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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 1554/93.

Dt. of Decision : 20-10-94.

B. Sudarsanam

.. Applicant.

Vs

1. Union of India, Rep. by the
Secretary, Ministry of Human
Resources Development Dept.,
of Youth Affairs, Sports,
New Delhi.
2. The Commissioner, Information
and Public Relations Department,
Govt. of A.P., Hyderabad.

.. Respondents.

Counsel for the Applicant : Mrs. S. Thripurasundari

Counsel for the Respondents : Mr. N.R. DEVARAJ, Sr. CGSC.

Mr. D. Panduranga Reddy, SC for A.P.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

O.A. 1554/93.

Dt. of Decision : 20-10-94.

ORDER

¶ As per Hon'ble Shri A.V. Haridasan, Member (Judl.) ¶

This is a peculiar case in which the applicant who rendered service initially with the State Government and subsequently with the Central Government is not being paid any retiral benefits. The Central Government ^{is} ~~taking~~ ^a ~~stand~~ that ^{it} ~~is~~ the State Government which is responsible for payment of pension to him. The facts in narrow ~~campus~~ lie thus, The applicant who was appointed as a Social Education Organiser in the service of the Government of A.P. on 1.5.1961, was taken on deputation as Youth Co-ordinator in the Nehru Yuva Kendra, Krishna District, in the year 1977. While he was in the service of the Nehru Yuva Kendra, he was sought to be repatriated by the Central Government to the State of A.P. in September 1985. Aggrieved that, by the applicant ~~approached~~ the High Court of A.P. in writ petition No. 10995/1985, which, after commencement of the Administrative Tribunals Act, was transferred to this Tribunal. The writ petition re-numbered as T.A. No. 105/88 was disposed of by order dt. 15.3.1990 with the following observations.

"It is clear that the case of the applicant is substantially similar to that of the applicants before the Principal Bench in Suraksha Markanda's case. The only difference was that he was sought to be sent back to his parent department on 16.9.1985 which was on the request of the parent department. However, the said attempt to revert the applicant to the parent department

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could not fructify because of the stay orders issued by the High Court in the Writ Petition which has given rise to the present transfer application. Since the reasoning and dicta of the Principal Bench in Suraksha Markanda's case is equally applicable to the applicant and he also is deemed to have been appointed on regular basis at the time of initial constitution, to ask him to go back to his parent department and restart his career afresh from the stage he left off long years ago in 1977 is as held by the Principal Bench arbitrary and a colourable exercise of power. We would accordingly quash the impugned office order No. 304/85 YS.I, dated 4.9.1985. Respondents 1 and 6 are directed to give the same reliefs as given to similarly placed employees in Suraksha Markanda's case viz.,"

"(i) The impugned orders dated 28th March, 1987 and 13th of April 1987 are hereby quashed as being violative of Articles 14 and 16 of the Constitution as indicated above."

"(ii) the applicants are declared to be Central Government employees and they are deemed to have been absorbed in the cadre of Youth Co-ordinators at the 'initial constitution' as per amended Recruitment Rules, 1986;"

"(iii) the respondents shall ensure and guarantee to those of the Youth Co-ordinators who had put in five or more years of service upto 30.6.87, employment in the Nehru Yuva Kendra

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Sangathan, if they so choose as Youth Co-ordinators on the existing terms and conditions of their service including pay and other emoluments to which they were entitled as on 30.6.87 or on a subsequent date when they are so absorbed by the Sangathan. It shall however be open to them to repatriate these of the Youth Co-ordinators, who want to be repatriated to their respective parent departments 'of their own free will', provided their lien in the State Government has not yet been terminated. The absorption of the applicants shall be on "first come first served" basis i.e., strictly in accordance with their continuous length of service as Youth Co-ordinators."

"(iv) Till the respondents are able to get the applicants suitably absorbed in the Sangathan protecting their present conditions of service and emoluments, they shall retain the services of the applicants with them on the existing terms and conditions, of course, it shall be open to the respondents to utilise their services on any other post of equal status and pay scale."

Dis-satisfied by the decision rendered by this Tribunal in the transfer application, the Union of India filed a Special Leave Petition ^{before} in the Supreme Court challenging the decision. ^{also} But this special leave petition was dismissed. Consequently, the applicant continued in the services of the

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Central Government and was allowed to retire on superannuation on 30-4-1992. Though he retired on superannuation, he was not paid any pensionary benefits. He made several representations ^{to} the Central Government. But the Central Govt. only wrote to the State Govt. stating that it was ^{the} liability of the State Govt. to pay pension to the applicant. ^{To} cut the long story short, either from the State Government or from the Central Govt., the applicant did not get anything towards his pensionary benefits. It is under these circumstances that the applicant has filed this application for a direction to the first respondents to pay him pension with interest at the rate of 12% per annum for delayed payment. The applicant contends that as the decision of the Tribunal in T.A.No. 105/88 has become final, and as he retired from the service of the Central Government, there is no justification for the Central Govt. to disown the liability to pay his pensionary benefits.

2. The respondents' contention is that as the judgement of the Tribunal in T.A.No. 105/88 was only based on the decision of the Principal Bench of the Central Administrative Tribunal in Suraksha Markanda's case and as the SLP filed against the above said judgement in Suraksha Markanda's case is still pending before the Supreme Court, it is not possible for the Central Government to take a decision to grant pension to the applicant. It ~~is~~ has been also contended that the Central Government on receipt of the representation of the applicant claiming pension had addressed the State Govt. stating that it was the State Govt. responsibility to pay pension to the applicant and requested that an early action may be taken in the matter so that the applicant could get his pension.

