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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A. No. 567/2018

Date Of Decision: 1st May, 2019.

CORAM: R. VIJAYKUMAR, MEMBER (A).

Shri Hemadri S. Pol,
Age: 92 years, Occ: Retired Account Officer,
Grade-I, RCF,
Working at Telecom Stores & Workshops, Mumbai
and Resident of Mahatma Co-operative Hsg. Soc.
Ltd., Golibar Road, Jawahar Nagar,
Santa Cruz(East), Mumbai- 400 055.

....Applicant.

(By Advocate Shri A W Kotulkar)

Versus

1. Union of India,
Through the Secretary,
Government of India,
Ministry of Communication and Information
Technology, 513, Sanchar Bhawan,
20, Ashoka Road, New Delhi- 110 001.
2. The Chief General Manager,
Telecom Factory, Deonar,
Mumbai- 400 088.
3. The Secretary,
Ministry of Personnel & Public Grievances
& Pensions, (Department of Pension &
Pensioners Welfare), 3rd Floor, Lok Nayak
Bhavan, New Delhi- 110 003.

....Respondents.

**(By Advocate Ms. Vaishali Chowdary for R-1 & R-3
and Shri V S Masurkar for R-2.)**

**Reserved on : 01.04.2019.
Pronounced on : 2.5.2019**

ORDER

This application has been filed on 31.07.2018 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a) That this Honourable Tribunal be pleased to call for the record and proceeding of the communication dated 8th November 2016 sent by the Respondent No.1, Director (Establishment) of the Department of Telecommunication, Ministry of Communication and Information and Technology Government of India and after going through the same and satisfying about the legality, validity and propriety thereof be pleased to quash and set aside the same;

b) This Hon'ble tribunal may further be pleased to direct the Respondent No.2 to pay to the Applicant Pro-rata Pension and DCRG to the Applicant in respect of service rendered by him with the Government of India from 07.07.1947 to 27.12.1962 w.e.f. 01.03.1985 onwards alongwith interest @ 18 % per annum;

c) That this Hon'ble Tribunal may further be pleased to direct the respondents to pay compensatory cost for this Application;

d) Any other suitable relief to which the Applicant may be found eligible and entitled in facts and circumstances of the case may kindly be granted in the interest of justice and equity."

2. This is a second round of litigation by

the present applicant who is stated to have joined the Office of Telegraph Stores and Workshop, Byculla, Mumbai-11, under the Government of India as a Clerk on 07.07.1947.

He responded to an Advertisement dt. 10.03.1961 for the post of Accounts Assistant in the Fertilizers Corporation of India(FCI) Ltd. [later Rashtriya Chemicals Fertilizers(RCF)] and his application dt. 23.03.1961 is claimed to have been forwarded in a letter No. EA-12/II dt. 29.03.1961 to the Government PSU under the signature of Shri M.K. Vatwani, A.C. (Admn), Office of the Chief Accounts Officer, Tele. Stores and Workshops, Calcutta-1. The applicant then received a letter dt. 06.10.1961 for interview to appear with a 'No Objection Certificate' and following an interview on 17.10.1961, he was appointed in their letter dt. 27.11.1962 as Accounts Assistant. He thereupon filed his resignation letter in a letter dt. 22.12.1962 which has not been enclosed with this OA and on this basis, his resignation was accepted on 27.12.1962 A.N.

by the Department as below:

"INDIAN POSTS AND TELEGRAPHS DEPARTMENT.

From: Accounts Officer, Tele. Stores & Workshops, Bombay-11.

*To: Shri. H.S. Pol, Permt. Clerk.
A.O.S & W. Bombay.*

No. PF-43, at Bombay, dated 27-12.1962.

Sub: Resignation.

Ref: Your letter dated 22nd December 1962.

With reference to your letter referred to above, you are hereby informed that your resignation has been accepted with effect from 27-12-1962 After-noon.

