

(18)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD

O.A.NO.791/95

Between:

Date of Order: 19.12.95.

Saripalli Kumara Swamy

...Applicant.

And

1. Engineer in Chief,
Sena Mukhyalaya,
Pramukh Engineer Sakha,
Army Head Quarters,
Engineer in Chief's Branch,
DHQ Post Office,
New Delhi - 110 001.
2. The Chief Engineer, (MES)
Southern Command,
Pune - 411 001.
3. The Director General,
Naval Project,
Visakhapatnam 530 014.

...Respondents.

Counsel for the Applicant : Mr.S.Ramakrishna Rao

Counsel for the Respondents: Mr.N.V.Ramana,Addl.CGSC.

CORAM:

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

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O.A. 791/95.

Dt. of Decision : 19-12-95.

ORDER

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

The claim of the applicant is for a direction to the respondents to grant pro-rata pension, gratuity, encashment of leave and GPF balance on his absorption with Visakhapatnam Steel Plant.

2. The applicant joined Military Engineering Service on 08-07-1965 as Sub-Overser and was absorbed as Superintendent B/R Grade.II and confirmed as quasi-permanent with effect from 08-07-1968. He acquired the technical qualification of B.E., (Civil) in 1978 and was sent to M/s Hindustan Shipyard Limited, Visakhapatnam on deputation basis with effect from 31-03-1982. In response to an advertisement by Visakhapatnam Steel Plant he applied for the post of Divisional Engineer (Civil) through proper channels, that is, M/s Hindustan Shipyard Limited and MES department. After his selection by the Steel Plant he submitted his technical resignation which was accepted by the MES with effect from 15-03-1983. Thus he served in the MES for more than 17 years from 1965 to 1983. Subsequent to his resignation from MES he joined VSP on 16-3-83. He requested the authorities concerned to give him the terminal benefits such as encashment of leave to his credit, gratuity and pro-rata pension which was rejected by the respondents. As can be seen from the Headquarters Southern Command, Engineer Branch, Pune letter dated 22-02-1995, the request of the applicant for pro-rata pension was rejected on the ground that as he was holding quasi-permanent appointment in the Grade of Superintendent before he resigned from MES, he was not eligible for pro-rata pension.

3. Counter affidavit filed by the respondents refutes the claim of the applicant on the ground that the applicant had not taken the permission of the parent department for joining the VSP. This does not seem to be correct as is evident from the letter dated 11th November 1982 issued by the office of the Chief Engineer, Dry Dock and East Coast Zone addressed to the VSP with a copy endorsed to the Chief Engineer Southern Command, Pune. The said letter which is at Annexure-IV to the OA makes abundantly clear that the applicant processed his case for taking up his assignment with the Steel Plant through proper channel and with the parent department as required by the relevant instructions.

4. The next contention raised by the respondents is that the applicant, ~~is~~ not being a permanent employee of the MES ^{was} ~~he is~~, not entitled to pro-rata pension. That the applicant was a member of the Military Engineering Service from 1965 to 1983 cannot be disputed. It makes no difference if the individual was on deputation, in between, with AP Mining Corporation and Hindustan Shipyard Limited.

5. The claim of the applicant is that he is entitled to pro-rata pension in terms of Government of India, Department of Personnel & A.R., O.M. No.28-10/84-Pension Union, dated the 29th August, 1984 under which an employee would be entitled to pro-rata pension irrespective of whether the employee was temporary or permanent in Government service. The said OM cannot be of help to ~~any of~~ the applicant as it came into effect from 29-08-1984 and also it pertains only to transfer of Central Government servants to Central autonomous body and vice-a-versa.

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To

1. Engineer in Chief,
Sena Mukhyalaya,
Pramukh Engineer Shakha,
Army Head Quarters,
Engineer in Chief's Branch,
DHQ Post Office,
New Delhi - 110 001.
2. The Chief Engineer, (MES),
Southern Command,
Pune - 411 001.
3. The Director General,
Naval Project,
Visakhapatnam - 530 014.
4. One copy to Mr. S. Ramakrishna Rao, Advocate,
CAT, Hyderabad.
5. One copy to Mr. N. V. Ramana, Addl. CGSC, CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. One spare copy.

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6. Learned counsel for the applicant has drawn my attention to a decision of this Bench of this Tribunal in OA.No. 1150/92 decided on 18/20-10-95. In that case the employee was a quasi-permanent stenographer. Relying upon the judgement of the Apex Court in Praduman Kumar Jain Vs Union of India (1994 (28) ATC 70) it was held by the Tribunal that an employee who worked in a substantive capacity for a long duration, cannot be treated as temporary employee. In the instant case the applicant joined MES as a direct recruit in 1965. He ~~has~~ worked continuously for more than 17 years. It ~~uses~~ ^{fails} one's imagination as to how the applicant who was declared quasi permanent with effect from 08-07-1968 was allowed to remain so without being regularly absorbed till as late as 1983. In these circumstances as per the decision of the Supreme Court in P.K.Jain's case, I must hold that the applicant should be entitled to pro-rata pension even though he was not made permanent in the MES.

7. As regards the claim of the applicant for encashment leave to his credit and payment of gratuity, the said ~~emoluments~~ ^{reliefs &} to crystallised as early as 1983 and I would not like to examine them or pass orders thereon at this belated stage. The said claim ~~is~~ therefore ^{is} rejected as ~~have~~ ^{having} become stale.

8. In the result, the OA is ordered with a direction to the respondents to grant pro-rata pension to the applicant as is admissible in accordance with the extant rules/instructions. Arrears of pro-rata pension shall be calculated and paid to the applicant by 30th June 1996 failing which the same will carry interest at the rate of 12% per annum from 01-07-1996.

9. The OA is ordered accordingly. No costs.

A. B. Gorathi
(A. B. Gorathi)
Member (Admn.)

Dated : The 19th December 1995.
(Dictated in Open Court)

Amalg.
27/12/95
Dy. Registrar (J)
contd.

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD.

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

HON'BLE SHRI

DATED: 19.12.95

ORDER/JUDGMENT

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

IN

D.A. NO. 791/95

~~ADMITTED AND INTERIM DIRECTIONS ISSUED~~

~~ALLOWED~~

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~ORDERED/REJECTED~~ ✓

~~NO ORDER AS TO COSTS~~

* * *

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