

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 375/95

Date of Decision 4-4-96

Baburao Honu Govekar

Petitioner

Mr. L. M. Nerlekar

Advocate for the Petitioner.

Versus

U.O.I. & Ors.

Respondent

Mr. R. K. Shetty

Advocate for the Respondents.

Coram:

The Hon'ble Mr. M.R. Kolhatkar, Member(A)

The Hon'ble Mr.

1. To be referred to the Reporter or not?

2. Whether it needs to be circulated to other Benches of the Tribunal?

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
MUMBAI

O.A.375/95

Annex

Pronounced this, the 4th day of July 1996
CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Baburao Honu Gavekar,
Surya Darshan
IIInd Floor, Room No.13,
Hari Shankar Joshi Road,
Dahisar 400 068.
(By Advocate Shri L.M.Nerlekar)

.. Applicant

-versus-

1. Union of India
through
Secretary,
Ministry of Defence
South Block,
New Delhi.
2. The Embarkation Commandant,
Embarkation Headquarters,
Nav Bhavan Building,
Post Box No.331,
Bombay - 400 001.

(By counsel Mr.R.K.Shetty) .. Respondents

O R D E R

(Per M.R.Kolhatkar, Member(A))

The applicant has rendered total service of nearly (13) years w.e.f. 21-8-1963 to 30-9-1976 as Tally Clerk in the office of respondent No.2. His name was sponsored by the Employment Exchange for the post of Asstt. Grade III (TMG) in the Office of Food Corporation of India and in response to the offer of the FCI he joined FCI w.e.f. 1-10-1976. The applicant contends that the employment obtained by him in the FCI was with due permission from the respondents. The applicant was duly relieved by respondent No.2 and the pay of the applicant was protected by FCI taking into consideration the service of the applicant rendered with respondent No.2. The applicant's amount of GPF was also transferred by respondent No.2 to the FCI for credit to the applicant's CPF

Account No. 36714.

2. In the face of the above the applicant had pursued the matter of counting of his service with the respondent No.2 for grant of pensionary benefits. However, the applicant was informed by the impugned letter dt. 11-8-1994, Ex. 'A', that this request has not been considered. Earlier by letter dt. 9-7-84 which is also part of collective Ex. 'A' it was intimated as below:

"It has been intimated by Army Headquarters that the case relating to sanction for grant of pro-rata pension and DCR Gratuity in respect of the above named individual was taken up with the Government. Government has not accepted for grant of pro-rata pension & DCR Gratuity as this case does not seem to be absorption in Food Corporation of India. Food Corporation have clarified that the individual was not on deputation to that organisation and he was appointed through employment exchange."

Thus the applicant's claim for grant of pensionary benefits in respect of service under Respondent No.2 was rejected mainly on the ground that he was not on deputation from respondent No.2 to the FCI but he was appointed through employment exchange. The applicant contends that the rejection of his request is not in accordance with O.M.No.8/1/72 Est.(C) dt. 21-4-72 from Department of Personnel which has been enclosed by him in his rejoinder. O.M. As this is material for decision, the same is reproduced below:

"The undersigned is directed to refer to Ministry of Home Affairs O.M.NO. 70/62/62-Ests(A) dated the 22nd January, 1966 read with O.M No.70/62/62/Ests(A) dt. 27th July, 1968 regarding forwarding of application of Central Government servant for posts in public sector undertakings etc. according to which permanent Government servants who are

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selected for appointment in public sector undertakings or autonomous semi-government organisations on the basis of their applications were allowed to retain their lien on their permanent posts in their parent offices for a period of 2 years (to be extended by one more year in exceptional cases) or till they are permanently absorbed in the undertaking/autonomous bodies, etc. whichever is earlier subject to certain conditions. It was also stipulated that on their permanent absorption in the public sector undertakings/autonomous bodies etc. Government would not accept any liability to pay any retirement benefits in respect of such persons for the period of service rendered by them under the Government.

2. The question of the retirement benefits which may be provided to the above category of permanent Government servants on their permanent absorption in the public sector undertakings alone, has been under the consideration of Government for some time. It has now been decided that a permanent Government servant who has been appointed in a public sector undertaking on the basis of his application shall, on his permanent absorption in such public sector undertaking, be entitled to the same retirement benefits in respect of his past service under the Government as are admissible to a permanent Government servant on deputation to the public sector undertaking on his permanent absorption therein. Thus, permanent Government servants, who have been or are appointed in public sector undertakings on the basis of their applications in response to press advertisements, circulation of vacancies, and who are absorbed hereafter on a permanent basis in the undertaking(s) in which they have been so appointed, will also be governed by the orders in respect of payment of retirement benefits issued by the Ministry of Finance Bureau of Public Enterprises, their O.Ms.

