

duly confirmed as Draftsman-A. The Respondent No. 1/Delhi Development Authority (DDA) had called for applications for eligible candidates to fill vacancies for the post of Junior Engineer. Pursuant to an application filed through proper channel the Appellant was selected and on 14th July, 1981 was relieved from the Indian Railways. Before joining the DDA the Appellant had furnished an undertaking that he would not claim any benefit whatsoever regarding seniority, promotion or pay fixation on the basis of his past services rendered in other departments from DDA. On 15th July, 1981 on joining the DDA the Appellant was placed under probation. However, his lien was retained in the Indian Railways for a period of two years. Thereafter, he applied for voluntary retirement from the Railways which was accepted by the Ministry of Railways. On a query from the Ministry of Railways as to whether the Appellant has completed his probation successfully the DDA vide its letter dated 7th November, 1984 confirmed that the Appellant had acquired quasi permanent status after completion of probation with effect from 15th July, 1984.

2. The Appellant filed a writ petition being WP(C) No.1023/1990 inter alia praying for a declaration as a permanent employee of the DDA, fixation of basic pay at Rs.660/- per month with effect from 15th July, 1981 i.e. when

he joined DDA with all consequential allowances, pensionary benefits on the basis of past service in Ministry of Railways.

3. During the pendency of the said writ petition on the Appellant's representation the DDA vide its order dated 23rd October, 1991 fixed the pay of the Appellant at Rs.660/- per month in the scale of Rs.425-700/- (pre-revised) with effect from 15th July, 1981 which he was drawing in the Ministry of Railways before joining DDA. However, this order was withdrawn on 27th September, 1994. In the meantime, the Appellant attained the age of superannuation on 30th September, 1994. Vide order dated 24th April, 1995 this Court disposed of the writ petition of the Appellant by setting aside the order dated 27th September, 1994 of the Respondent-DDA superseding its earlier order dated 23rd October, 1991 and allowed the writ petition by directing the Respondents to grant all consequential reliefs such as seniority, promotion and superannuation benefits available in accordance with law. The DDA challenged the order dated 24th April, 1995 passed by the learned Single Judge of this Court disposing of the writ petition of the Appellant. In view of the fact that the issues had not been decided on merits, the Division Bench in LPA No. 443/1995 remanded the matter back to the learned Single Judge for hearing on 12th January 1999 directing to consider the remaining issues with regard to the entitlement of the Appellant vis-à-vis

service benefits under the DDA. The Appellant thereafter filed number of applications and also amended the writ petition.

4. By way of amendment the Appellant sought directions to the DDA to fix the Appellant's seniority immediately or next below the permanent confirmed employees of the DDA drawing the same pay scale as on 15th July, 1981 or in the alternative sought seniority in the parent department in addition to the existing claims. Thus principally the two issues raised by the Appellant before the learned Single Judge were: Firstly, assignment of proper seniority and promotion to the Appellant and Secondly, reckoning of the entire length of service before 15th July, 1981 in the Railways for the purpose of release of pension and pensionary benefits by the DDA. The learned Single Judge of this Court after hearing detailed arguments with regard to the first issue held that the same cannot be acceded to as the persons likely to be affected by it were not impleaded in the petition and moreover intervention at this stage when Appellant had superannuated, would disturb the settled position enuring in favour of a large number of officials. It also held that the Appellant had no overriding right in law, to claim seniority in DDA by including his past service in Railways. With regard to the second issue, the learned Single Judge passed the following order on 7th February, 2006:

“33. I am of the opinion, in the facts of this case, that the petitioner was entitled to be reckoned as a confirmed employee of DDA, when it declared his probation to have been successfully completed, in 1983, as per its letter dated 7.11.1984; as per its own admission, he was entitled to quasi permanent status on 15.7.1984. Therefore, his entitlement to pension, and other terminal dues payable on the basis of continuous service from 14.7.1981, stands established. The DDA is liable to the period 14.7.1981 to 30.9.1994, when he retired from its services. He would be entitled to pro-rata/ proportionate pension, gratuity, and other terminal benefits for that period, on the basis of his pay having been fixed @ 660/- per month in the grade of Rs. 425-700 in DDA, with consequential increments in DDA.

