

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD.

D.A. No. 718 of 1989

DATE OF DECISION: - - - - -

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Between:-

M.V. Shankara Rao - - - - - Petitioner(s)

Shri G. Ramachandra Rao - - - - - Advocate for the
petitioner(s)

Versus

Union of India & another - - - - - Respondent.

Shri Naram Bhaskar Rao, Addl.CGSC. - - - - - Advocate for the
Respondent(s)

CORAM:

THE HON'BLE MR. B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HON'BLE MR. D.SURYA RAO, MEMBER (JUDICIAL).

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships Wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunals ?
5. Remarks of Vice Chairman on columns 1, 2, 4 (To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

NO

B.N.J. D.S.R.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
 AT : HYDERABAD

O.A.No. 718 of 1989

Date of Order: 23-5-1990

Between:

M.V.Shankara Rao .. Applicant

and

1. Union of India per Secretary
 Ministry of Agriculture, Deptt.
 of Rural Development, Krishi
 Bhavan, New Delhi.

2. Joint Agricultural Marketing
 Adviser to Govt. of India,
 Directorate of Marketing &
 Inspection, New Secretariat
 Building, Nagpur, Maharashtra.

.. Respondents

Appearance:-

For the Applicant : Shri G.Ramachandra Rao, Advocate.

For the Respondents : Shri Naram Bhaskar Rao, Addl.CGSC.

CORAM

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HONOURABLE SHRI D.SURYA RAO, MEMBER (JUDICIAL).

(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE SHRI D.SURYA RAO,
 MEMBER (JUDICIAL).)

1. The applicant herein is now working as Assistant Manager (Accounts) in Tobacco Board, Guntur. He states that he was initially appointed as Lower Division Clerk on 10-9-1956 in the office of the Senior Marketing Officer, Tobacco Grading, Guntur, under the administrative control of the 2nd respondent herein. While he was working as L.D.C., he was sent on deputation to work as Accountant in the Tobacco Export Promotion Council, Madras, w.e.f.1-2-1973. Subsequently he was absorbed

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as Accountant on 2-8-1973 in the Tobacco Export Promotion Council.

2. The applicant states that consequent to his absorption as Accountant in the Tobacco Export Promotion Council, Madras, he has submitted his resignation to the post of Lower Division Clerk which he was holding under the second respondent herein. ~~Though~~ ^{on} he tendered his resignation, his terminal benefits like pension and gratuity were not settled and paid. He therefore filed Writ Petition No.12294 of 1985 in the High Court of Andhra Pradesh seeking directions to the respondents to calculate and pay the terminal benefits due to him for the service rendered by him from 10-9-1956 to 1-8-1973. The Writ Petition was transferred to this Tribunal under section 29 of the Administrative Tribunals Act 1985 and the same is re-numbered as T.A.487 of 1986. This T.A. was allowed on 27-6-1986 with a direction to the respondents to calculate and pay the terminal benefits due to the applicant. Thereupon the 1st respondent issued a letter dated 21-10-1987 conveying the sanction of the President of India to the permanent absorption of the applicant as Accountant in the Tobacco Board, Guntur, previously Tobacco Export Promotion Council, w.e.f. 2-8-1973, on the terms and conditions envisaged in the Government of India, Ministry of Finance (Department of Expenditure) O.M. No.26(10)/EV(B)/75, dated 8-4-1976 as amended from time to time.

3. The applicant contends that before the disposal of the Writ Petition, the Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms, by its Office Memo No.28/10/84, Pension,Unit, dated 29-8-1984 issued orders relating to terminal benefits in respect of Central Government Employees going to Central autonomous bodies or vice-versa. He states that para 3(a) of the said proceedings, which is applicable to him, reads as follows:

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" This matter has been considered carefully and the President has now been pleased to decide that the cases of Central Government Employees going over to a Central autonomous body or vice-versa and employees of the Central autonomous body moving to another Central autonomous body may be regulated as per the following provisions:-

(a) In case of Autonomous Bodies where Pension Scheme is in operation:

i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him under the Government shall be allowed to be counted towards Pension under the autonomous body irrespective of whether the employee was temporary or permanent in government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employees of the autonomous bodies who are permanently absorbed under the Central Government.

