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

+ W.P.(C) 7784/2018 & C.M.Nos.29859/2018 (for stay) &
29860/2018(for exemption)

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI & ANR Petitioner

Through Ms.Ruchira Gupta with Ms.Mona Sinha,
Advs.
versus

ASHOK KUMAR GAUR & ANR Respondent

Through Mr.Naresh Kaushik with Mr.Omung Gupta,
Advs.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

27.07.2018

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1. The present petition has been filed by the Irrigation and Flood Control Department, GNCTD challenging the order dated 20.12.2017 passed by the Central Administrative Tribunal allowing the O.A.No.3923/2014 filed by the respondent no.1 thereby quashing the order dated 06.03.2014 passed by the petitioner/Department rejecting the request of respondent no.1 for grant of retiral benefits on the ground that he had not submitted his technical resignation and nor was a copy of his relieving order issued at the time when he was absorbed in the Delhi Energy Development Agency (DEDA).

2. Briefly stated the facts of the case are that the respondent no.1 had joined the petitioner/Department of the GNCTD in the year 1976 as a Junior Engineer (Civil).

3. On 08.12.1985, the petitioner was deputed to DEDA as an Assistant

Engineer (A.E.) and was absorbed therein w.e.f. 01.07.1988, in terms of the order dated 26.04.1994. Later on, the petitioner was promoted in DEDA, as an Executive Engineer. In the year 2006, DEDA got wound up and as a result, all its employees including the respondent no.1 were declared surplus. Subsequently, the petitioner/GNCTD posted the respondent no.1 in the respondent no.2/Delhi State Industrial and Infrastructure Development Corporation Ltd. (DSIIDC) from where he finally superannuated on 28.02.2013.

4. As the DSIIDC does not grant pension to its employees, the respondent no.1 approached the petitioner/Department for grant of pension and gratuity for the period during which he had served therein, in terms of the O.M. dated 31.01.1986, issued by the DOPT. Since the said relief was not granted to him, the respondent no.1 approached the Chairman, Public Grievance Commission by submitting a representation dated 15.12.2013, raising a grievances that his gratuity, GPF, payment of leave encashment and pension benefits for the period during which he had worked in the petitioner/department i.e. 1976-88 may be released in his favour. The said representation was forwarded for comments to the respondent no.2/DSIIDC who had in turn forwarded the same to the petitioner/department. By its reply dated 06.03.2014, the petitioner/department rejected the request of the respondent making the following observations:-

“Please refer to your above grievances filed before Public Grievance Commission. In this connection the reply of this department is as under:-

1. It is clarified that you were transferred on deputations to DEDA in 1985. After several correspondence with DEDA for your relieving & absorption in DEDA you were

relieved/repatriated from DEDA vide their letter dated 19.9.89 (Copy enclosed), even though you had not joined the I&FC. However you were absorbed as A.E. in DEDA without the consent of parent department i.e. I&FC and without giving any technical resignation.

2. *Later on, the I&FC department issued a charge sheet to you on 28.03.90 & thereafter you had also moved to CAT & filed a petition through O.A. No.2377/91 which was disposed of without any order as to costs. Further an enquiry was also conducted by the DOV, Govt. of NCT of Delhi, regarding your illegal appointment in D.E.D.A.*

3. *As per provision of CCS Pension Rules, & guidelines of GOI, DOPT, O.M. No.28016/5/85-Estt.(C) dated 31.01.86 (copy enclosed), following documents are required for grant of Pro Rata Retirement benefits to govt. Servants permanently transferred to PSU/Autonomous Bodies, etc.*

A. *Technical resignation.*

B. *Relieving Order at the time of absorption*

C. *Necessary orders accepting the resignation of the officer from Govt. service from the actual date of his/her joining the PSU/Autonomous body.*

4. *Earlier this case was discussed at various higher level & an expert opinion of the Accounts functionary of this department has also been obtained. Since you had not given any technical resignation, & neither copy of Relieving Order Issued at the time of absorption in D.E.D.A. nor any order was issued accepting the resignation of the officer, hence in the absence of above mentioned documents it is difficult to consider your request for grant of Retirement benefits."*

5. As it is apparent from a perusal of the aforesaid reply, the petitioner had sought the following documents from the respondent no.1 for granting him the pro-rata of retirement benefits:-

(i) Technical resignation.

(ii) Relieving order at the time of absorption

(iii) Orders accepting the technical resignation from the date he

had joined the PSU/Autonomous Body/ DEDA.

6. Aggrieved by the aforesaid communication dated 06.03.2014, the respondent no.1 knocked at the doors of the Tribunal. His O.A. was allowed by the Tribunal by taking note of the O.M. dated 31.01.1986, issued by the DOP&T, Govt. of India laying down comprehensive guidelines relating to grant of pro-rata pension and other retiral benefits to the Government servants, who were later on absorbed by the Public Sector Undertakings (PSUs). In the light of the said guidelines and the extant rules, namely the CCS Pension Rules, the Tribunal held that the respondent no.1 is entitled to grant of pro-rata regular pension and all the retiral benefits for the period of service rendered by him in the petitioner/GNCTD, before he was absorbed in DEDA. The relevant extract of the OM. dated 31.01.1986, reproduced in para 5 of the impugned judgment is as follows:-

“a. xxx xxx xxx xxx

b) In case of absorption in an autonomous body under the State Government having a pension scheme on the pattern of the Central Government, the employee will have the option to count the service for pension provided the concerned State Government has entered into reciprocal arrangements with the Central Government for counting of service for pension. Otherwise, the employee will be entitled to the payment of prorata retirement benefits only.”