34. As far as pension and benefits for the period the petitioner was with the railways is concerned, I am of the opinion that in the absence of pleadings, and a categorical assertion that no pension or amounts were paid to the petitioner, for the period of his service, by the railways, it would not be safe to give a declaration about his entitlement. However, the materials on record justify a direction to the railways to consider all the aspects, in relation to the petitioner's admitted service of more than 20 years, and pass a suitable order, as to the payment of pro-rata pension with terminal benefits, as per the circulars, rules and guidelines applicable, and having regard to the facts that the petitioner was permitted to voluntarily retire from the Railways from 14-7-1983.

35. A direction is issued to the DDA to treat the petitioner as its confirmed employee, with effect from the date he joined the post, on 14th July, 1981, and pass a consequential pension fixation order, on the basis of the last pay drawn, after pay fixation at Rs. 660/- p.m. in the grade of Rs. 425-700 for the period 14.7.1981 and 30.9.1994, as per its rules and

guidelines/circulars. The amounts admissible towards pension arrears, and other terminal benefits shall be calculated, on the basis of such order, shall be paid to the petitioner within eight weeks from today.

36. A direction is hereby issued to the railways to consider all the aspects, in relation to the petitioner's admitted service with it till 13.7.1981, and pass a suitable order, as to the payment of pro-rata pension with terminal benefits, as per its circulars, rules and guidelines, and having regard to the fact that the petitioner was permitted to voluntarily retire from the Railways from 14.7.1983. The order shall be a speaking one, and shall be communicated to the petitioner within eight weeks from today. In case of any grievance arising out of the order, the petitioner is at liberty to question it in accordance with law."

5. The Appellant not satisfied by the order dated 7th February, 2005 filed a review petition before the learned Single Judge. The review petition was dismissed on 17th February, 2009 on the ground that there was no error apparent.

6. Aggrieved by the orders dated 7th February, 2006 and 17th February, 2009, the Appellant has preferred the present appeal. The main contention of the Appellant before us is that he was not appointed as a direct recruit by the DDA but was on deputation from Railways and thus on his absorption he was entitled to all the benefits as are available to him in the erstwhile Railway Ministry as well. It is contended that the learned Single Judge has committed a factual error because of which the Appellant is losing the combined effect of

the two services. Alternatively, it is stated that the Appellant is entitled to seniority from the date of absorption or at least from the date of termination of lien and consequential promotion. It is also contended that the DDA had no source of power to take such an undertaking and even if it is assumed that the undertaking is taken the same is not applicable in view of the Fundamental Rules. In support of his contentions the Appellant relies on the decisions rendered in *Vijaya Kumar Shrotriya v. State of U.P. and others*, AIR 1998 SC 1088, *Sub-Inspector Roop Lal and Another v Lt. Governor Through Chief Secretary, Delhi and others*, 2000 (1) SCC 644, and *Ramesh K. Sharma and Another v Rajasthan Civil Services and others*, 2000 (7) Supreme 622 and by this Court in *Mr. G.R.Chawla and others v Delhi Development Authority and Another in CWP No.1768/1988*.

7. Per contra, the learned counsel for the Respondent No.1 in support of its contentions rely upon the OM dated 22nd January 1966 reiterated on 2nd March, 1987 wherein it was clearly mentioned that the Government will not accept any liability to pay any retiral benefits or to carry forward of leave for the period of service rendered under the Government on transfer of the employee to the autonomous Central Organizations. In an exceptional case where the permission was to be given to retain his lien in the parent department for one year such permission was to be given on an undertaking as

