

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved On:19<sup>th</sup>August, 2010  
Judgment Delivered On:20<sup>th</sup> August, 2010

+ **W.P.(C) 7611/2008**

SUBHASH CHANDER GARG ..... Petitioner  
Through: Ms.Avnish Ahlawat, Advocate

Versus

GOVT. OF NCT OF DELHI & ORS. .... Respondents  
Through: Ms.Jyoti Singh, Advocate with  
Mr.Ankur Chhibber, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MR. JUSTICE MOOL CHAND GARG**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

**PRADEEP NANDRAJOG, J.**

1. The prayers made by the writ petitioner in OA No.1141/2007 are as under:-

“In view of the facts mentioned in para 6 above the Applicant prays of the following reliefs:

- i. Quash and set aside order dated 14.3.2007.
- ii. Order and declare that the Applicant is entitled for counting his past services for the purposes of Pension, leaves gratuity etc. as per CCS (Pension) Rules, 1972 rendered at National Informatics Centre, Planning Commission, Government of India w.e.f. 10.12.1985 to 27.10.1988 and at the National Horticulture Board, Ministry of Agriculture, Government of India w.e.f. 28.10.1988 to 15.9.2004 for the purposes of Pension, leaves, gratuity etc. as per CCS (Pension) Rules, 1972 and would be entitled to be covered by Old Pension Scheme under CCS

(Pension) Rules, 1972.

- iii. Any other order which this Hon'ble Court may deem fit and proper be also passed in favour of the Applicant in the interest of justice."

2. Needless to state the issue would be whether past service rendered by the petitioner with effect from 10.12.1985 to 27.10.1988 under National Informatics Centre, Planning Commission, Government of India and service rendered with effect from 28.10.1988 to 15.9.2004 under the National Horticulture Board has to be counted for purposes of such dues as may be payable to the petitioner under the Government of NCT of Delhi.

3. The impugned order dated 7.5.2008 shows that the Hon'ble Tribunal has decided the issue only with respect to the entitlement of the petitioner to become a member of the pension scheme of the respondent, Government of NCT of Delhi, and whether past service has to be counted for other issues and benefits has not been decided.

4. The undisputed position is that the service rendered by the petitioner under National Informatics Centre was under the Government of India but service rendered under the National Horticulture Board is not service under the Government of India for the reason the said Board is an autonomous body and did not have any pension scheme in place for its employees. There was a Contributory Provident Fund Scheme in place by the said body and the petitioner was a member of the said Contributory Provident Fund Scheme.

5. With respect to mobility of personnel between Central Government Departments and Autonomous Bodies, an office memorandum was issued on 29.8.1984, para 3 whereof reads as under:-

"3. This matter has been considered carefully and

the President has now been pleased to decide that the case of Central Government employees going over to a Central autonomous body or vice-versa and employees of the Central autonomous body moving to another Central autonomous body may be regulated as per the following provisions:-

(a) In case of Autonomous Bodies where Pension Scheme is in operation.

(i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the services rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body *irrespective of whether the employee was temporary or permanent in Government*. The pensionary benefits will, however accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employee of the autonomous bodies who are permanently absorbed under the Central Government.

The Government/autonomous body will discharge its pension liability by paying in lumpsum as a one-time payment, the pro-rata pension/service gratuity/terminal gratuity and DCRG for the service upto the date of absorption in the autonomous body/Government, as the case may be. Lumpsum amount of the pro-rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time.

(ii) A Central Government employee with CPF benefits on permanent absorption in an autonomous body will have the option either to receive CPF benefits which have accrued to him from the Government and start his service afresh in that body or choose to count service rendered in Government as qualifying service for pension in the autonomous body by foregoing Government's share of CPF contributions with interest, which will be paid to the concerned autonomous body by the concerned Government

Department. *The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulate period, employee shall be deemed to have opted to receive CPF benefits. The option once exercise shall be final.*

(b) Autonomous body where the Pension Scheme is not in operation.

(i) A permanent Central Government employee borne on pensionable establishment, on absorption under such autonomous body will be eligible for pro-rata retirement benefits in accordance with the provisions of the Ministry of Finance O.M.No.26 (18) EV (B)/75 dated the 8<sup>th</sup> April, 1976, as amended from time to time. In case of quasi-permanent or temporary employees, the terminal gratuity as may be admissible under the rules would be actually payable to the individual on the date when pro-rata retirement benefits to permanent employees become payable. However, in the case of absorption of a Government employee with CPF benefits, in such an autonomous organization, the amount of his subscriptions and the Governments' contribution, if any, together with interest thereon shall be transferred to his new Provident Fund account with the consent of that body.

