

(82)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1064 of 1993

DATE OF ORDER: 13.6.96

BETWEEN:

V.PARANKUSHA RAO

.. Applicant

and

1. Union of India, rep. by the Secretary,
Ministry of State (Personnel, Public
Grievances & Pension), Ashoka Road,
New Delhi,
2. The Officer on Special Duty,
Coal Mines Labour Welfare Organisation,
Dhanbad, Jagjivan Nagar, Bihar State,
3. The Union of India rep. by the Secretary,
Ministry of Energy,
Lok Nayak Bhavan,
New Delhi.
(Respondent No.3 was impleaded vide
Court orders dt.30.9.93 in
M.A.No.739/93)

.. Respondents.

COUNSEL FOR THE APPLICANTS: Shri M.RAMA RAO

COUNSEL FOR THE RESPONDENTS: SHRI N.R.DEVARAJ, Sr.CGSC

HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE CHAIRMAN

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMINISTRATIVE)

JUDGEMENT

(AS PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMINISTRATIVE))

Heard Shri M.Rama Rao, learned counsel for the applicant and Shri N.R.Devaraj, learned senior standing counsel for the respondents.

2. On passing of the Coal Mines Labour Welfare Fund (CMLWF for short) (Repeal) Act, 1986, the Coal Mines
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Labour Welfare Organisation stood transferred to the Subsidiaries of Coal India Limited and Singareni Coal Company with its assets and liabilities on regional basis with effect from 1.10.86. The employees of erstwhile CMLWF were also transferred to subsidiaries of Coal India Ltd. and Singareni Coal company Ltd. from 1.10.86. The services of the applicant were transferred to Singareni Coal Company Limited with effect from 1.10.86 as by then he was posted in Andhra Pradesh Coalfields. Immediately after transfer of the said organisation to Coal Companies all the employees were served with option papers to opt for any one of the following:-

"(i) I do hereby opt for the retention of the Government Service;

or

(2) I do hereby opt for the absorption in the subsidiary of CIL in company's pay scale and terms and conditions;

or

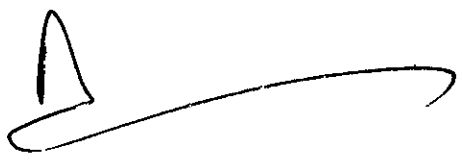
(3) I do hereby opt for the absorption in the subsidiary of CIL but to retain the Government pay scale and service conditions including pensionary benefit."



3. The prorata pension and other retirement benefits from the Government to permanent Ex-CMLWF employees who have completed more than 10 years of service is to be regulated in accordance with the Government of India O.M.No.4(8)/85-P&PW dated 13.1.86 and Ministry of Coal's letter No.S-21019/2/83-CSW dated 9.1.85 and also the Government letter of even number dated 21.6.85 and 5.5.89.

4. Subsequently another memo No.4/18/87-P&PW(D) dated 5.7.89 (Annexure-I) under Section VIII was issued in regard to the question of settlement of pensionary terms on conversion of a Government Department or a segment thereof or a Government office into a Central Public Sector Undertaking/Autonomous Body in the light of the recommendations of the Committee of the National Council (JCM). This OM stipulates terms and conditions applicable in regard to the pensionary terms in the case of en masse transfer of employees.

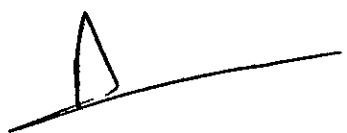
5. The applicant herein was transferred and absorbed in Singareni Collieries Co. Ltd., on 1.10.1986 in terms of OM dated 13.1.86. On the basis of that OM, the applicant was to be given pensionary benefits for the period he worked in the Government i.e., from 1966 to 1.10.86. As the applicant had completed 55 years of age in the month of February 1992, the pro rata pension from the Government was fixed from 1.2.92 in accordance with the OM dated 13.1.86. The applicant submitted a memo to the concerned authorities for fixing his ~~pro rata pension from the~~



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pro rata pension from the Government in accordance with the memo dated 5.7.89 i.e., ^{payment of pensionary arrears} /from 1.10.1986, the date of the absorption in Singareni Collieries Co. Ltd. instead of fixing his prorata pension from the Government with effect from 1.2.92 on the basis of the earlier memo dated 13.1.86 on the plea that his case is similar to those absorbed in a Public Sector Undertaking on the basis of the OM dated 5.7.89. As he had not received reply to the memo, he made a representation through an Ex-Member of Parliament. The representation of the Ex-MP was replied in terms of the letter at Annexure A-V (Page 15 of material papers in the OA) wherein it is stated that the "OM dated 5.7.89 will have only prospective effect and those who were absorbed earlier to that memo will be governed by the extant rules in force on that date. As such, retrospective application of the OM dated 5.7.89 would lead to similar demands from others for application of other orders issued by the Government from time to time and it would have substantial financial implications and hence it has not been found possible to extend the provisions of the OM dated 5.7.89 to pre-5.7.89 cases of absorption."

