Chemicals and his deputation was in public interest. Otherwise he would not have received deputation allowance of 20% of his basic pay. He had not sought absorption of his own volition in the Hindustan Organic Chemicals. Actually it is the Public Sector Undertaking which had sought his willingness to be absorbed in the Public Sector Undertaking on condition that his parent department agrees to grant terminal benefits. Accordingly the applicant gave his willingness to be absorbed being aware that he would get the terminal benefits from respondent no.2 for the service rendered by him. The applicant's resignation was accepted by the Office of the Accountant General vide its letter dated 31/1/1966. It has been clearly stated in this letter that his resignation was

accepted w.e.f. 1/1/1966 consequent on his proposed permanent absorption in the Hindustan Organic Chemicals. Thus his absorption had to be upheld in public interest. The applicant has referred to the OM dated 10/11/1960 from the Ministry of Finance (Department of Expenditure) regulating the grant of retirement benefits when a government servant who is deputed or transferred to service under a body corporate owned or controlled by Government or whose services are lent to such a body, should in the event of his permanent absorption in service under the body, be allowed retirement benefits in respect of his previous pensionable service rendered under the Government. The retirement benefit was fixed to be an amount equal to what Government would have contributed had the officer been on Contributory Provident Fund account with the autonomous body as initial contribution together with simple interest at 2% for a period of his pensionable service to be credited to his Contributory provident fund account. Applicant submits that he was not given any benefit of the contributory provident fund for the service rendered under the Government at the time of absorption in the Public Sector Undertaking.

5. The applicant submits that the respondent had given different reasons for not granting him pensionary benefits at different times through the replies to the representations given by the applicant. The reasons were that the applicants' absorption in the Hindustan Organic Chemicals was not in public interest, it was of his own volition and the applicant had been absorbed prior to 16/6/1967. Also when the applicant resigned he had been told that he would not get any retiral benefits and he had accepted the same.

6. The applicant has contended that even the Hindustan Organic Chemicals had given a letter stating that the applicant was absorbed in public interest. According to the applicant, it was not of his own volition that he had been absorbed in the Hindustan Organic Chemicals. His absorption could not have materialised unless agreed to by the respondents, i.e. his parent department, the Hindustan Organic Chemicals and himself and therefore it is not correct to say that the applicant's absorption was not in public interest but of his own volition. Even if the applicant was willing to be absorbed, it cannot have finality unless respondent no.3 also required his service in public interest and was willing to absorb him on permanent basis. So the public interest could also be related to the needs of the Public Sector Undertaking.

7. The applicant has relied on a few judgements in support of his contention that he is entitled to the retiral benefits for the service rendered by him in the Union of India. In Umapathy Choudhary V/s. State of Bihar and Anr (1999)4 S.C.C. 659, it was observed by the Supreme Court that "Deputation can aptly be described as assignment of an employee of one department or cadre or even an organization. The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not." In the case at hand all the three conditions were fulfilled. It was held in this case that there was no issue of it not being in public interest or it was

vitiated by favouritism or malafides. Even though consent given by the three parties involved, the whole process is in public interest. The applicant has further cited a case of Nokes V/s. Doncaster Amalgamated Collieries Ltd (1940) A.C. 1014, wherein also it was held that going on deputation to a Public Sector Undertaking and getting absorbed there has to be with the consent of the employee and the going on deputation itself is the begining of public interest in the whole process. The applicant submits that the Supreme Court rendered judgement in the case of Thiruvengadam V/.s. Secretary to Government of India, Department of Expenditure, New Delhi 1993(2)SCC 124. The applicant therein was a UDC absorbed in the Neyyeli Lignite Corporation Ltd. He was held to be eligible for pensionary benefits. The Supreme Court held citing the Rule-37 of the CCS(Pension)Rules 1972 that once a government servant was absorbed in the public interest in the public sector undertaking no classification was permissible in the rule between pre and post 1967 government servants. The applicant therefore contends that in his case also merely because he was absorbed prior to 16/6/1967, he cannot be denied the pensionary benefits. On the basis of Thirunvengadam's case, the applicant too ought to have been granted pensionary benefits.