7. The relevant extract of Appendix 7 under the heading ‘pensionary benefit’ in the CCS Pension Rules (May 2013) is reproduced hereinbelow for ready reference:-

“Pensionary benefits

(4) (i) Resignation from Government service with a view to secure employment in 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 retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organization.

(ii) [The officer eligible for pension will be entitled to draw pro rata monthly pension (with option to commute up to 40 per cent of pension wherever admissible) and retirement gratuity as admissible under the relevant rules.] ”

8. In view of the aforesaid legal position, the Tribunal directed the petitioner/GNCTD to release the GPF amounting to Rs.2,59,384/- in favour of the respondent no.1, as sanctioned by the Pay & Accounts Officer, vide order dated 25.08.2014. Further, the petitioner/GNCTD has been directed to sanction the pro-rata regular pension in favour of the respondent no.1 as also release all the admissible retiral dues to him for the period of service rendered by him in the petitioner/GNCTD before he was absorbed by DEDA, without insisting on his producing the technical resignation and relieving order. Not satisfied with the said order, the petitioner has filed the present petition.

9. Learned counsel for the petitioner states that the Tribunal has erred in dispensing with the requirement of submission of a technical resignation, relieving order at the time of his absorption and the necessary orders accepting his resignation, which are a pre-requisite for grant of pro-rata retiral benefits to a Government servant, who is permanently transferred to a PSU/Autonomous body. She contends that the technical resignation and the relieving order mentioned in the OM. Dated 31.01.1986, is of importance as the said documents determine the exact period of service for ensuring entitlement of any retiral benefits to a government servant permanently transferred to a PSU/Autonomous Body and, therefore, the said documents

have to be treated as mandatory in nature and could not have been dispensed with.

10. Mr.Kaushik, learned counsel for the respondents, who appears on receipt of an advance copy of the paperbook counters the submissions made above and draws the attention of this Court to the letter dated 23.05.1989 filed at page 45 of the paperbook and states that his client had submitted his technical resignation from the post of Junior Engineer (Civil) to the Chief Engineer of the petitioner/GNCTD and had clearly stated therein that the said resignation may be treated as effective from the date of his permanent absorption in the DEDA.

11. Learned counsel for the respondents further states that a specific averment with regard to the submission of a technical resignation was made by the petitioner in para 4 (c) of the O.A. filed before the Tribunal and while filing the counter affidavit, the petitioner/GNCTD had not denied the same. Instead they had admitted in the corresponding para of the counter affidavit that *“the said para is a matter of record”*. He thus contends that it does not lie in the mouth of the petitioner/GNCTD to now dispute the factum of receiving the technical resignation from the respondent no.1 and that too after so many years of his having been absorbed by DEDA and subsequently, transferred to the respondent no.2/DSI IDC.

12. We have considered the submissions made by the learned counsels for the parties and on examining the records, are inclined to concur with the submission made by learned counsel for the respondents that the petitioners were well aware of the stand taken by the respondent no.1 in the O.A. filed by him wherein he had stated in clear terms that he had already submitted his technical resignation to the petitioner department on 23.05.1989. The

petitioner/GNCTD did not dispute the said submission while filing their counter affidavit. Instead, it was stated in the counter affidavit that the averments made in para 4 “was a matter of record”. That being position, the petitioners cannot be permitted to renege at such a late stage and try to take a different stand from what was taken before the Tribunal. Even though the Tribunal may not have referred to the fact that the respondent no.1 had taken a specific plea in his O.A. that he had submitted his technical resignation from the post of Junior Engineer (Civil) to the petitioner/GNCTD, not much would turn on the same for the reason that the petitioners have not denied the said factual position in their counter affidavit.

13. We may further note that after approaching the petitioners for redressal of his grievances and not receiving a positive reply, he had written to the Public Grievances Commission and specifically stated in his representation dated 04.04.2014 addressed to the Chief Engineer of the petitioner/Department that he had submitted his technical resignation vide letter dated 04.05.1989. He had also enclosed a copy of his technical resignation with the said representation.

14. In view of the aforesaid facts and circumstances and the legal position referred to by the Tribunal in the impugned order, in particular the instructions in O.M. dated 31.01.1986 issued by the DOP&T, Government of India and the relevant CCS Pension Rules, we do not find any infirmity in the impugned order that deserves interference in judicial review.

15. At this stage, learned counsel for the petitioner/GNCTD states that the petitioner had already released the GPF amount in favour of the respondent on 26.07.2016, which was received by him through a cheque on 01.08.2016.

16. Learned counsel for the respondents states that if the GPF amount has

been received by his client, he would not press for the said relief in the contempt petition filed by him before the Tribunal, seeking implementation of the impugned judgment.

17. As far as the remaining directions issued to the petitioner/GNCTD are concerned for release of the retiral dues and pro-rata pensionary dues to the respondent no.1 within a period of 3 months reckoned from the date of receiving a certified copy of the impugned order, since the said period has expired and we are informed that the respondents has already filed a contempt petition against the petitioner, in the interest of justice, it is deem appropriate to extend the time for releasing the aforesaid amount in favour of the respondent no.1, within four weeks from today.

18. The petition is dismissed *in limine* as meritless alongwith the pending applications.

HIMA KOHLI, J

REKHA PALLI, J

JULY 27, 2018

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