*Sd/-
Accounts Officer,
Tele. Stores & Workshops,
Bombay-11."*

3. The applicant served with the FCI, renamed as RCF Ltd. and superannuated on 28.02.1985 as Accounts Officer Grade-I for which, he obtained a Service Certificate from the Company for his service from 28.12.1962 to 28.02.1985. Since this was not a pensionable service, he addressed the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training, New Delhi in letter dt. 01.12.2000

seeking pro-rata pension for the period he served in the P&T Department for 15 years and 7 months in terms of Pension Rule 49(2)(b).

He has argued in this letter that when he resigned from the P&T Department, the Departmental officers in P&T Department misguided him and told him that he was not eligible for any benefit in P&T Department and he had to resign his service unconditionally even though he had forwarded his application only through the Department to the RCF Ltd. The Department of Posts(R-1) replied in their letter No. 1345/DDG(T&E) dt. 30.03.2001 stating that since he had resigned from the P&T Department, under Rule 26 of CCS(Pension) Rules, 1972, resignation entitles forfeiture of past service. He was advised that if he had any other plea on the matter of having applied for the job in RCF Ltd through proper channel, he could take it up with the Head of Office concerned along with all supporting documents and by reference to rules and regulations after satisfactorily explaining the delay of nearly

40 years in raising the claim. The applicant continued to correspond with the respondents and then on 10.10.2008, he filed an OA No. 539/2008 asserting that his claim for pro-rata pension was a continuous cause of action since pension was due every month. However, he also filed an MA for condonation of delay, if this was so required by the Tribunal. The matter was considered by this Bench and ordered on 16.06.2011 noting that the basic facts had not been disputed. However, Respondent No.2 had stated that records pertaining to the applicant are not available in their Factory. They also produced a list of officials submitted on 01.06.1962 prior to applicant's resignation on 27.12.1962 to the Factory by the Accounts Officer, Government of India wherein the name of the applicant was not available. The respondent No.2 (The General Manager, Telecom Factory, Deonar, Mumbai-88 expressed helplessness in considering any grant of pro-rata pension in the absence of records. On the basis that the appointment of applicant in the FCI was

well within the knowledge of respondent No.1, the Tribunal held that they could not shirk their responsibility and referred to the provisions of Rule 37 of CCS(Pension) Rules, 1972 and DoPT OM dt. 31.01.1986 on pro-rata benefits for Government servants permanently transferred to PSUs etc. Accordingly, Respondent No.1 was directed to examine the case of the applicant with reference to the rules and pass orders within a period of four months. The matter was taken to the Hon'ble High Court of Bombay which noted that directions had been issued to consider the matter according to the rules and therefore, the Court declined to interfere. The impugned order No. 38-27/2008-Pen(T) dt. 08.11.2016 has been issued in consequence and is reproduced below:

"Court Case
Most immediate

No. 38-27/2008-Pen(T)
Government of India
Ministry of Communications & Information
Technology
Department of Telecommunications

513, Sanchar Bhawan
20, Ashoka Road
New Delhi 110 001.

Dated the 8th November, 2016.

To

Shri Hemadri S. Pol,
R/o Mahatma Co-Operative Housing Society
Ltd., Golibar Road, Jawahar Nagar, Santa
Cruz (East), Mumbai-400055.

Sub: Judgment dated 26/07/2016 of
Hon'ble Bombay High Court in WP No.434 of
2012 in the matter of UOI & Anr. versus
H.S. Pol,

Sir,

The Writ Petition No. 434 of 2012
filed by Union of India through
Secretary, DOT against the order dated
16/06/2011 of Hon'ble CAT, Mumbai Bench
in OA No. 539 of 2008 has been disposed
of by the Hon'ble Bombay High Court, vide
judgment dated 26/07/2016. A copy of
this judgment was forwarded by your
advocate, Shri S.R. Waghode, vide notice
dated 20/11/2016, received in this office
on 25/10/2016.

2. On dismissal of the aforesaid
Writ Petition by the Hon'ble High Court,
your claim for pro-rata pension and DCRG
for service rendered by you during the
period from 07/07/1947 to 27/12/1962 in
the O/o Telecom Stores & Workshops,
Mumbai has been considered by the
Secretary, Department of
Telecommunications and the same has not
been accepted on the grounds given below:

a) You were not transferred by
Department of Telecommunications to
Food Corporation of India. You got
yourself recruited in FCI in response
to a newspaper advertisement and got
the job in your own interest and not
in public interest. Hence, provisions
of OM No. E-24(12)/E.V/66 dated
16/06/1967 are not applicable in your
case.