8. The applicant has further placed reliance on a judgement in the case of Jasbir Singh Narula V/s. Union of India & Ors reported in 1/97, Swamynews 83, (Chandigarh). It was held in this case that "*Rights assured on the date of absorption for pro rata pension cannot be taken away due to subsequent action of the incumbent by shifting his employment, as the payment of pension cannot be limited to the organization to which he went with the permission of erstwhile employer.*" In this case, the reason

given for denial of retirement benefits to the applicant was that he forfeited his entire service in the Central Government because he had resigned. It was held in this judgement that the appellant was entitled to the retiral benefits w.e.f. from the date of his absorption in the Public Sector Undertaking. The applicant submits further that after the judgement in the case of Thiruvengadam (supra) the Government of India issued OM dated 3/1/1995 extending the benefits of OM dated 16/6/67 to all Central Government employees who where absorbed in Public Sector Undertakings prior to 16/6/1967 subject to certain conditions. It was stipulated therein that the employee should have proceeded to a Central Government Public Sector Undertaking in public interest.

9. According to the applicant his case is clearly covered by the judgement in the case of Thiruvengadam(supra) and he therefore deserves to be granted the retiral benefits as claimed by him.

10. The respondents have already taken a stand that the applicant's absorption in the Hindustan Organic Chemicals was not at all in public interest as his resignation had been accepted with a condition that he will not be entitled to any retiral benefits and he had accepted the same. This is confirmed from the original records produced by the respondents in this connection. The respondents ofcourse have also stated that the concession of retiral benefits cannot be claimed as a matter of right and it has to be sanctioned by Competent Authority in individual case where it is meritted. Even going by the OM of 3/1/1995, the applicant's case cannot be considered as he does

not fulfil the requirement of public interest. The competent authority had taken a decision not to treat the applicant's absorption in Hindustan Organic Chemicals in public interest.

11. The respondents have also taken a preliminary objection of limitation in this case. The applicant's request for pro rata pension benefits was rejected in 1982, whereas the applicant has approached the Tribunal in the year 2001. Thus, it is beyond the period of limitation as well as it suffers from delay and laches. Not only that infact, it goes back to 1966 when the applicant was informed vide DO letter dated 15/1/1966 that his absorption was not treated in public interest. The matter ought to have been taken by the Hindustan Organic Chemicals in that order itself and not after a lapse of so many years. The applicant has also alleged discrimination in his case as according to him some stenos who were absorbed later than the applicant in Hindustan Organic Chemicals have been granted the retiral benefits.

12. The applicant once again contended that the transfer from Government service to an autonomous body is in public interest. Infact, he has reiterated the arguments already advanced in this matter. In regard to limitation, the applicant submits that non grant of pensionary benefits is a continuous cause of action and therefore the plea of limitation has no merit in view of judgement of Supreme Court of M.R.Gupta V/s. Union of India AIR 1996 SC 669. According to the applicant, the application has been filed within the time prescribed immediately on receipt of the decision communicated to the applicant vide letter dated 26/9/2000 and this being a final reply to his representation. According to the applicant, the application is well within the

one year period of limitation as prescribed under Section 21 of the Administrative Tribunals Act.

13. I have heard the learned counsel for the applicant as well as the respondents. In order to consider the claim of the applicants, I would like to refer to the various orders of the Government in which retiral benefits were provided to those who got themselves absorbed in Public Sector Undertakings after having rendered considerable service in the Central Government. The first such order is of 10/11/1966 of the Ministry of Finance, Department of Expenditure, New Delhi which regulated the grant of retirement benefits. Thereafter, instructions were issued vide letter dated 21/1/67 of the Ministry of Home Affairs. It was made clear that if a permanent government servant who was selected for deputation to a public sector undertaking or an autonomous body, had to resign from government service before his permanent absorption in the said public sector undertaking, then on permanent absorption in a public sector undertaking/autonomous body, the government would not accept any liability to pay any retirement benefits. However, by orders contained in OM dated 19/6/72, the government allowed pro rata retirement benefits to the government servants on the basis of their own applications. However, this benefit was made available to only those government servants who got permanently absorbed in public sector undertaking on or after 19/6/72. The effect of the circular was that pro rata pension would be available to those who went on deputation after 8/11/1968. In case of Government servants getting absorbed on their own volition, the benefit of pro rata pension only became available from 19/6/72. Subsequently, the