stipulated in clause 2. It is contended by learned counsel for the Respondent No.1 that the present is a case of fresh appointment in the service of Respondent No.1 and hence the Appellant is not entitled to reliefs sought for. Learned counsel for the Respondent No.1 states that on employment with the DDA the Appellant would be governed by the Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961. Learned counsel for the Respondent No. 1 further contends that there is neither any rule having force of law nor any administrative instruction that permits retention of past service for the purpose of seniority. It is further stated that the persons who would be adversely affected by the seniority, if granted to the Appellant, are not parties before this Court and hence this appeal is liable to be dismissed on this ground itself. Thus, according to him a new entrant to the service cannot retain his past service for the purpose of seniority on joining a new organization unless the rules having force of law clearly permit him to do so. It is further contended that the fundamental rules stipulate counting of past service only for fixing the salary and not for seniority and promotion. According to him, in the present case, the incumbent has submitted an undertaking giving up his past service for seniority and now he cannot turn around and claim the same. It is further contended that the petitioner was informed in the year 1981 that his past service will not be counted for the

purpose of seniority. His representation was rejected on 17th February, 1983 and the writ petition filed in the year 1990 was a highly belated one and ought to have been rejected on this ground itself. It is further contended that the relevant rules and instructions permit the incumbent either to opt for pro-rata pensionary benefits from the two organizations separately or one single pension from the new organization in which case, the old organization is required to hand over its contribution for the relevant period to the new employer. In the present case, even before the retirement of the Appellant, the DDA in the year 1992 had desired to hand over to the Railways its contribution. The Railways also agreed and the petitioner was asked to submit his option in the year 1996, but he chose not to do it. The Railways again made an offer in the year 1999 during the pendency of the writ petition, however again the Appellant did not submit his option. It is submitted that in view of these facts, the learned Single Judge directed grant of pro-rata pension to the Appellant. Learned counsel for Respondent No.2 also contended that the OMs issued under the CCS Pension Rules would have no application as the Railways has its own pension rules governing its employees. In the writ petition no reply was filed by the Respondent No.2 /Railways. In the present LPA the Railways has filed a reply stating therein that in the absence of status of absorption of the Appellant in DDA

determination of the exact amount of various settlements including FAC charges was not feasible by the Railways and the Railways have never denied from paying their liabilities to the Appellant and the delay if any was due to the fact that the required action was not taken from the side of the Appellant. It is stated by the Railways that it clearly conveyed the approval to the DDA that subject to Shri Dhawan paying FSC for the period from 14th July, 1981 to 14th July, 1983 Railway Ministry had no objection to discharge its liabilities in the matter of pensionary benefits subject to the nature of option exercised by the Appellant that is either he would be paid pro rata pension for the Railway service or allow the benefit of continuity of Railway service for pension in the autonomous body as per his option. Thus the Respondent No.2 was prepared to pay their part of the pensionary benefits subject to the Appellant exercising his choice.

9. We have heard learned counsel for the parties and perused the records. The judgments relied upon by the learned counsel for the Appellant have no relevance to the facts of the present case. The decision of the Hon'ble Supreme Court in *Vijaya Kumar Shrotriya v. State of U.P. and Ors.* AIR 1998 SC 1088 deals with a case of transfer wherein by means of letter dated 19th October, 1968, it was directed that Assistant Engineers in Public Works, Irrigation and ES&E department who came through competitive examinations

and are working in any of the said departments if allocated to any such department, they would be deemed to have been transferred from one department to the other. A case of transfer or/and absorption is on a totally different footing then the present one where there is fresh selection de-hors the earlier appointment. In ***Ramesh K. Sharma and Anr vs. Rajasthan Civil Services and Ors. 2000 (7) Supreme 622***, the Court was dealing with Seniority inter se direct recruits and deputationists subsequently absorbed. That being a case of absorption pursuant to deputation, the Court held that the two should be treated to be equal. Similarly, in ***Sub-Inspector Roop Lal and Anr v. Lt. Governor and Ors, (2000) 1 SCC 644***, the Court was dealing with a case of deputationist who was subsequently absorbed. The present is neither a case of transfer nor absorption, but a case of fresh appointment simplicitor along with an undertaking rendered by the Appellant.

10. As regards the claim of seniority and promotion on the basis of inclusion of past service, we find no infirmity in the finding of the learned Single Judge. The Appellant is claiming seniority from 1970, alternatively from 1979 and in case this Court or the learned Single Judge would have assigned that particular seniority to the Appellant, the same would have upset the seniority position of the other people. None of them were impleaded as party in the proceedings not even in representative capacity. Seniority is a

legal right and if a new entrant is allowed to retain his past service for the purpose of calculating seniority then it shall adversely affect the seniority of existing employees in the cadre.