(b) On selection in the FCI, you had
submitted your resignation on
22/12/1962, which was not a technical
resignation, and your resignation was
accepted on 27/12/1962 by the
competent authority.

C) Resignation from service or post entails forfeiture of past service and, as such, you are not eligible for pro-rata pension

(d) As per para (x) of the OM No. E-24(12)/E.V/66 dated 16/06/1967, any further liberalization of Pension Rules decided upon by the Government after permanent absorption of a government employee in a Public Sector Undertaking is not to be extended to him. Therefore, the provisions of Rule 37 of CCS (Pension) Rules, 1972 and DOP&T's O.M. No. 28016/5/85-Estt .(C) dated 31/01/1986 are not applicable in your case.

3. This issues in implementation of the order dated 16/06/2011 of Hon'ble CAT, Bombay Bench in OA No. 539 of 2008 and judgment dated 26/07/2016 of Hon'ble Bombay High Court in WP No. 434 of 2012.

Yours faithfully,
sd/-
(Vandana Sethi)
Director (Estt.)
Tele. 2303 6500"

4. In this application, the applicant has impugned the Secretary, Union of India through the Ministry of Communications as Respondent No. 1; The Secretary, Department of Pension & Pensioners Welfare as Respondent No.3 and the Chief General Manager, Telecom Factory, Deonar, Mumbai- 400088 as Respondent No.2. He has reiterated his version of the facts and the details of previous proceedings. He argues that the impugned

orders are non-speaking in nature and are arbitrary and unreasonable and that he should have been considered eligible. He also relies on the judgment of the Hon'ble Apex Court *in T.S. Thiruvengadam Vs. Secretary to the Government of India, Ministry of Finance, Department of Expenditure & Ors. (1993) 2 SCC 174, dt. 17.02.1993* in which the Hon'ble Apex court is stated to have held that the Memorandum dt. 16.06.1967 could not be restricted for prospective operation and only provide benefits to those absorbed in Public Sector Undertakings after 16.06.1967 as this would be arbitrary in terms of Articles 14 & 16 of the Constitution.

5. The respondent No. 2 has, in his reply to MA No. 469/2018 for condonation of delay, taken a preliminary objection that when the applicant's resignation was accepted on 27.12.1962, the cause of action arose on that date and further, this Tribunal was constituted w.e.f. 01.11.1985 and in terms of Section 21(2)(a), it can consider cases whose cause of action has arisen three years prior

to the date of constitution of the Tribunal. The respondents have also argued that even if this Tribunal were to hear the matter, the OA suffers from delay since it was filed on 30.07.2018 when the action of action is 27.12.1962 and they have cited a series of cases in support for dismissal of the application on grounds of limitation. They also submit that the applicant had suppressed the correspondence between the applicant and respondent No.2 and has unnecessarily impleaded respondent No.2 in this matter when this respondent has no information or relationship in relation to the claims of the applicant. They submit that the applicant had sent an Advocate's Notice on 20.10.2016 referring to the orders of the Tribunal in OA No. 539/2008 with regard to which the Hon'ble High Court of Bombay had passed orders on 26.07.2016. they had replied in their letter No. ES-31-22/2008-09/(43) dt. 16.11.2016 as below:

To
 Shri Hemadri.S.Pol
 R/at: Mahatma Co-ope.Hsg.Society Ltd. Golibar
 Road, Jawahar Nagar
 Santacruz (East), Mumbai-400 055.

Sub: Payment of pro-rata pension.