6. This OA is filed praying for a direction to the respondents to pay him pro rata pension from the Government from the date of his absorption in the public sector undertaking i.e, from 1.10.86 following the memo dated 5.7.89 and Rule 37 of CCS (Pension) Rules, 1972 with all consequential benefits.



7. The respondents have filed a reply resisting the prayer. The main contention of the respondents in not granting the relief is that the OM dated 5.7.89 will take effect only from a prospective date and not with retrospective effect as retrospective application of this OM will involve heavy expenditure. As the applicant was absorbed in Singareni Collieries Co. Ltd, with effect from 1.10.86, the extant instructions on that date viz, OM dated 13.1.86 will be applicable to him.
8. Shri N.R.Devaraj, learned senior standing counsel for the respondents further submitted that the applicant is entitled for prorata pension from the Government for the services rendered by him in the Government Department in terms of the OM dated 13.1.86 apart from the pensionary ~~-----, to get as per the~~ service conditions of Singareni Collieries Co. Ltd, for the service rendered by the applicant in that organisation i.e., from 1.10.86 till his superannuation in Singareni Collieries Co. Ltd.
9. The main contention of the applicant in this OA is that the instructions given in the memo dated 5.7.89 should be applied retrospectively in his case and that his pro rata pension from the Government is to be governed by the Para (d)(ii) of OM dated 5.7.89.
10. The question now arises in this OA is whether the OM dated 5.7.89 can be applied retrospectively even to those who were absorbed in the Public Sector Undertakings earlier to the date of issue of the OM dated 5.7.89.



11. Before going into the various contentions, it is necessary to reproduce the instructions as incorporated in the OM dated 13.1.86, and 5.7.89 in regard to the payment of pro rata pension / for better appreciation of this case. The relevant portion in this connection in OM dated 13.1.86 is as follows:

"In supersession of the Ministry of Finance (Department of Expenditure) Office Memorandum No.F.2(6)/EV(A)/62 dated 5th November, 1964, it has not been decided that the pensionary terms in respect of Government employees who are transferred to an autonomous body/public sector undertaking on the conversion of a Central Government Department/Office into an autonomous body or a public undertaking would be governed by the following conditions:-

(a) xxxx xxx xxxx xxxx xxxx

(b) xxxx xxxxx xxxx xxxx xx

(c) The Government employees who opt to be governed by the rules of the autonomous body or public undertaking shall become liable to the rules of the autonomous body or undertaking from the date of their transfer. For the service under the Government, they will receive following retirement benefits:-

(i) Permanent Central government employees who have completed 10 years or more service will receive pro-rata retirement benefits.

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(ii) xxxx xxxxx xxxxxxxx

(d) The retirement benefits would become payable either from the earlier date from which Government servant could have retired voluntarily under the rules applicable to him (except under the scheme of voluntary retirement on completion of 20 years of qualifying service) or from the date of transfer to the undertaking/corporation whichever is later."

The relevant portion of the OM dated 5.7.89 reads as under:-

"The question of settlement of pensionary terms on conversion of a Government Department or a segment thereof or a Government Office into a ^{Central} Undertaking/Autonomous Body has been reviewed in the light of the recommendations of the Committee of the National Council (JCM). It has been decided that, in partial modification of this Department's Office Memoranda No.4(8)/85-P.& P.W., dated the 13th January, 1986 [Order (3) below] and No.4(8)/85-P.& P.W., dated the 30th October, 1986 [Order (4) below], the following terms and conditions will be applicable in the case of en mass transfer of employees:-

(a) xxxx xxxxx xxxxx xxxxxxxx



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(b) xxxx xxxx xxxx xxxx xxxx

(c) xxxx xxxx xxxx xxxx xxxx

(d) The permanent Central Government servants who have completed 10 years or more of service and who opt for the retirement benefits of a PSU/Autonomous Body will receive pro rata retirement benefits for the service rendered under the Government. These will be regulated as follows:-

(i) xxxx xxxx xxxx xxxx xxxx

(ii) Where the employees opt in favour of monthly payment of pro rata pension, the same shall be allowed to be drawn with effect from the date of permanent absorption in a PSU/Autonomous Body. No part of pro rata pension will be allowed to be commuted either at the time of permanent absorption or any time thereafter.