(ii) An employee of an autonomous body on permanent absorption under the Central Government will have the option either to receive CPF benefits which have accrued to him from the autonomous body and start his service afresh in Government or choose to count service rendered in that body as qualifying service for pension in Government by foregoing employer's share of Contributory Provident Fund contributions with interest thereon, which will be paid to the concerned Government Department by the autonomous body. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulated period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final."

6. It is known to one and all that the Government brought into force a new superannuation scheme as per which Government employees who joined service after 1-1-2004

would not be entitled to pension under the CCS (Pension) Rules 1972, and thus on 26.7.2005 an office order was issued which reads as under:-

**““OFFICE MEMORANDUM**

**Subject:- Counting of past service on submission of technical resignation on or after 1-1-2004 by employees governed by Central Civil Services (Pension) Rules, 1972.**

The various Ministries/Departments/Autonomous bodies have been seeking clarifications from this Department whether the employees appointed on or before 31-12-2003, who were governed by old pension scheme under the Central Civil Services (Pension) Rules, 1972, will be eligible for counting of their past service under Rule 26(2) of the said rules or under the provisions of the DP&AR's O.M.No.28/10/84-PU dated 29-8-1984, as amended from time to time, in the situation where such employees submit technical resignation, on or after 1-1-2004 to take up new appointment in the new Ministry/Department/Central Autonomous Body.

2. The matter has been considered in consultation with the Ministry of Finance and it is clarified as follow:-

(i) All the employees who entered into Central Government service or in the service of an Autonomous Body set up by Central Government (satisfying the conditions laid down in para-4 of O.M. dated 29-8-1984), on or before 31-12-2003 and who were governed by old pension scheme under the Central Civil Services (Pension) Rules, 1972, will continue to be governed by the same pension scheme and same rules, for the purpose of counting of their past service under the said rules or under the provisions of the DP&AR's O.M.No.28/10/84-PU dated 29-8-1984, as amended from time to time, if such employees submit technical resignation on or after 1-1-2004, to take up new appointment in another Ministry or Department of the Government of India or an Autonomous Body set up by the Central Government, in which the pension scheme under Central Civil Services (Pension) Rules, 1972 already

exists for the employees who entered into service on or before 31-12-2003.

(ii) The employees who entered into service on or before 31-12-2003 and who were governed by CPF scheme or any pension scheme of Central or State Government, other than the pension scheme under Central Civil Services (Pension) Rules, 1972, on submission of technical resignation to take up new appointment on or after 1-1-2004, cannot be allowed to join the old pension scheme under Central Civil Services (Pension) Rules, 1972 because entry to the said scheme ceased w.e.f. 31-12-2003 and no new entry can be allowed in the pension scheme under above Rules. However, such employees can seek pensionary/terminal benefits, from the previous organization/Department, if admissible under the rules of that organization/Department, for the period of service rendered under that organization/Department.

(iii) All the Central Government employees who entered Government service or the service of an Autonomous Body set up by Central Government, on or before 31.12.2003 and who were governed by old pension scheme under the Central Civil Services (Pension) Rules, 1972 and who submit technical resignation on or after 1.1.2004, to take up new appointment under State Government. will be eligible for grant of pro-rata pensionary benefits for the period of Central Government or Central Autonomous Body service, on the lines as provided in the Rule 37 of Central Civil Services (Pension) Rules, 1972 and related orders.

3. Para 3 (a) (ii) & 3 (b) (ii) of the DP & AR's O.M.No.28/10/84-PU dated 29.8.1984 may be treated as deleted w.e.f. 1.1.2004. Further, the provisions of the DP & AR's O.M.No.28/10/84-PU dated 19.8.1984 or any other related order shall, in so far as it provides for any of the matters contained in this Office Memorandum, cease to operate.

4. This issues with the concurrence of the Ministry of Finance (Department of Expenditure) vide I.D.No.177/E.V/05 dated 6.6.2005, Ministry of Finance (Department of Economic Affairs) vide U.O.No.F.5(80)/2004-ECB&PR dated 28.6.2005 and

with the concurrence of Office of the Comptroller & Auditor General of India vide their U.O.No.111-Audit(Rules)/44-2001-Vol.II dated 13.7.2005.

5. Hindi version is being issued simultaneously.”

7. The reader of the instant decision would immediately understand what the problem is. The petitioner joined service under the Government of NCT of Delhi on 16.12.2004 and he had moved from an autonomous body where Contributory Provident Fund Scheme was in vogue. By said date, under the Government of NCT of Delhi, the previous pension scheme was not open for fresh members to be inducted and thus vide order dated 14.3.2007 the petitioner has been denied the benefit of joining the pension scheme. The order reads as under:-

**“ORDER**

Whereas Sh.Subhash Chand Garg, Systems Analyst had filed OA No.2641/2006 in the Hon’ble CAT seeking therein the following reliefs:-

- i) Order and declare that the Applicant is entitled for counting his past services rendered at National Informatics Centre, Planning Commission, Government of India w.e.f. 10.12.1985 to 27.10.1988 and at the National Horticulture Board, Ministry of Agriculture, Government of India w.e.f. 28.10.1988 to 15.9.2004 for the purposes of Pension as per CCS (Pension) Rules, 1972.
- ii) Any other order which this Hon’ble Court may deem fit and proper be also passed in favour of the Applicant in the interest of justice.