Ref: Letter No. AVSD/646/16 dated 20.10.2016 (Date corrected as per letter dated 22.10.2016)

With reference to your Advocate's above cited letter, you are requested to approach Controller of Communication Accounts, Department of Telecommunications, Maharashtra Circle as Chief General Manager, BSNL Telecom Factory, Mumbai is not the appropriate authority for payment of pro-rata pension payable to you. Further, refer the letter No. 101/Col.V/64-65/(137) dated 09.10.1964 issued by Accounts Officer, Tele Stores & W/Shop, Bombay-11, wherein it is mentioned that D.A.A. P&T, S&W, Calcutta has been requested to transfer your G.P.F balance to F.C.I. Ltd., Trombay. It indicates that you were on the roll of Tele : Stores & W/Shop and not the erstwhile Bombay Telephone Workshop to which other employees were transferred on deputation w.e.f 01.06.1962.

sd/-
 (B.USardar)
 Dy. General Manager (Admn)
 Telecom Factory, Mumbai-88."

6. The respondent No.2 also affirms that the decision in OA No.539/2008 contained a direction to respondent No.1 and not respondent No.2. Further, they argue that the applicant will be required to explain the 56 years of delay from 1962 to 2018 for reopening old matters of this kind.

7. In their reply to the OA, respondent No.2 has reiterated the aspects of delay and jurisdiction already pressed in their reply to the MA on delay. They further deny that the applicant, at any time, worked for the Bombay Telephone Workshop/Telecom Factory, Deonar, Mumbai, which is now the BSNL Telecom Factory, Mumbai and therefore, they cannot make any claims of pro-rata pension and DCRG and have accordingly disowned the applicant as an employee of this particular Telecom Factory. They further clarify that prior to the formation of BSNL on 01.10.2000, the Telecom Factory at Deonar, Mumbai was known as Bombay Telephone Workshop and was located at Jacobs Circle, Byculla, Mumbai-11. At that time, there was no separate Accounts Department for Bombay Telephone Workshop and the entire work of its Store Accounts was handled by the Controller, Telecom Stores. After bifurcation of the Accounts Office, the Government of India transferred on 01.06.1962, the work relating to the stores accounts to Bombay Telephone Workshop under

the Cost Accounts Officer, Bombay Telephone Workshop along with 41 clerical staff and five Group-D staff whose names are annexed to orders passed by the Accounts Officer, Indian P&T Department in Reference No. 98/62-63 dt. 01.06.1962 but this list of 41 staff and five Group-D staff does not include the applicant. Since the applicant is stated to be relieved only after this date, they have no evidence of his employment. Further, the Accounts Department for the Bombay Telephone Workshop was effectively formed only w.e.f. 01.06.1962 and prior to that there was no Accounts Department and this entire formation has subsequently become part of BSNL in the year 2000. On this basis, they urge that the applicant is filed based completely on assumptions and presumptions and there is no documentary evidence to show that the applicant worked with the respondent No.2. In any event, the respondent No.2 urges that they have been unnecessarily impleaded and should be deleted from the array of parties.

8. Respondent No. 1 & 3 have filed a

common reply reiterating their objections to jurisdiction and limitation that have been elaborately put forth by respondent No. 2. They have referred to the facts of the case from the applicant's initial employment to his application for appointment in the Fertilizers Corporation of India Ltd. and emphasized that he submitted a resignation letter on 22.12.1962 which was not a 'Technical Resignation' and this was duly accepted w.e.f. 27.12.1962. They reiterate that the applicant got himself recruited in FCI Ltd. in his own interest and not for the public interest. This was a new recruitment case for the FCI and not a transfer on deputation and therefore, also not covered as an absorption nor was it an en masse transfer of staff to the PSU. The applicant resigned under Rule 26 of the CCS(Pension) Rules, 1972 which entailed forfeiture of past services and therefore, cannot claim pensionary benefits. They assert that the OM dt. 16.06.1967 issued by the Department of Expenditure, Ministry of Finance relates to

permanent transfer of a Government servant to Government companies whereas the present applicant had resigned from Government service as a result of which the OA dt. 16.06.1967 was not applicable to him. In their detailed reply, the respondents have also denied that the applicant had filed his application through proper channel with reference to the Rule 37 of the CCS(Pension) Rules, 1972, they state that since the applicant was not a case of absorption from Central Government service to PSU, this particular Rule did not apply to him.

