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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 740/90

199

T.A. NO:

DATE OF DECISION

17-12-91

Shri V. C. Sarkar

Petitioner

Shri P.D. Panchakshari

Advocate for the Petitioners

Versus

Union of India

Respondent

Shri A.I. Bhatkar for Mr.
A.I. Setlwa.

Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~Mr.~~ Ms USHA SAVARA, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Usha Savara
(USHA SAVARA)
MEMBER(A)

mbm*

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original application No.740/90

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Shri K. Sarkar

... Applicant

V/s

Union of India through the
Secretary, Min of Urban
Development, New Delhi and 3 others

... Respondents.

CORAM : Hon'ble Ms Usha Savara Member (A).

Appearance:

Shri P.D. Panchakshari, advocate
for the applicant.

Shri A.I. Bhatkar for Mr. M.I.
Sethna, advocate for the
respondents.

JUDGEMENT:

Dated: 17-12-91

Per Ms Usha Savara, Member (A)

1. The applicant who was working in the capacity of Junior Account in the Office of Respondent No.3, resigned with effect from 1.9.84 after putting in 12 years and 8 months of service in Central Government. While he was in service, he had applied for an appointment with M/s. Mazagon Dock Ltd., (for short MDL) through proper channel. He was duly selected and joined MDL on 3.9.1984. He was absorbed in this Organisation on 3.3.85 after completing probationary period as laid down in the Rules of MDL. The application has been filed with the prayer that the applicant be declared legally entitled to interest at 18% for the delayed payment of legitimate dues and further interest at 18% be paid on the consolidated amount of interest claimed i.e. Rs. 32,283.63 till the date of actual realisation. He has also prayed for compensatory costs.

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2. After joining the MDL, the applicant requested Respondent No.2 to permit him retention of lien in the parent department vide his letter dated 18.2.85 (Annexure A). Respondent No.2 refused the permission for the retention of the lien to the applicant on the basis of the latest instructions from DPAR dated 20.9.84, which laid down that henceforth deputation of members of Central Services to the posts in Public Undertakings, would be on immediate absorption basis. Thereafter, the applicant wrote to Respondent No.3 on 1.6.85 requesting for payment of pro-rata retirement benefits (Annexure C). But this request of the applicant was also refused by the respondent by his letter dated 20.8.85 (Annexure D) on the ground that in his resignation letter, there was no mention of retention of lien. Not satisfied with the refusal, the applicant continued writing to the respondent No.2 for payment of pro-rata retirement benefits, but the same were refused without assigning any cogent reason. It was only on 14.4.87 that the Chief Controller of Accounts reviewed the applicant's case afresh and agreed to pay him proportionate retirement benefits for the service rendered by him and also agreed to allow the applicant to pay leave salary and pensionary contributions upto the date of his absorption. Thereafter the PAO informed the applicant that a sum of Rs. 707/- was to be paid by him as FSC. This amount was paid by the applicant immediately.

3. On 11.12.87 he was given copy of letter No. A 35010/Lien/84/PrAO/Estt(C)/22060-65 issued by respondent No.2 conveying the approval of the Government to the permanent absorption of the applicant in the Ministry/Department of Urban Development from the

forenoon of 3.3.85. By this letter the applicant was declared to be eligible for pro-rata pension and DCRG based on the length of his qualifying service under Government of India till the date of permanent absorption in MDL. He was also allowed to carry forward the E.L. of 28 days at his credit on the day of his absorption. However, respondent No. 4 i.e. MDL clarified that the request to carry forward 28 days of E.L. could not be acceded as the service conditions and pay scale applicable to the employees was different to that of Central Government employees. After some correspondence between MDL and the PAO, it was decided on 13.3.89 that the lumpsum amount equal to the leave salary for 28 days of leave at his credit would be paid directly to the applicant.