11. We may note that the Appellant can claim seniority only on the basis of some Rule, Regulation or condition of service of the DDA, the organization where he joined subsequently by way of direct recruitment. No such Rule, Regulation or Statutory provision has been shown to assert the legal right of the Appellant qua the claim of seniority and promotion. Thus the learned Single Judge rightly did not accept the claim of seniority and promotion on the basis of inclusion of past service.

12. The second issue concerns the pensionary benefits to the Appellant. There is a fundamental difference between the appointment of Appellant with the DDA and that of a person who comes from another department or organization on deputation and is subsequently absorbed. The latter is a case of continuous service but the prior is a case of discontinuation of service with his earlier employer and a case of fresh appointment with the new employer. Thus, on the fresh appointment, the Appellant would be governed only by the relevant Rules, Regulations and provisions of Respondent No.1.

13. We also do not find any force in the contention of learned counsel for the Appellant that Respondent No.1 had no source of power to take the undertaking from the Appellant. We may note that no Rule, Regulation or provision has been pointed out by the Appellant to assert his right. In the absence of any Rule, Regulation or provision to the contrary the Respondent No.1 was well within its right to take an undertaking as a matter of abundant caution. Even if this undertaking was not taken no right accrues to the Appellant to claim pensionary benefits from DDA for his employment under Railways. Moreover the notings of the officers of DDA referred to by the learned counsel for the Appellant to buttress his case, would not entitle him to a right in the absence of the Rules and Regulations in this regard. It may be noted that the consistent stand of DDA in its affidavits has been that the appointment of the Appellant was as a fresh recruit and it was not a case of absorption on transfer or deputation.

14. Learned counsel for the Respondent No.1 has relied upon the circular dated 22nd January, 1966 reiterated on 2nd March, 1987 wherein it has been clearly laid down that if a permanent Government servant is selected for appointment in a public sector undertaking or autonomous semi Government organization on the basis of his application for such post, his lien in the parent department will be retained for a period of two years or till he is permanently

absorbed, whichever is earlier, subject to the condition that he would give an undertaking that the Government will not accept any liability to pay any retirement benefits or for carry forward of leave for the period of service rendered under the Government. Thus, the contention that the DDA could not have taken the undertaking from the Appellant is incorrect. OM dated 2nd March, 1987 is reproduced as under:-

“OFFICE INSTRUCTION NO.-E-107, DATED THE 21ST JANUARY, 1966.

No. 70/62/62-Ests (A)

Government of India

Ministry of Home Affairs

New Delhi-1, 22nd January, 1966

2nd March, 1987

OFFICE MEMORANDUM

Subject: Forwarding of application of Central Government Servants for posts in Public Sector Undertakings, autonomous bodies, etc.

The undersigned is directed to refer to para 2(v) of Ministry Home Affairs Office Memorandum No. 170/51-Ests dated the 21st October, 1952, under which when a Government servant seeks permission to apply for employment in private business or industrial firms etc. he should first offer to resign or retire from Government service. The question as to what

procedure should be followed in respect of permanent government servants who apply in response to advertisements or circulation of vacancies to Government for posts in public sector undertakings whether incorporated or not, which are wholly or substantially owned by the Government of India or the State Government and in autonomous semi-Government organizations, has been under consideration for some time past. It has now been decided that permanent Government servants who are selected for appointment in public sector undertakings or autonomous semi-Government organizations on the basis of their applications for such posts should be allowed to retain a lien on their permanent post in the parent office for a period of two years or till they are permanently absorbed in the undertaking, etc. whichever is earlier, subject to the following conditions: -