(iii) to (v) xxxx xxxx xxxx xx"

12. From the above it is seen that in terms of memo dated 13.1.86, the Central Government employees with 10 years or more service and absorbed in public sector undertaking or autonomous body are entitled to receive pro-rata retirement benefits from the Government from the earliest date from which the Governemnt servant could have retired voluntarily under the rules applicable to him (except under the scheme of voluntary retirement on

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completion of 20 years of qualifying service) or from the date of transfer to the public sector undertaking/corporation whichever is later. The voluntary retirement mentioned in this rule is to be in accordance with Rule 48 Chapter VII of the CCS (Pension) Rules. The rule as incorporated for voluntary retirement after 20 years of service incorporated in terms of Rule 48(a) of CCS (Pension) Rules is not applicable as has been stated in the OM dated 13.1.86. The applicant herein was shown as having retired voluntarily with effect from 1.2.92 in terms of Rule 48 Chapter VII of CCS (Pension) Rules and his pensionary benefits from the Government has been fixed accordingly granting him pensionary arrears from 1.2.92.

13. In terms of the OM dated 5.7.89, the pro rata pension from the Government shall be allowed to be drawn with effect from the date of transfer to the public sector undertaking/autonomous body irrespective of the fact whether he has completed 30 years of service or 55 years of age. Thus, if the OM dated 5.7.89 is made applicable to the applicant herein who was absorbed in the Singareni Collieries Co. Ltd, with effect from 1.10.86, he will be entitled for pro rata pensionary arrears from 1.10.86 instead of from 1.2.92. In view of the above, the applicant herein has filed this OA for retrospective application of the OM dated 5.7.89 as it is beneficial to him.

14. The first contention of the applicant for applying the OM dated 5.7.89 retrospectively from the date



of his absorption in Singareni Collieries Co. Ltd. is that the OM dated 5.7.89 is a modification of the earlier OM dated 13.1.86 and hence the later memo should be deemed to have taken effect from the date of issue of the earlier OM.

15. The respondents submit that the OM dated 5.7.89 has been issued in the light of the recommendations of the Committee of the National Council (JCM) and in partial modification of the earlier OM dated 13.1.86. In para 6 of the said OM, it has been clearly stated that the conditions stipulated in OM dated 13.1.86 which have been specifically modified will continue to remain operative. In regard to the payment of the pro rata pension i.e, from the date of permanent absorption instad of the date of voluntary retirement as stipulated in the OM dated 13.1.86. This OM does not indicate that it will have retrospective effect in view of the fact that such retrospective effect will have serious effect retrospectively, the retrospective date has also to be mentioned. Retrospective effect cannot be from 13.1.86 as there were absorptions from the Government to the public sector undertakings even earlier also. Hence, in order to avoid drain on the public exchequer, the OM dated 5.7.89 has been made only prosective and not with retrospective effect.

16. A perusal of both the OMs indicates that the policy for pro rata pension has been reversed in the OM

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dated 5.7.89. When there is complete reversal of the policy, it cannot be said that the later OM is only a minor modification of the earlier OM. When such reversal of policy takes place, it is for the Government to fix a date of effectiveness of that policy. No Government order can take retrospective effect unless otherwise it is stated so. The OM dated 5.7.89 does not indicate any retrospective effect for that OM and hence it is only prospective. The reason given for restricting that OM prospectively is clearly spelt out by the Government. To avoid huge extra expenditure, limiting the OM prospectively cannot be called arbitrary. The Government cannot be forced to pay if there is lack of funds. Under the circumstances, the instructions of the Government cannot be called arbitrary or illegal. The contention of the applicant is that the employees absorbed in public sector undertakings after issue of OM dated 5.7.89 will get more pensionary benefits as compared to those who were absorbed earlier and hence it will attract Articles 14 and 16 of the Constitution of India. Reasonable classification is permitted. In a number of cases when such a classification is made especially in payment of pensionary benefits, the Apex Court had held that such a reasonable classification is permitted. Even in the present case, it is seen that the OM dated 5.7.89 was issued following the deliberations and discussions with the members of the JCM. Hence it cannot be stated that the cut off date viz, 5.7.89 is one "picked out from a hat" in which case the cut off date would be arbitrary as stated by the Apex Court in Para 4 of the judgment in (1994) 4 SCC 212 (Union of India v. Sudhir Kumar Jaiswal). For the reasons stated in the



