

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS DAY OF SEPTEMBER, TWO THOUSAND NINETEEN

PRESENT:

HON'BLE MR. T. JACOB, MEMBER (A)

OA/310/01140/2016

R. Purushothaman
No.2/36, Kulakarai Street
Mettur Village, Somangalam
Chennai – 602 109.

....Applicant

By Advocate M/s Balan Haridas

Vs

1. Union of India
Rep. by its Director General of Works
Central Public Works Department
Nirman Bhavan, New Delhi.

2. The Executive Director
Chennai Electrical Division II(E)
Central Public Works Department
Sastri Bhavan
Haddows Road, Chennai 600 006.

3. Regional Director
Airports Authority of India
National Airport Division
Meenambakkam
Chennai 600 027. ... Respondents

By Advocate Mr. C. Kulanthaivel (R1&R2)

ORDER

(Pronounced by Honble Mr. T. Jacob, Member (A))

This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"I. to declare that the action of the 1st and 2nd respondent in not shifting the date of absorption of the applicant as 15.04.1995 in the 3rd respondent as illegal, arbitrary and contrary to law.

ii. consequently direct the 1st and 2nd respondent to shift the date of absorption of the applicant in the 3rd respondent as 15.04.1995 and sanction the pension with effect from the date when the same had been extended to the employees who had filed WP No.39431 to 39434 of 2005 and WP Nos.14769 to 14773 of 2013 and pay pension arrears and family pension to the applicant and

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant joined the 1st respondent as Khalasi on 15.04.1985 at Chennai Airport. Thereafter on the formation of the 3rd respondent, the services of the applicant was absorbed by the 3rd respondent with effect from 01.07.1990. The applicant had put in 5 years, 2 months and 15 days service in the 1st respondent department. In such circumstances the applicant and All India PSU Absorbed Retired Employees Welfare Association had been requesting the 1st respondent to fix the date of his absorption as 15.04.1995 in order to make the applicant fully eligible for availing

pension. The last of the representation was made by the applicant on 14.05.2016. The respondents have not given any reply nor considered the applicant's representation. Hence the applicant has filed this OA seeking the above reliefs on the following grounds:

- a. The action of the 1st and 2nd respondent in not extending the benefit of judgment in WP Nos. 39431 to 39434 of 2005 dated 3.5.2005, WP No. 4213 of 2006 dated 6.4.2009, W.P. Nos. 14769 to 14773 of 2013 dated 4.10.2013, W.P. No. 10501 of 2014 dated 4.7.2014 and W.P. No. 19415 of 2015 dated 5.2.2016 by the Division Bench, High Court, Madras as illegal.
- b. Action of the 1st and 2nd respondent in denying the pro-rata pension and pension arrears when the applicant has completed qualifying years of service is in gross violation of Article 21 of the Constitution of India.
- c. The action of the respondents in not shifting the date of absorption so that the applicant would have completed 10 years of service under the 1st and 2nd respondent when the same has been done in the case of other similarly situated persons is devoid of any rationale and the same is illegal.
- d. The 1st and 2nd respondent cannot selectively shift the date on their whims and fancies and deny pension to the similarly

placed persons.

- e. The action of the 1st respondent in denying shifting of date of absorption and denying pension is discriminatory.

3. Per contra the respondents in their reply statement have stated that in 1971 a new organisation by name International Airport Authority of India (IAAI) was formed. Many employees of Directorate General of Civil Aviation (DGCA) and CPWD went on deputation to the new organisation. As far as CPWD employees are concerned, options were called for from the interested or willing CPWD employees who want to go to IAAI on deputation basis. The applicant went on permanent absorption to the IAAI on his own free volition. The CPWD employees engaged on Airport Works were absorbed permanently in IAAI. As per the conditions laid down in para 3 of the consolidated order dated 08.04.1976 issued by the Government of India, Department of Expenditure on their File No.26(8)-EV(B)S/75, in cases where a Government Servant at the time of absorption in autonomous body has less than 10 years service is not entitled to proportionate pension but he will be eligible to proportionate service gratuity in lieu of pension and DCR Gratuity based on the length of service. Rule 49 of CCS (Pension) Rules, 1972 also states that a Government servant who has not completed 10 years of qualifying service is not entitled to pension.

