

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Dated the 10th day of November Two Thousand And Seventeen

PRESENT:

THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

O.A.No. 1634/2012

Ajit Kumar Ray Son of Monmohan Ray,
Presently posted as Head of Department of
Social Sciences, Indian Grassland and Fodder
Research Institute, JhansiApplicant

(By Advocate : Mr. U. Srivastava)

VS.

1. Union of India, Department of Agriculture
And Cooperation, Ministry of Agriculture,
Krishi Bhavan, New Delhi through its Secretary;
2. Secretary, Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi;
3. Director, Indian Grassland and Fodder Research
Institute, Jhansi;
4. Senior Administrative Officer,
Indian Grassland and Fodder Research Institute,
Jhansi. ...Respondents

(By Advocates:Mr. Nasir Ahmed,
Mr. Gagan Mathur)

Reserved on: 27.09.2017

ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member (A))

The applicant has filed this O.A. seeking the following reliefs:-

“i) to set aside order dated 15.07.2009 (Annexure-A1) issued by respondent no.3 and 4 whereby applicant has been categorized as re-employed employee w.e.f. 01.05.2009;

ii) to set aside order dated 11.11.2009 passed by Respondent No.1 whereby the applicant is held to be repatriated w.e.f. 31.08.2006 and treat date of repatriation w.e.f. 5.11.2008;

iii) a suitable order of direction commanding the respondents to treat the applicant in the organization of respondents No.3/4 as Head Division of Social Science in Indian Grassland and Fodders Research Institute, Jhansi as regular employee in terms of circular dated 31.3.1990 as well as other circulars issued from time to time;

iv) order or direction commanding the respondents to compute pay scale and pension of the applicant treating him regular employee of respondents No.3/4 ignoring order dated 15.07.2009 and 11.11.2009 and grant him promotional benefits and other consequential monetary benefits attached to the said post in accordance with law and release arrears thereof with interest at the rate of 24% per annum.

v) any other order or direction as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case in favour of the applicant.

vi) award cost of this application to the applicant.”

2. According to the applicant, he was initially appointed on the post of Economist in the Department of Agriculture and Co-operation (DAC) on 10.4.1983. An advertisement No.02/2005 dated 13.08.2005 was issued by the Agricultural Scientists Recruitment Board (ASRB), Krishi Anusandhan Bhavan, Pusa, New Delhi for the post of Head, Division of Social Science in Indian Grassland & Fodder Research Institute (IGFRI), Jhansi in the pay scale of Rs. 16400-450-20900-500-22400. The applicant applied for the said post and his application was duly forwarded by the 1st respondent by Annexure-A/4 letter dated 18.1.2006 conveying cadre clearance for appointment on 'immediate absorption' basis. Thereafter, the second respondent conveyed the selection of the applicant for appointment to the said post on tenure basis for a period of five years or until further orders by Annexure A5 letter dated 15.2.2006. The second respondent also conveyed approval for extension of joining time up to 31.7.2006 by Annexure A7 letter dated 20.06.2006 addressed to the applicant wherein it was stated that they had no objection if the Ministry of Agriculture was willing to permit him to proceed on deputation till his date of superannuation.

3. As the first respondent was not willing to place the services of the applicant with the second respondent on deputation and instead, insisted on his resignation from his present post, the applicant filed O.A. 1720/2006, which was disposed of by an order dated 28.08.2006 directing the 1st respondent to relieve the applicant in time to join at IGFRI without prejudice to the contentions of either party. The second respondent was directed to provisionally accept the applicant on

deputation/lien basis for a period of four months. In the mean time, steps were to be taken to obtain exemption from the general rule of 'immediate absorption' from the Department of Pension and Pensioners' Welfare.

4. The applicant had been representing to the respondents to allow him to proceed on deputation instead of on 'immediate absorption' citing certain allegedly similar instances where the department had not insisted on appointment on 'immediate absorption' basis. However, by an order dated 29.08.2006, the 1st respondent relieved the applicant of his duties with effect from 31.08.2006 in acceptance by the competent authority of his resignation from his current post. Shortly thereafter, the order was modified by another order dated 31.08.2006 passed in compliance with the directions of the Tribunal in the said O.A. and without prejudice to the right of the Government to contest the order in an appropriate legal forum. The modified order stated that the applicant was relieved of his duties with immediate effect to take over as Head, Division of Social Sciences in the 3rd respondent institute in the pay scale of Rs. 16400-22400/- on deputation on foreign service terms until further orders.