No.2(90)/68-BPE(GM) dated 8th November, 1968,

No.2(57)68-BPE(GM), dated 26th April, 1969,
No.2(57)/68-BPE(GM) dated 3rd January, 1970
and No.2(57)/68-BPE(GM) dated 24th July, 1971."

3. Respondents have opposed the claim of the applicant. First of all it is contended that the O.A. is barred by limitation because what the applicant has impugned is the letter dt. 9-7-84. It was open to the applicant to challenge that letter in accordance with the rules as to limitation obtaining at that time and he cannot challenge the letter before the Tribunal which was not even in existence on 9-7-84. I hold that the O.A. is within limitation with reference to impugned letter dt. 11-8-94.

4. The respondents contended that as per para 2 of Appendix 31A of Civil Service Regulations Vol. II (Part II) pro-rata pension and DCR Gratuity is admissible only where permanent transfer from Govt. service to an autonomous body/quasi Govt. Corporation is in public interest. So far as the applicant is concerned he had applied on his own and there was neither a public interest involved in shifting from respondent No.2 to the FCI nor was it a case of intentional transfer (deputation) and subsequent absorption as is the requirement under the rules. The mere fact of issue of NOC or the relieving certificate does not convert the voluntary shift of the applicant into transfer on deputation. It was a case of applicant applying in his own interest through employment exchange directly to secure a job outside respondent No.2 and under the rules he is not entitled to pro-rata pension and DCRG. So far as the reference made by the applicant to the Personnel Department memorandum dt. 21-4-72 is concerned the respondents contend that this memorandum needs to be read along with other circulars

which are referred to in that memorandum viz. the circular dt. 8-11-1968, 26-4-1969, 3-1-1970 and 24-7-1971.

5. The respondents have enclosed copy of some of these circulars. I have perused the same. The circular dt. 8-11-1968 refers to Govt. decision on the Administrative Reforms Commission Report on Public Sector undertakings. One of the decisions relates to permanent absorption in the Public Enterprises. Since this is not a case of permanent absorption the same has no applicability. In the circular dt. 19-12-1969, it has been clarified that when a Govt. servant appointed under another central government department resigns from his parent department such a resignation should not be deemed to be resignation within the meaning of Article 418(b) of Civil Service Regulations for pension. As a consequence of this decision, continuity of service benefit should be allowed in the matter of leave also. This circular does not appear to ~~apply~~ ^{to} the case of the applicant. The circular dt. 3-1-1970 states that Govt. servants who opt for permanent absorption in Public Enterprises may be given their pension/gratuity immediately on their absorption, ~~and whatever~~ pension has been earned by a Govt. servant prior to his absorption, will be allowed to him in addition to the pay he would get. Circular dt. 24th July, 1971 clarified that whenever ~~deputationists~~ exercise their option for service in the concerned Public Enterprise they should be deemed to have retired in public interest with a view to permanent absorption in the concerned undertaking. All these circulars do ~~not~~ appear to refer to option to be exercised and the permanent absorption consequent there upon and ^{consequent} grant of benefit of pro-rata pension and DCRG. It is nobody's case that the applicant went on deputation and thereafter was permanently absorbed

as a consequence to his option. Thus the various circulars do not ~~help~~ either party. However, the contents of the O.M dt. 21-4-72 are clear and appear to squarely cover the case of the applicant because this O.M. refers to selection of Govt, employees for employment in public sector undertaking on the basis of their application. The O.M. lays down that ~~O~~ permanent Govt. servants ~~who have been or are~~ appointed in public sector undertakings on the basis of their application in response to press advertisements, circulation of vacancies and who are absorbed hereafter on permanent basis in the undertaking(s) in which they have been so appointed will also be entitled to the same retirement benefits in respect of ~~their~~ past service under the Government as are admissible to a permanent Government servant on deputation to the public sector undertaking on his permanent absorption therein. This order covers Govt. employees who apply in response to press advertisements, circulation of vacancies etc. and they are ^{not} to be governed by previous orders which I referred to above. In terms of order dt. 21-4-72 therefore the applicant is entitled to grant of pro-rata pension and DCRG and the action of the respondents in ~~not~~ denying the same to him on the basis either ^{that} he was not on deputation or that his deputation was not in public interest is not borne out by the Govt. orders obtaining at the time of his shift to FCI. No orders amending the O.M. dt. 21-4-72 ~~have~~ been brought to my notice.

6. I am, therefore, of the view that the applicant is entitled to the relief claimed viz. pro-rata pension and DCRG for the service rendered by the applicant under respondent No.2 from 21-8-63 to 30-9-1976. In the facts and circumstance of the case the applicant is not entitled to the interest,

O.A. is therefore disposed of in these terms.
Respondents are directed to give the necessary
benefits to the applicant in terms of the
declaration within three months of the order.
There would be no order as to costs.

M.R.Kolhatkar

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(M.R.KOLHATKAR)
Member(A)