(1999) 10 DEL CK 0053

In the Delhi High Court

Case No : C.W. No. 3223 of 1998

Union of India APPELLANT

Vs

Mr. B.L. Gupta RESPONDENT

Date of Decision : 11-10-1999

Acts Referred:

Citation : (1999) 6 AD 489

Hon'ble Judges : Usha Mehra, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : Mr. Jayant Bhushan, for the Appellant; Mr. D.P. Avinashi, for the Respondent

Judgement

Usha Mehra, J.—The Central Administrative Tribunal (hereinafter called the Tribunal) directed the Union of India, petitioner herein, to pay to the respondent pro-rata retirement/ terminal benefits for the service rendered by him with the Central Ordnance Depot (hereinafter called the COD) Delhi Cantt., New Delhi, from 21st January, 1944 to 9th August, 1963 w.e.f. 6th March, 1985. The Tribunal further directed that this benefit be computed and paid within a period of two months. Aggrieved by this order, Union India filed the present writ petition challenging the impugned order, inter alia, on the grounds that the respondent herein resigned his post in the Army Ordnance Corps before being absorbed in the State Trading Corporation Limited (hereinafter called the STC). He was not to get benefit of his past service. His absorption was subject to the above two conditions. Moreover, his joining the STC Ltd. was not in public interest. Therefore, not entitled to retiral benefits.

2. In order to appreciate the challenge, the brief facts of the case are that Mr. B.L. Gupta, respondent herein, was employed as LDC in the COD, Delhi Cantt. He joined STC Ltd., in July, 1958 on deputation. He kept his lien with the COD, Delhi Cantt. He while on the deputation, cleared the departmental examination of Assistant Grade in his parent organisation. STC accepted to take the respondent as Assistant provided he was relieved by his parent organisation after

terminating his lien. It was further stipulated by the STC that his application would be treated as a fresh recruitment and be would not be given benefit of his past service rendered with the Government Department. Respondent accepted these conditions. Accordingly he sought relieving order from the COD, Delhi, Cantt., with the permission to take up the post of Assistant with STC. The Army Headquarters allowed this request of the respondent subject to the condition that; (1) he resigns his post of LDC and (2) he would not ask for any benefit of the service rendered as ADC, Delhi Cantt.

3. That after getting absorbed permanently with the STC, respondent approached the petitioner for restoration of benefit of past service rendered by him in COD, Delhi Cantt. This was declined in view of the fact that he had resigned from the Government service with clear understanding that his past service would not be counted towards retiral benefits. The second ground taken by the petitioner before the Tribunal for non-computing the past service was that his appointment in the STC was not in public interest.

4. Therefore, the short question for consideration is whether the respondent after having severed relation with COD and getting permanently absorbed in the STC could claim benefit of past service which he had voluntarily foregone? Whether his absorption in the STC was in public interest.

5. The law is well settled that obtaining of consent of government servant to the termination of lien is necessary in certain circumstances where the government servant is to be confirmed in a non-government service. The proper course in such cases, where it is proposed to absorb him in nongovernment service in public interest, would be to ask the government servant concerned to resign appointment under the Government with effect from the date of such permanent absorption and the lien will stand automatically terminated with the cession of the government service. Such resignation from government service will be without prejudice to the entitlement of the government servant to the retirement benefits provided the transfer or the absorption of the government servant in Public Sector Undertaking or semi-government corporation is in public interest. It is due to this provision of the law that the petitioner sought for the resignation of the respondent. After resignation his lien with COD stood terminated. He was, Therefore, got absorbed permanently with the STC. As the absorption of the respondent in the STC was of his own volition and not in public interest, hence he was made aware that his past service rendered in the Government Department would not be counted towards retiral benefits. Had his absorption in STC been in public interest the respondent would have definitely been entitled to retiral benefits and/or counting of his past service rendered in the COD, Delhi Cantt. This is what has been provided under Rule 37 of the Central Civil Services (Pension) Rules, 1972. The said Rule provides :

"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 in 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 a scientific employee."

6. Since respondent''s absorption was not in public interest hence, to our mind, the Tribunal fell in error in equating his case with that of Mr. K.L. Sharma, O.A. No. 1734/94 as well as of T. S. Thiruvengadam Vs. Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi and Ors., reported in (1993) 2 SCC 102. The Tribunal itself while considering the case of Mr. K. L. Sharma pointed out that Mr. K. L. Sharma''s absorption in NSIC Ltd. was in public interest. That being not so in the case in hand, no help could be derived from K.L. Sharma''s case. Similarly the Tribunal while relying on the decision of Supreme Court of T. S. Thiruvengadam''s case (supra) gloss over the important aspect that is the Apex Court while arriving at that conclusion also placed reliance on Rule 37 of CCS (Pension) Rules, 1972 T. S. Thiruvengadam''s case was based on the fact that he was sent on foreign service to Neyveli Lignite Corporation Ltd. (a Public Sector Undertaking). He did not go there of his own volition. He was sent to the Public Sector Undertaking by the Government. In Para 12 of that judgment, the Apex Court while relying on Rule 37 stated that a government servant who has been permitted to be absorbed in service in a Central Government Public Undertaking in public interest be deemed to have retired from service and shall be eligible to receive retirement benefits. Since that writ petitioner Mr. T. S. Thiruvengadam was permitted to be absorbed in the Central Government Public Sector Undertaking in public interest hence he was made eligible to receive the retirement benefits. In contrast in the case in hand respondent was not sent to STC in public interest nor permitted to get absorbed in the said Corporation in public interest. It has been his case through out that he got absorbed of his own volition. Therefore, his case is distinguishable from the case relied by the Tribunal in the impugned judgment.

