

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 4/2003

NEW DELHI THIS ^{4th} DAY OF June, 2004

HON'BLE SHRI S.A. SINGH, MEMBER (A)

V.N. Mathur,
75-B, SFS DDA Flats,
Sukhdev Vihar,
New Delhi - 110025

..... Applicant:

(By advocate: Shri Jayant Nath)

VERSUS

1. Union of India through
Director General (Works)
Central Public Works Department,
Nirman Bhavan, New Delhi - 110011
2. The Chief Controller of Accounts,
CPWD, Nirman Bhawan,
New Delhi - 110011
3. Superintending Engineer,
Jaipur Central Circle,
CPWD, Sector-10,
Vidhya Dhar Nagar,
Jaipur - 302023
4. Superintending Engineer
Agra Central Circle, CPWD,
Agra
5. Executive Engineer,
Ajmer Central Division,
CPWD, Ajmer

..... Respondents

(By advocate: Sh. Rajeev Bansal for Sh. B.K. Aggarwal)

O R D E R

The applicant through this OA has impugned the respondents' order dated 25.5.2002 wherein they have not agreed to the request of the applicant for grant of pro-rata pensionary benefits.

2 The applicant joined Central Public Works Department (CPWD) on 5.9.1962 and in the year 1977

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he was on deputation to the Delhi Development Authority (DDA) in the post of Junior Engineer (Civil).

3. The applicant applied through proper channel against open advertisement for the post of Assistant Engineer (Civil) with the Indian Tourism Development Corporation (ITDC) and joined the Department on 26.5.1977. The DDA, where the applicant was on deputation from CPWD, and the SE Delhi Central Circle III (Coordination), CPWD also gave their consent. The applicant was promoted to the post of Manager (Engineering Civil) in the year 1984 and retired from ITDC from 31.5.1997.

4. The ITDC had released the retirement benefit of the applicant for the period he remained with them. However, the request of the applicant for payment of pro-rata retirement benefits by the CPWD has not been agreed to vide order dated 25.6.2002. Operative part of the order reads"

"2. The matter was referred to the Department of Pension & Pensioners' Welfare for their advice/clarification. The Department of Pension & Pensioners' Welfare has clarified that the case does not qualify for grant of Pro-rata pensionary benefits as the statutory requirement of prior consent with the parent dept. as well as acceptance of resignation have not been met. Attributed to these discrepancies the absorption of Shri V.N.Mathur cannot be treated to have taken effect as per rules

3. In view of the advice of Department of Pension & Pensioners' Welfare, it is not

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possible to accede the request of Shri V.N.Mathur to treat his absorption in ITDC to have taken effect in fulfilment of rules of permanent absorption of Shri V.N.Mathur can not be treated to have taken effect as per rules.

5. It is the case of the applicant that the respondents erred in rejecting his claim for pro rata pension on the ground that prior consent of the parent Department as well as acceptance of resignation were necessary for grant of pro rate pensionary benefits - retirement benefits. By a letter dated 25.5.1977 issued by the CPWD granting no objection to the applicant to release from DDA to join his new assignment with the ITDC has laid down some conditions, which are reproduced as below:-

1. His lien in this department shall be retained for two years from the date of his release

2. Immediately on expiry of two years either he should revert to this department or resign from the post he was holding in this department

3. If the leave salary and pension contributions are not paid by the above undertaking then Shri V N Mathur JE will pay himself.

4. The pay allowed to him by undertaking should not exceed the limits specified in the Ministry of Finance Memo. No. 10(21)-VIII/60 dated 9.3.64 and such other orders restricting pay on resign service as may be issued by the Min. of Finance from time to time.

5. If it is proposed to absorb Sh. V N Mathur permanently in the above undertaking before the expiry of two years sanctioned above it would be incashment on the ITDC to consult this office before issuing absorbing orders permanently and should be issued only after the resignation of Sh. V N Mathur has been accepted by this department and w.e.f. the date of such acceptance vide Min. of

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Finance Memo No. 4(3)/IV-A/63 dated 1.10.69.

6. He is a permanent Govt. servant so he will be entitled to retirement benefits on his permanent absorption in ITDC in accordance with memo No. 8/1/72-Estt(C) dated 21.4.72 from Cabinet Sectt. Department of Personnel, New Delhi received through the Ministry of Works & Housing endorsement No. 16018/10/70-Coozd dated 14.5.72."

6. From a plain reading of the above, it is clear that there was only one condition which requires to be fulfilled before his absorption, i.e., condition no.5 that if the applicant was to be absorbed before the expiry of two years, it would be incumbent on the ITDC to consult the respondents before issuing absorption orders. No such procedure had been followed by ITDC, however, *pleaded* the applicant that on this technical ground it was incorrect on the part of the respondents to deny him pro rata pensionary benefits. The Government of India's Office Memo dated 21.4.1972 deals with forwarding of application of Central Government servant for the post in public sector undertakings and retirement benefits to those government servant who apply on their own volition. As per this OM, the applicant is entitled to the same retirement benefits in support of his past service under the Government as are admissible to a permanent government servant on deputation to the Public Sector Undertakings on his permanent absorption thereon.

