

**Central Administrative Tribunal  
Principal Bench  
New Delhi**

**OA No.4162/2015**

**Reserved on:20.11.2017  
Pronounced on :12.12.2017**

**Hon'ble Ms. Praveen Mahajan, Member (A)**

Mohinder Pal  
S/o Late Ram Singh  
R/o H.No.7, Block No.11  
Near sec.31, Springfield colony  
Faridabad, Haryana.  
(Through Rajesh Kumar Bidhuri)

.... Applicant

(By Advocate:Shri Dharmendra Tyagi)

Versus

1. Union of India  
Through Secretary  
Central Water Commission  
Ministry of Water Resources  
Govt. of India, Sewa Bhawan  
R.K.Puram, New Delhi.

2. Union of India  
Through Secretary  
Department of Power CEA  
Sewa Bhawan  
R.K.Puram, New Delhi.

.....Respondents

(By Advocate:Shri Gyanender Singh)

**ORDER**

The present OA has been filed by the applicant, Shri Mohinder Pal seeking pension, gratuity and other post retiral benefits for service rendered by him for a period of more than 10 years. The applicant states that after working with the Central Water and Power Commission for more than 10 years, he was permanently absorbed with NTPC where he worked till the date of his retirement on 31.08.2006. The pro-rata pension and gratuity

being due with the previous employer, he applied to the Under Secretary, Central Electricity Authority Sewa Bhawan, R.K.Puram, New Delhi seeking grant of pension and gratuity and other post retiral benefits, Vide his representations dated 25.11.2014 and 16.12.2014.

2. He submits that he has not received any letter or reply from the respondents but has been informed verbally that his claim is not viable since he has not completed 10 years of qualified government service and remained in a temporary capacity and was never declared permanent/substantive in any post, as required under Rule 13 of CCS (Pension) Rules 1972, before his permanent absorption in NTPC.

3. The applicant further avers that his case is fully covered by the Judgment of **Pardumna Kumar Jain Vs. Union of India & Ors.** 1984 (Supp.) (2) SCC 548 and he is entitled for post retiral benefits from the respondents. He has also relied upon a number of judgments passed by the Tribunal in OA No.168/2004, OA No.2362/1997, OA No.1852/2004, OA No.129/2005, OA No.1522/2005, OA No.1523/2005, OA No.2684/2007 and OA No.59/2008 etc.

4. In other cases like OA No.1637/2005 Puranwasi Ram Vs. UOI, OA No.54/2006 Chhotey Lal Vs. UOI, OA No.245/2005 Chunni Lal (Bairwa) Vs. UOI, OA No.3078 Hari H. Tiwari Vs. UOI and OA No.1860/2005 Sohan Lal Vs. UOI, he submits, the Tribunal has directed the respondents to release the pro-rata pension to the applicants with interest, despite the fact that the applicants had not completed 10 years of qualifying service in accordance with the rule.

5. Being aggrieved by the inaction of the respondents the applicant has sought the following reliefs :-

- “(a) Pension for the period served under Central Water and Power Commission along with interest from the date of accrual.
- (b) Encashment of the leave to his credit as per the existing Rules on the subject along with interest from the date of accrual.
- (c) Gratuity if any, left over in case of the applicants, along with interest.
- (d) Other post retirement benefits as per Rules.”

6. The respondents in their counter state that the applicant, Shri Mohinder Pal had rendered service in the work-charged establishment of Badarpur Thermal Power Station (BTPS) under CEA as “Painter” from 25.04.1969 to 31.03.1978 till his permanent absorption in NTPC. Hence, the applicant served only for a period of 8 years 11 months & 6 days in that establishment and has never worked in a regular establishment during his government service. He remained in a temporary capacity and was never declared permanent/substantive in any post, as required under Rule 13 of CCS (Pension) Rules, 1972, before his permanent absorption in NTPC. Hence, as per the provisions of Rules 13 & 49 (2) (b) of the CCS (Pension) Rules, 1972, he is not entitled for pro-rata Pensionary benefits, since he does not fulfil the eligibility criteria of minimum 10 years qualifying service for grant of pension.

