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**Central Administrative Tribunal
Jabalpur Bench**

OA No.973/04

Jabalpur, this the 15th day of December 2006.

CORAM

Hon'ble Dr.G.C. Srivastava, Vice Chairman
Hon'ble Mr.M K.Gupta, Judicial Member

Ganesh Ram
S/o Shri Lalchand
R/o C/o Jaiprakash, Omprakash,
Rajak, Doctor Line, Near Ruan,
Gora Bazar, Jabalpur.

Applicant

(By advocate Shri S.Nagu)

Versus

1. Union of India
Through Secretary
Ministry of Defence
Government of India
South Block
New Delhi.
2. Chief Engineer
Central Command
Lucknow.
3. Commander Works Engineer
Mhow
District Indore.
4. Garrison Engineer (MES)
Mhow Cantt.(M.P.)
5. Principal Controller of
Defence Accounts (Pension)
Draupadi Ghat
Allahabad.
6. Chief Engineer (MES)
Central Zone
Jabalpur.

Respondents.

(By advocate Shri P.Shankaran)

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ORDER

By M.K. Gupta, Judicial Member

Whether applicant is entitled for pension is the question posed in present OA? The matter has been heard in compliance of directions issued by High Court of Madhya Pradesh vide order dated 12th September 2006 in W.P.No.16532/2005(S).

2. The facts which gave rise to present claim are as follows:

On 26.8.1964, applicant joined Military Engineering Service as Sub Overseer and rendered 17 years of service before he was selected and joined the post of Junior Engineer in Oil & Natural Gas Commission on 16th May 1981. Applicant submitted his technical resignation on 24.4.81 and made a request for retention of his lien in MES for one year. MES treated the said request as resignation instead of technical resignation. Thereafter applicant sought to return to MES as ONGC refused to count the service rendered by him in MES, for the purpose of pensionary benefits. Therefore he filed a Civil Suit which stood transferred to this Tribunal and registered as T.A.No.26/88, and ultimately disposed of vide order dated 17.1.90 with a direction to MES to appoint him as Overseer in MES and further holding that applicant would not claim seniority. Vide para 7 of the judgement it was held that the fact that No Objection Certificate was issued by the M.E.S, goes to show that his appointment in ONGC was not with its knowledge or consent, although it was not a case of transfer in public interest. It was further held that the applicant cannot claim seniority for the original post of Sub-Overseer. It is not in dispute that the said judgement became final. Applicant, when offered, refused such re-appointment. However, he requested for pro-rata pension. When MES refused to give him pro-rata pension, he filed OA No.304/92 before Ahmedabad Bench of Tribunal, which was disposed of vide order dated 9.3.98 with a direction to MES to treat his resignation as technical for purpose of giving service benefits. In the meantime, applicant superannuated as Assistant Executive Engineer from ONGC on 31st March 1996. Thereafter a contempt petition No.56/99 was

also filed seeking implementation of the directions passed in OA No.304/92. Vide order dated 19th July 2001, the contempt petition was dismissed holding that the applicant was not entitled to pension as he did not complete minimum 20 years of qualifying service. The said order was carried before Hon'ble Supreme Court in Civil Appeal No.1458/2002, wherein vide order dated 21.8.2002, it was observed that "we are of the view that the Tribunal should have held that by passing the impugned order there was no contumacious conduct. The application should have been rejected in limine on that ground. There was no occasion for the Tribunal to go into the merits of the order passed by the respondents".