5. The 1st respondent followed up the aforesaid action by filing Writ Petition(C) 17470/2006 before the Hon'ble Delhi High Court which was disposed of by an order dated 5.8.2008 with a direction to the petitioner therein to take a final decision on the various resignation letters submitted by the applicant without being influenced by the observations of the Tribunal in the impugned order. The applicant preferred another representation to the respondents thereafter on 12.09.2008 to accept his

resignation in terms of the order of the Delhi High court and Pension Rule 37 of CCS (Pension) Rules 1972. The 1st respondent informed the applicant by Annexure A21 letter dated 10.10.2008 that his application for appointment to the post of Head, Division of Social Sciences IGFI was forwarded subject to the condition that he would join the post on 'immediate absorption' basis. The DOP&T had advised that there was no question of technical resignation and the applicant would have to sever his links with the earlier post of Economist in the Directorate. However, it was also noted that since the applicant could not be permitted to join IGFI on deputation/technical resignation it would mean that he would have to forgo all pensionary benefits of almost 33 years of his service and accordingly an opportunity was granted to the applicant to revert back to the department latest by 5.11.2008.

6. Although the applicant did not revert to his parent department, he would contend that having given him an option to revert latest by 5.11.2008, he should be deemed to have been in service of the parent department at least till that date and accordingly he was entitled to benefits flowing therefrom. However, the third respondent passed Annexure-A1 office order dated 15.7.2009 wherein he was described as re-employed pensioner with effect from 1.5.2009. Subsequently by Annexure-A/2 letter dated 11.11.2009, the 1st respondent referred to a decision dated 31.08.2009 for grant of pension and other retirement benefits to the applicant for the services rendered by him in the department up to 31.08.2006. The applicant would contend that he was entitled to benefits flowing from permanent absorption in the 3rd

respondent institute in terms of office memorandum dated 29.08.1994, 19.4.1998 and 29.1.1991 wherein it was provided that in case of transfer of Central Government servant to central autonomous bodies, they would be allowed to count the previous service for pension subject to certain conditions. He would, accordingly, seek to be declared a regular employee of the 3rd respondent with benefit of pension etc for service rendered thereat including the previous service rendered in the 1st respondent department.

7. The first respondent has filed a counter affidavit contesting the claim of the applicant. It is stated that in his Annexure-CA2, application for the post of Head, Division of Social Sciences in IGFI, the applicant had declared that in the event of his selection, he would tender his resignation or seek voluntary retirement. It was in the light of this undertaking that his application was forwarded to the 2nd respondent with cadre clearance for appointment on 'immediate absorption' basis as in terms of Annexure-CA-4 O.M. dated 19.4.1988 of the Department of Pension & Pensioner Welfare, the appointment of Government Servants in the Central Autonomous Bodies (CAB) shall be made on 'immediate absorption' basis only as in the case of Central Public Sector Undertakings. Further as per Annexure-CA5 Office Memorandum of even number dated 29.1.1991, if any autonomous body wished to seek exemption from the general rule of immediate absorption in respect of any particular post or posts or in respect of an organization as a whole, a proposal should be made by the autonomous body to the administrative Ministry/Department concerned. In the present case, the second

respondent never applied for any such exemption and, therefore, the rule of immediate absorption was applicable for filling up the post.

8. It is further submitted that after selection, the applicant was clearly informed that his appointment would be tenurial for a period of five years or until further orders and that the second respondent was not in a position to immediately absorb incumbents in tenurial positions. His tenure would, therefore, be regulated as re-employed pensioner for five years from the date he assumed charge of the post or till the he attained the age of 62 years whichever was earlier (Annexure-CA7). The applicant by Annexure CA8 letter dated 18.5.2006 applied for voluntary retirement. His request was examined in consultation with the department of Pension and Pensioners' welfare. Accordingly, the applicant was informed by Annexure CA10 O.M. dated 21.07.2006 that a Central Government servant could not take voluntary retirement under Rule 48 A of CCS (Pension) Rules 1972 for joining a post in a CAB. It was also informed that as per the extant instructions, the Central Government servant was required to give his technical resignation before his relief from the government. No lien/quasi permanent status of the government servant would be retained in his parent cadre. All his connections with the Government would be severed on his release for his appointment in the CAB and he would not be allowed to revert to his parent cadre. In such a case, the Government Servant concerned would be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in the parent organization.