4. Shri Panchakshari, learned counsel for the applicant submitted that the applicant was paid his legitimate dues as follows:

1. Payment in respect of DCRG amount on 26.2.88 for Rs. 4,115/-.
2. Pro-rata Gratuity and Lumpsum amount in lieu of pension on 14.3.88 for Rs. 4,312/-.
3. Commuted Value and Terminal benefits on Pension on 12.4.88 for Rs. 24,455/-.

5. It is submitted by the learned counsel that these payments should have been paid to the applicant on the due date i.e. 31.8.84 i.e. the date he left the Government Service. But these amounts have been paid to him without any interest although there was inordinate delay of 3 years and 8 months. The applicant was paid leave encashment of Rs. 1,081/- in April 1989 i.e. after a delay of 4 years and 8 months. The applicant sent a legal notice on 5.4.89 demanding interest on the delayed amount of pro-rata pensionary benefits, but the same

was ignored by respondent No. 2. He sent a reminder through his advocate on 24.3.90 and a reply was received on 16.4.90 stating that the applicant was not entitled to penal interest on retirement benefits (Annexure (V)). The learned counsel for the applicant relies on a judgement given by the Supreme Court in "State of Kerala V/s. M. Padmanabhan Nair AIR 1985 s.c. 356" wherein the Hon'ble Supreme Court has ordered the payment of interest at prevailing market rates in such cases of delayed payment of pensionary benefits.

6. Shri A.I. Bhatkar, learned counsel for the respondents strongly contested the claim of the applicant. A preliminary objection taken by the counsel was that of limitation. It was submitted that the applicant had given notice on 5.4.89 and reply to that was sent on 1.6.89, so the cause of action arose to the applicant on 1.6.89 whereas he has filed the OA on 12.10.90. In view of this, it is argued by Shri Bhatkar, that the application was time barred and was not maintainable.

7. It was further submitted that on his selection in MDL the applicant gave one month's notice for acceptance of his resignation from Govt. service and he did not give an undertaking for retention of lien and agreeing to pay leave salary/Pension contributions. The resignation was accepted on 31.8.84. He was neither sent on deputation nor transferred to MDL. It was further submitted that in case ^{of} permanent absorption in PSU, date of resignation from Govt. service and date of permanent absorption in the undertaking should be the same. However, the applicant's resignation was accepted w.e.f. 31.8.84, but he was confirmed in MDL only w.e.f. 3.3.85. The applicant had not even taken prior permission from his parent department for his absorption

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as required under rules.

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8. For the above reasons, the applicant's claim for payment of pro-rata retirement benefits had been rejected. However, his case was reviewed and concession was shown to him by the Head of the department. On remittance of leave salary / Pension contribution by the applicant on 3.6.87, the principal terms and conditions for his permanent absorption in the undertaking were issued in consultation with Ministry of Finance and B.P.E. vide letter dated 11.12.87. The dues were paid to him soon thereafter. There was no undue delay on the part of the department for payment of the claim. His claim for payment arose on 11.12.87 and not on 3.3.85 i.e. the date of permanent absorption in MDL. In view of this, the application may be dismissed.

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9. In the first instance, I intend to deal with the preliminary objection of limitation raised by the Respondents. The Respondents had claimed that a reply dated 1.6.89 was sent to the Applicant in response to his legal notice. However, the respondents have not adduced any evidence of the receipt of this reply by the applicant and the applicant denies receiving the reply dated 1.6.89. In the interest of justice and equity, I feel that in the absence of any evidence, the bold plea of the respondents has to be rejected, and the plea of limitation cannot be sustained.

10. I have given my earnest consideration to the arguments of the opposing counsel. The short point to be decided is whether the Applicant was legally entitled to pensionary benefits after he resigned from Government service to join M/s.MDL. Before proceeding further, a glance is necessary at Rule 26 of C.C.S. Pension Rules.

The relevant clauses- read as follows:

- (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.
- (2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government, where service qualifies.