Government of India vide DOP&T OM dated 25/3/1997 removed the distinction regarding public interest and on own volition. It was decided there should be no distinction between the type of deputation thus adopted in public interest and those going on their own volition. It was decided that all deputationists after 8/11/1968 would be entitled to the benefit of pro rata pension. However, only from 1/8/1976. It was contended by some that there was no rational basis for fixation of pension from an arbitrary date and there can be no distinction between a government employee joining on his own volition after 8/11/1968. Thereafter even the cut off date was done away with after the judgement in the case of Thiruvengadam(supra). Thus, since no distinction was to be made between those who got absorbed on their own volition and those who were absorbed in public interest, the first contention of the respondents that the applicant's absorption was not in public interest is not at all sustainable. Secondly, that the applicant was absorbed prior to 16/6/1967 is also no longer applicable because the cut off date was set aside later on based on the judgement in the case of Thiruvengadam by issue of OM dated 3/1/1995 as reproduced by the applicant. Therefore the reasons for which the applicant has been denied the retiral benefits are no longer valid and the applicant therefore deserves to get the retiral benefits for the service rendered by him in the Central Government. Further, the judgements relied upon by the applicant make it very clear that the applicant is entitled for the retiral benefits. There is also a judgement and order dated 19/4/1988 in OA 527/1987 decided by the Hyderabad Bench of the Tribunal in the case of Har Binder Lall V/s Comptroller &

Auditor General of India reported in 1988(7)ATC-567. The facts in this case are similar to the facts of the applicant's case. The applicant therein was working in the Audit and Accounts Department, Kapurthala under the jurisdiction of the Accountant General, Posts and Telegraphs, Simla from 19/5/1952 to 11/12/1967. Then he applied in January, 1965 for the post of Accounts Officer in the N.M.D.C. a Central Public Sector Undertaking. the applicant was selected and joined N.M.D.C on 15/12/1967. Before he was relieved to join the Public Sector Undertaking, he was called upon to resign from the Central Government service. The applicant had drawn attention to the Ministry of Home Affairs Memorandum dated 22/1/1966 giving option to permanent government employees to retain their lien in their parent department for two years which was later on extended to three years. The applicant opted to retain his lien by payment of leave salary and pension contribution either by himself or through his employer. However, it was also stated that in case this contention was not accepted the letter may be treated as a letter of resignation and he was relieved. The applicant thereafter made further representations as in the present case for revival of his lien and grant of pro rata retirement benefits. He followed up with several representation. He was finally informed that he was not eligible. He followed it up with several representations and finally approached the Tribunal for Relief. Tribunal granted the relief. This case squarely covers the applicant's case where the distinction between public interest and on own volition was done away with by the orders of 1977. Thus whether the applicant's absorption in Hindustan Organic Chemicals on public interest or otherwise is no longer a

matter to be decided. Further, the cut off date of 16/6/1967 is also not applicable in applicant's case in view of the judgement of the Supreme Court in the case of Thiruvengadam(supra). I therefore agree with this judgement and hold the applicant entitled for pensionary benefits. Coming to the limitation, it is seen that even in the case of Har Binder Lall (supra) there were delay and laches and the application had not been made within the period of limitation. However, the Tribunal condoned the delay because the final reply had been given to the applicant therein on merits on 24/5/1984 stating that the matter has been treated as closed and therefore the Tribunal held that since that order was sought to be impugned by the applicant, his application filed on 21/11/1985 was within the period of limitation. In the present case also the applicant got the final reply on 26/9/2000 and has approached this Tribunal within a period of one year in 2001. Thus, the limitation would count from the date of the final reply on merits to the representation of the applicant and therefore I am also inclined to condone the delay in this matter.

14. On merits also I hold the view that when the Government of India itself has treated absorption in public sector undertaking as being entitled to pro rata pension and also to treat resignation to join the PUC as a technical resignation the applicant cannot be denied pensionary benefits stating that it was not in public interest.

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15. In view of the discussion and the reasons recorded above, the OA succeeds with all consequential benefits. The respondents shall pay the arrears within a period of three months from the date of receipt of a copy of this order. OA is allowed. No costs.

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(SMT SHANTA SHAstry)
MEMBER(A)

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