9. The applicant had also requested the first respondent department by Annexure CA-II letter dated 1.3.2006 and CA 12 letter dated 1.8.2006 to allow him to join the post on deputation basis. The department examined his request and informed him by Annexure-CA13 O.M. dated 08.08.2006 that it was not possible to relieve the applicant on deputation/lien basis unless ICAR through Department of Agriculture Research and Education obtained exemption from the general rule of immediate absorption in respect of the post from the Department of Pension & Pensioners Welfare. By Annexure-CA 14 letter dated 24.08.2006, the applicant tendered his technical resignation w.e.f. 31.08.2006 and it was conveyed to him by Annexure-CA 15 O.M. dated 28.8.2006 that in terms of para 2 of the O.M. dated 13.11.1991 of Department of Pension & Pensioners Welfare, no lien of the applicant shall be retained and all his connections with the government shall be severed. The order was modified by order dated 31.08.2006 to the effect that the applicant was relieved on deputation on foreign service terms in compliance with the order of the Tribunal in O.A. No1720/2006 dated 28.08.2006. However, following the directions of the Hon'ble Delhi High Court in W.P(C) No.17470/2006 filed thereupon, the matter was considered by the 1st respondent and it was decided that the applicant could not be permitted to join IGRI on deputation/technical resignation/voluntary retirement and he would have to sever his links with the department. He would also have to forgo all his pensionary benefits of his service which could not be counted for pensionary benefits in future.

10. The aforesaid decision was conveyed to the applicant by Annexure-CA20 letter dated 10.10.2008. However, option was given to him to revert back to the department latest by 5.11.2008. It is submitted that the applicant did not avail of the opportunity and continued on the post of the third respondent. The first respondent, therefore, consulted the department of Pension and Pensioners Welfare again and as per their advice decided to grant pension and other admissible pensionary benefits to the applicant up to 31.08.2006 only for the service rendered in the department up to that date treating him as resigned from the Central Government on 31.08.2006. Accordingly, Annexure CA-22 notification was issued on 26.4.2010 treating the applicant as resigned from the Central Government with effect from 31.08.2006. Since the applicant had not availed of the opportunity to revert back to the department, he could only be given pensionary benefits up to 31.08.2006, the date up to which he had served in the department, it is contended.

11. The second, third and fourth respondents have filed a joint counter affidavit. According to them, the post for which the applicant had applied was advertised for being filled up on tenurial basis for a period of five years subject to the age of superannuation of 62 years. In the offer of appointment issued to the applicant by the second respondent it was stated that it would not be possible to absorb the incumbent serving on a tenurial post and, therefore, the appointment of the applicant would be regulated as re-employed pensioner for a period of five years. The second respondent had expressed such inability to absorb the applicant in the context of the cadre clearance given by the 1st respondent for

appointment on 'immediate absorption' basis. The applicant accepted this offer by letter dated 20.2.2006 and, subsequently, mentioned that he had submitted his notice of voluntary retirement and accordingly sought extension of joining time. The council kept acceding to his request for extension till the final extension granted up to 31.08.2006 as the Council could not continue to keep this crucial post vacant indefinitely. It was subsequently clarified to the applicant that the second respondent had no objection if the first respondent was willing to permit the applicant to proceed on deputation till the applicant attained the age of 60 years i.e. the age of superannuation in the Ministry of Agriculture.

12. It is further submitted that since the applicant tendered his resignation in terms of the relevant rules and was relieved with effect from 31.08.2006, the applicant was granted pension and other admissible benefits by the 1st respondent up to 31.08.2006. The applicant's grievance that he could not be treated as re-employed pensioner in the third respondent institute is absolutely baseless. The order granting pension and other benefits up to 31.08.2006 was passed in acceptance of the applicant's resignation from the 1st respondent department in terms of the direction of the Hon'ble Delhi High Court in W.P. 17470/2006 dated 5.8.2008. It is also contended that the O.A. filed by the applicant was pre-mature as the impugned orders are appealable under sub rule 4 of Rule 23 of CCS (CCA) Rules and the applicant had not preferred any appeal as provided under the rules.