The government/autonomous body will discharge its pension liability by paying in lumpsum as a one-time payment, the pro-rata pension/service gratuity/terminal gratuity and DCRG for the service upto the date of absorption in the autonomous body/government, as the case may be. Lumpsum amount of the pro-rata pension will be determined with reference to commutation table laid down in CCS (Commutation of pension) Rules, 1981 as amended from time to time.

ii) A Central Government employee with CPF benefits on permanent absorption in an autonomous body will have the option either to receive CPF benefits which have accrued to him from the Government and start his service afresh in that body or choose to count service rendered in Government as qualifying service for pension in the autonomous body by foregoing Government's share of CPF contributions with interest which will be paid to the concerned autonomous body by the concerned government department. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulated period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final.

4. The applicant states that in accordance with the terms and conditions laid down in the aforesaid proceedings, he submitted an option for counting of his previous service in the Central Government for purpose of full pension and gratuity under the Tobacco Board, where he has been absorbed permanently. This option was sent alongwith a covering letter on 19-11-1987

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to the 1st Respondent with copies to 2nd Respondent and the Chairman, Tobacco Board, Guntur. In the option form the applicant had categorically stated that he is prepared to refund the prorata retirement and other terminal benefits already received by him with interest thereon which was sanctioned and paid to him in the year 1987. After submitting the option, he sent several reminders. Finally the 1st respondent rejected the option of the applicant by his letter No.19-25/81-M.I, dated 22-6-1988 on the ground that the previous service of the applicant in the Central Government cannot be counted for full pension and gratuity in the statutory body like the Tobacco Export Promotion Council, since the applicant had not exercised his option within one year from the date of issue of Office Memo No.28/10/84, dt.29.8.1984. This order was communicated to the applicant by the 1st respondent by their letter No.19-25/81-M.I., dt.3-8-1989 through the 2nd respondent, who forwarded the same to the applicant under his covering letter dated 24-8-1989, which was received by the applicant on 31.8.1989.

5. The applicant contends that the order of the 1st respondent dated 22-6-1988 is illegal. It is contended that according to O.M. dated 29-8-1984 any option shall be exercised within one year from the date of absorption. The applicant was absorbed permanently in the Tobacco Board only pursuant to the order dated 21-10-1987 issued by the 1st respondent. Prior to that date neither the pro-rata terminal benefits were settled or paid nor the absorption of the applicant on permanent basis in the Tobacco Board was regularised by conveying the sanction of the President of India for the same. It is contended that he had submitted his option well within one year from 21-10-1987 i.e. the permanent absorption in Tobacco Board orders passed by the 1st respondent. It is further stated that he could not have given his option prior

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to that. Under these circumstances, he has filed the present application to issue an order or direction to the respondents calling for the records relating to the proceedings No.19-25/81-M, I, dated 22-6-1988, to quash the same and to issue a consequential direction to the respondents to give the benefit of Circular Memo No.28/10/84, dt.29-8-1984 treating the option given by the applicant as valid.

6. On behalf of the respondents a counter has been filed. It is alleged that since the applicant was sent on deputation to the Tobacco Export Promotion Council, Madras, where he was later absorbed as an Accountant w.e.f. 2-8-1973, it is not open to him to exercise the option at this distant point of time claiming that his services in the Government of India should count for pension and other terminal benefits in the autonomous organisation. It is contended that Memo No.28/10/84-Pension Unit, dated 29-8-1984 of the Ministry of Personnel and Administrative Reforms, Government of India, giving a right to exercise an option is restricted to only such of the officials whose date of permanent absorption was yet to be fixed. This facility has not been extended to the officials, whose date of permanent absorption was already decided.

7. It is contended that the applicant ought to have agitated this matter in the Writ Petition No.12294/1983 (T.A.No.487 of 1986) previously filed. Since the Central Administrative Tribunal by its order dated 27-6-1986 allowed the T.A.487 of 1986 with a direction for payment of pro-rata retirement benefits to the applicant, the said benefits were paid to the applicant. After receiving the pensionary benefits, he now wants to exercise option w.e.f. 9-11-1987, counting his past service with the Central Government for purpose of pensionary benefits. It is further alleged that in the earlier Writ Petition filed by the applicant he has accepted that his date of absorption in the Tobacco Export Promotion Council is 2-8-1973. The respondents therefore contend that the applicant has failed

to make out any case for grant of the relief prayed for and the application is liable to be dismissed.