9. The learned counsel for the applicant reiterated many of the pleadings during his arguments. He relied on OM No. E 24(12) E.V./66-No.F.247(T2)-EV/66 dt. 16.06.1967 which reads in the relevant paras as below:

"Subject: Permanent transfer of Government servants to Government Companies / Corporation:- Grant of retirement benefits.

The undersigned is directed to say that the retirement benefits granted in terms of this Ministry's Office Memorandum No. E2933) -EV(A)/60 dated 10.11.1960 to a Government servant who is permanently absorbed in a public sector undertaking

have been reviewed and the President is pleased to sanction the following revised terms in respect of those absorbed hereafter:

(i) A permanent Government servant on absorption in public undertaking will be eligible for pro-rata pension and D.C.R. Gratuity based on the length of his qualifying service under Government till the date of absorption. The pension will be calculated on the basis of average emoluments for three years preceding the date of absorption and the D.C.R. Gratuity on the basis of the emoluments immediately before absorption.

xxx.

(iii) The pro-rata pension, gratuity, etc. admissible in respect of the service rendered under Government would be disbursable only from the date the Government servant would have normally superannuated had he continued in Government service.

(iv) Every officer, will exercise an option, within six months of his absorption, for either of the alternatives indicated below:

(a) receiving the monthly pension and D.C.R. Gratuity already worked out, under the usual Government arrangements.

(b) receiving the gratuity and lump sum amount, in lieu of pension worked out with reference to commutation tables obtaining on the date of superannuation.

Where no is exercised within the prescribed period, the officer will automatically be governed by alternative. b) Option once exercised shall be final. The option shall be exercised in and communicated by the officer concerned to the undertaking.

xxx.

2. The above decisions will apply only where the permanent transfer from Government service to a public undertaking is in the public interest. In all other cases, Government will not accept liability to pay any retirement benefits

for the period of service rendered by the officer before his transfer."

10. He refers to the judgment of the Hon'ble Apex Court in **T.S. Thiruvengadam (supra)** in which case, the pensioner had retired in April 1984 and filed a Writ Petition in October 1984. In the present case, the applicant retired in 1985 and after filing a representation in 2000 and getting a reply in 2001, approached the Tribunal in the year 2008. He also relies on the judgment of the Hon'ble High court of Bombay in **Niraj Kamlakar More Vs. Scheduled Tribe Certificate Scrutiny Committee, Aurangabad** in W.P. No. 2016, 1420, 3634, 4046 and 4050 of 2012, decided on 11.05.2012, to argue by reference to Para 9 & 11, to state that it was a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. He further refers to the decision of the Hon'ble High Court of Delhi in **The**

Secretary, Ministry of Health & Family Welfare & Ors. Vs. Shri Khageswar Padhan & Ors. in W.P. (C) No. 5715/2017 decided on 11.07.2017 at para 17 where the Hon'ble Court deprecated the attitude of writ petitioner in repeatedly challenging judgments being rendered by Tribunals and Courts. He further argues that the decision of this Tribunal in OA No. 539/2008 and as upheld by the Hon'ble High Court of Bombay, constituted constructive Res Judicata which has not been properly regarded by the respondents.

11. Respondent No.2 has reiterated various arguments mentioned in the pleadings. They also refer to the appointment order of Fertilizers Corporation of India Ltd. dt. 27.11.1962 (page 43 of OA) which has been addressed to the applicant and no reference has been sent to the Government Department nor has the appointment letter been challenged through his then employer. Further, the letter itself makes no reference to his present employment and is of the nature of a direct appointment in consequence

of their advertisement. He also referred to the DoP&T OM dt. 31.01.1986 that had been mentioned at para 9 of OA No. 539/2008 which modified the previous OM dt. 09.03.1985, denying the facility of deputation of Central Government servants to Central Public Sector Enterprises (CPSE) except on immediate absorption basis. The benefits were made available from 06.03.1985 and the applicant could not seek a benefit under this provision, especially since there is no evidence that he was transferred in the public interest vide para 4 nor was there any evidence to prove the claim of applicant that his application had been sent through proper channel in view of the contradictions pointed out above. They also press their arguments that the CCS(Pension) Rules of 1972 were not applicable to the case of the applicant.