13. Heard both sides. Learned counsel for the applicant argued on the lines of the written submission presented on 19.10.2013. The thrust of

his argument was that the applicant had a right to be appointed on deputation to IGFRl as it is a research institute under the Indian Council of Agricultural Research. The ICAR is a State as per Article 12 of the Indian Constitution as observed by the Hon'ble Apex Court in P.K. Ramchandra Iyer & Ors.vs. UOI & Ors. 1984 SCC (2), 141 and Pradip Kumar Biswas & Ors Vs. I.C.B.(CSIR), SC 2002. It was pointed out that the 2nd and 3rd respondents had no objection to availing of the services of the applicant on deputation as the post in question was tenurial and an appointment on 'immediate absorption' basis was not possible. However, the 1st respondent, after having given cadre clearance to the applicant was harassing him by refusing to make his services available to the second respondent on deputation while at the same time failing to prevail upon the 2nd/3rd respondent to absorb him in their regular service. It was in such circumstances that the applicant was forced to knock at the doors of this Tribunal and obtained an order to provisionally appoint him on deputation basis. The 1st respondent filed W.P.No. 17470/06 challenging the order of the Central Administrative Tribunal and obtained an order dated 5.08.2008 directing the petitioner to take a final decision on the various resignation letters submitted by the respondent. It was argued that the various resignations/voluntary retirement letters were not submitted voluntarily but only under the threat of forfeiture of the applicant's entire service with the 1st respondent, if he failed to do so. While initially the respondents kept insisting that the applicant would forfeit his claim for pension and other pensionary benefits from the first respondent and all his connections would then be severed, surprisingly,

he received a letter dated 11.11.2009 stating that the DAC had decided to grant pension and other pensionary benefits to the applicant for the services rendered by him up to 31.08.2006. The applicant had a right to be treated at par with certain other persons serving in the 1st respondent department who were appointed to other institutions on deputation basis. Attention was drawn to the counter affidavit filed by the second, third and fourth respondents wherein it had been admitted that guidelines regarding exceptions to the 'immediate absorption' principle had been elucidated in DoP & PW O.M. No. 4/42/87-P&PW(D) dated 19.4.88 and 29.1.91. It was specified that certain posts requiring specialized persons in connection with scientific research or development of technology would come under the exception. The case of the applicant was accordingly covered under the specific clause. The 1st respondent ought not to have given cadre clearance conditionally as per the relevant instructions of the DoP& PW. The applicant had been given an option to revert back to the cadre by 5.11.2008, till which time he had been on deputation in the 3rd respondent institute. The mere fact that the applicant did not revert by the said date would not entitle the 1st respondent to accept his resignation/voluntary retirement from a retrospective date, 31.08.2006. Any resignation/voluntary retirement, no matter when it was submitted, could only be accepted prospectively especially when the incumbent had continued to be in service during the pendency of the technical resignation/voluntary retirement.

14. Learned counsel for the respondents on the other hand would lay stress on paras 4.1 to 4.4 of the counter affidavit filed by the 2nd, 3rd and

4th respondents. It was submitted that in terms of the relevant DoP & PW Circulars, none of the options viz., deputation/technical resignation/voluntary retirement was available to the applicant. Therefore, he would be deemed to have resigned from the services of the previous employer with the implication that he had severed his links with the DAC and his services with them would not be counted for pensionary benefits. He was, therefore, given an option to revert back to the Ministry of Agriculture by 5.11.2008 in the interest of justice by letter dated 10.10.2008. The applicant did not avail of the opportunity and, therefore, he would have no claim for pension and other retiral benefits. Nevertheless, on the advice of the Department of Pension and Pension Welfare, pension and other benefits were granted to the applicant for services rendered by him in DAC up to 31.08.2006. The applicant had applied for the post in question knowing full well that it would be filled up on tenurial basis for a period of five years or till the age of superannuation of the selectee i.e. 62 years. It was clarified that normally selectees in such tenurial only positions from outside the ICAR system were appointed on usual deputation/foreign service terms and conditions without deputation duty allowance. Since the Council would not be in a position to absorb such appointees in tenurial positions, the tenure of the applicant could be regulated as a re-employed pensioner for a period of five years from the date of assumption of charge. The applicant was accordingly informed clearly that he could seek voluntary retirement from Department of Agriculture and Corporation (DOA&C). The classification of the applicant as a re-employed pensioner had

become necessary as his services were not placed on deputation with the second/third respondent and no immediate absorption was possible in the case of the applicant. The applicant had accepted the offer and accordingly submitted his resignation/voluntary retirement from the services of DOA&C. The respondents were fully justified in passing the order granting the benefit of pension and other retirement benefits up to 31.08.2006 only as the Hon'ble Delhi High Court had in W.P. No. 17470/2006 had directed the respondents by an order dated 5.08.2008 to take a final decision on various resignation letters submitted by the applicant herein without being influenced by the observations of the Tribunal in the impugned order.