These are the two clauses which are relevant for deciding this case. Clause (1) is clear, unambiguous in its **import**. Resignation entails forfeiture of past service unless ^{it} is allowed to be withdrawn. It is nobody's case that the resignation tendered by the applicant was ever withdrawn. He applied for the post of an Assistant in Mazagaon Docks Ltd., through proper channel and on selection, was relieved by the office. He sent his resignation letter on 23.7.1984 (Ex.2) giving one month's notice. This resignation was unconditional, and he did not even request that he may be allowed to retain his lien in the department. It was only on 18.2.1985 that the applicant made a request for being allowed to retain his lien for a period of two years or the date of his permanent absorption in MDL, whichever was earlier. It was also in this letter that the applicant made a claim to the effect that he had resigned only as "a technical formality". Since his resignation had already been accepted w.e.f. 3.9.1984, and he had left the Department after giving the resignation he was not allowed to retain lien in the Department.

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11. Clause - 2 lays down conditions under which past service may not be forfeited. If resignation has been given to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies then the past service is not forfeited.

12. The applicant resigned to take up an appointment with MDL which is a Government of India undertaking,

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in the Ministry of Urban Development. His appointment was through proper channel. However, he has not taken up an appointment in another Central Government Department. He has taken an appointment with an autonomous body, which has its own distinct entity, its own service rules, its own pay scales. But service in MDL does not qualify, and therefore this case is fully covered by clause (2) of Rule 26. For this reason alone, the applicant's claim for pensionary benefits could be rejected.

13. The learned counsel for the applicant had, during the course of arguments, drawn my attention to Appendix 18 of the Pension Rules. But Appendix 18 specifically covers cases of Govt. servants who have been permanently transferred to autonomous bodies. The Applicant's case is beyond the ambit of Appendix 18, For this reason, the argument of the learned counsel for the applicant has to be rejected.

14. It is clear from the above that the applicant's claim for grant of pro-rata pensionary benefits arose only on 11.12.87, when the competent authority relaxed the rule, took a lenient view, and granted him the said benefit.

Thereafter, the respondents paid the applicant on 26.2.88, 14.3.88, and 12.4.88. All these payments have been made within 6 months of passing of the order i.e. 11.12.87, so no interest can be claimed on these payments. But the leave encashment of Rs. 1081/- was only paid in April '89, therefore the applicant is entitled to interest at 12% on the sum of Rs. 1081/- for the period of delay beyond six months from 11.12.87.

15. In view of these facts, the respondents are directed to pay to the applicant interest at the rate of 12 % on Rs. 1081/- for the period of delay beyond 6 months from 11.12.87 till the date of payment.

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The respondents are directed to comply with this order within a period of two months from the day of communication of this order.

There will be no order as to costs.

Usha Savara
(USHA SAVARA) 13.11.21.
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition 16/92

in
OA 740/90

Shri UTTAM KUMAR SARKAR

... Applicant

V/s

Union of India through the
Secretary, Min, of Urban
Development, New Delhi and 3 ors.

... Respondents.

CORAM : Hon'ble Ms Usha Savara Member (A)

Order on Review Petition No.16/92

Dated: 24-1-92

¶ Per Ms Usha Savara, Member (A) ¶

Review Petition No.16/92 has been filed in
O.A. No. 740/90 by the respondents i.e. Union of India
and others. It is pointed out that in the body of the
judgement the name of the applicant has been mentioned
as Shri V.K. Sarkar, whereas, the correct name of the
applicant is Shri U.K. Sarkar i.e. Shri Uttam Kumar
Sarkar.

On scrutiny of record, I find that
an error ^{in order} has ~~been~~ ⁱⁿ ~~made~~ ^{as} pointed out above. The
Review Application is allowed. The name of the applicant
will be corrected in the body of the judgement. The
correction will be made accordingly.

U. Savara
(USHA SAVARA)
MEMBER (A)