8. We have heard Shri G.Ramachandra Rao, learned counsel for the applicant, and Shri Naram Bhaskara Rao, learned Central ~~Govt.~~ Standing Counsel for the Department. The facts narrated above disclose that from 10-9-1950 to 31-1-1973 applicant worked in the Government of India under the Directorate of Marketing and Inspection. On 1-2-1973 he joined the Tobacco Export Promotion Council (T.E.P.C), a Central Government sponsored organisation. He was confirmed in that organisation w.e.f. 2-8-1973. He accordingly tendered his resignation to the Directorate w.e.f. 2-8-1973 and that was accepted on 10-3-1976 by the Directorate. He claimed that he was entitled to a lumpsum amount towards leave salary and pension contribution for the period he had served in the Government of India. By order dated 27-6-1986 in T.A.No.487 of 1986 this Tribunal directed the respondent Directorate to calculate the terminal benefits due to the applicant for the service rendered by him as L.D.C. in the Government of India prior to absorption in T.E.P.C. and effect payment. Consequent thereto order No.19-25/81-M.I. dated 21-10-1987 was issued by the Ministry of Agriculture, Department of Rural Development that the applicant is permanently absorbed in the Tobacco Board w.e.f. 2-8-1973, that he shall be eligible for pro-rata pension and DCRG on the length of his qualifying service in Govt. of India till the date of his absorption in the Tobacco Board, that the pro-rata pension and D.C.R.G. be calculated as per CCS (Pension) Rules and that payment should be made from the date he would be eligible for voluntary retirement under Govt. of India or date of ~~absorption in the~~ Tobacco Board whichever is later. This order further gave the applicant the option to (a) ~~Review~~ ^{Receive at} the pro-rata monthly pension and D.C.R.G. as calculated or (b) ~~Reviewing~~ ^{Receive at} pro-rata gratuity and a lumpsum amount in lieu of

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pension worked out as per commutation tables. Where no option was exercised within 6 months, the applicant was directed to be governed by ^{alternatively (b)} ~~alterations~~. These orders were implemented and the applicant states he was paid a sum of Rs.2000/- as provisional gratuity in August 1986 and a sum of Rs.1050/- being provisional pension for the period July 1986 to September 1987. On receipt of the orders dated 21-10-1987 the applicant wrote another letter on 19-11-1987 inviting attention of the 1st respondent to O.M.No.28/10/198 Pension Unit, Ministry of Home (Department of Personnel and Administrative Reforms), dated 29-8-1984 stating that under this order he has a right to exercise an option to refund the pro-rata retirement and terminal benefits already received with interest so as to enable him to count the service under the Government of India for pension under the autonomous body. This request was rejected by the 2nd respondent by the impugned proceedings No.19-25/81 M.I., dated 22-6-1988.

9. The question that therefore arises for determination is whether the applicant has a right to refund the pro-rata pensionary benefits and terminal benefits with interest. The applicant claims a right to refund the pro-rata pensionary and terminal benefits paid to him with interest for the service rendered by him in the Govt. of India from 10-9-1950 to 2-8-1973 in view of the orders contained in Govt. of India O.M.No.28/10/84, dated 29-8-1984. These orders provide at para(3) that where a Central Government employee is allowed to be absorbed by an autonomous body, he will be allowed to count the service rendered by him under the Government to be counted for pension under the autonomous body after Government discharges the pension liability by paying in a lumpsum towards the pro-rata pension/service gratuity/terminal gratuity and D.C.R.G. (vide para 3(1) of the order dated 29-8-1984). This clause viz., para (3) obviously applies to those who are absorbed in an autonomous organisation after 29-8-1984 i.e. the date of the order. In regard to those absorbed earlier and

who have already been sanctioned or have received pro-rata retirement benefits or terminal benefits, para(5) of the O.M. dated 29-8-1984 is relevant and gives such employees an option (a) to retain such benefits foregoing the right to count the past service in the Government of India as qualifying for pension in the autonomous body or (b) to deposit the pro-rata retirement and terminal benefits already received with interest from the date of receipt to the date of deposit and to have the past service counted as qualifying service for pension under the new organisation. The option is to be exercised within one year of the issue of the O.M. dated 29-8-84 i.e. by 29-8-1985. After the close of the litigation viz., order of the Tribunal dated 27-6-1986 in T.A.487/1986 and after issue of order No.19-25/MI, dated 21-10-1987, the applicant on 19-11-1987 gave his option in terms of the O.M. dated 29-8-1984 opting to deposit the lumpsum amount received under the order dated 21-10-1987 with interest to enable him to have the past service in the Government of India as counting for pension in the new organisation. As already stated supra this request was rejected since the option was not made within one year of issue of the O.M. dated 29-8-1984. Obviously this action of the respondents is not valid. Till 27-6-1986 the right of the applicant for grant of terminal benefits was being illegally denied by the respondents. It was only pursuant to orders of the Tribunal that the right of the applicant for terminal benefits got crystallised and established. Immediately thereafter the applicant opted for the benefit under para 5(1)(b) of the O.M. dated 29-8-1984. The intention of this O.M. is to give the benefit of claiming past service for pensionary and other terminal benefits to those absorbed in autonomous organisations both prior to and after 29-8-1984. The applicant but for the illegal denial of his pensionary benefits should have got these rights determined long prior to 29-8-1984. If