In the meanwhile, respondents issued order dated 17th October, 2000 conveying President's sanction to the permanent absorption of applicant in terms of OM dated 8th April 1976, w.e.f. 16.5.1981 and also notified various terms and conditions of his absorption. Vide communication dated 25th October 2000, the respondents took the stand that he was entitled only to gratuity and ultimately paid Rs.3861/- on said account. Thereafter applicant filed another OA No.106/03 claiming pension. The said OA was disposed of vide order dated 7th November 2003 with following observations:

"9. The learned counsel for the applicant has relied on Pension Rule 49 as it stood prior to 1.1.86 which entitles earning of pension on completion of a minimum qualifying service of ten years. But the applicant has not produced any documents/circulars/rules which prove that at the time of his joining in the ONGC i.e. 24.4.81, the rule of qualifying service of 10 years for entitling him to pension was applicable in his case. As there is a controversy regarding the applicability of the rules, and both the sides have not been able to convince the Tribunal, it is found desirable to dispose of this OA with a direction to the applicant to produce the rule position by submitting a fresh representation to the competent authority and if the competent authority has any doubt about the applicability of the rules in the case of the applicant, they may refer the matter to the nodal Ministry i.e. the Ministry of Personnel and thereafter decide the case of the applicant. Ordered accordingly. The respondents are directed to comply with our directions within a period of four months from the date of receipt of the representation of the applicant along with a copy of this order."(Emphasis supplied).

As per the directions contained in the aforesaid order, applicant made a representation to the respondents on 20.1.2004, which was rejected vide communication dated 26th May 2004 (A-12) stating that he is not entitled for pension as he had rendered only 17 years of qualifying service, which was less than 20 years, as prescribed under the rules. Aggrieved with the aforesaid order, the present OA has been filed.

3. In their reply, respondents contested the claim laid though admitted the fact that he was in services from 26.8.1964 to 15.5.81 and while submitting resignation he had sought to keep his lien for one year but contended that he was not eligible for pension. Based on Tribunal's directions, his pension papers were submitted to HQ CRCC, Lucknow who in turn intimated GE Mhow detailing the pensionary benefits admissible. The GE Mhow, in turn, instructed the Bank on 13.11.2000 to release only gratuity as he was not entitled to pension. Placing reliance on Rule 37-A, Respondents stated that he is not meeting the provision either the said rule 37-A or 49 (2) (a) and 49 (2) (b), as he had 17 years qualifying service instead of minimum 33 years of qualifying service in Central Govt., and further no qualifying service could be added for his service in ONGC, since no pension scheme exists with ONGC. Hence there is no violation of the provisions of rule 49 (2) (b). Further contention of the respondents is that his technical resignation can be termed as retirement from Central Government service with effect from the date of absorption in ONGC in the light of CCS (Pension) Rule 37 of 1972. Rule 49 (2) (b) cannot be read in isolation and has to be read along with rule 37 of the Pension Rules. The applicant did not satisfy the requirement of said rule when read cumulatively and was not entitled to pro rata pension, as claimed. Applicant had not retired on ground of public interest but on his own interest.

4. By filing rejoinder, applicant controverted the contentions raised by the respondents and relied upon numerous judgements, namely, 2005 (1) ATJ 261 - Prabhakar Reddy vs Union of India

(CAT, Bangalore-DB); 1994 Supp.(2) SCC 548 - Praduman K. Jain vs. Union of India and order dated 18.2.2003 in OA No.1563/2000 (P.V.Rama Sarma vs. the Chief Engineer, MES and others) of Hyderabad Bench of this Tribunal.