Further, the CPWD while conveying the terms and conditions for approval of CPWD staff for permanent absorption in IAAI vide order dated 31.10.1977 have clearly stated that in case where an employee is not entitled to pension at the time of absorption, the question of proportionate pension will not arise. The applicant was permanently absorbed in the IAAI on his own volition and had put in less than 10 years of service in the CPWD as on the date of absorption in IAAI on 01.07.1990. He had joined CPWD on 15.04.1985 as a Khalasi and had put in service of 5 years, 2 months and 15 days. He has not produced any record to show that the applicant had made any request to the department for shifting the date of absorption in order to make him eligible for availing pension from CPWD. The applicant's letter dated 14.05.2016 is the first representation after the date of absorption in IAAI which was rejected by the respondents vide letter dated 09.06.2016. It is also stated by the respondents that the department has not shifted the date of absorption in IAAI to any of the employees to enable them to complete 10 years qualifying service to make them eligible for pension from CPWD. The respondents deny shifting the date of absorption in respect of Mr. S.Gopalan, Mr. M.G.Paramanandam, Mr. S.K.Thangavelu, Mr. S.M.Thanikachalam and Mr. D.Audhikesavan as alleged by the applicant. The decision

with regard to shifting the date of absorption in respect of the above employees vide Memorandum dated 18.12.1980 was not issued by CPWD but by IAAI in concurrence with DGCA and the employees involved were from Civil Aviation Department and not from CPWD. In the case of Mr. D. Kumaravel, referred to by the applicant, he had given willingness for permanent absorption w.e.f. 01.01.1975 to the post of Airport Ticket Clerk and the DGCA and IAAI had communicated the date of absorption as 01.01.1975 by an order dated 29.08.1975 and hence this Tribunal had held in OA.641/2003 dated 29.11.2003 that the applicant was eligible for pro rata pension w.e.f. 01.01.1975. In the case of R. Subramanian, the CPWD was not a party to the decision to shift the date of absorption of employees of DGCA absorbed in IAAI in the order issued by IAAI vide letter dated 18.02.1980 which was done in consultation with Department of Personnel and Administrative Reforms and Ministry of Finance (Bureau of Public Enterprises) and Director General of Civil Aviation but not CPWD. The applicant is not placed as that of employees of DGCA who were absorbed in IAAI because DGCA and IAAI fall under the same Ministry of Civil Aviation and employees of DGCA may not have any option but to accept absorption in IAAI whereas the same is not so in the case of CPWD employees who have the option to get

absorbed in IAAI or revert back to CPWD. Hence the respondents pray for dismissal of the OA.

4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

5. Admittedly 272 employees of DGCA were placed under the services of IAAI on a permanent basis e.m.f. 01.07.1973 or from the date they report for duty to IAAI. Subsequently the IAAI based on the decision of the Department of Personnel and Administrative Reforms, Ministry of Finance (Bureau of Public Enterprises) received communication dated 02.02.1980 through the Director General of Civil Aviation conveying its approval with regard to shifting of the date of absorption of the 5 among the 272 employees from 01.07.1973 to 31.12.1974. CPWD has not shifted the date of absorption to its employees from 01.09.1977 whereas IAAI has shifted the date of absorption to DGCA employees from 01.07.1973 to 31.12.1974 to make them eligible for pension. As per the amended rule 49(1) effective from 28.6.1983, fraction of a year equal to three months and above only shall be treated as a completed one half year and reckoned as qualifying service. This benefit was not extended to the cases before 28.6.1983. Even as per the amended rule, the competent authority does not have the powers to condone the shortage of qualifying service of 10 years