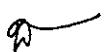
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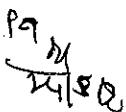
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that was done and he had yet not opted within one year from 29-8-1984 for the benefit of para 5(1)(b) of the said O.M. dt.29-8-1984, he could have been denied his right or claim but not otherwise. In accordance with the spirit of the O.M. dt.29-8-1984, his option made on 19-11-1987 should have been accepted and be allowed to count his past service in Government of India in the autonomous organisation viz., the Tobacco Board for pensionery benefits. Denying him this right would be arbitrary and violate his rights under Article 14 of the Constitution of India. In any event the applicant's case is governed by subsequent O.M.No.4(12)/85-P & PW, dated 31-3-1987 which provides that those Central Government employees absorbed in an autonomous body having a pension scheme will have an option to receive pro-rata retirement benefits or continue to have the benefit of continued service under Government and the autonomous body subject to the conditions laid down in the O.M.No.28/10/84-PU, dt.29-8-1984 but such option should be made within six months from the date of permanent absorption. This order makes applicable para 5(1)(b) of the O.M. dt.29-8-1984 to those absorbed in an autonomous organisation provided he has made the option within 6 months of permanent absorption. Though the applicant was permanently absorbed in the autonomous organisation from 2-8-1973, this was done retrospectively pursuant to the order No.19-25/81.M.I., dt.21-10-1987. Hence for purposes of O.M.No.4(12)/85-P&PW, dt.31-3-1987 the relevant date for exercising option is 21-10-1987. Since he has exercised his option within 6 months from the said date, he cannot be denied the rights conferred on similarly situated employees pursuant to the orders dated 29-8-1984 and 31-3-1987.

10. For the reasons given above, the application is allowed. The impugned order No.19-25/81-M.I., dated 22-6-1988 is set aside.


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The respondents are directed to give the applicant the benefit of para 5(1)(b) of O.M.No.28/10/84, dated 29-8-1984 and O.M.No.4(12)/85 P and P.W., dated 31-3-1987 and allow him to count the service rendered in the Government of India for pension and other terminal benefits in the Tobacco Board. This order is subject to the condition that he deposits pro-rata retirement and terminal benefits already received by him ^{payable to him} ~~in terms of~~ the order No.19-25/81-M.I., dated 21-10-1987 with interest at 6% p.a. from the date of receipt to the date of payment to the authority prescribed in O.M.No.28/10/84, dated 29-8-1984. Such payment will be made within one month from the date of receipt of this order. The parties are directed to bear their own costs.

B.N.Jayasimha
(B.N.JAYASIMHA)

VICE-CHAIRMAN

D.Surya Rao
(D.SURYA RAO)
MEMBER (JUDICIAL)

Dated: 23rd May 1990.

Arvind Reddy
REGISTRAR.

To

1. The Secretary, Union of India, Ministry of Agriculture, nr Department of Rural Development, Krish Bhawan, N. Delhi.
2. Joint Agricultural Marketing Adviser to the Government, Directorate of Marketing & Inspection, New Secretariat, Nagpur (Maharashtra).
3. One copy to Mr. G. Ramachandra Rao, Advocate, 1-3- 'Srinivas', Kavadi Guda, Secunderabad-500300.
4. One copy to Mr. M. Bhaskara Rao, Addl. CGSC.
5. One spare copy.

CHECKED BY

TYPED BY: *24/5*

COMPARED BY :

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH:HYD.

HON'BLE MR. B. N. JAYASIMHA: V.C.

HON'BLE MR. D. SURYA RAO: MEMBER: (JUDL)

AND

HON'BLE MR. S. NARASIMHA MURTHY (M) (J)

AND

HON'BLE MR. R. BALASUBRAMANIAN: (M) (A)

DATED: 23.5.90

ORDER/JUDGMENT:

M.A./R.A./C.A./No. IN

T.A.No. W.P.No.

O.A.No. 718 /69

Admitted and Interim directions issued.

Allowed.

Dismissed for default.

Dismissed.

Disposed of with direction.

M.A. ordered.

No order as to costs.

Sent to Xerox on:

