

PRADUMAN KUMAR JAIN

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v.

UNION OF INDIA THROUGH SECRETARY TO
THE GOVT. OF INDIA, DEPARTMENT OF SCIENCE AND
TECHNOLOGY, NEW DELHI AND ANR.

JULY 11, 1994

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[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

Service Law—Substantive appointment—Held, a person appointed in the Central Government Service against a permanent vacancy, completing his probation period successfully, crossing efficiency bar and promoted to higher rank must be treated to be appointed in a substantive capacity and hence entitled to pro rata pension for such period of service in Central Government—CCS (Pension Rules 1972, Rules 13 and 49(2)(b).

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The appellant joined Central Government service on March 2, 1974. No specific order confirming him in the service of the Central Government was issued. He resigned and joined the National Thermal Power Corporation (NTPC) a Central Government Undertaking, on October 31, 1986 after being selected for appointment as a Senior Engineer. He approached the Central Administrative Tribunal claiming *pro rata* pension for the period of his service under the Central Government. The Tribunal rejected his claim on the ground that he was not a substantive employee of the Central Government. He appealed to the Supreme Court by Special Leave.

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Allowing the Appeal, this Court

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HELD : 1. The question whether the Appellant is entitled to *pro rata* pension in respect of the service for the period of twelve years and eight months rendered by him under the Central Government depends on the point whether he held the appointment in the service of the Indian Meteorological Department in a substantive capacity. It is not disputed that he was appointed as Assistant Meteorologist on October 13, 1977 by way of direct recruitment through the Union Public Service Commission. Direct recruitment, invariably is made against permanent vacancies. It is not the case of the Respondents that the appellant was appointed against a temporary post. The Appellant was therefore appointed as Assistant Meteorologist against a permanent vacancy. He was on probation for a

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A period of two years. His crossing the efficiency bar in October 1983 and further promotion to the higher post in September 1986 show that he successfully completed his probation period. In any case it is obvious that the work and conduct of the Appellant have throughout been satisfactory. [307-H, 308-D; A-C]

B 2. 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. [308-E]

C *Baleshwar Dass v. State of U.P.*, [1981] 1 SCR 449, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4670 of 1994.

D From the Judgment and Order dated 24.10.91 of the Central Administrative Tribunal, New Delhi in O.A. No. 770 of 1988.

Vijay Hansaria, Adv. (NP) for M/s. Jain Hansaria & Co. for the Appellant.

E V.C. Mahajan, S.N. Terdol and Ms. Kitty Kumaramangalam for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Special leave granted.

F The appellant joined Central Government service on March 2, 1974. He was selected for appointment as Senior Engineer in the National Thermal Power Corporation (NTPC), a Central Government Undertaking. He joined the NTPC on October 31, 1986. No specific order confirming the appellant in the service of the Central Government was issued. The question before the Central Administrative Tribunal (the Tribunal), New Delhi was whether the appellant was entitled to *pro rata* pension for the period of his service under the Central Government. The Tribunal answered the question in the negative and rejected the claim of the appellant on the short ground that the appellant was not a substantive employee of the Central Government. This appeal by way of special leave is against the judgment of the Tribunal dated October 24, 1991.

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The appellant joined the Central Government service on March 2, 1974 as Technical Assistant in the Office of the Director General of Supplies & Disposals and worked there till October 12, 1977. On October 13, 1977 he joined the Indian Meteorological Department (IMD) as Assistant Meteorologist after being selected through the Union Public Service Commission. He was placed on probation for a period of two years. He was permitted to cross the first efficiency bar on October 1, 1983. While working with the IMD he was selected for appointment as Senior Engineer in the NTPC. He was required to resign from the Central Government service for the purpose of joining the NTPC. The appellant delayed his joining the NTPC because his case for confirmation as Assistant Meteorologist was under consideration of the Central Government. The NTPC finally directed the appellant to join on or before October 31, 1986. In the meantime, the appellant was promoted as Meteorologist Grade-I in the IMD with effect from September 22, 1986 and posted at Pune. However, in order to pursue his case for confirmation, he decided to forgo the promotion. Despite repeated representations the IMD did not confirm the appellant and, as such, he submitted his resignation on October 21, 1986 to the IMD. He was relieved on October 30, 1986 by the IMD and he joined the NTPC on October 31, 1986. On February 11, 1987 the appellant again represented to the Central Government requesting for the grant of *pro rata* pension as he had served the Government for twelve years and eight months. The Director General, IMD by his letter dated November 11, 1987 informed the appellant that since the seniority list of the cadre of Assistant Meteorologist has been quashed by the Central Administrative Tribunal, Madras Bench, his case "for confirmation will be considered according to rules on the basis of revised seniority list when finalised." Since no decision was taken by the IMD for considerable time, the appellant approached the Tribunal seeking direction that he should be deemed to be a substantive employee of the Central Government within the meaning of rule 13 of the CCS (Pension) Rules 1972 (the Rules) and, as such, entitled to pension and other retiral benefits under the rules. As mentioned above, the Tribunal rejected the prayer.

The question whether the appellant is entitled to *prorata* pension in respect of the service for the period of twelve years and eight months rendered by him under the Central Government depends on the point

- A whether he held the appointment in the service of the IMD in a substantive capacity. It is not disputed that the appellant was appointed as Assistant Meteorologist on October 13, 1977 by way of direct recruitment through the Union Public Service Commission. Direct recruitment, invariably, is made against permanent vacancies. It is not the case of the respondents that the appellant was appointed against a temporary post. The appellant was, therefore, appointed as Assistant Meteorologist against a permanent vacancy. He was on probation for a period of two years. His crossing the efficiency bar in October 1983 and further promotion to the higher post in September 1986 show that he successfully completed his probation period. In any case it is obvious that the work and conduct of the appellant has throughout been satisfactory.

- The finding of the Tribunal, that the appellant was working in an officiating capacity, is solely based on the wording of the order dated March 29, 1984 allowing the appellant to cross the efficiency bar wherein it was mentioned that the increment was being given to him in the officiating post of Assistant Meteorologist. We fail to understand how a direct recruit in the post of Assistant Meteorologist, who joined service in 1977 and completed his probation in 1979, could be working against an officiating post. As mentioned above, direct recruitment is always made against permanent vacancies. 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.

- It would be useful to refer to para 4 of the Office Memorandum dated January 31, 1986 which is in the following terms: —

"Pensionary benefits:

- (i) Resignation from Government service with a view to secure employment in a Central public enterprises 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 organisation."

It is not disputed that the appellant resigned from government service with a view to secure employment in the Central public enterprise with proper permission of the Central Government. The appellant is, therefore, entitled to the benefit of the above quoted Office Memorandum. We may also refer to para 4.1 of the Office Memorandum dated March 28, 1988 which is reproduced hereunder: —

"4.1 CONFIRMATION

(a) General

(i) Confirmation will be made only once in the service of an official which will be in the entry grade.

(ii) Confirmation is delinked from the availability of permanent vacancy in the grade. In other words, an officer *who has successfully completed the probation may be considered for confirmation.*"

The Memorandum dated March 28, 1988 came into force with effect from April 1, 1988.

The Tribunal came to the conclusion that since the appellant had resigned from the Central Government service before coming into force of the Office Memorandum dated March 28, 1988 the same was not applicable in his case.

It is not disputed that the appellant had more than ten years of service under the Central Government. His service would count as qualifying service for pension if the provisions of rules 13 and 49 of the Rules are satisfied. The relevant provision of Rules 13 and 49 are as follows:-

"Rule 13: Commencement of qualifying service:

Subject to the provisions of these rules, qualifying service of a government servant shall commence from the date he take charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post.

- A *Rule 49 (2)(b)*: The amount of pension arrived at on the basis of the above slabs will be related to the maximum qualifying service of 33 years. For Government servants who, at the time of retirement, have rendered qualifying service of ten years or more but less than 33 years, the amount of their pension will be such proportion of the maximum admissible pension as the qualifying service rendered by them bears to the maximum qualifying service of 33 years. A few illustrations are given in the Annexure to this Office Memorandum."
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- C This Court in *Baleshwar Das & Ors. etc. v. State of U.P. & Ors. etc.*, [1981] 1 SCR 449, interpreted the term "holding of a post in a substantive capacity" in the following terms:—

- D "A person is said to hold a post in a substantive capacity when he holds it for an indefinite period, especially of long duration in contradistinction to a person who holds it for a definite or a temparate period or holds it on probation subject to confirmation. It the appointment is to a post and the capacity in which the appointment is made is of indefinite duration, if the Public Service Commission has been consulted and has approved, if the tests prescribed have been taken and passed, if probation has been prescribed and has been approved, *one in way well say that the post was held by the incumbent in a substantive capacity.*"
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- F Although the combined reading of the two Office Memorandums reproduced above support the appellant's contention that he stood confirmed in the post of Assistant Meteorologist before he resigned the Central Government service but it is not necessary for us to go into the effect of the two Memorandums. Examining the facts and circumstances of this case in the light of the law laid down by this Court in *Baleshwar Das's* case, the only conclusion which can be drawn is that the appellant was
- G working as Assistant Meteorologist in a substantive capacity.

- H We, therefore, hold that the appellant had been appointed in a substantive capacity against a permanent post of Assistant Meteorologist and is therefore entitled to prorata pension and other terminal benefits in respect of the service rendered by him under the Central Government.

We direct the respondents to compute and pay the pension and other terminal benefits due to the appellant under the rules and all other relevant orders/regulations, within three months of the receipt of this judgment. The appellant shall be entitled to 12% interest on the arrears of payment to which he becomes entitled as a result of this judgment. A

We allow the appeal in the above terms and set aside the judgment of the Tribunal. The appellant shall be entitled to his costs which we quantify as Rupees 10,000. B

R.R.

Appeal allowed.