15. I have carefully considered the facts of the case as well as the submission made on behalf of the applicant and the respondents. It is not in dispute that the applicant had applied for the post of Head, Division of Social Sciences in the third respondent Institute in terms of the advertisement No.2/2005 published on 13.08.2005. It is clearly mentioned therein that the post would be filled up on tenurial basis for a period of five years. The applicant could not have participated in the selection process without cadre clearance from the 1st respondent. While the post in question was tenurial and the cadre clearance was to be either granted or refused accordingly, the 1st respondent chose to forward the application of the applicant for the post with cadre clearance for appointment on 'immediate absorption' basis. It is contended that the respondents were bound by the policy of DoP & PW under which appointment of Government Servants in the Central Autonomous Bodies

(CABs) shall only be on 'immediate absorption' basis as in the case of Central Public Sector Undertakings(CPSUs) in terms of DoP&PW O.M. dated 31.3.1987. By a subsequent O.M. dated 19.4.1988, a provision was made to seek exemption from the condition of 'immediate absorption' in certain cases. However, neither the second nor the third respondent had made any efforts to seek exemption from the DoP & PW from the policy of immediate absorption in respect of the post in question in the third respondent Institute and, therefore, the policy was applicable on them.

16. The applicant having been found eligible and most suitable had been selected by the 'Agricultural Scientists Recruitment Board' (ASRB) for the said post. As the applicant could not be appointed in the third respondent institute on 'immediate absorption' basis, an offer was made to him either to be appointed on deputation, if the 1st respondent would agree for the same or otherwise as re-employed pensioner after the applicant quit the services for the first respondent. As the first respondent would not allow the applicant to proceed on deputation, the applicant had no option but to submit his resignation/voluntary retirement, if he wished to join the services of the second/third respondent. It is in such circumstances, he had submitted various letters with a view to be able to join the post for which he was selected on merit.

17. The issue that arises in this case is whether the policy of DoP& PW that Government Servants would only be allowed to be appointed in CPSUs/CABs on 'immediate absorption' basis is applicable only on the government servants or on the CPSUs/CABs as well. The policy of

'immediate absorption' which had its genesis in an OM issued by the Ministry of Finance in March 1985 found expression in G.I., Dept. of Per. & Trg. O.M. No. 28016/5/85-Estt.(C), dated the 31st January, 1986, issued with the concurrence of the Ministry of Finance (Dept. of Expenditure) and the Dept. of Public Enterprises. It was stated inter alia, therein that the stipulation of 'immediate absorption' would apply to all appointments of Central Government servants in the Central Public Enterprises irrespective of the level of appointment, the mode of recruitment and whether an appointment was in public interest or otherwise, but subject to exceptions made in G.I.M.F., O.M. No 5(25)/83BPE(PESE) dated 6th March, 1985. The O.M. dated 6.3.1985 inter alia stated as follows:-

"The Government have reviewed the policy regarding deputation of Government officers to Central Public Enterprises in the context of the need for toning up the performance of public enterprises.

2. In supersession of all extant orders on the subject, it has been decided that deputation of all Government Officers including those belonging to Defence Services, to all posts (whether Board-level or below Board-level) in Central Public Enterprises should, except in the cases mentioned in the following paragraphs, not be permitted from the date of issue of this OM i.e. 6th March, 1985. Hereafter, such officers could join posts in the Central Public Enterprises only on immediate absorption basis."

18. It would be clear from the above that the policy regarding deputation of Government Officers to Central Public Enterprises had been reviewed in the context of the need for toning up the performance of

public enterprises. When such a policy is extended to CABs as well in terms of DoP& PW O.M. dated 31.3.1987 which stipulated inter alia that appointment of government servants in CAB shall be on immediate absorption basis only as in the case of CPSUs, the conclusion is inescapable that the Central Government, at the highest policy level, was equally concerned about the need to tone up the performance of the CABs. Accordingly, when the policy is sought to be enforced on government servants, it could not but be expected that the same policy would be enforced on the CPUs/CABs as well with as much rigour. However, it appears in the instant case that while the first respondent granted cadre clearance to the applicant for appointment on 'immediate absorption' basis, they were not in a position to enforce the policy of 'immediate absorption' on the second and third respondents. Nor were they able to secure compliance from the third respondent with the requirement of seeking exemption from the policy. As a result, the third respondent neither followed the policy nor sought exemption therefrom which was tantamount to ignoring the policy altogether. If the policy of 'immediate absorption' was incapable of being enforced on the CAB, it is not clear how it could be selectively enforced only on the government servant. The applicant was willing to be absorbed and, therefore, he was not responsible for the violation of the policy. Accordingly, it would be unfair to allow penal consequences to visit him for non compliance of the policy by the second and third respondents.

