

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.1309/2018

M.A.No.1463/2018

Tuesday, this the 3rd day of April 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Asu Lal s/o Shri T R Aghi
Aged about 67 years
Post Ex-Dairy Supervisor/ Assistant Manager
r/o BG-6/252 B
Paschim Vihar, New Delhi – 110 063
2. Ashok Kumar Srivastava
s/o Lt. N P Srivastava
Aged about 67 years
Post Ex-Dairy Supervisor/ Assistant Manager
r/o H.No.3290-A, Sector 3
Faridabad, Haryana 121004
3. Kanchhid Singh Sharma s/o Pt. Shiv Ram
Aged about 68 years
Post Ex-Dairy Supervisor/ Assistant Manager
r/o H.No.BH/20/GF
Puri VIP Floors, Sector 81
Greater Faridabad, Haryana
4. S M Salam s/o Lt. S M Moosa
Aged about 72 years
Post Ex-Dairy Supervisor/ Assistant Manager
H.No.64/A, 3rd Floor
Flat No.105, Jamiya Nagar
Okhla, New Delhi – 110 025

..Applicant

(Mr. Mahesh Srivastava, Advocate)

Versus

Delhi Milk Scheme
Through its General Manager
West Patel Nagar, New Delhi

..Respondent

O R D E R (ORAL)

M.A. No.1463/2018

M.A. seeking joining together in a single petition is allowed.

O.A. No.1309/2018

This instant O.A. has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 praying for the following main relief:-

“i. direct the Respondent to release the pensionary benefit accrued to the applicants with 18% interest in the interest of justice.”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicants joined Delhi Milk Scheme (DMS) – respondent organization as Assistant Manager / Dairy Supervisor on different dates between the years 1973 and 1976, which is directly owned and controlled by the Central Government. Thereafter they participated in selection for various posts in Haryana Dairy Development Cooperative Federation (HDDCF) Ltd. on 05.09.1980 and were selected. They accordingly joined HDDCF. Their lien in DMS, however, was continued for some time. The details relating to the date of joining the DMS, date of becoming quasi-permanent and dates of joining HDDCF are indicated in the table below:-

Name	Date of joining	Date of quasi permanent capacity	Date of transfer to HDDCF
Asu Lal	19.04.1973	18.04.1976	09.12.1980
Ashok Kumar Srivastava	09.08.1975	10.09.1980	06.02.1981
Kanchhid Singh Sharma	28.08.1972		05.12.1980
S M Salam	17.03.1976		24.01.1981

2.2 The applicants retired from the service of HDDCF on attaining the age of superannuation. Their grievance is that their retiral dues have not

been settled by the respondent despite their representation. Accordingly, they approached this Tribunal in O.A. No.3680/2017, which was disposed of vide order dated 24.10.2017 with the following directions:

“2. Given the nature of prayer, it does not seem necessary to issue notices to the respondents at this stage. Respondent no.1, General Manager, Delhi Milk Scheme is hereby directed to decide the representation of the four applicants within two months from the date of receipt of certified copy of this order by passing a reasoned and speaking order keeping in mind the rules, regulations and law in this regard. This direction however does not reflect my opinion on the merits of the case. OA is disposed of accordingly.”

2.3 In compliance of the order of the Tribunal dated 24.10.2017, the respondent-DMS has passed the impugned Annexure A-1 order dated 19.01.2018 stating therein that the applicants shall be granted pensionary benefits, if any, in respect of the services rendered by them in DMS from the respective dates of their joining DMS and till the respective dates on which they were relieved from DMS for joining HDDCF. The relevant portion of the impugned order is extracted below:-

“9. It is observed that the applicants have not furnished any evidence to show that they deposited pensionary benefit contribution for the period of their stay in HDDCF. In fact, they have not even claimed to have deposited pensionary benefit contribution for the period of their stay in HDDCF. Therefore, they will be entitled to grant of pensionary benefits in respect of the services rendered by them in DMS if and as admissible under the rules, only up to the respective dates of their release from DMS for joining HDDCF.

10. In view of the position as brought out above, the undersigned holds that S/Sh. AsuLal, A.K. Srivastava, Kanchhid Singh Sharma and S.M. Salam shall be granted pensionary benefits, if any, in respect of the services rendered by them in DMS from the respective dates of their joining DMS till the respective dates on which they were relieved from DMS for joining in HDDCF.”

Aggrieved by the impugned Annexure A-1 order dated 19.01.2018, the applicants have approached the Tribunal in the instant O.A. praying for the relief as indicated in paragraph (1) above.

3. Brief arguments of Mr. Mahesh Srivastava, learned counsel for applicants heard. He submitted that the lien of the applicants had continued in DMS till it was terminated vide impugned Annexure A-4 order dated 20.03.1990. He thus contended that the applicants are deemed to have worked in the DMS from their respective dates of joining DMS and up to 20.03.1990, i.e., the date when their lien was terminated.

4. The learned counsel argued that the applicants are entitled to the retiral benefits including pension under Rule 37 of CCS (Pension) Rules, 1972, which reads as under:-

“37. A Government servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to sub-rule (3) he shall be eligible to receive retirement benefits if any, from such date as may be determined, in accordance with the orders of the Central Government applicable to him.”

5. It is not in dispute that the applicants have served in DMS from their respective dates of joining DMS and till they joined HDDCF on selection; the details in this regard are noted in the table at paragraph 2.1 above. The Annexure A-1 order dated 19.01.2018 of the respondent also indicates that no pensionary benefit contribution for the period of their service in HDDCF was deposited by them in DMS. Furthermore, Rule 37 of the Pension Rules

deals with the cases of government servants, who have been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government etc. The HDDCF is admittedly a Cooperative institution. Neither the Central Government nor the State Government of Haryana has got any direct control over it. Therefore, the applicants cannot take benefits of Rule 37 of the Pension Rules for the purpose of getting their services rendered in HDDCF counted for claiming pension and other retiral benefits from DMS or even for the period of their service in HDDCF up to 20.03.1990 when their lien was terminated by DMS vide Annexure A-4 order. There is nothing on the record to indicate that any contribution towards pensionary benefits of the applicants either by themselves or by HDDCF have been deposited with DMS. Under these circumstances, I am of the view that the respondent-DMS has correctly indicated in its Annexure A-1 order dated 19.01.2018 that it would consider grant of pension to the applicants only for the period of service actually rendered by them in DMS in accordance with the extant rules.

6. In view of the above, I do not find any merit in this O.A, and hence the same is dismissed in *limine*.

(K.N. Shrivastava)
Member (A)

April 3, 2018
/sunil/