

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

O.A.No.746/91
O.A.No.81/91 to 89/91
O.A.No.284/91
O.A.No.285/91
O.A.No.472/91
O.A.No.849/91
O.A.No.850/91



Between:-

Date of Decision: 27-6-94.

1.D.Prabhakar Rao	...Applicant in O.A.No.746/91.
2.B.Satyasi Rao	...Applicant in O.A.No.81/91.
3.Duggaraju Ramachandra Rao	...Applicant in O.A.No.82/91
4.Salupu Satyanarayana	...Applicant in O.A.No.83/91
5.Cherukuni Venkataaramana	...Applicant in O.A.No.84/91
6.Bandi Naguraju	...Applicant in O.A.No.85/91
7.Pasala Viraprasad	...Applicant in O.A.No.86/91
8.Medlapalli Ramaraju Patnaik	...Applicant in O.A.No.87/91
9.Ukuju Ropalakrishna	...Applicant in O.A.No.88/91
10.Potnuru Rajeswara Rao	...Applicant in O.A.No.89/91
11.Kurna Mallikarjuna Rao	...Applicant in O.A.No.284/91
12.B.Satyas Rao	...Applicant in O.A.No.285/91
13.Devulapalli Veeru Venkata Satyanarayana Murthy	...Applicant in O.A.No.472/91
14.C.V.S.Ramakrishna	...Applicant in O.A.No.849/91
15.V.Curen Rao	...Applicant in O.A.No.850/91

VS

1.Union of India,rep. by its Secretary, Ministry of Defence, New Delhi.	...Respondent in all the O.As.
2.Chief of Naval Staff, Naval Head Quarters, New Delhi.	...Respondent in all the O.As Except O.A.No.849/91.
3.The Flag Officer Commanding in Chief, Eastern Naval Command, Naval Base, Visakhapatnam.	...Respondent in all the O.As Except O.A.No.849/91

contd...

4. The Flag Officer, Commanding in Chief, Mukhalaya, Poorv Nausena Kaman, Nausena Base, Vizag - 14. Respondent in O.A.No.849/91.

5. The Base Victualling Officer, Base Victualling Yard, Visakhapatnam - 530 009. Respondent in O.A.No.849/91

6. The Officer in Charge, Weapon Equipment Depot, Eastern Naval Command, Naval Base, Visakhapatnam. Respondent in O.A.No.746/91.

7. The Commanding Officer, I.N.S. Veerabahu, Visakhapatnam 14. Respondent in O.A.No.850/91.

Counsel for the Applicants

: Mr. M.P. Chandramouli, Advocate in all the O.As.

Counsel for the Respondents

: Mr. N.R. Devraj, Sr.CGSC in all the O.As except O.A.No.850/91 & 746/91.

: Mr. M.V. Raghav Reddy, Addl.CGSC, in O.A.No.850/91.

: Mr. N.V. Ramana, Addl.CGSC, in O.A.No.746/91

CCR.M:

THE HON'BLE SHRI A.B.GORTHI : MEMBER (ADMN.)

THE HON'BLE SHRI T.CHANDRASEKHAR REDDY : MEMBER (JUDL.)

JUDGMENT

As per Hon'ble Shri A.B.Gorthi : Member(Admn.)

The relief claimed by the applicants in all these O.As being identical and the issues raised for determination being similar, all the O.As are disposed of by the common order.

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2. The facts common to all the O.As are briefly stated. The applicants joined the civilian establishment of Headquarters, Eastern Naval Command, on different dates between 1969 and 1974, in the posts of LDC/Steno-typist/Asst. Store Keeper. Their initial appointment was as casual temporary employees. Except for the applicants in O.A.No.746/91 and O.A.No.850/91, all others continued to serve without their services being regularised.

3. Visakhapatnam Steel Plant (V.S.P. for short) which was then newly established, placed heavy demands on the Employment Exchange for recruitment of its staff. The applicants sought permission of the competent authority for registering their names with the Employment Exchange for seeking brighter careers. Most of them being casual temporary employees were naturally keen to secure regular jobs. The respondents reacted positively and granted each of them a 'no objection certificate' as per extant instructions.

4. On being sponsored by the Employment Exchange, the applicants were offered suitable jobs in the V.S.P. They immediately requested the Naval authorities for being released immediately and for that purpose submitted letters of resignation. Their resignations were promptly accepted and immediately thereafter the applicants joined the V.S.P. on different dates between 1980 and 1983.