- (i) The leave salary and pension contributions should be paid either by the undertaking organization or by the Government servant concerned himself.
- (ii) The pay allowed to him by the undertaking organization should not exceed the limits specified in Ministry of Finance OM No.10(24)-E.III/60, dated the 9th March, 1964, and such other orders restricting pay on foreign service as may be issued by the Ministry of Finance from time to time.
- (iii) If it is proposed to absorb the Government servant permanently in the public sector undertaking/autonomous semi-Government organization before the expiry of the period of two years mentioned above, it would be incumbent on the foreign employer to consult the parent office before issuing orders absorbing the Government servant permanently, and the orders of permanent absorption should be issued by the foreign employer only after the resignation of the Government servant has been accepted by the Government and with effect from the date of such acceptance vide Ministry of Finance OM No.4(3)-e.IV/A/68, dated the 1st October, 1968.
- (iv) Since the transfer in such cases is not in the public interest the Government will not accept any liability to pay any retirement

benefits or for carry forward of leave for the period of service rendered under the government.

- (v) If the Government servant is not permanently absorbed within a period of two years from the date of his appointment in the public sector undertaking/autonomous semi Government organization in the manner indicated at (iii) above, he should immediately on expiry of the said period of two years, either resign from Government service or revert to his parent office.
- (vi) In exceptional cases where it would take some time for the public sector undertaking, autonomous body, etc. to permanently absorb such Government servant due to administrative reasons, the permanent Government servant may be permitted to retain his lien in the parent department/office for one more year. While granting such permission, a fresh undertaking similar to the one referred to in paragraph 2 below may be taken from the permanent Government servant by the parent Department/office. A similar treatment may be accorded to the quasi-permanent employees.

2. In view of the above decision, applications from permanent Government servants for posts (whether temporary or permanent) in public sector undertakings/autonomous semi-Government organization should be forwarded only after taking from them a written undertaking accepting the conditions stipulated above and the foreign employer should also be informed of these conditions.

3. As regards quasi-permanent employees, it has been decided that all quasi-permanent employees applying for post in the public sector undertakings/autonomous semi government organization should be treated as on foreign service with the undertakings/organizations for a period of two years and given the same treatment as permanent employees vide para 1-2 above.

4. These orders do not apply to temporary employees, who will have to resign from Government service before they are appointed in such undertakings/organizations on the basis of their own applications. It is therefore necessary in such cases to obtain from the Government servant concerned before their

application is actually forwarded, an undertaking that in the event of selection for the post applied for, they will resign from Government service.

5. The Ministry of Finance etc. may kindly bring the above instructions to the notice of all concerned and also to the public sector undertaking autonomous semi-Government organizations with which they are administratively concerned.

6. In so far as the officers serving in the Indian Audit and Accounts Department are concerned, these orders have been issued after consultation with the Comptroller and Auditor General of India.

Sd/-

R.M.Shroff
Deputy Secretary to the Government of India.”

15. In view of the Ministry of Railway circulars dated 16th April, 1986, 9th January, 1986 and 31st March, 1986, which state that an employee permitted to be absorbed in autonomous body or centrally controlled organisation, could opt for pro-rata pension the learned Single Judge rightly directed grant of pro rata pension to the Appellant. The relevant portion of the circulars adopted by the Indian Railways for its employees absorbed in Central Government controlled bodies/PSUs are as follows:

“GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS/RAIL MANTRALAYA
(RAILWAY BOARD)

No. F(E)III/86 PN 1/5 dated 16/04/86

Subject :- Grant of pro-rata retirement benefits to Railway Employees on immediate absorption basis in P.S.E.

A copy each of Department of Public Enterprises (BPE)'s O.M. No.3 (2)/85/BPE-S&A Cell dated 9.1.1986 and DOPT&T's O.M. No. 28016/5/85-Estt. (C) dated 31.01.1986 regarding terms and conditions and the retirement benefits admissible to the Government Employees on their immediate absorption in Central Public Enterprises are enclosed herewith for information and guidance.

2. Orders contained in the above O.M's will apply mutatis mutandis to the Railway Employees also. These orders are effective from 6.3.1985 but the cases already settled on and after 6.3.1995 will not be reopened.

3. Orders corresponding to BPE's O.M. No. 5(25)/83-BPE(PESB) dated 6.3.1985 referred in the above office memorandum dated 9.1.1986 and 31.1.1986 have been issued under the Department's letter No. F(E)II-86/DE 1/1 dated 25.03.1986.