19. As the policy regarding 'immediate absorption' had evolved out of a review of the policy regarding deputation, it stands to reason that if the

policy regarding immediate absorption could not be invoked for any reason, the government would consider reverting to the previous policy of providing the services of the government servant concerned on deputation. However, the first respondent insisted on enforcing the policy selectively on the applicant only. No explanation is given how a person could be absorbed in a tenurial post and if it was not possible, why cadre clearance was given at all for 'immediate absorption'. Further, it is not as if the policy regarding 'immediate absorption' is rigid and totally inflexible as the O.M dated 19.4.1988 of DoP&PW provides for exceptions in the following cases:-

- "(1) Posts in executive or senior management level (i.e. posts carrying a pay scale of not less than Rs. 3700-5000) in local self Govt. bodies and specified posts like Chairman and Vice-Chairman in public utilities such as DESU and DDA.*
- (2) Posts in executive or senior management level in autonomous bodies having very close inter action with policies and programmes of the Govt.*
- (3) Posts where the nature of the work requires employment of Govt. Officers for security reasons or vigilance purposes.*
- (4) Posts in newly established/temporary organisations (upto a period of 5 years from the date of establishment)*
- (5) Posts limited in number particularly in specialized fields where creation of a regular cadre is not feasible.*
- (6) Posts requiring specialized personnel in connection with scientific research or development of technology."*

It is not clear why the exception at S. No.2 could not have been invoked in the instant case as the post of Head, Division of Social Sciences, in an Institute such as the third respondent could not be below executive or

senior management level having close interactions with the policies and programmes of the Government. Needless to say, if exemption from the policy would have been sought and availed of, the applicant's services would have been offered on deputation. The failure to seek permissible exemption should mean compliance with the policy of 'immediate absorption' and not its defiance by the third respondent.

20. It was not the applicant's fault that neither the second nor the third respondent thought it fit to seek exemption from the policy of 'immediate absorption' in terms of the aforesaid O.M. While the reluctance/inaction of the second and the third respondent to seek permissible exemption from the rule of 'immediate absorption' remains unexplained, the question that arises for consideration is whether it is fair on the part of the respondents to insist that the only other option is for the applicant to quit his services without pension and other retirement benefits if he wished to join the post. Although the respondents realised how unreasonable their stand was and subsequently, in consultation with the DoP& PW, allowed pension and retiral benefits to the applicant up to 31.08.2006, it appears to have been done more as a measure of a special concession to the applicant than in appreciation of his legal right.

21. The refusal of the second and third respondents to appoint the applicant to the post on 'immediate absorption' basis had left the first respondent with only two options, i.e. to either place his services with the third respondent on deputation or to insist on his quitting the service without any benefits flowing from his selection to a higher post. While the first respondent had opted for the latter, it is not clear why the services of

the applicant could not have been offered on deputation in such a situation when the DoP& PW was unable to enforce the policy of 'immediate absorption' on the second and third respondents. After all, the stated objective of the policy of 'immediate absorption' was not to deprive the government servants of their legitimate career prospects in government owned and controlled CABs but to tone up the performance of the CPSU/CAB. What the policy implied was that an official would perform better and do his best for an organisation or institution if he had long term stakes in it which was possible only if he was absorbed in their services. If the services were made available only for a short term such as when an officer is posted on deputation, he was more likely to look at his long term prospects in the parent organization and might not work too hard to excel or promote the interests of the borrower organisation to the extent he would in the parent organization. It is a policy intended to benefit the CPSU/CAB rather than harm the government servant.