7 The applicant argued that he had submitted his technical resignation on 27.5.85 to be

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effective from 26.5.77. This has also been confirmed by ITDC vide their letter dated 16.11.98 (Annexure P-22) to the Superintending Engineer, Jaipur Central Circle of CPWD. The respondents had received the resignation as they have removed his name from the seniority list issued on 01.12.98 where as his name was shown in the seniority list of 1.1.96.

8. The applicant relies upon the case of Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon AIR 1969 SC 1267 that it would be incorrect to reject his plea for grant of pro-rata pensionary benefits on technical grounds of non-compliance of condition no.5 of the relieving letter.

2. The respondents strongly contested the case of the applicant taking preliminary objection that it is barred by limitation i.e. the relieving letter clearly stated that the applicant was either to revert to the parent Department or resign the post (condition no.2), which he has not done. And as per condition no.5 he could be absorbed only after resignation had been accepted by the respondents. As both these conditions had not been fulfilled, the respondents are within their rights to reject his claim for pro rata pension. The applicant was well aware of these conditions but kept quiet and hence he could not now claim the benefits. Rule 37 (i) of the CCS (Pension) Rules requires that:

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"37. Pension on absorption in or under a corporation, company or body.

(1) 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

Explanation - Date of absorption shall be -

i) in case a Government employee joins a corporation or company or body on immediate absorption basis, the date on which he actually joins that corporation or company or body;

ii) in case a Government employee initially joins a corporation or company or body on foreign service terms by retaining a lien under the Government, the date from which his unqualified resignation is accepted by the Government."

10 It is clear from the Rule that he will have deemed to have retired from service before he could be granted pensionary benefits. The respondents had not received the resignation letter, as claimed by the applicant. The respondents submitted that though the applicant claims that he had handed over the technical resignation letter on 27.5.1985 to Shri U.V.S.Tyagi, the then ACC, CPWD, Agra but he has not produced any documentary proof in support of his claim and no such resignation letter has been found on record. The cited judgement deals only with court procedure and as such it is not applicable in the present case.

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Further, the applicant accepted the promotion without first resigning from the parent department. He had no right to do so without first resigning thus his case has been correctly rejected.

11. The respondents have put an objection that the OA is barred by limitation as he joined ITDC in the year 1977 and retired therefrom in 1997. He has filed this OA in the year 2003. Thus it is badly delayed. The applicant strongly contested this preliminary objection pointing out that he had been in correspondence with the respondents regarding his retirement benefits and the cause of action arose when the respondents finally rejected the case of the applicant vide order dated 25.6.2002.

12. Heard the learned counsel for the parties and perused the documents on record.

13. From a plain reading of the order, it is clear that the final rejection has been communicated in the impugned order dated 25.2.2002 and the OA had been filed on 19.12.2002 as such the OA is not barred by limitation. The short question before the Tribunal is whether absorption of the applicant without fulfilling condition nos. 2 and 5 laid down in the letter releasing the applicant to join ITDC debars him from the pro rate pensionary benefits. Condition No.2 states that the applicant, on expiry

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of two years either has to revert to the Department or resign from the post he is holding in the Department. Clearly the thrust of this condition when read in conjunction with condition no.1 is that the department would maintain his lien on the the post for two years and no more and that if he did not join he would loose his lien thereafter. As the question before the Tribunal is not concerning lien beyond two years it is not being gone into further..

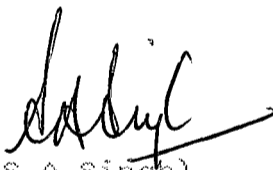
14. With regard to the condition that the ITDC was to consult the respondents before issuing the order permanently absorbing the applicant. It is clear from reading condition no.5 that this permission is only necessary, if it is proposed to absorb the applicant before the expiry of two years.. In that case absorption is only possible after the resignation of the applicant had been accepted by the department which is not the issue in this case. As the applicant failed to return to the department within two years and the respondents failed to take any action seeking his return they cannot now at this late stage take support of this condition for denying him pensionary benefits.

15. It is apparent that the respondents did not take any action to recall the applicant after expiry of two years and continued to let the situation linger. Therefore, now at this stage, to claim that the applicant did not qualify for grant of Pro-rata pensionary benefits on the grounds that the prior consent of the parent department as well

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acceptance of resignation have not been taken before absorption by ITDC is not sustainable. It has been held in the case of Jeenabhai Bavabhai Patel v. Union of India & Ors. 1990 (3) SLJ 169 that right to receive pension is property and grant of pension is not bounty, but is a vested and valuable right. Undoubtedly, the denial to pension affects Fundamental Right at the petitioner cannot be deprived of it except in accordance with law. The absorption of the applicant by ITDC can be considered to be at the most irregular, but not illegal, and therefore, cannot be a ground for denial of pensionary benefits.

16. In view of the above, the OA succeeds and respondents are directed to accept the technical resignation of the applicant, forwarded by ITDC, w.e.f. 26.5.1977 as compliance of Rule 37(1) of CCS (Pension) Rules and pay pro-rata pensionary benefits as per rules and law and ^{and} if otherwise admissible, consider the applicant for CGHS benefits also.


(S.A. Singh)
Member(A)