No. 3(2)/85/BPE-S&A Cell
Government of India
Ministry of Industry
Department of Public Enterprises
(bureau of Public Enterprises)
S&A Cell

Public Enterprises Bhawan,
Block-14, CGO Complex,
Lodhi Road, New Delhi-3.

Dated the 9th January, 1986

Subject:- Pro-rata pension/gratuity and other retirement to Government Servants who join Central PSE's on

immediate absorption basis clarification regarding.

The undersigned is directed to refer to the BPE's O.M. No. 5(25)/83/BPE(BPSB) dated 6th March 1985 banning deputation of Central Government employees, save exceptions made therein, to Central PSEs and to say that a doubt has been raised as to whether the liberalized pro-rata retirement benefits which are, at present, admissible to those Central Government employees who, while on deputation to Central PSEs, opt for permanent absorption in the undertaking, can be allowed to the Government servant who join Central PSEs on immediate absorption basis. It is hereby; clarified that the Central Government of Employees who join Central PSE's on immediate absorption basis are entitled to the same pensionary benefits as are admissible to deputationist Central Government Officers who opt for permanent absorption, irrespective of the fact that appointment of some of those employees in the public Enterprises may be on probation of a given period. In other words, the immediate absorption is to be treated as permanent absorption so far as pensionary benefits to Central Government employees are concerned.

2. The stipulation of immediate absorption will apply to all appointments of Central Government servants in the Central Public Enterprises, irrespective of the level of appointment and whether the appointment is in public interest or otherwise, provided they had applied through proper channel and that they had been released only after obtaining and accepting their resignation from the Government service. Since the admissibility of aforesaid terminal benefits is limited to those officers who leave Government service to secure employment in the enterprises, with prior permission, the case for grant of these benefits may be processed only after ascertaining from the Enterprises concerned that the officer has actually joined them.

3. Cases of grant of pensionary benefits to Central Government employees who join Central Public Enterprises on immediate absorption basis as well as those who opt, while

on deputation to PSE's, for permanent absorption should continue to be referred to the Bureau of Public Enterprises.

4. This issues with the concurrence of the Ministry of Personnel and Training (Department of Personnel) and Ministry of Finance (Department of Expenditure).

No.28016/5/85-Estt.(C)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel & Training)
New Delhi, the 31 January, 1986

OFFICE MEMORANDUM

Sub:- Appointment of Central Government servants in the Central Public Enterprises on immediate absorption basis terms and conditions of.

The undersigned is directed to say that instructions were issued vide the Ministry of Finance (Bureau of Public Enterprises) O.M. No. 5(25)/83-BPE(PESB) dated 06.03.1985 to the effect that save in the exceptional cases mentioned therein, deputation of Central Government servants to the Central Public Enterprises would not be allowed and the officers could join the enterprise only on immediate absorption basis. The modalities of appointment of Government servants in the enterprises after the issue of these instructions, as also the question of granting terminal benefits to the Government servants going over to the enterprises on immediate absorption basis has been under consideration of the Central Government and it has been decided that the appointment of Government servants in the Central Public Enterprises will be on the following terms and conditions:-

1. Release of the Government servants for appointment in the enterprises:- A Government servant who has been

selected for a post in a Central Public Enterprise may be released only after obtaining and accepting his resignation from the Government Service.

2. Retention of lien/quasi-permanent status:- No lien/quasi-permanent status of the government servant concerned will be retained in his parent cadre. All his connections with the Government will be served on his release for appointment in an enterprise and he will not be allowed to revert to his parent cadre.

3. Pay fixation:- A Government servant selected for a post in a Central Public Enterprise will be free to negotiate his emoluments with the enterprise. On appointment to a post in a public sector enterprise on immediate absorption basis, a Government servant will be at par with other employees of the enterprise and will be governed by the rules of the enterprise in all respects.