12. Learned counsel for the respondents 1 & 3, Ms. Vaishali Chowdhari, argued that at the time when the applicant was in service and he resigned, the rules required a minimum of 30 years of service for obtaining pension and

there was no Scheme of pro-rata pension at that time. The applicant resigned for better prospects in the Public Sector since he had left on his own accord and had resigned, the OAs he has referred to are of no help to the applicant. They concede that the delay from the date of passing the impunged orders on 08.11.2016 upto filing of this OA, was not being pressed in view of the fact that the Hon'ble High Court had already granted liberty to the applicant for this purpose.

13. In rebuttal, the learned counsel for the applicant argued that respondents had made no reference to the required period of 30/33 years under the Pension Rules at the time when the applicant resigned. He was of the view that all his delays that attracted limitation had already been condoned by the Hon'ble High Court. Further, on being inquired about the contradiction that the applicant's name was not in the list of 41 staff members transferred to the Accounts Department as in Annexure R-3, the learned counsel for the applicant stated that it was

not to bound to deny this list in the rejoinder.

14. We have heard the learned counsel for the applicant and learned counsels for the respondents and carefully considered the facts and circumstances, law points and rival contentions in the case.

15. On the issue of limitation and on the aspect of jurisdiction under Section 21(2)(a) of the Administrative Tribunals Act, 1985, it is a general principle that claims for pension are a continuous cause of action. Pension is an inalienable property right in a general instance. In the case of the applicant, what needs to be established is that such a right existed or was made available by the Government as on the date of his resignation from Government service. If such a right indeed existed, then the recurring dues over the succeeding months would generate continuous cause of action although the applicant may be restricted in terms of his claims of arrears in such matters. In case the applicant has no such

right, the question of limitation itself would not arise. Further, in case the beneficial legislation or executive instruction provided for a period within which such a request had to be made or certain pre-conditions met for enabling such a right, the applicant should have satisfied those conditions within the time fixed and in case, he failed to do so, this cause of action would arise from the filing date so fixed and in such circumstances, the issue of limitation and the aspect of jurisdiction for cases arising more than three years prior to the formation of this Tribunal would arise.

In the present case, the applicant, has claimed the benefits of Government OM dt. 16.06.1967 which was issued prior to his retirement on 28.02.1985. The first representation made by the applicant thereafter was only on 01.12.2000, 15 years after his retirement and 37 years after the said OM. During arguments, he has also referred to the OM dt. 31.01.1986 but that OM requires certain options to be submitted

within a time period by persons who are made eligible under that OM which clarified the previous OM of 06.03.1985. The representation of the applicant is also 14 years subsequent to this OM. In regard to the documents relevant to the applicant including his service register etc., delay in filing a representation amounts to a delay of 39 years and that too for a department that was evidently in a state of flux as explained by the respondents. The Courts and Tribunals cannot rush to the rescue of a litigant who has slept over his rights whether due or not due, and has not agitated them well in time for even providing an opportunity to the respondents to produce relevant documents relating to the claims made by him. In the present case, the applicant has only produced some typewritten letters in support of the fact that he had applied for a post in a Public Sector Undertaking through the Department and that he had resigned and joined at that Company. The only original letter is that of an acceptance of

resignation dt. 27.12.1962. Therefore, even the details of his service period from 1947 to 1962 and the days of actual service, leave, breaks etc. that could be relevant for assessing his pension are not available. If the applicant wishes to place a financial burden on the exchequer and consequently on the tax payer, he would, in all fairness, be expected to furnish all the relevant documents of his service. However, we note that these different aspects of the matter of limitation and jurisdiction do not appear to have been raised when the applicant first approached this Tribunal in OA No. 539/2008 and therefore, we pass over these aspects after making the above observations.

16. The applicant claims are two-fold. Firstly, he refers to the OM of 16.06.1967, the relevant portions of which have been extracted(supra). The subject heading of this OM refers to grant of retirement benefits for permanent transfer of Government servants to Government companies. Such permanent transfer arises in the event of

deputation and subsequent permanent absorption or compulsory transfer or conversion of a department into a corporation. The OM itself provided for the exercise of an option within six months of absorption and clearly, this OM has no relevance to the case of the applicant.