7. The Tribunal misread the Office Memorandum dated 3rd January, 1995 quoted by it in para 11 of its judgment. Reading of para (ii) of the said O.M. clearly show that the absorbed should have proceeded to a Central Public Sector Undertaking in public interest and absorbed therein prior to 16th June, 1967. Therefore, the pre-condition as per this Office Memorandum was absorption in public interest, which in the facts of this case was lacking. In fact the Tribunal misconstrued the Office Memorandum dated 3rd January, 1995 when it observed that the condition of absorption in public interest had been made away in this Office Memorandum.

8. Reliance by the Tribunal on the Government of India''s Department of

Personnel Office Memorandum No. 28016/5/85-Estt. (C) dated 31st January, 1986 is misplaced. The Tribunal overlooked the fact that the respondent herein had been absorbed in the STC Ltd. in the year 1963. He submitted his resignation with the petitioner on 7th October, 1963 when he also gave a certificate of not claiming any benefit thereafter. Therefore, the OM dated 31st January, 1986 could not have a retrospective operation nor in facts of this case any relevance. Therefore, para 4 of that circular which deal with the pensionary benefit could not be used in aid to give benefit to the respondent who had resigned in 1963 and got permanently absorbed in the STC Ltd. in 1963. Since the OM dated 31st January, 1986 could not have been made applicable retrospectively, Therefore, the reliance by, the Tribunal on the decision of Supreme Court in the case of Praduman Kumar Jain Vs. Union of India reported in (1994) 28 dt Case 70 , was also of no help. In Praduman Kumar Jain''s case the Apex Court was dealing with the question of requisite length of qualifying service of Mr. Jain. Mr. Praduman Kumar Jain was selected for appointment as Senior Engineer in the NTPC, a Central Government Undertaking. He joined NTPC on 31st October, 1986. By that time no specific order confirming Praduman Kumar Jain in the service of Central Government was issued. Therefore, the question before the Tribunal was whether Mr. Jain was entitled to pro-rata pension for the period of his service under the Central Government. Tribunal rejected his claim. The Apex Court on the facts of that case held that Mr. Jain was not working with the Central Government in an officiating capacity because the Central Government by allowing Mr. Jain to cross the Efficiency Bar could not have treated him as an officiating officer. Mr. Praduman Kumar Jain was appointed as a direct recruit in the post of Assistant Mythologist in the year 1977. He completed his probation period in 1979. Therefore, keeping these factors in view the Apex Court observed that "direct recruitment is always made against a permanent vacancy. A person appointed against a permanent vacancy completing his probation period successfully, crossing the efficiency bar and even promoted to the higher rank, cannot be considered to be working in an officiating capacity". After having held so the Apex Court relying on the Office Memorandum dated 31st January, 1986 and in particular para 4 concluded that Mr. P.K. Jain was entitled to pro-rata pension and other terminal benefits in respect of service rendered by him under the Central Government. The Office Memorandum of 31st January, 1986 was applied because by the time Praduman Kumar Jain was absorbed in the NTPC on 31st October, 1986 this Office Memorandum was already in existence. But when the present respondent was absorbed in the STC Ltd. such an Office Memorandum was not in existence. Therefore, the Tribunal fell in error in giving retrospective effect to the Office Memorandum dated 31st January, 1986. Reliance in this regard can be placed to the decision of Supreme Court (which was also noted by the Tribunal) R.L. Marwaha Vs. Union of India (UOI) and Others, , wherein it has been held that the benefit conferred by a Government Notification is prospective in operation in the sense that such benefit can be claimed only from the date of such notifications. Applying this principle to OM dated 31st January, 1986 the Tribunal could not by any reason made the OM dated 31st January, 1986 look back and apply in the case of the respondent who stood absorbed in the STC way back in 1963. The mere fact that resignation of the respondent was procured with the prior permission and approval of the COD, Delhi Cantt. could not ipso-facto entitle him the benefit of past service fo he purposes of retiral benefits.

9. For the reasons stated above, the impugned order cannot be sustained. The same is accordingly set aside. The O.A. filed by the respondent has necessarily to be dismissed.