7. The Respondents further submit that vide their letter dated 13.09.1978 (Annexure R-1) the applicant accepted the offer of NTPC vide letter dated 08.09.1978 and exercised the option for transfer/absorption in NTPC as per the terms and conditions stipulated in the letter dated 01.04.1978. As per sanction of the President conveyed by letter dated 04.07.1981 (Annexure R-3) issued by the Ministry of Energy in consultation with the Department of Personnel & Administrative Reform, the Government had allowed, at the time of their absorption, the benefits of service rendered by ex-employees of Central Electricity Authority (CEA)

absorbed in BTPS under the Contributory Provident Fund Rules in terms of Ministry of Finance Office Memorandum subject to the condition that they were not eligible for grant of pension under the Central Civil Service (Pension) Rules, 1972. Hence, the applicant is not eligible for pro-rata pensionary benefits from Respondents. He has already accepted the terms and conditions offered to him by NTPC and also availed the benefit allowed by the Ministry of Energy.

8. The respondents further submit that the OA is barred by limitation as the action by the applicant in this regard was to be taken at the time of absorption in NTPC i.e. in 1978. However, he is requesting for pro-rata pensionary benefits now i.e. after a gap of 35 years since his absorption in NTPC. Having said that, the respondents contend that in terms of Rules 5(1) of CCS (Pension) Rules 1972, "Any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from the service or dies, as the case may be." As per the Pension Rules existing at the time of applicant's absorption in NTPC, he is not entitled to pro-rata Pensionary benefits from the Government of India.

9. The submission of the applicant that he served under the Central Water and Power Commission up to 12.06.1979 is not correct as the applicant himself stated that he was permanently absorbed on 01.04.1978. This fact is evident from the Annexure A-5 (NTPC's letter dated 30.07.1979) that he was serving in the NTPC on 01.01.1979 as his pay was fixed w.e.f. 01.01.1979 vide the above cited letter. The applicant has rendered service in the work-charged establishment of BTPS as "Painter" from 25.04.1969 to 31.03.1978 i.e. a period of 8 years 11

months and 6 days only. As per the letter No.50/16/81-Adm. I dated 04<sup>th</sup> July, 1981 issued by the Ministry of Energy, in consultation with the Department of Personnel & Administrative Reforms, the government had allowed, at the time of their absorption, the benefit of service rendered by ex-employees of CEA absorbed in BTPS under the Contributory Provision Fund Rules in terms of Ministry of Finance office Memoranda No.2(6)/E.V./(A)/62 dated 05.11.64 and No.9/(1)-E.V. (B) 71 dated 23.12.73 in BTPS (NTPC) subject to the condition that they were not eligible for grant of pension under the Central Civil Service (Pension) Rules, 1972.

10. On his retirement from NTPC, the applicant has received gratuity by the Corporation for his entire period of service (including Government service from 25.04.1969 to 31.03.1978) along with other terminal benefits as per rules. He has also been given the carry forward of leave from NTPC for the past service and no further leave encashment is payable to the applicant by the respondents. The applicant got benefits as sought for by him by getting double benefit for the same period of service.

11. The respondents aver that while disposing of similar petitions filed by Shri A.K.Bagchi in OA No.940/2008 Shri Lal Bahadur in OA No.1433/2008 & Shri Prem Singh in OA No.1638/2008 and few others, a Division Bench of the Tribunal, vide Order/Judgment dated 23.03.2011 has observed that the applicants have accepted the benefits of CPF from the government for the period of service rendered by them in CEA subject to the condition that they were not considered eligible for pension. In view of this, the OAs were disallowed (Annexure -9). The ratio of the aforementioned order, they state, is squarely applicable in the case of the applicant in the present OA

– Sh. Mohinder Pal, who also accepted CPF benefits at the time of his absorption in NTPC is not eligible for pro-rata pension from CEA.