5. We heard learned counsel for the parties and perused the pleadings and the documents placed on record carefully.

6. Shri S.Nagu, learned counsel appearing for the applicant strenuously urged that in view of the provisions of the CCS (Pension) Rules and the law declared by Hon'ble Supreme Court in Praduman Kumar Jain (supra), applicant is entitled to pension and pensionary benefits. The thin distinction which had been made the basis for denying him benefit of pension i.e. quasi-permanent and permanent employee, temporary and permanent employee has been erased completely. The mere fact that applicant continued to serve for 17 long years uninterruptedly itself is sufficient to hold that he had been holding the post in a substantive capacity particularly when his appointment was made following the due process of law and in accordance with rules. In Praduman Kumar Jain's case, appellant was appointed as Technical Assistant in DGS&D on 2.3.74 and worked there till 12.10.77. On 13.10.77, he joined the Indian Meteorological Department (IMD) through UPSC and was placed on probation for a period of two years. He was permitted to cross the first efficiency bar in the year 1983. While working with IMD, he was selected for appointment as Senior Engineer in the NTPC. He joined NTPC on 31.10.86. Prior to the said date, he was promoted in IMD as Meteorologist, Gr.I. He had not been confirmed in IMD. In the circumstances, his request for grant of pro-rata pension for a period of 12 years and 8 months rendered in the Government was denied, contending that appellant was not deemed to be a substantive employee of the Central Government within the meaning of Rule 13 of the CCS (Pension) Rules 1972 and, therefore, was not entitled to pension and other retiral benefits under the rules. In such circumstances, the matter reached before the Hon'ble Supreme Court, where the question had been whether the appellant was entitled to pro

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rata pension in respect of the service for the period of twelve years and eight months rendered by him under the Central Government and whether he held the appointment in the Central Government service in a substantive capacity. After noticing the office memo dated 31.1.86 and 28.3.88 dealing with confirmation as well as Rules 13 and 49 (2) (b) of the CCS (Pension) Rules, besides the earlier judgement in Baleshwar Dass vs. State of U.P., 1980 (4) SCC 226 the Hon'ble Supreme Court held that appellant had been appointed in a substantive capacity against a permanent post and therefore entitled to pro-rata pension and other terminal benefits along with interest and costs.

7. Shri P. Shankaran, learned counsel appearing for respondents, on the other hand, strenuously urged that based on Department of Personnel & AR OM dated 26th August 1977 as the applicant was only a quasi permanent employee he was not entitled to pension but had been entitled to only terminal gratuity which had rightly been paid to the applicant.

8. The short issue that arises for our consideration is whether under the Rules read with various OMs issued on the subject from time to time and keeping in view all the law laid on the said subject, the applicant is entitled to pro rata pension or not. We may note that Rule 49 of CCS (Pension) Rules under Chapter VI dealing with "Regulation of Amounts of pensions", reads as follows:

"49. Amount of pension

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be the appropriate amount as set out below:

Completed six monthly periods Of qualifying service	Scale of service gratuity
1	½ month's emoluments
2	1 -do- -do-
3	1 ½ -do- -do-
4	2 -do- -do-
5	2 ½ -do- -do-
6	3 -do- -do-
7	3 ½ -do- -do-
8	4 -do- -do-
9	4-3/8 -do- -do-
10	4-3/4 -do- -do-

11	5-1/8 -do- -do-
12	5-1/2 -do- -do-
13	5-7/8 -do- -do-
14	6-1/4 -do- -do-
15	6-5/8 -do- -do-
16	7 -do- -do-
17	7-3/8 -do- -do-
18	7-3/4 -do- -do-
19	8-1/8 -do- -do-

(2)(a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty three years the amount of pension shall be determined as follows, namely:-

Average emoluments	Amount of monthly pension
(j) Up to first Rs.1000	50% of average emoluments
(ii) Next Rs.500	45% of average emoluments.
(iii) Balance	40% of average emoluments subject to a maximum of Rs. 1,500 per mensem including relief on pension payable upto index level 328:

(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty three years, but after completing qualifying service of ten years, he amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than rupees sixty per mensem:

(c) Notwithstanding anything contained in clause (a) and clause (b) the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54.....
.....”(emphasis supplied).

9. We have extracted the above rules from Swamy's Pension Compilation - 1986 Edition - which had been relevant at that point of time. We may also note that Sub Rule 2 of the said rules had been substituted by G.I., Deptt. Of Personnel & A.R. Notification No.F.38 (4)-Pen.(A)/80, dated 8th August, 1980. Chapter III of the said rules deals with "qualifying service". Rule 13 provides commencement of qualifying service, i.e. the date when the government servant takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. Much emphasis was laid by

the respondents on Rule 37 which deals with 'Pension on Absorption in or under a Corporation, Company or Body'.

