

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 47/97

3.9.98

Date of Decision:

S.S.Shinde

.. Applicant

Shri V.S.Masurkar for Shri K.R.Yelva

.. Advocate for
Applicant

versus-

Union of India & Ors.

.. Respondent(s)

Shri J.P.Bodhar

.. Advocate for
Respondent(s)

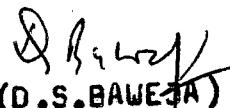
CORAM:

The Hon'ble Shri D.S.Bawej, Member (A)

The Hon'ble

(1) To be referred to the Reporter or not ?

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


(D.S.BAWEJ)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA NO.47/97

this the Thud day of September 1998

CORAM: Hon'ble Shri D.S.Bawej, Member (A)

S.S.Shinde,
B/13, Municipal Staff Colony,
Gilder Lane, Bombay Central,
Mumbai.

By Advocate Shri V.S.Masurkar
with Shri K.R.Yelwe

... Applicant

v/s.

1. Union of India
through the Secretary to
the Government of India,
Ministry of Energy,
New Delhi.
2. Secretary,
Department of Personnel & Training,
New Delhi.
3. The Under Secretary (Administration)
Government of India,
Department of Atomic Energy,
Anushakti Bhavan, Mumbai.
4. The Administrative Officer-III,
Government of India,
Department of Atomic Energy
Construction and Service Group,
V.S.Bhavan, Anushakti Nagar,
Mankurd, Mumbai.

By Advocate Shri J.P.Deodhar

... Respondents

ORDER

(Per: Shri D.S.Bawej, Member (A))

The applicant was appointed on 8.11.1982
in the Department of Atomic Energy, Government of
India. In the month of February, 1994 he made an
application through proper channel to the Maharashtra
Public Service Commission for the post of Ward Officer
in the Bombay Municipal Corporation. The applicant

was selected for the same. He resigned from the Department of Atomic Energy and after acceptance of his resignation, he was relieved on 20.8.1995 for joining the Bombay Municipal Corporation. The applicant had completed 12 years and 10 months of service in the Department of Atomic Energy. He made a request for payment of pro-rata pension benefits for his service in the Department of Atomic Energy. This request has been rejected as per the orders dated 9.5.1996 and 2.4.1996. Feeling aggrieved by this rejection, the present OA. has been filed on 19.12.1996 making prayer for the following reliefs :- (a) to quash the orders dated 9.5.1996 and 2.4.1996, (b) to declare that the applicant is eligible for pro-rata pension under the CCS (Pension) Rules and (c) to direct the respondents to make the payment of pro-rata pension as admissible.

2. The main contention of the applicant is that he had applied for the post of Ward Officer in Bombay Municipal Corporation through proper channel. ^(BMC) Bombay Municipal Corporation is a statutory/autonomous body of the State Government and therefore his case is covered by the instructions laid down by the Department of Personnel in the Office Memorandum dated 7.2.1986 read with O.M. dated 13.7.1992.

3. In the written reply, the respondents have strongly contested the claim of the applicant while admitting the main facts with regard to the total period of service in the Department of Atomic Energy, making an application through proper channel and submitting

~~of resignation~~ for joining ~~as~~ Ward Officer in Bombay Municipal Corporation. The respondents have contended that the Bombay Municipal Corporation is not an autonomous body as contemplated under the Pension Rules. Since the applicant was ~~neither~~ deputed by the Government nor absorbed in an autonomous body in the interest of public, the applicant is not eligible for any pro-rata benefits for his service in the Department of Atomic Energy.

~~also~~
The respondents have ~~also~~ stated that the claim of the applicant that BMC is to be equated with a statutory body solely on the ground that it is the outcome of an Act is belied by the clarification furnished by the Government of Maharashtra ~~stating~~ that the State Government does not extend any ~~pensionary~~ benefit of previous service for employees transferred from the State Government to the BMC or the ~~State Govt.~~ does not allow any ~~pensionary~~ benefit ~~for previous service~~ in respect of the Municipal employees absorbed in the State Government.

4. The applicant has not filed any rejoinder reply for the written reply of the respondents.

5. I have heard Shri V.S.Masurkar proxy to Shri K.R.Yelwe, learned counsel for the applicant and Shri J.P.Deodhar, learned counsel for the respondents.