4. Pensionary benefits:-

i Resignation from Government service with a view to secure employment in a Central Public Enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases the Government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all the retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation.

ii The officer eligible for pension should exercise an option with 6 months of the date of his resignation for either of the following two alternatives:-

a Pro-rata monthly pension and death-cum-retirement gratuity as admissible under the relevant rules.

b. Pro-rata gratuity and lump sum amounts in lieu on pension worked out with reference to the

commutation tables applicable on the date of resignation.

NOTE: Where no option is exercised within the prescribed time limit, the officer will be governed by alternative (a) above. Option once exercise shall be treated as final.

i Any further liberalization of pension rules decided upon by Government after the date of resignation of a Central Government servants to join the public enterprise will not be extended to him.

ii A Government servant who opts for pro-rata monthly pension on his resignation from government service will not be entitled to relief on pension during his service in the public enterprise.

5. Leave:- A Government servant taking up an appointment in a Central Public Enterprise will be entitled to encashment of earned leaves to his credit at the time of acceptance of his resignation from Government service, subjects to limit of 180 days. Half pay leave will stand forfeited.

6. Family Pension:- If there is no family pension scheme in a public enterprise, or if the officer does not become eligible to join family pension scheme in the enterprise, the family pension as admissible under the Central Government will be allowed to him.

2. Absorption means acceptance of resignation of the officers from Government service to enable him to take up an appointment in a Central public enterprise, for which he had applied with proper permission.

3. Since the terminal benefits mentioned above are admissible only to those officers who leave Government service to secure employment in the enterprise, with proper permission, a case of grant of these benefits may

be processed only after ascertaining from the enterprise concerned that the officer has actually joined them.

4. The stipulation of 'immediate absorption' will apply to all appointments of Central Government servants in the Central public enterprises, irrespective of the level of appointment, the mode of recruitment, and whether an appointment is in public interest or otherwise, but subject to the exceptions made in the O.M. dated 6.3.1985 referred to above.

5. For the purpose of these orders, a Central public enterprise is an undertaking wholly or substantially owned by the Government of India, and which is accepted as such by the Bureau of public enterprises.

6. The terminal benefits etc. enumerated in para 1 above will be admissible to all Central Government servants, who secure appointments in Central public enterprises with proper permissions. A Government servant selected for appointment in an enterprise on the basis of an application submitted by him before joining the Government service will be deemed to have applied with proper permission for the purpose of these orders.

7. All existing instructions on the subject will stand amended/superseded to the extent indicated in the proceeding paragraphs. Formal amendments in the statutory rules, where considered as necessary, will be carried out in due course.

8. All cases of grant of pensionary benefits etc. to Government servants, who are appointed in the Central public sector enterprises on immediate absorption basis, shall be decided by the administrative Ministries/cadre Controlling Authorities/Authority competent to accept resignation of a Government servant in accordance with provisions of this O.M. All other cases not covered under the provisions of this O.M. or which required relaxation of any provision should continue to be referred to the Bureau of public enterprises with necessary service particulars. Cases of doubtful nature

also should continue to be referred to Bureau of Public Enterprises.

9. The Ministry of Home Affairs etc., may please bring these orders to the notice of all concerned including the public enterprises under their administrative control.

10. So far as the officers serving in the India Audit and Account Department are concerned, these orders are being issued after consulting the Comptroller & Auditor General of India.

11. These orders take effect from 06.03.1985

12. This issues with the concurrence of the Ministry of Finance (Department of Expenditure) and the Department of Public Enterprises.”

16. Further even in terms of Rule 53 (1) and 53 (3) of the Railways Services (Pension) Rules reproduced hereinafter the Appellant is entitled to pro rata retirement benefits:-

Rule 53(1)

“absorption 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.”

Rule 53(3)

“Where there is a pension scheme in a body controlled or financed by the Central Government in which a railway servant is absorbed, he shall be entitled to exercise option either to count the service rendered under the railways in that body for pension or to receive pro-rata retirement benefit for the service rendered under the railways in accordance with the orders issued by the railways.”

17. Thus, we find no infirmity in the impugned order. The appeal is dismissed.

(MUKTA GUPTA)
JUDGE

(MADAN B.LOKUR)
JUDGE

MAY 28, 2010
mm