22. Clearly the objective of such a policy to tone up the performance of the borrower organisation could only be realised by applying the policy equally on the CPSU/CAB on the one hand and the government servant on the other. The manner in which the policy had been invoked by the first respondent would only dis-incentivize meritorious government servants from competing for top jobs in the CPSUs/CABs thereby defeating the policy itself as such jobs would then be restricted to competition among outsiders only. This would deprive the CPSUs/CABs of the best human resources and the task of 'toning up the performance' would have to be left to less than the best that emerge out of a restricted

competition. In the process, the government servant concerned would also stand deprived of his right to compete for a tenurial post in a CAB due to the unreasonable restriction that has no rational nexus with the stated objective of the policy and, therefore, violative of equal opportunities guaranteed by the Constitution of India. No rule or executive instructions have been brought to the notice of the Tribunal to state that the Central Government as a matter of policy would not allow its officers to compete for tenurial posts in CPSUs/CABs. Such policy, if any, would be in direct conflict with the objective of toning up the CPSUs/CABs. While there appears to be no such express policy statement, the respondents, by a process of negative interpretation of the policy of 'immediate absorption' had brought into effect precisely such a policy at their own level.

23. It is not as if the third respondent institute, being an autonomous body was not bound by the policy of 'immediate absorption' or the need to seek exemption therefrom. The CABs like CPSUs are owned and controlled by the Central Government which has a right to give directions and secure their compliance in policy matters. Had this not been so, the Government would not have issued inter alia, the following clarification in G.I., Min. of Industry, S.&A. Cell, O.M. No.2(8)/85-BPE S & A. Cell received under C.&A.G.'s Endorsement No.945-GE I/215-85 dated 24.2.1986.

"Clarification 2.— The policy on immediate absorption as contained above applies equally to the employees of the State Governments joining Central Public Sector Undertakings.

No Central Public Enterprise except those specifically exempted from the purview of the ban order, should appoint an employee of a State Government otherwise than on immediate absorption basis."

Clearly, the Central Government could not have interfered in a matter between CPSU/CAB and a State Government unless their directions were binding on the CPSU/CAB.

24. Having regard to the facts of the case and the policy objectives as discussed above, I am of the view that the applicant ought not to have been asked to revert to his substantive post in the Central government as this would have had the effect of undoing the merit based selection in which the applicant had emerged successful. His reverting to the parent department by 5.11.2008 would have served little purpose as it was not for the reason that his services were required in the parent department and were going to be better utilized therein than in the third respondent institute, that he was asked to revert. The direction/option to the applicant to revert by 5.11.2008 appears to have been given solely with the intention of depriving him of the benefits of retiring from a higher post and had nothing to do with public interest. His exit would only have paved the way for an outsider to enter the third respondent institute though a restricted competition thereby depriving them of the services of the best of all eligible persons. Thus the manner in which the respondents sought to implement the policy was detrimental to the interests of the applicant while not being beneficial to the CAB. Such an approach was clearly counter productive and shows a non application of mind at a

sufficiently senior level in the government as a result of which the respondents failed to realise the implication of their stand.

25. In view of the above, I have no hesitation to hold that it was wholly unnecessary and contrary to the stated objective of the policy of the Ministry of Finance, DoP& PW and DOPT to deny the applicant the benefit of his selection and appointment in the third respondent institute, by insisting on his resignation from the substantive post held by him in the first respondent department. If the policy had been correctly understood and applied in context, the applicant would have been allowed to be in service in the first respondent department till his normal date of superannuation on attaining the age of 60 years by suitably regularising his service up to that date in the third respondent institute. The resignation letters obtained from the applicant were nothing but an outcome of a misapplication of the policy and contrary to its basic objective of toning up the performance of the CAB. In any case, in granting the option to revert by 5.11.2008, the first respondent had decided to ignore the resignation letters as none of them was voluntary. In such circumstances neither the notification dated 26.4.2010 treating the applicant as having resigned from the Central Government w.e.f. a retrospective date of 31.08.2006 nor the communication dated 11.11.2009 that the applicant would only get admissible pensionary benefits up to 31.08.2006, both issued after the normal date of superannuation had already passed could be sustained. They are accordingly quashed and set aside. The first respondent, having granted cadre clearance and having failed to enforce the policy of 'immediate

absorption' on the third respondent cannot be allowed to act in a manner that denied the right of the applicant to serve upto the normal age of superannuation. It is, therefore, held that the applicant is entitled to determination of pension and other retirement benefits as would have been due on the normal date of superannuation on attaining the age of 60. The first respondent is accordingly directed to re-determine and revise his entitlements within a period of two months from the date of receipt of copy of this order.

26. O.A. is allowed in the above terms. No costs.

(R. RAMANUJAM)
MEMBER(A)

10.11.2017