6. Keeping in view the rival contentions of the parties, the central issue for deliberation ~~is~~ whether the Bombay Municipal Corporation is an autonomous body is envisaged in the Office Memorandum dated 7.2.1986 and 13.7.1992. The applicant has submitted that Bombay Municipal Corporation is a statutory body created under the Bombay Municipal Corporation Act and is

under the administrative control of Maharashtra Government. The applicant has further stated that the Municipal Corporation receive grants ^{for} from Maharashtra Government and all appointments to the posts about certain level, approval and sanction of Maharashtra Government is required. The applicant has also relied upon the order of this Bench in OA.NO.770/96 dated 18.9.1997. On going through this order, it is noted that the issue involved was whether the employees of the Zilla Parishad are the employees of the State Government. The Bench in its order had concluded that the employees of Zilla Parishad are Government employees of the State Government, keeping in view that they are governed by the service conditions as applicable to the State Government employees and 100% expenditure on account of pay and allowances is borne by the State Government. In the present case, in respect of Bombay Municipal Corporation, the applicant has not made any submission on this aspect. The applicant has not stated whether the staff of the Bombay Municipal corporation is governed by the service conditions as applicable to State Government staff. During arguments, the learned counsel for the applicant stated that the grant is being received by the corporation from the State Government but did not clarify whether the 100% expenditure of the employees is met by the State Government. In the absence of any such details, I am unable to accept the contention of the applicant that the ratio of this order is applicable to the case of the applicant. On the other hand, the respondents have brought on record the letter issued by the

State Government with regard to the status of Bombay Municipal Corporation on a clarification sought by the Department of Atomic Energy. This letter dated 23.11.1994 from the State Government has brought out that the Municipal Corporation of Greater Bombay has a different formula for fixing pay-scale and D.A. for its employees from Central or State Government. The Service Rules of the Municipal Corporation of Greater Bombay employees are also different from that of the State Government. It is further clarified in this letter that ~~if an~~ employee from the Municipal Corporation of Greater Bombay joins the service of the State Government, his previous services period is not counted while fixing his pay and pension. In view of this clarification furnished by the State Government and in the absence of any material brought on record by the applicant to support his contention as discussed earlier, I have no hesitation to hold that the Bombay Municipal Corporation is not an autonomous body as covered under the Office Memorandum dated 7.2.1986 and 13.7.1992.

7. The respondents in reply to the applicant dated 2.4.1996 have indicated that the pay scale and allowances of the staff of Bombay Municipal Corporation are different from that of State Government or Central Government. The applicant has repelled his contention stating that such a situation has been envisaged by Central Government and taking into consideration such disparity in the pay scales and service conditions, the detailed instructions have been issued as per letter dated 16.10.1989. This letter has been brought on record at Annexure-'A-IX'. The applicant contends

that as per Para 3 (b) of this letter, the applicant is entitled for pro-rata pension. On carefully going through this letter, it is noted that such ^a benefit is available only if the transfer of the employee is to a State Government or autonomous body as covered by the Office Memorandum dated 7.2.1986. In the present case, as already indicated, the applicant has taken job in Bombay Municipal Corporation which does not qualify as an autonomous body. Therefore, the applicant is not entitled for the benefit of pro-rata pension as envisaged in the letter dated 16.10.1989. For taking a job from Central Government to State Government or ^{an} autonomous body, the resignation given by the applicant is treated as technical resignation ^{he} benefit of the and will be given ~~as~~ service in the previous organisation. However, if the transfer to a ~~body~~ which is not declared as autonomous body, then any resignation given will not be a technical resignation but a normal resignation. In case of the normal resignation, as per the extant rules, the previous service does not qualify for pension. In the present case, the resignation of the applicant cannot be treated as a technical resignation for taking appointment in an autonomous body covered by the extant rules and therefore, I am unable to find any illegality in rejecting the claim of the applicant for payment of pro-rata pension.

8. In the result of the above, I am unable to find any merit in the claim of the applicant. The OA, therefore deserves to be dismissed and is accordingly dismissed. No orders as to costs.

D.S. Baweja
(D.S. BAWEJA)
MEMBER (A)