2. Whereas the Hon’ble CAT in their orders dated 20.12.06 has issued direction that before deciding the claim of the applicant on merits, we think it appropriate to direct respondent No.1 to dispose of the aforesaid representation purportedly submitted by the applicant, within three months from the date of communication of this order. We order accordingly. Since this order shall not cause any prejudice to the

respondents, without issuing notice to them, we dispose of this case.

3. Whereas representation dated 19.1.05 stated to have been submitted by Sh.Subhash Chand Garg is not existing in the records of this department. But representations dated 10.1.05, 31.1.05, 17.3.05, 15.6.05, 19.7.05, 30.9.05, 28.3.06 & 5.4.06 regarding counting of his past service rendered in National Informatics Centre (NIC) M/o Information Technology, Government of India, New Delhi for the period from December 10, 1985 to October 27, 1988 and in National Horticulture Board, M/o Agriculture, Government of India (a Central Autonomous Body) for the period from 28.10.88 to 15.12.04 for the purpose of Pension, Leave, Gratuity & other benefits were received in this department.

4. And whereas the Government of India, Department of Economic Affairs vide notification dated 22.12.03 has introduced New Re-structured Defined & Contributory Pension Scheme for new entrants to the Central Government service appointed on or after 1.1.04. The new scheme is mandatory for all new recruits to the Central Government service from 1.1.04.

5. And whereas all the conditions of service as applicable to the Central Government employees are applicable to the employees of the Union Territories and hence the New Re-structured Defined & Contributory Pension Scheme as issued by the Government of India vide notification dated 22.12.03 is applicable to the new entrants appointed to the service of GNCT of Delhi on or after 1.1.04.

6. And whereas the notification dated 22.12.03 was not having any clarity to deal with the cases in respect of the persons who though have been appointed under the service of GNCT of Delhi on or after 1.1.04 but prior to that had rendered service in Central Autonomous Bodies, Departments of Central Government etc. The matter was accordingly referred for clarification to the competent authority of the Government of India.

7. And whereas the Government of India though their O.M.No.28/30/2004-P&PW(B) dated 26.7.2005 has issued clarification that employees who entered

into service on or before 31.12.03 and who were governed by CPF Scheme or any pension scheme of Central or State Government, other than the Pension Scheme under Central Civil Services (Pension) Rules 1972, on submission of technical resignation to take up new appointment on or after 1.1.04, cannot be allowed to join the Old Pension Scheme under CCS(P) Rules 1972 because entry to the said scheme ceased w.e.f. 31.12.03 and no new entry can be allowed in the pension scheme under the rules.

8. And whereas Sh.Subhash Chand Garg, System Analyst was appointed under the service of GNCT of Delhi w.e.f. 16.12.04 and prior to this had rendered service in National Horticulture Board M/o Agriculture Government of India (a Central Autonomous Body) for the period from 28.10.88 to 15.12.04 where he was governed by the CPF Rules.

9. Now, therefore, after considering the facts of the case submitted by Sh.Subhashh Chand Garg, Systems Analyst through his representation dated 19.7.05 and other representations referred to above, the service rendered by Sh.Subhash Chand Garg in an autonomous body having CPF Scheme prior to his joining the service under the Government cannot be counted for the purpose of pension under the Government of NCT of Delhi and hence he cannot be allowed to join the Old Pension Scheme under Central Civil Services (Pension) Ruls 1972 but would be covered by the New Restructured Defined & Contributory Pension Scheme being appointed under the service on or after 1.1.04 in view of the provision of O.M. dated 26.7.05.

10. This issues with the approval of the Chief Secretary."

8. The Tribunal has held that since the petitioner was not a member of the pension scheme and he having joined Government of NCT of Delhi in the month of December 2004 cannot claim any right to be borne as a beneficiary under the scheme, a finding with which we concur.

9. However, whether past service has to be counted towards service rendered in the grades, for purposes of

experience, seniority, gratuity etc. needs to be decided independent of the issue pertaining to pension and since we find that the Tribunal has not adjudicated upon said issues we dispose of the petition affirming impugned decision in so far as it denies right to the petitioner to join the pension scheme under the Government of NCT of Delhi with further direction that other issues raised in OA No.1141/2007 shall be decided by the Tribunal.

10. On copy of the present order being filed along with an application the proceedings would be revived before the Tribunal for further adjudication on other issues.

11. No costs.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(MOOL CHAND GARG)**  
**JUDGE**

**AUGUST 20, 2010**  
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