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reply, we are satisfied that the date has relevance and the OM had to be issued only prospectively following wide range of discussions with the staff representatives. Hence the cut off date of 5.7.89 cannot be held as arbitrary and hence the validity of the OM has to be upheld.

17. The second contention of the applicant is that at the time of calculation of the pro rata pension in the year 1992, the OM dated 5.7.89 was in force and hence that OM is applicable to him. The date of absorption namely 1.10.1986 is not a criteria for fixing the pro rata pension adhering to the earlier OM dated 13.1.86.

18. This argument of the applicant does not appeal to appropriate to decide the due benefits and the O.M. in force on that date should naturally govern the fixation of pro rata pension. If a further revision of the OM dated 5.7.89 takes place subsequently and till then the pro rata pension of the applicant is not fixed, will it mean that the revised O.M. should be made applicable to him? In other words, the OM applicable to him for fixation of pro rata pension can keep on changing till he retires from the service of the public sector undertaking if till then the said date, the pro rata pension is not fixed. This is a rule that are applicable should be the rule in force on the date the applicant was absorbed in the public sector



undertaking/autonomous body/corporation. As the applicant was absorbed in Singareni Collieries Co. Ltd. with effect from 1.10.86, his pro rata pensionary benefits have to be calculated in terms of the rules in force at that time viz, rules as contained in the OM dated 13.1.86. In our view, this second contention also has to be over-ruled.

19. The third contention of the applicant is that the OM dated 5.7.89 is for en mass tranfer of the employees from public sector undertakings as stipulated in the OM itself. But the earlier OM dated 13.1.86 does not indicate that it is for en mass tranfer and that the O.M. is applicable only to individual cases. As the applicant and others were transferred en mass from the Government of India to the public sector undertakings, they are governed by the rule for pro rata pension as stipulated in the OM dated 5.7.89 as this O.M. is meant for en mass tranfer.

20. This argument has no validity. Even though it has not been stated in the OM dated 13.1.86 that it is applicable for en mass tranfers, the contents of the OM reveals that it is for en mass tranfers. Further the OM dated 5.7.89 is in partial modification of the OM dated 13.1.86. Hence we have no doubt in our mind that even the OM dated 13.1.86 is for en mass tranfer of the employees from Government of India to the public sector undertakings.


The next contention of the applicant is that he is entitled for pro rata pension from the date of his



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absorption as contained in Rule 37 of CCS (Pension) Rules. Even Rule 37 of CCS (Pension) Rules indicates that "the retirement benefits that an employee is eligible to receive is the one he has elected or deemed to have elected from such date as may be determined in accordance with the orders of the Central Government is applicable to him." Hence it has to be held that Rule 37 of CCS (Pension) Rules also states that the pro rata pensionary benefits have to be in accordance with the orders of the Central Government issued from time to time for such absorption. As a matter of fact, Rule 37 can be construed as a rule applicable to an individual employee and such rule may not be applicable for en mass transfers. Only rules and regulations stipulated whenever such en mass tranfer takes place, those rules only are applicable and absorption of the applicant in Singareni Collieries Co. Ltd, the extant OM dated 13.1.86 was in force, he cannot claim to have any other benefits in regard to the pro rata pension except the one which was in force at that time.