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3. I have carefully gone through the pleadings and documents on record and I have also seen a copy of the judgement in T.A. No. 105/88 and a copy of the order of the Supreme Court dismissing the SLP filed by the Union of India against this order. It is ^a fact beyond dispute that right from the year 1977 onwards the applicant has been serving the Central Government and that the Tribunal in T.A.No. 105/88 had declared that the applicant should be deemed to have been appointed to the regular service of the Central Govt. This declaration by this Tribunal that the applicant should be deemed to have been appointed to the regular service to the Central Govt. has become final as far as the applicant and the respondents are concerned as SLP filed by the Union of India has been dismissed by the Supreme Court. It is true that the Tribunal in T.A.No. 105/88 for reaching conclusion it did in that case relied upon the judgement of the Principal Bench in Suraksha Markanda's case. But the pendency of SLP against the judgement of Suraksha Markanda's case before the Supreme Court especially as there is no interim order issued by the Supreme Court staying payment of pensionary benefits to pensioners who retired during the pendency of this appeal and in the light of the fact that the SLP filed against the judgement in T.A. No. 105/88 between the applicant and the respondents was dismissed by the Supreme Court, I am of the considered view that it is not open for the first respondent to deny the liability to meet the pensionary benefits claimed by the applicant. It is well settled that the pension is not bounty. It is the propriety earned by the employee by virtue of services rendered by him to the Government. An employee who retired on superannuation is solely dependent on this pensionary benefits

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for the remainder of the life, It is unjust to deny him the pension on account of some doubts ^{lingering} ~~emerging~~ in the mind of the authority competent to sanction the pension. This is not a solidatory case in which the services of a State Govt.

employee has been taken on deputation and subsequently absorbed in the Central Government; there should have been several cases in the past of this nature and it is not as if there is no rule and regulation or practice as to how the pensionary claims of such individuals are to be settled. In Govt. of India instructions O.M. No. 28(10)/84-P & PW/Vol. II, dated 7th February, 1986, 17th June, 1986, 30th October, 1986, 20th March, 1987, etc., in the third paragraph regarding the liability of payment of pension it has been stated as follows:

"3. The question of extension of various benefits like counting of service, etc., in the cases of (i) employees of the Central Government absorbed in State Autonomous Bodies, and (ii) employees of Central Autonomous Bodies absorbed in State Governments and State Autonomous Bodies; and vice versa, has been considered in consultation with the State Governments. After careful consideration, the President has now been pleased to decide that these cases may be decided in accordance with the principles as laid down in the Department of Personnel and Administrative Reforms, O.M.No.28/10/84-Pension Unit, dated 29-8-1984 (vide Section V). The cases of Central Government servants appointed in State Governments and vice versa will continue to be decided as hitherto". (Emphasis supplied)

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This Government of India instruction is available Under Section VII, page 422 of the Swamy's Pension Compilation 12th Edition. It is evident from the above Government instructions that regarding the settlement of pensionary claims of State Government employees absorbed in the Central Government, there has been a practice followed by the concerned Governments. I am at a loss to understand why the government in this case did not follow the practice and to see that the pensionary claim of the applicant was settled, though he retired in the year 1992. Hence I am of the view that the interest of justice in this case will be met if the pensionary claims of the applicant are finally settled in consultation with the State Government if required, within a reasonable time and to pay whatever is due to the applicant towards pension and other retiral benefits with interest for the delay in payment.

4. In the result, the application is disposed of directing the first respondent to settle the pensionary claims of the applicant, if necessary, after consultation with the second respondent and to pay to the applicant all the pensionary benefits due to him within a period of 6 months from the date of receipt of a copy of this order together with interest at 12% per annum from the date 3 months after the date of his retirement. It is also made clear that the applicant should be deemed to have been absorbed as an employee of the Central Government as held in T.A. 105/88 and retired as a Central Government Employee.

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The second respondent is directed to forward the pension papers and ~~some~~^{service} records of the applicant received by it from the Central Government, with all necessary details and also to make its contribution in regard to settlement of the pensionary claim of the applicant forth with at any rate within two months from the date of receipt of the settlement of the applicant's pensionary benefit and to pay him the same within the time stipulated. There is no order as to costs.


(A.V. HARIDASAN)
MEMBER (JUDL.)

Dated : The 20th October 1994.
(Dictated in Open Court)


DEPUTY REGISTRAR 10/10/94

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Copy to:

1. The Secretary, Union of India, Ministry of Human Resources Development Department, of Youth Affairs, Sports, New Delhi.
2. The Commissioner, Information and Public Relations Department, Govt. of A.P., Hyderabad.
3. One copy to Mr.S.Thripurasundari, Advocate, 11-6-868, Red Hills, Hyderabad.
4. One copy to Mr.N.R.Devraj, Sr.CGSC, CAT, Hyderabad.
5. One copy to Mr.D.Panduranga Reddy, SC for A.P. CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. One spare copy.

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10/11/94

Typed by
Checked by

Supervised by
Approved by

THE CENTRAL ADMINISTRATIVE TRIBUNAL

THE HON'BLE MR. A. V. H. N. S. : MEMBER,

AND

THE HON'BLE MR. A. S. GURTHI : MEMBER

Dated: 20.10.94.

ORDER/JUDGMENT.

M.A./B.P/C.P/No.

O.A.NO. 1554/93 in
T.A.NO. (W.P.NO.)

Admitted and Interim Directions
Issued.

Allowed.

Disposed of with Directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

No spare copy

Central Administrative Tribunal
DESPATCH
24 NOV 1994
HYDERABAD BENCH.

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for 10/11/94