12. In the rejoinder, filed to the counter, the applicant states that at the time of absorption in NTPC, the applicant, along with other similarly placed employees was informed as per letter dated 8<sup>th</sup> Sept. 1978 issued by the Ministry of Energy, NTPC that for the purpose of contributory provident fund, gratuity and payment of retrenchment compensation, workmen absorbed in NTPC, shall be deemed to have been in continuous service of the company with effect from date of joining BTPS/BTPP in regular or work-charged status so that they are not deprived of the benefit of past service in the central government for these purposes. In consultation with the Department of Personnel & Administrative Reform, the government had allowed, at the time of their absorption, the benefit of service rendered by ex-employees of Central Electricity Authority (CEA) absorbed in BTPS, under the Contributory provident Fund Rules in term of Ministry of Finance Office Memoranda dated 05.11.1964 and 23.12.1971 in BTPS (NTPC) subject to the condition that they were not eligible for grant of pension under the Central Civil Services (Pension) Rules, 1972. He states that assuming that there is/was such an agreement, (though this fact is being disputed by the applicant) as per provisions of the Pension Act, no pension can be relinquished or assigned before its accrual. Hence, the applicant could not have relinquished his pension at the time of his absorption with NTPC because at the time of absorption, no pension would have accrued in his favour.

13. I have gone through the facts of the case carefully and perused the relevant records, as also the rival contentions of both the learned counsels.

14. The primary prayer of the applicant in the OA is grant of pension for the period he served under the Central Water and Power Commission along with interest, from the date of accrual. Before adjudicating the matter, it is essential to go through the terms of settlement regarding the conditions of absorption of workman in regular and workcharged establishment. These conditions have been laid down in the Annexure-I of letter dated 08.09.1978 of NTPC, which were made available to all those who opted for permanent absorption. The said terms and conditions were to be effective w.e.f. 01.04.1978. The conditions in para 13.3 states as under :-

“13.3. For the purpose of Contributory Provident Fund Gratuity and payment of retrenchment compensation workmen absorbed in NTPC shall be deemed to have been in continuous service of the Company with effect from the date of joining BTPS/BTPP in regular or work-charged status so that they are not deprived of the benefit of past service in the Central Government for these purposes

Provided that in the cases of workmen covered by General Provident Fund and Pension Schemes may be given the benefit of contribution by the Government equal to the amount contributed by the workman himself and the total GPF balance inclusive of the said contribution shall be transferred to NTPC's Contributory Provident Fund.

Notwithstanding the provisions laid down herein, if the Central Government agrees to permit continuance of coverage of regular workmen under the General Provident Fund and Pension Schemes the Company shall make the necessary pension contribution as stipulated by the Government.”

15. It is stated that Shri Mohinder Pal vide letter dated 13.09.1978 (Annexure R-1) had accepted the offer of NTPC vide letter dated 08.09.1978 and exercised the option for transfer/absorption in NTPC as per terms and conditions stipulated in the above mentioned order dated 01.04.1978. However, as per letter No.50/16/81-Adm.I dated 04.07.1981 issued by

Ministry of Energy, in consultation with the Department of Personnel & Administrative Reform, the Government had allowed, at the time of their absorption, the benefits of service rendered by ex-employees of Central Electricity Authority (CEA) absorbed in BTPS under the Contributory Provident Fund Rules in terms of Ministry of Finance Office memorandum that "in terms of Rules 5(1) of CCS (Pension) Rules, 1972, any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign for the service or dies, as the case may be"... (Annexure R-4). Hence, as per the Pension Rules existing at the time of applicant's absorption in NTPC, he is not entitled to pro-rata pensionary benefits from the Government of India.