for eligibility of pension by more than 3 months whereas on 01.09.1977 no such relaxation was permissible. The AAI vide letter dated 22/25.4.2013 have informed that it is not willing to pay leave salary/pension contribution to the applicant for the extended period of deputation. Admittedly, the applicant joined CPWD on 15.04.1985 and had put in service of 5 years 2 months and 15 days on the date of his absorption in IAAI on 01.07.1990.. The terms and conditions of absorption of CAD employees are different from that of CPWD employees. The applicant has enjoyed the facilities, perks and benefits in the IAAI subsequent to his absorption which were not availed of by those employees who opted for reversion to CPWD and who were eligible to be paid pension as per Pension Rules.

6. During the course of hearing, the learned counsel for the applicant has produced a copy of the order of this Tribunal in OA.1430/2016 dated 10.01.2018, the relevant portion (paras 16 to 18) would read thus:-

"16. However, it is also true, very specifically that the orders of the Tribunal went in favour of CPWD employees ie., Ex-Beldar etc.,(ignoring for a moment any comparison with CAD employees). Even though the terms and conditions governing all permanently absorbed CPWD employees was that they will not be eligible for pro rata pension, the respondents went ahead and complied with the orders of the Tribunal in the OAs (cited by learned counsel for applicant) filed by the widows of the ex-Beldars and other CPWD employees, who were permanently absorbed in IAAI.

Although the respondents have taken a view in this OA that those were wrong benefits granted either on the direction of the Courts/Tribunals or complied with in consultation with Law Ministry/DOPT, the fact remains that the so-called wrong benefits were granted in the case of CPWD employees without any challenge. Further, even if the dismissal of SLP was on delay and not on merits. It meant that issues of law are not open, as per sedate of absorption to enable grant of pensionary benefits had come to stay. Hence this Tribunal is bound by precedential orders implemented by the respondents in other similarly situated case of Belders and other CPWD employers, as these orders were not challenged on facts/law.

17.

18. OA succeeds on merits and on the issue of delay both based on law. Hence OA is allowed in terms of the order of this Tribunal in the case of CPWD employees in OA.474/2013 and connected cases OAs.511-513/2014, OAs.1211, 1234-1236 & 256/2014. R-1 & R-3 are directed to calculate the pro rata pension by shifting the date of absorption of the applicant as 28.10.1981 and to grant him the consequential pro rate pension including arrears of pension. However, the arrears are to be paid to the applicant from the date on which the present OA is filed before the Tribunal. The applicant is also directed to refund the gratuity received by him with 9% simple interest per annum and the department will adjust the arrears and pay the balance to the applicant, If any amount is payable by the applicant by calculating such amount with interest at 9% per annum, the applicant would refund the sum within a period of three months from the date on which the communication would be received....."

7. Learned counsel for the respondents has produced a copy of the order dated 15.11.2018 wherein it could be seen that the respondents have implemented the order of this Tribunal in OA.1430/2016 dated 10.01.2018.

8. It is not in dispute that the case of the applicant herein is identical to those in OA No.1430/2016. In that event the applicant

is entitled to the benefits accrued to the applicants in the other OA. In the conspectus of the above facts and circumstances of the case and the order of this Tribunal cited above, the applicant succeeds. The respondents are directed to shift the date of absorption of the applicant in the 3rd respondent office as 15.04.1995 and grant him the consequential pro rata pension including arrears of pension. However, the arrears have to be paid to the applicant from the date on which he filed the present OA before the Tribunal. The applicant is also directed to refund the gratuity received by him with 9% simple interest per annum and the department will adjust the arrears and pay the balance to the applicant. If any amount is payable by the applicant by calculating such amount with interest at 9% per annum, the applicant would refund the sum within a period of three months from the date on which the communication would be received.

9. The above exercise shall be completed within a period of four months from the date of receipt of a certified copy of this order.

10. The OA is disposed of accordingly. No costs.

(T. Jacob)
Member (A)
.09.2019

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