10. Shri S. Nagu, the learned counsel, raised further contention that vide order dated 17th October 2000 (page 28), Presidential sanction was conveyed for permanent absorption of applicant in ONGC on terms and conditions enumerated there under. Para 2 thereof provides that on permanent absorption, applicant "shall be eligible for pro-rata pension and DCRG based on the length of his qualifying service under the Govt. of India till his date of permanent absorption in ONGC". The said Presidential sanction could not have been rescinded or changed by any lower authority. Moreover, no reference was made to the Nodal Ministry, as directed by this Tribunal vide order dated 7.11.03 in OA No. 106/03. The learned counsel pointed out that these two contentions raised under Para 5 (A)-(C) have not been controverted specifically. In other words, the said contentions have been deemed admitted.

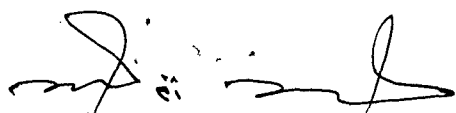
11. On perusal of the pleadings and bestowing our careful consideration to rival contentions raised, we do find justification and reason in the aforesaid contentions. Though this Tribunal vide order dated 7.11.03 observed that the competent authority, if it had any doubt, may refer the matter to the Nodal Ministry but the reply filed by them did not narrate about any such steps taken. On perusal of the order dated 17.10.2000, as noticed above, we find reason in the contention that the terms and conditions accepted by the President could not have been varied, altered or amended by any lower functionary. Moreover, from the records, we find that the pension was sanctioned by the respondents but it was only the gratuity which had been released to him. When the pension itself was sanctioned, why it was not paid ^{citings the fallacious of his being quasi-permanent} remains a question unexplained and mystery. 15/12

12. On consideration of the entire matter, we are of the view that Rule 49 (2) (b) deals with the situation where one becomes entitled to pension "after completing qualifying service of 10 years". The said Rule nowhere requires that 10 years service should be either permanent or temporary or quasi permanent. No provision of statutory

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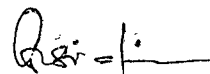
rule was brought to our notice, which requires completion of 20 years of service to claim pension etc. We may also note that respondents have been taking different stand on different occasions, which is not justified. When the provisions of the rule are unambiguous, a reference cannot be made to the office memo issued on the subject. We are not satisfied that the OM dated 26th August 1977 on which reliance was placed by the respondents is applicable in the facts and circumstances of the present case. We also notice that for the purpose of pension and pensionary benefits, the distinction between temporary employee and quasi-permanent and permanent employee has been completely dispensed with and no more insisted upon. When respondents have themselves taken the stand that the applicant is deemed to have retired on 16.5.81 when he joined ONGC and by the time he had rendered 17 years of service against the requirement of 10 years or more qualifying service under Rule 49 (2) (b), how he could be denied pro-rata pension? Following the mandate of Baleshwar Das as explained in Praduman Kumar Jain (supra), we hold that the applicant had been holding the said post in MES in a substantive capacity and therefore he was eligible for pro-rata pension for the service rendered with the said department.

13. In view of the discussion made herein above, we have no hesitation to conclude that the respondents' action in rejecting applicant's claim for pro-rata pension on the ground that he rendered only 17 years of service as quasi-permanent is unsustainable in law and accordingly the communication dated 26th May 2004 is quashed and set aside. Respondents are directed to release pro rata pension for the service rendered by the applicant in MES. This exercise shall be completed within a period of three months from the date of receipt of this order. In the circumstances, we do not order either interest or costs, as prayed for.



(M.K. Gupta)
Judicial Member

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(Dr. G.C. Srivastava)
Vice Chairman

22.12.06
T. S. G. S.

MEMORANDUM
TO THE DIRECTOR GENERAL OF INVESTIGATION
FROM THE DIRECTOR GENERAL OF INVESTIGATION
(1) ...
(2) ...
(3) ...
(4) ...

S. Khan Qureshi
P. Khan Khan