5. In the meantime, some casual temporary employees of the civilian establishment of Eastern Naval Command approached Andhra Pradesh High Court (W.P.NO.239/1980). The Writ Petition was allowed with a direction for regularisation of the services of the petitioners from the dates of their initial engagement. Several other such employees approached the Tribunal and were given similar relief. Consequently, the applicants in the O.As before us also were regularised from the dates of their initial engagement. As a result, their service in the Navy, which initially did not qualify for pension, being in the nature of a casual temporary service, was converted to regular service which qualified for pension. With this development, those who rendered 10 years or more service in the Navy requested the authorities concerned for pro-rata pension. Some others whose qualifying service in the Navy fell short of the minimum length of 10 years, sought for the grant of lieut.

6. The representations of the applicants were considered by the Naval authorities but were turned down for reasons stated below:-

- (a) The applicants did not follow proper channel to seek their employment in V.S.P.
- (b) The 'No objection certificate' issued to the applicants was only for the purpose of registering their names with the Employment Exchange, that too, for a higher post.
- (c) The request for lien with the Navy was made long after the applicants were duly absorbed in V.S.P.

7. Central Civil Services(Pension) Rules, 1972 Rule 26(1) lays down that resignation from a service or post entails forfeiture of past service. An exception to this general principle is to be found in Rule 37, which prior to its amendment in 1992 read as under:-

"37. Pension on absorption in or under a corporation, company or body.

A Govt. servant who has been permitted to be absorbed in a service or post in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government shall, in such absorption, be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Government applicable to him.

Provided that no declaration regarding absorption in the public interest in a service or post in or under such corporation, company or body shall be required in respect of a Govt. servant whom the Government may, by order, declare to be a scientific employee.

8. Thus, if a Govt. servant is 'permitted' to be absorbed in Public Sector Undertaking, he shall be deemed to have retired from the date of such absorption. In the instant case, the applicants sought permission of the authorities for enrolling their names

*Deleted by G.I., M.F., Notification No.F.4(1)-E.V(B)/73, dt. 8.10.75.

**Deleted by G.I. Dept. of Personnel & P.R., Notification No.F.38(4)-Pension(A)/80, dt. 8.8.1980.

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with the Employment Exchange and the said permission was given. Secondly, in their letters seeking resignation from service, they clearly indicated that they were selected for employment with V.S.P. and that they should be relieved early so as to enable them to join V.S.P. Acceptance of resignation under such circumstances would clearly imply that the applicants were 'permitted' to join the Public Sector Undertaking. This would be evident even from the office Memorandum issued in amplification of Rule 37 of the C.C.S.(pension) Rules, 1972.

9. Department of Personnel O.M.NO.70/62/62-Ests(A) dt.22.1.1966 and 27.7.1968 permit a Govt. servant selected for appointment in a Public Sector Undertaking to be retained on lien for 2 years or till he is permanently absorbed in the Undertaking, whichever is earlier, subject to certain conditions.

10. O.M.NO.78/1/72-Ests(c) dt.21.4.1972 governing the retirement benefits reads as under:-

"2. The question of retirement benefits which may be provided to the above category of permanent Govt. servant undertakings alone, has been under the consideration of Government for some time. It 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 first service under the Government as are admissible to a permanent Govt. servant on deputation to the public sector undertaking on his permanent absorption therein. Thus, permanent Govt. 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, etc. and who are absorbed hereafter on 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."

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11. There was some distinction between the Govt. servant who got absorbed in public interest and the one getting absorbed on his own volition for the purpose of grant of pro-rata retiring benefits. That distinction was removed vide Department of Personnel O.M. dated 25.3.1977 with the exception that in the case of Govt. servant joining a Public Sector Undertaking on his own volition, the extent of leave that can be carries forward would be limited to 120 days.

12. Taking into consideration the provisions of Rule 37 of the C.C.S. (Pension) Rules, 1972 read with the aforementioned Officer Memoranda it would be evident that the applicants have sufficient complied with the procedure prescribed and cannot be said to have left the Navy without being 'permitted'. As most of the applicants were at that time not eligible for pension for want of 'regular service' in the Navy, a certain amount of casualness crept in on either side in the seeking as well as in the acceptance of the resignations. The question of eligibility of retiral benefits cropped up consequential to the judgments of the Andhra Pradesh High Court and the Tribunal, which were delivered years after the applicants were absorbed in V.S.P., regularising the services of the applicants from the dates of their initial engagement.