Moreover, para-2 of the OM as extracted above emphasises that the decisions are applicable only when the permanent transfer is made in the public interest and in all other cases, Government would not accept liability to pay any retirement benefits for the period of service rendered by the officer before his transfer. In consequence, the case cited of T.S. Thiruvengadam(supra) which falls into the category of a Government servant sent on foreign service and absorbed permanently and where the respondents had made a distinction between those persons who had left prior to date of OM and those who had left after the date of OM was cut down in part after noting that the very objective of the revised retirement benefit scheme and the earlier

scheme dt. 10.11.1960 was to attract more and more Government servants for permanent absorption in Government undertakings. In fact, this OM was, as stated above, an improvement over the previous OM dt. 10.11.1960 where persons proceeding on permanent transfer and absorption were treated less generously. Notably, the applicant who had moved to a Public Sector Unit immediately after the issue of the OM dt. 10.11.1960 makes no reference to this order nor did he seek its benefit in the year 1962 when he resigned from service and joined the FCI Ltd. Not having claimed the benefit at that point in time would suggest that the applicant was well aware that he was completely ineligible for any benefits under the Scheme contained in OM dt. 10.11.1960 which was modified and made generous in the OM dt. 16.06.1967. The applicant has then relied on the OM dt. 31.01.1986 referred by this Tribunal in its orders in OA No. 539/2008. As mentioned before, this was in modification of the previous OM dt.

06.03.1985 and refers to the stoppage of a scheme of deputation of Central Government servants to Public Sector Enterprises by retaining their lien on their parent departments. The directions in these OMs is that they would have to join on immediate absorption basis. What is significant in these orders is that the eligibility for pro-rata pension is made admissible under the relevant rules which, in this case, would amount to applicability of OM of 16.06.1967 that we have discussed above and for which there are relevant supporting provisions in the Pension Rules. The applicant refers to Para 4(i) on pensionary benefits where the Government servant resigns from Government service to secure an employment in Public Sector Enterprise with proper permission and for which forfeiture of service for the purpose of retirement/terminal benefits will not arise. This provision is significant because in terms of the OM dt. 16.06.1967, at Para 1(vi), it is noted: "case of resignation from public undertaking will for the purpose

of these orders be treated as resignation from Government service, entailing forfeiture of the earlier service under Government and loss of the pensionary benefits under these orders."

17. However, the OM dt. 31.01.1986 specifically is made applicable at Para 11 to take effect from 06.03.1985 and is quite distinct in this regard from the OM of 16.06.1967 which makes no such specification. Therefore, the applicant can derive no benefit from the OM dt. 31.01.1986.

18. We are conscious of the fact that the details of service and resignation of the applicant and even his actual presence in that department in the Telecom Factory has been questioned by the respondents. The learned counsel for the applicant has argued that he was not obliged to deny the list of 41 persons and five Group-D persons furnished by the respondents. However, it is noted that this very list was also placed before the Tribunal in OA No. 539/2008 and finds mention in the orders. Therefore, there is

considerable evidence contradicting the service claims of the applicant and with the available documents, no satisfactory conclusion can be drawn by this Tribunal.

However, we also note that the respondents appear not to have seriously disputed the actual claims of the applicant in OA NO.539/2008 and as contained in the submissions of respondent Nos. 1 & 3 in the present OA. The emphasis of respondents is more on the fact that the applicant did not submit a technical resignation nor was he transferred or deputed and absorbed but actually resigned from Government service.

The only defense that the applicant has on this aspect is that he was misguided by certain officials in the Office of respondents at that point in time. However, as we have noted above, the OM of 1960 was available to him in case he wished to make any claim but even on that respect, he failed to do so. Therefore, there appears to be little evidence or arguments in support of the claim of the applicant.

19. In view of the above, the OA is dismissed as lacking in merits and without any order as to costs.

(R. Vijaykumar)
Member (A)

Ram.

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