

Delhi High Court

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Union Of India (Uoi) And Ors. vs Sh. O.P. Sharma And Anr. on 11 February, 2002

Equivalent citations: 2002 IIIAD Delhi 37

Author: A Sikri

Bench: S Sinha, A Sikri

JUDGMENT

A.K. Sikri, J.

1. The respondent No.1 joined as Accounts Clerk in the Jammu Division of CPWD on 8th November, 1947. He was declared quasi permanent on 1st February, 1951 and remained with CPWD till 30th September, 1961 where after he joined the services with ONGC as a Junior Accountant. He was ultimately absorbed in ONGC from where he retired on 30th June, 1984.

2. Since, according to the respondent No.1, he worked for more than ten years with the petitioner/CWPD, he was entitled to prorata pension and other retirement benefits from the petitioners. As the petitioners refused to give him any such benefit, he filed OA No.1275/2000 before the Central Administrative CWP NO: 5871/2001:

Tribunal, Principal Bench, New Delhi. This OA has been allowed vide impugned judgment dated 20th December, 2000.

3. Feeling aggrieved, the petitioners have filed the instant petition under Article 226 of the Constitution of India.

4. It may be mentioned that the learned Tribunal while allowing the OA filed by the respondent No.1, relied upon OM dated 10th November, 1960 issued by the Ministry of Finance, Govt. of India which permits grant of prorata pension to those Central Government servants who had proceeded on deputation with some Public Sector Undertaking (for short 'PSU') and subsequently got absorbed in the said PSU.

5. The learned Tribunal also noted that the aforesaid OM was subsequently followed by another OM dated 16th June, 1967 which provided that those absorbed in PSUs etc. after 16th July, 1967 would be entitled to prorata pension and DCR Gratuity but this was conditional on the transfer of government servants to the PSUs etc. being in the public interest. Thus public interest remained the guiding factor up to this stage. However, after consideration the government removed this condition of absorption by the PSU in the public interest and by DOPT's OM dated 21st April, 1972 laid down that those appointed in PSUs etc. on their own application will also be governed by the aforesaid orders of the Ministry of Finance dated 8th November, 1968, the effect of which would be to give benefit to those who were absorbed permanently in PSUs on or after 21st April, 1972. In this connection, the learned Tribunal also noted Rule 37 of CCS(Pension) Rules, 1972 which reads as under:

"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 Government or under a body controlled or financed by the Government shall, if such absorption is declared by the Government to be in the public interest, be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Government applicable to him.

Provided that no declaration regarding absorption in the public interest in a service or post in or under such corporation, company or body shall be required in respect of a Government servant whom the Government may, by order, declare to be scientific employee."

6. Interpreting the aforesaid Rule, the learned Tribunal stated that this Rule does not distinguish between Government servants absorbed in public interest and on their own application. The learned Tribunal noted that on this reckoning since his absorption in ONGC was on 3rd October, 1961 i.e. much prior to 8th November, 1968 he would be covered by the aforesaid OMs as he was absorbed on his own application and not in public interest.

7. However, relying upon the judgment of the Hyderabad Bench of the Central Administrative Tribunal in the case of Har Binder Lal Vs. The Controller & Auditor General of India & Ors. (OA 527/87) decided on 14th April, 1988 which was upheld by the Supreme Court in its order dated 9th January, 1989 the OA of the respondent was allowed. In this judgment rendered by the Hyderabad Bench the learned Tribunal applied the ratio of the Supreme Court in the case of D.S.Nakara Vs. U.O.I. & Ors. and held that there cannot be any

discrimination between those who joined the Public Sector Undertaking prior to 8th November, 1968 and those who were absorbed in Public Sector Undertaking after 8th November, 1968 as this date of 8th November, 1968 was arbitrary and without any rationale.

8. Mr. Adish C. Aggarwala, learned counsel appearing for the petitioner did not dispute the aforesaid position. However, his only submission was that the respondent No.1 was not entitled to the benefit of OM dated 10th November, 1960 inasmuch as he had not put in ten years service as a permanent employee. In support of this submission, the learned counsel took aid of OM dated 3rd January, 1995.

9. A reading of OM dated 3rd January, 1995 would indicate that it was issued pursuant to judgment dated 17th February, 1993 in Civil Appeal No.666/93 in the case of Sh.T.S.Thiruvengadam Vs. Union of India holding that restricting the benefit of OM dated 16th June, 1967 only to those Central Government employees who were absorbed in PSUs after 16th June, 1997 would be arbitrary. Para 3 is relevant for our purposes which reads as under:

"The manner of implementation of Supreme Court judgment has been under consideration of the Government for some time past. After careful examination of judgment, the President has now been pleased to decide that the benefits of O.M. dated 16th June, 1967 may be extended to all Central Government employees who were absorbed in Central Public Sector Undertakings prior to 16th June, 1967, subject to the following conditions:

i) The absorbee should satisfy all the terms and conditions regarding grant of retirement benefits as laid down in the Ministry of Finance, Department of Expenditure OM dated 16.6.1967, as amended vide O.M. No.44(8)/E.V/71 dated 19.6.1972. The question of proportionate pension will not arise in cases where an officer, at the time of absorption, had rendered less than 10 years of service under Government and was not entitled to pension. In such cases, he will only be eligible to proportionate service gratuity in lieu of pension and to D.C.R.Gratuity based on the length of service.

ii) The absorbee should have proceeded to a Central PSU in Public interest and absorbed there in prior to 16th June, 1967.

iii) The absorbee should have received the retirement benefits as per Ministry of Finance, Department of Expenditure O.M.No.F.2(33)/EVA/60 dated 10th November, 1960 viz., an amount equal to what Government would have contributed had the officer been on contributory Provident Fund terms under Government, together with simple interest thereon at 2% for the period of his pensionable service under Government, should have been credited to his Contributory Provident Fund Account with the PSU as an opening balance within one year from the date of his/her permanent absorption.

Ministry of Finance, etc., are requested to settle the claims of the Central Government employees who were permanently absorbed in the Central PSUs prior to 16.6.1967 on the above basis, on receipt of a formal request from each such employee. CPF benefits received in terms of Ministry of Finance O.M. dated

10.11.1960 have to be refunded by the said employees to Government together with interest at the rate applicable to GPF Accumulations on the date of such refund and calculated in the same manner as interest on GPF is worked out."

10. Clause (i) of the aforesaid para only stipulates that the concerned employee at the time of his absorption should have rendered not less than ten years of service under the Government. It is nowhere stated that an employee should have rendered ten years of service as a permanent employee. In the present case the respondent No.1 had joined CPWD on 8th November, 1947 and thus has rendered approximately 14 years of service before his absorption in ONGC. He was declared quasi permanent w.e.f. 1st February, 1951 and even if qualifying period of ten years is to be reckoned from this date, he had completed more than ten years service. Moreover, the reading of the impugned judgment suggests that no such contention was taken before the learned Tribunal. In this petition also the petitioners have not annexed the copy of the reply filed before the learned Tribunal from where it could show that any such contention was taken by the petitioners.

11. For these reasons, we do not find any merit in the arguments advanced by the learned counsel for the petitioners. This writ petition is accordingly dismissed.

12. Having regard to the fact that the matter relates to the pension of the respondent No.1 who is staying at Vadodara after his retirement and had to come to Delhi to defend his case, the petitioners shall also pay the respondent No.1 cost of these proceedings which is quantified at Rs.2,000/-.

13. The Registry of this court is directed to send the certified copy of this judgment/order to the respondent No.1 free of cost.