13. The respondents stated that the 'No objection certificates' issued to the applicants were for allowing the applicants to seek 'higher posts', whereas the applicants accepted lower posts in V.S.P. The said contention of the respondents is not borne out from t

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material before us. On the contrary, some of the applicants who were working as Store Keepers stated that in the new appointment of Asst. Store Keeper in V.S.P. they would be receiving higher emoluments. In the same organisation, a higher post is usually the one designated as higher in the hierarchy but when posts are to be compared between different organisations, the more relevant factor to determine whether a post is higher or not should be emoluments attached to the post and not merely its designation. It cannot, therefore, be said that any of the applicants before us left a higher post to join a post which is less lucrative.

14. The applicants in O.A.s No.849/91 and 285/91 were granted lien for a period of one year. This was on account of the fact that the period of their regular service was falling short of 10 years by a few months. As regards the request of the other applicants for granting them lien, the respondents rejected the same for the reason that their request for grant of lien was made long after their absorption in V.S.P. Ordinarily lien may be granted under the extant instructions for a period not exceeding 2 years or till the date of absorption of the Govt. servant in the Public Sector Undertaking whichever is earlier (underlined for emphasis). We, therefore, find that the respondents acted rightly in refusing to grant lien to those of the applicants who had sought for such lien after their absorption in V.S.P.

15. Some of the applicants before us did not render the minimum qualifying service of 10 years in the Navy. The rules providing for pro-rata pension apply only to those who have rendered at least 10 years qualifying service in the parent Govt. department. Consequently, the plea of such of the applicants who did not complete 10 years qualifying service in the Navy for grant of pro-rata pension has to be rejected.

16. In view of our above observations, we allow O.A.s No.82/91, 83/91, 86/91, 88/91, 285/91, 746/91, 849/91 and 850/91, the applicants wherein rendered more than the minimum period of 10 years of qualifying service in the Navy. The respondents are hereby directed to consider the cases of the applicants in the aforesaid OAs for grant of pro-rata pensionary benefits in accordance with the extant instructions, within a period of 6 months from today.

17. As regards the other OAs, namely O.As 103/91, 04/91, 05/91, 07/91, 09/91, 284/91, and 472/91, the same are hereby dismissed as the applicants did not render the minimum required period of qualifying service in the Navy.

18. No order as to costs.

Sd/-
Deputy Registrar (Judl.)

CERTIFIED TO BE TRUE COPY

24/7/94

Date. 24/7/94

Court Officer,
Central Administrative Tribunal,
Hyderabad Bench, Hyderabad.

Copy to:-

1. The Secretary, Ministry of Defence, Union of India, New Delhi.
2. Chief of Naval Staff, Naval Head Quarters, New Delhi.
3. The Flag Officer Commanding in Chief, Eastern Naval Command, Naval Base, Visakhapatnam.
4. The Flag Officer, Commanding in Chief, Mukhyalaya, Poorv Navsena Kaman, Nausena Base, Vizag-14.
5. The Base Victualling Officer, Base Victualling Yard, Visakhapatnam-009.
6. The Officer in Charge, Weapon Equipment Depot, Eastern Naval Command, Naval Base, Visakhapatnam-14.
7. The Commanding Officer, INS Virabahu, Visakhapatnam-14.
8. 5 copies to Mr. M.P.Chandramouli, advocate, CT, Hyd.
9. One copy to Mr. N.R.Devraj, Sr. CGSC, CAT, Hyd.
10. One copy to Sri. N.V.Raghava Reddy, Addl. CGSC, CAT, Hyd.
11. One copy to Sri. M.V.Ramana, Addl. CGSC, CAT, Hyd.
12. Copy to Reporters ^{of All benches} as per the standard list of CAT, Hyd.
13. One copy to Library, CAT, Hyd.
14. One spare copy.

YLR
RSM/-

14/7/94

Case No.	0.A.746/94/Le
Officer	27-6-94
Conc.	15-7-94

ADYOGA
W. & CHANDRAMOULI