22. The learned counsel for the applicant when the case was heard on 11.6.96 relied on an unreported judgment purported to have been delivered by the Apex Court. But when we found that the judgment was delivered by one of the Benches of this Tribunal, we corrected him saying that the said judgement is not delivered by the Apex Court but was delivered by one of the Benches of this Tribunal. The learned counsel for the applicant still held that the said

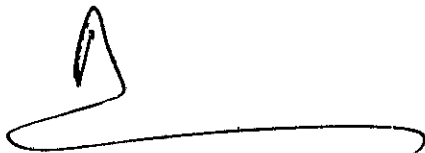


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judgment is to be treated as Apex Court judgement as SLP filed against the judgement has been dismissed by the Supreme Court. We do not want to enter into any controversy in this connection as it has no relevance to the present issue. Though this OA was treated as Part-heard and the learned counsel was told that it would be heard on 13.6.96, he did not care to be present on 13.6.96 and as he had also not submitted the above said judgement to the court on 11.6.96 and taken away the judgement with him, we are not in a position to comment on that judgement to come to a definite conclusion whether that judgement may assist the cause of the applicant or not.

23. If the OM dated 5.7.89 is to be given retrospective effect, there is no reason to restrict retrospective date on and from 13.1.1986. It can be from an earlier date also as the absorption from Government of India to the public sector undertaking had taken place even earlier. Hence an uncertainty will prevail if a proper cut off date is not indicated. There will be demands from the staff to give retrospective effect from various dates which will be beneficial to them. Hence on this account also, the OM dated 5.7.89 is to be treated as prospective only to avoid unnecessary litigation and

24. Even if the applicant is granted pro rata pensionary benefits from 1.10.1986, the applicant may not be allowed to get full salary in the public sector



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undertaking as the payment of salary and pro rata pension may mean dual payment. The pension equivalent to the pro rata pension may have to be deducted from his salary in which case the applicant may not get any benefit by way of arrears. From this angle also, we do not see any reason for giving pro-rata pension from the date of his absorption. However, we hasten to add that we do not make any observation in regard to his getting both salary and pro rata pension from 1.2.92 and payment from 1.2.92 is to be decided on the basis of the existing rules.

25. From the analysis as above, we conclude that an harmonious balance has to be effected in regard to the date of payment of pro-rata pension on the basis of retrospective effect to the OM dated 5.7.89 is to be weighed from the expectation from the staff absorbed earlier in the public sector undertakings earlier to 13.1.1986. The feasibility aspect has to be considered from the point of view of the capacity of the Government we can have no quarrel when the learned standing counsel for the respondents submits that the present OM dated 5.7.89 has been issued with prospective effect as an harmonious marriage of these two aspects.

26. In view of what is stated above, we see no merit in this OA and hence the OA is liable only to be dismissed. Accordingly, it is dismissed. No costs.

[Signature]

(R.RANGARAJAN)
MEMBER (ADMN.)

[Signature]

(M.G.CHAUDHARI)
VICE CHAIRMAN

DATED: 13th June, 1996

[Signature]
22/6/96
Deputy Registrar (CC)

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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

Original Application No.1064/93

Dt.of decision:11-6-1996

Between:

V. Parankusha Rao .. Applicant

and

1. Union of India rep. by the Secretary of State (Personnel, Pub.Grievances & Pension), Ashoka Road, New Delhi.
2. The Officer on Special Duty, Coal Mines, Labour Welfare Orgn., Dhanbad, Jagjiv Nagar, Bihar State.
3. The Union of India rep. by Secretary, Min. of Energy, Dept. of Energy and Coal, New Delhi.

.. Respondents

Counsel for the applicant : Sri M. Rama Rao

Counsel for the respondents: Sri N.R Devaraj

CORAM

Hon'ble Mr. Justice M.G.Chaudhari; Vice Chairman

Hon'ble Sri R.Rangarajan : Member (A)

JUDGEMENT

{Oral order as per Hon'ble Mr.Justice M.G.Chaudhari, V.C. }

Counsel for the applicant absent. Sri W.Satyanarayana for Sri N.R.Devaraj for the respondents present. The application is dismissed for default. No order as to costs.

(R.Rangarajan)
Member (A)

M.G. Chaudhari
(M.G. Ghaudhari)
Vice Chairman

(Open Court dictation)

96/11/96
Rangas

11/7/96

I COURT

TYPED BY _____ CHECKED BY _____
COMPARED BY _____ APPROVED BY _____

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M. G. KHAMAN

AND

R. Rangarajan

THE HON'BLE MR. H. RAJENDRA PRASAD: M(A)

~~ORDER~~ JUDGMENT

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

in

O.A.No. ~~595/96~~ 1064/93

T.A.No. (W.P.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected.

No order as to costs.

pvm

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केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
व्यवस्थापन / DESPATCH
77 JUL 1996
Hydrabad Bench
HYDERABAD BENCH