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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2025 OF 2003

New Delhi, this the 8th day of March, 2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Surinder Nath Mangla,
S/O Late Shri Mool Chand Mangla,

Address:

R/O 124/5, Street No.11,
Rajinder Nagar,
Dehradun-248001

At present in Delhi

.....Applicant

(By Advocate : Dr. Parveen Kumar Sharma)

Versus

1. Union of India/Govt. of India,
through its
Principal Director of Audit,
Economic & Service Ministries,
AGCR Building,
I.P.Estate,
New Delhi-2
2. Comptroller and Auditor General of India,
10, Bahadur Shah Zaffar Marg,
Delhi-110002

.....Respondents

(By Advocate : Shri Madhav Panikar)

ORDER (ORAL)

This application under section 19 of the
Administrative Tribunals Act, 1985 has been filed
seeking the following reliefs:-

"i) That he be granted pro-rata-pension
and other benefits for the period of
service rendered by him in his parent
department.

ii) That he be paid encashment of leave
standing to his credit at the time of
acceptance of his resignation.

iii) That he be paid interest on the
amounts mentioned in (i) and (ii) above
@ 18% p.a. from the date of the same
became due till the date of payment.

Shri Madhav Panikar

iv) Any other relief to which he may be found entitled under the facts and circumstances of the case may also be granted to him."

2. It appears that the applicant was initially appointed as Lower Division Clerk (LDC) on 16.5.49 in the erstwhile office of the Accountant General, Central Revenue, New Delhi. He was subsequently appointed as Upper Division Clerk (UDC) on 22.8.49, Probationary Divisional Accountant on 30.5.51 and Officiating Divisional Accountant on 5.5.54. The applicant applied directly for the post of Accountant in Oil and Natural Gas Commission (ONGC). He did not send application through proper channel. On his being selected in the ONGC, the applicant submitted his resignation from the Central Govt. service on 28.3.60 and joined ONGC on 6.4.1960. The applicant's resignation was accepted w.e.f. 28.4.60. The claim of the applicant is that he is eligible for pro-rata pension and other benefits in terms of OM dated 3.1.95 (Annexure-A6). He has placed reliance on the decision of this Tribunal in OA No.2445/2000 Baldev Verma Vs. GOI & Ors. dated 7.8.2001 (Annexure-A7). The learned counsel has heavily placed reliance on the provisions of Rule 26(2) of the CCS (Pension) Rules, 1972. He has also placed reliance on the Notes contain in Swamy's Handbook, 1999 wherein it has been stated that "a Govt. servant selected for a post in a Central Public Sector Enterprise/Central Autonomous Body will be released after obtaining and accepting his resignation from Government service. Such a resignation will not entail forfeiture of service for purposes of retirement/terminal benefits/. In such cases, the Government servant shall be deemed to have retired

Swamy

from service from the date of such resignation and he will be eligible to retirement/terminal benefits admissible under the relevant rules applicable to him in his parent organisation."

3. The respondents on the other hand have placed reliance on the judgment of the Hon'ble Supreme Court dated 2.5.1996 in Civil Appeal arising out of SLP (Civil) No.697 of 1995 Union of India V. V.R. Chadha [Bnnexure-R1]. The Hon'ble Supreme Court in V.R.Chadha's case (supra) prescribes two conditions for grant of retirement benefits i.e. (i) the employee should have been permitted to be permanently absorbed, and (ii) such absorption has been declared by the Government to be in the public interest. According to the learned counsel of the respondents, the applicant applied and joined the service in ONGC of his own volition and decided to resign from the post he was holding in the Govt. of India and his resignation was accepted. According to him, this does not mean that he was permitted to be absorbed in the public undertaking i.e. ONGC. in public interest.

4. After hearing the learned counsel of both the parties and after perusal of material on record, it is seen that the applicant did not apply through proper channel. He resigned from service of Govt. of India. The resignation was accepted. The provisions contained in Rule 26 (2) of CCS(Pension) Rules read as follows:-

"(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."

U. S. M. Singh

In the opinion of this Tribunal, the applicant had not been allowed to join the new place of posting (ONGC) "with proper permission", Merely because his resignation was accepted, does not automatically mean that he was accorded the due permission. As a matter of fact, the applicant submitted his resignation from the service of the Govt. of India on 28.3.60 and joined ONGC on 6.4.60. The resignation of the applicant was accepted on 28.4.60 and the period from 2.4.60 to 27.4.60 was treated as unauthorised absence. The Govt. of India's OM dated 3.1.95 also does not help the applicant. This OM applies to those Central Govt. employees who were initially sent on deputation and were permanently absorbed in the Central Public Undertaking. It is clear that in those cases their initial deputation was with the prior permission and even the absorption was in the public interest. Therefore, that OM dated 3.1.95 does not help the applicant. The decision of the Hon'ble Supreme Court in V.R.Chadha's case (supra) squarely covers the issue wherein it has been observed that "for grant of pro-rata pension and retirement benefits, such absorption should be declared in public interest." In the present case, the applicant had not applied through proper channel with the prior permission of the Govt. of India. Therefore, acceptance of his resignation will not automatically entitle the applicant for pro-rata pension and retirement benefits. Rule 37 of CCS (Pension) Rules also contains the relevant rules for grant of pension on absorption in or under a Corporation, Company or body. In this rule also, the basic condition is that a Govt.

Concluded
3.1.95

servant should be absorbed. In view of the facts of this case those provisions those provisions for absorption are not applicable in the case of the applicant. The Notes relied upon by the applicant in Swamy's Handbook-1999 also cannot help the applicant. The provisions contained in the Swamy's Handbook deal with a situation where the Govt. servant applied for a post through proper channel and on selection he is asked to resign from the post for the administrative reasons.

5.. For the reasons mentioned here-in-before, this OA is dismissed without any order as to costs.


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

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