

**Central Administrative Tribunal
Principal Bench**

OA No.3923/2014

Order Reserved on: 29.11.2017

Pronounced on:20.12.2017

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

Ashok Kumar Gaur,
S/o late Sh. J.K. Sharma,
Age about 61 years (Retired),
6, Chanan Singh Park,
Kirby Palace, MH Road,
Delhi Cantt-110010

... Applicant

(By Advocate: Shri Naresh Kaushik)

Versus

1. The Secretary,
Govt. of Delhi,
Delhi Sachivalaya,
ITO, New Delhi.
2. Chief Engineer (Irrigation & Flood
Control Department),
Govt. of Delhi, 4th Floor, ISBT,
Kashmere Gate,
New Delhi.
3. Delhi State Industrial & Infrastructure
Development Corporation Ltd. (DSIIDC)
Through General Manager,
N-36, Bombay Life Building,
Connaught Circus,
New Delhi-110001.

-Respondents

[By Advocate Ms. Alka Sharma (R-1&2) and Ms. Aditi Gupta for Mr.
Gaurang Kanth (R-3)]

ORDER

Through the medium of this Original Application (OA)
filed under Section 19 of the Administrative Tribunals Act,
1985, the applicant has prayed for the following reliefs:-

“a) allow the present Original Application; and quash the impugned order dt. 6.3.2014 (Annexure A-6) and

b) direct the Respondent to grant and release the pension and other retirement benefits i.e. gratuity at 10% per annum from the date the gratuity became payable till the date on which it is paid, GPF, leave encashment for the period i.e. 1976 to 1988, the Applicant had worked with Respondent Department;”

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

2.1 The applicant joined as a Junior Engineer (JE) in the year 1976 in the Irrigation & Flood Control Department of Government of National Capital Territory of Delhi (GNCTD). He was deputed to Delhi Energy Development Agency (DEDA) as an Assistant Engineer (AE) on 08.12.1985 and was absorbed therein w.e.f. 01.07.1998 as AE vide order dated 26.04.1994 (Annexure A-2). He earned his promotion in DEDA as Executive Engineer. The DEDA was closed in the year 2006 and consequently the applicant and other employees of DEDA were declared surplus.

2.2 On having been rendered surplus, the GNCTD posted him to Delhi State Industrial & Infrastructure Development Corporation (DSIIDC)-respondent no.3 where he worked from 02.12.2009 to 28.02.2013. He finally retired from DSIIDC on 28.02.2013 on attaining the age of superannuation. The DSIIDC is not a pensionable organization. The applicant is

seeking grant of pension and gratuity for the period when he served in the Irrigation & Flood Control Department of the GNCTD, in terms of DoPT OM 31.01.1986. Since his case was not properly considered by the GNCTD, he approached the Chairman, Public Grievances Commission (PGC) of GNCTD vide his representation dated 15.12.2013 (Annexure A-4). The representation of the applicant was forwarded by the PGC to DSIIDC and who, in turn, sent it to respondent no.2.

2.3 The respondent no.2 vide his Annexure A-6 letter dated 06.03.2014 had sought the following documents for processing grant of pro-rata retirement benefits to him in accordance with CCS (Pension) Rules, 1972 and the guidelines contained in DoPT OM NO.28016/5/85-Estt.(C) dated 31.01.1986:

- “A) Technical resignation.
- B) Relieving Order at the time of absorption.
- C) Necessary orders accepting the resignation of the officer from Government service from the actual date of his/her joining the PSU/Autonomous body.”

2.4 The said letter further states that in the absence of a copy of his technical resignation letter/relieving order whereby he was relieved from the office of respondent no.2 before joining DEDA, it would be difficult to consider his request for the retiral benefits.

2.5 Aggrieved by this Annexure A-6 communication, the applicant has approached this Tribunal in the instant OA, praying for the reliefs as indicated in para-1 supra.

3. Pursuant to the notices issued, the respondents entered appearance. However, reply has been filed only on behalf of respondents no.2&3. Respondent no.2 in its reply has stated that the applicant was permanently transferred to DEDA and later on to DSIDC and hence all his service grievances are to be dealt with by DSIDC only.

3.1 Respondent no.3 in its reply has stated that respondent no.3 is a non-pensionable organization. The applicant has not made out any grievance against respondent no.3 and as such no relief can be granted by respondent no.3 to him.

4. Heard the arguments of the learned counsel for the parties on 29.11.2017. The fact that the applicant worked in the office of respondent no.2 from 1976 to 1.7.1998 is not in dispute. For this period of service, he is entitled for pro-rata pension and all retiral benefits viz. GPF, leave encashment and gratuity in accordance with CCS (Pension) Rules, 1972. The applicant in his rejoinder to the reply filed on behalf of respondent no.2 has stated that a sum of Rs.2,59,383/- has been released by the Pay & Accounts Officer of GPF Cell (PF-IX) of GNCTD vide order

dated 25.08.2014 (page 52) but the same has been illegally withheld by respondent no.2.

5. The Central Government vide DoPT OM dated 31.01.1986 has issued comprehensive guidelines with regard to grant of pro-rata pension and other retiral benefits to the government servants who have later got absorbed in Public Sector Undertakings (PSUs). The relevant extract from the said OM is reproduced below:

“a. xxx xxx xxx xxx

b) In case of absorption in an autonomous body under the State Government having a pension scheme on the pattern of the Central Government, the employee will have the option to count the service for pension provided the concerned State Government has entered into reciprocal arrangements with the Central Government for counting of service for pension. Otherwise, the employee will be entitled to the payment of pro-rata retirement benefits only.”

6. Appendix 7 under the heading ‘Pensionary benefits’ CCS (Pension Rules – May 2013 Edition) also clearly spells out the grant of pro-rata pension and other retiral benefits to such government servants, which is reproduced below.

“Pensionary benefits

(4) (i) Resignation from Government service with a view to secure employment in Central public enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the Government servant concerned shall 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 his parent organization.

(ii) [The officer eligible for pension will be entitled to draw pro rata monthly pension (with option to commute up to 40 per cent of pension wherever admissible) and retirement gratuity as admissible under the relevant rules.]”

7. From the above provisions of the CCS (Pension) Rules and DoPT OM dated 31.01.1986, it is quite clear that the applicant is entitled for pro-rata regular pension and all retiral benefits for the period of service rendered by him in the Irrigation & Flood Department of the GNCTD prior to his absorption in DEDA.

8. The Pay & Accounts Officer has sanctioned the GPF of the applicant for the period of service rendered by him in GNCTD. It is very unfortunate to notice that respondent no.2 has not in turn allowed this benefit to pass-on to the applicant. Such action of respondent no.2 is indeed reprehensible.

9. In the conspectus of the discussions in the foregoing paras, this OA is allowed in the following terms:

a) The respondent no.2 shall release the GPF amount of Rs.2,59,384/- to the applicant sanctioned by PAO vide order dated 25.08.2014 within four weeks of receipt of a certified copy of this order.

b) The respondent no.2 shall sanction pro-rata regular pension to the applicant for the period of service rendered by him in the Irrigation & Flood Control Department of GNCTD

before he was absorbed in DEDA without insisting on production of technical resignation and relieving order.

c) The respondent no.2 shall also release all the admissible other retiral dues, viz. leave encashment and gratuity of the applicant for the period of service rendered by him in the Irrigation & Flood Control Department of GNCTD.

d) The reliefs granted at (b) & (c) shall be released to the applicant within a period of three months from the date of receipt of a certified copy of this order. No costs.

(K.N. Shrivastava)
Member (A)

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