

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.632/97

dt. 19-12-97.

Between

N. Somi Setty

: Applicant

and

1. The Union of India
Rep. by its Secretary
Min. of Finance (Dept. of Expenditure)
New Delhi

2. The Accountant General of
Andhra Pradesh
Hyderabad

: Respondents

Counsel for the applicant

: R. Bris Mohan Singh
Advocate

Counsel for the respondents

: G. Parameshwara Rao
Counsel for State Govt.

Coram

Hon. Mr. H. Rajendra Prasad, Member (Admn.)

Judgement

Order (per Hon. Mr. H. Rajendra Prasad, Member (Admn.) *8/11/68*)

The applicant while on deputation from the office of the Accountant General, Hyderabad, to the Regional Research Laboratory, Hyderabad, applied for the post of Assistant Administrative Officer in National Seeds Corporation, a public sector undertaking. The application was forwarded by the foreign employer, viz., Regional Research Laboratory, and the applicant was selected for the job. He was relieved by the Regional Research Laboratory on 13-9-1968, and joined the Corporation on 14-9-1968. The Regional Research Laboratory was informed by respondent No.2 to relieve the applicant only after obtaining a resignation letter from him since he was away from the service of his parent office for more than two years and had neither resigned from the post nor had reverted to it. The applicant's resignation was accepted by AGAP, w.e.f. 14-9-1968.

2. In this application the petitioner claims pro-rata pensionary benefits for the service rendered by him in the offices of the Accountants-General, Madras and Hyderabad, from 2-9-1953 to 13-9-1968 in terms of OM No.28016/4/76 Estt.(c) dated 25-3-1977 issued by the Department of Personnel.

3. The respondents resist the claim of the applicant on three grounds. Firstly, that his application for the post in the Corporation was not routed to CSIR through their office but had instead been sent directly by the Regional Research Laboratory to CSIR. Secondly, that the applicant's services were merely lent on deputation to RRL and the

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latter was not competent or expected either to process or to forward the applicant's candidature to CSIR. Thirdly, that the applicant continued on deputation in excess of the two year term as originally approved; He neither returned to his parent office/post, nor was his foreign service extended.

4. Regarding the grant of pro-rata pensionary benefits to Government servants who are absorbed in public sector undertakings, it is not necessary to discuss the question in detail. Suffice it to say that, beginning 1967 to 1977, the concession was gradually extended, firstly to officials who resigned from parent service prior to their absorption in such undertakings, secondly to such of the employees who were absorbed on or after 8-11-1968, next to those employees who had been so absorbed not only in public interest but on their own application, thereafter to employees who were absorbed in such undertakings on or after 21-4-1972, and finally to such employees who had joined the undertakings between 21-4-1972 and 8-11-1968. The benefit of proportionate pension was, however, allowed only from 1-8-1976.

5. The applicant, as already seen, was absorbed in the Corporation in 1968, i.e., prior to 21-4-1972.

6. The grievance of the applicant is that this stipulation of 8-11-1968 being a cut-off date has no relevance to the benefit that was sought to be conferred on the employees, and that the rigid fixation of such a date is unreasonable and arbitrary having no kind of nexus to the object that was sought to be achieved by the Government. This question was examined by this Bench in OA.527/87 in their judgement of 14-4-1988. Relying inter alia on the judgement in DS Nakara Vs. Union of India (AIR 1983 SC 130) it was held that there could be no discrimination between the applicant who had resigned on 11-12-1967 to join the public sector undertaking and those who joined such undertaking after 8-11-1968.

contd.... 3.

The applicant relies on this judgement to support his claim whereas the respondents submit that the facts of the case cited are different from the present case. The difference pointed out by them lies in the fact that H.B. Lal, the applicant in the OA cited supra was working in one of the offices of the department and applied for a post in NMDC, and additionally that his application was forwarded by his parent office, to NMDC, while in the present case the application was forwarded by a foreign employer with whom he was on deputation. Also, the said H.B. Lal was relieved by his parent office to enable him to take up the appointment with NMDC whereas in the present case the applicant was asked to resign from his post in his parent office on the ground that he had neither resigned the post till then nor had he reverted back to the original post on the expiry of the two-year deputation term.

7. The basic question which arises in this case is as to why the second respondent did not recall the applicant from deputation on the expiry of the two-year period, or alternatively, why no extension was granted to him. Also, when informed about the applicant's selection for the post of Assistant Administrative Officer in the Corporation, the Accountant-General had the choice either to refuse permission to the applicant to join the new post on the ground that his application was not routed through them, or to recall the applicant even at that stage before deciding whether or not to permit him to take up the new appointment. It has been argued by the applicant's counsel that it would have been perfectly within the rights of Respondent-2 to insist on the reversion of the applicant, and to decide the question as to whether or not he would be permitted to take up his new

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job; instead, he was merely asked to submit his resignation. The request was duly considered and accepted by the Accountant General - an act which would establish the master-servant relationship between the said respondent and the applicant, even upto and at the time of acceptance of the latter's resignation. Moreover, the applicant till the date of relief/resignation was allowed to serve and was indeed serving in a Laboratory under the CSIR. He was neither recalled, nor was he returned by RRL to his parent office. This cannot be equated to unauthorised absence from the parent office, and it would be plainly incorrect to penalise the applicant, or to deny benefits which would have been legitimately his due, on the untenable grounds of this applicant overstaying the tenure of his deputation or failing to revert to his original office/post. It is not explained, as to why a resignation was insisted on when the applicant could have been as easily recalled to the parent organization and the question of relieving, or not relieving him, to take up his new appointment with the Corporation could well have been settled thereafter by the parent organisation itself. Having failed to ^{do} this at the appropriate time, it would be clearly incorrect of Respondent 2 to cover up ~~his~~ initial failure by denying the applicant's just claim.

8. ~~In the light~~ of what has been noted above, it is felt that the claim of the applicant is wholly valid and admissible. The applicant is indeed entitled to pro-rata pensionary benefit for the service rendered by him under the Accountants General, Madras and Hyderabad, between 2-9-1953 to 13-9-1968. The respondents are accordingly directed to examine afresh the claim of the applicant, by reviewing their earlier decision, with a view to granting him the benefit claimed by him. A suitable decision may be communicated to the

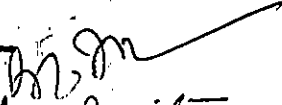
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applicant within 90 days from the receipt of a copy of this order.

9. Thus the OA is disposed of with no orders as to cost.


(H. Rajendra Prasad)
Member (Admin.)

Dated : 19 DEC. 97


Deputy Registrar

mask

(65)

O.A. 632/97.

To

1. The Secretary, Union of India,
Ministry of Finance, (Dept. of Expenditure)
New Delhi.
2. The Accountant General of A.P. Hyderabad.
3. One copy to Mr. R. Briz Mohan Singh, Advocate, CAT. Hyd.
4. One copy to Mr. G. Panameswar Rao, SC for AG. CAT. Hyd.
5. One copy to HHRP. M. (A) CAT. Hyd.
6. One copy to D.R. (A) CAT. Hyd.
7. One spare copy.

pvm

29/12/97

I Court

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE

VICE-CHAIRMAN

AND

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

DATED: 19-12-1997

ORDER/JUDGMENT:

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

in

O.A.No.

632/97.

T.A.No.,

(W.P.)

Admitted and Interim directions
Issued.

Allowed

Disposed of with direction

Dismissed.

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm.

