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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 30 of 1995.

Dated this Thursday, the 22nd day of February, 2001.

Kamalakar Wasudev Mujumdar, Applicant.

Shri S. P. Kulkarni, Advocate for the
applicant.

VERSUS

Union of India & 2 Others, Respondents.

Shri V. S. Masurkar Advocate for
Respondents.

CORAM : Hon'ble Shri Justice Ashok Agarwal, Chairman.
Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ? X
- (iii) Library. X

B. N. Bahadur

(B. N. BAHADUR).
MEMBER (A)

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CORAM : Hon'ble Shri Justice Ashok Agarwal, Chairman.
Hon'ble Shri B. N. Bahadur, Member (A).

Kamalakar Wasudev Mujumdar,
Divisional Engineer (Retd.),
Telecom (Quality Assurance),
Telecom Factory, Test Room,
Deonar, Bombay - 400 088.

Residing at - Flat No. 11,
Building No. 16, Anand Nagar,
Paud Road, Pune - 430 029.

... Applicant.

(By Advocate Shri S.P. Kulkarni)

VERSUS

1. Union of India through
The Secretary,
Telecommunication,
Sanchar Bhavan, Ashoka Road,
New Delhi - 110 001.

2. The Member (Personnel),
Telecommunication,
Ashoka Road, Sanchar Bhavan,
New Delhi - 110 001.

3. The Chief General Manager,
Quality Assurance Circle,
6, Cockburn Road,
Bangalore - 560 051.

... Respondents.

(By Advocate Shri V.S. Masurkar)

OPEN COURT ORDER

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case, Shri K.W. Mujumdar, who retired as Divisional Engineer with the Respondents', comes up to

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the Tribunal under very peculiar circumstances, in that, a position has come about requiring interpretation as to whether he has been deemed to have retired w.e.f. 01.02.1989 or on 31.05.1990. Actually, what had happened under these peculiar circumstances was that he had continued to work with the Respondents till he superannuated and retired as such on 31.05.1990.

2. To expound the case, the Applicant had asked for voluntary retirement with effect from the earlier date and this was refused on the ground that disciplinary proceedings had been initiated against the Applicant. The Applicant approached this Tribunal and the matter was decided in O.A. No. 376/90 on 18.06.1992, by this Bench of the Tribunal. This Tribunal held that his desire to retire from the stipulated date in 1989 could not be thwarted by the Respondents since he had completed thirty years of service and was retiring under that provision of the rules. Similarly, the enquiry that had meanwhile been ordered against him also stood quashed. Thus, it is clear that the retirement date has been settled and decided by this Tribunal as being the date from which he asked for such voluntary retirement i.e. 31.01.1989. Now it so happened that this decision of the Tribunal came in June, 1992 by which time the Applicant had superannuated and hence retired. Importantly, therefore, he continued in service even after 31.01.1989 right upto 31.05.1990.

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3. The stand of the Respondents is that they gave ex-post facto approval, in view of the above circumstances, for voluntarily retiring him from 31.01.1989 and orders were issued whereby the Applicant was considered and deemed to have retired voluntarily. It is also stated that vide order dated 15.03.1994 (Annexure A-3) the Applicant was treated as being re-employed for the remaining period i.e. 01.02.1989 to 31.05.1990.

4. We have heard the Learned Counsel, Shri S.P. Kulkarni and Shri V.S. Masurkar for the respective sides and have considered all the papers in the case. As we have stated above, these are peculiar circumstances where the Applicant continued to work till his date of superannuation i.e. 31.05.1990, in actual terms, and on his approach to the Tribunal he was declared to have been retired w.e.f. 31.01.1989. It is important to note that in view of this and with reference to the relevant rules, the enquiry against him stood quashed. He now comes up to the Tribunal seeking that the second period of his employment be deemed to be regular employment. Shri S.P. Kulkarni argued that the pension rate and other retiral benefits should now be made available as if he retired in 1990. It is clear that once the order of this Tribunal has been made that the Applicant retired w.e.f. 31.01.1989 and that too on account of a relief sought by him to this effect, no other interpretation can be made. In fact, what

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is seen is, having acquired one benefit of securing a date of retirement, and securing freedom from the disciplinary enquiry, the Applicant now comes to this Tribunal to get other benefits on the ground that he actually worked.

5. In the facts and circumstances of the case, we find that the action of the Respondents in treating the remaining period (i.e. between 01.02.1989 to 31.05.1990) as re-employment is just and fair and there is nothing arbitrary or illegal about it. Once this is decided, the case for the claims made by the Applicant fail and cannot be provided to. It therefore must be concluded that for the period of re-employment the Applicant will be entitled to pension + (pay - pension) to put it technically. If any amount below this has been paid or been recovered, that shall be made good as per calculations to be made by the Respondents and communicated to the Applicant with details. This action shall be taken within a period of three months from the date of receipt of this order. It also follows that the pensionary and other retiral benefits of the Applicant shall be calculated on the basis that he retired on 31.01.1989 and the claims made by Applicant cannot be provided to him.

6. Subject to the above directions/observations, this O.A. is hereby disposed of. No costs.

B.N. Bahadur

(B.N. BAHADUR)
MEMBER (A).

Ashok Agarwal
(ASHOK AGARWAL)
CHAIRMAN.