16. The applicant was given the benefit of past service under CPF rules in terms of Ministry of Finance Office Memoranda dated 05.11.1964 since he was considered ineligible for pension. In terms of the aforesaid OM, when the government servant is transferred to an autonomous body he has to be paid by such rules. In the present case the Government paid to NTPC the CPF contribution at the time of absorption of the applicant in the said department. Thus the applicant got benefits of service rendered by him in CEA by way of CPF contribution made by the government.

17. I have gone through the relied upon judgment by the applicants as well as the order passed by the Hon'ble Supreme Court in **Praduman Kumar Jain's** case. In the said case, the main question before the Hon'ble Court was whether the appellant was entitled to pro-rata pension for the period of his service under the Central Government on his not being a substantive employee of the Central Government. In the present case,

however, the proposition to be examined is not whether the service rendered by the applicant, on temporary workcharge can be considered for pension, but the question is, whether, having accepted the benefit of CPF for a particular length of service rendered by the Central Government, can the applicant still claim the pro rata pension also, for the same period? The answer is obviously in the negative.

18. The respondents in their counter have also disputed the claim of the petitioner that he worked in the workcharged establishment of BTPS to CEA for more than 10 years. They contend that in addition to other issue, he does not fulfil the eligibility criteria of minimum 10 years service for grant of pension since he worked as Painter from 25.04.1969 to 31.03.1978 i.e. for a period of 08 years 11 months and six days, in a purely temporary capacity. For the moment I don't think I need to go into the issue whether temporary status can entitle him for consideration of pension, since the "ineligibility" of the applicant (on account of other reasons discussed in the afore mentioned paras), for grant of pro rata pension, stands established.

19. I agree with the contention of the respondents that on his retirement from NTPC, the applicant was paid gratuity by the corporation for his entire period of service (including Government service from 25.04.1969 to 31.03.1978) along with other terminal benefits as per rules. Therefore, he is not entitled to payment of any gratuity from the Government. As regards leave encashment the government vide letter No.3/8/90-BTPS dated 13.03.1992 had approved the carry forward of leave of the quasi-permanent as well as temporary employees of Central Electricity Authority/Central Water Commission at the time of his permanent absorption in BTPS(NTPC) w.e.f.01.04.1978. Accordingly, the applicant has been granted the benefit of

carry forward of leave from NTPC for the past service. Therefore, no leave encashment is payable to the applicant from the government. Having requested terminal benefits by the NTPC for his whole period of service if the applicant were to get the benefits as sought for by him in the OA, it would amount to the applicant getting double benefits for the same period of service.

20. The applicant has tried to seek shelter under provision of Rule 37(1) & 49 (2) of Pension Rules. Rule 37 provides as under :-

“37 (I) 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.”

**It is important to note that retiral benefits can be received, if any, subject to his being eligible for the same.**

Rule 49 (2) of the Pension Rules provides that :-

“In the case of a Government servant retiring in accordance with the provisions of these rules after completing the qualifying service of not less than ten years, the amount of pension shall be calculated at fifty percent of emoluments or average emoluments, whichever is more beneficial to him, subject to a minimum of three thousand and five hundred rupees per mensem and a maximum of forty-five thousand rupees per mensem.”

**In the present case, the applicant has completed less than the minimum qualifying service, since he worked as “Painter” from 25.4.1969 to 31.3.1978 and these dates have not been disputed by the applicant.**

21. The judgments relied upon by the applicant do not deal with the substantive issue in the current OA. Hence, the ratio of the same is not applicable to the present case.

22. The respondents have relied upon the judgment of the Principal Bench, New Delhi in OA No.940/2008 delivered on 23.03.2011. I find that the ratio of the said order passed by the Principal Bench is squarely applicable to the present case. All the issues raised in the present petition formed a subject matter of the above mentioned OA. The issues therein have been dealt with succinctly and at length, leaving no room for ambiguity.

23. In view of the facts and discussions above, I cannot fault the respondents for having issued the impugned orders and there is no scope for intervention by the Tribunal. The O.A. is dismissed as being devoid of merit. No costs.

**(Praveen Mahajan)**  
**Member (A)**

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