

PETITIONER:
T.S. THIRUVENGADAM

Vs.

RESPONDENT:
THE SECRETARY TO GOVT. OF INDIA, MINISTRY OF FINANCE,

DATE OF JUDGMENT 17/02/1993

BENCH:
KULDIP SINGH (J)
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KULDIP SINGH (J)
KASLIWAL, N.M. (J)

CITATION:
1993 SCR (1) 1078 1993 SCC (2) 174
JT 1993 (1) 609 1993 SCALE (1) 625

ACT:
Civil Services:
Central Civil Services (Pension) Rules, 1972 Retirement benefits Govt. servants absorbed in public sector Undertakings-Government of India Memorandum dated 16.6.1967-Revised Terms and Conditions-Made applicable to those who retired after the issue; of Memorandum-Validity of. Constitution of India, 1950.
Articles 14 and 16-Retirement benefits to Govt. servants absorbed in Public Sector Undertakings-Government of India-Memorandum dated 16.6.1967-Terms and Conditions revised-Made applicable from date of issue of the Memorandum-Reasonableness of the classification-Cut-off date-whether arbitrary and discriminatory.

HEADNOTE:
The appellant was serving the Audit Department of the Government of India. He was sent on foreign service to the Public Sector Undertaking Neyveli Lignite Corporation Ltd. (N.L.C.) and was absorbed there. Before joining N.L.C. he had already completed 15 years of pensionable government service. Retirement benefits in such cases were regulated by Memorandum dated November 10, 1960 issued by the Ministry of Finance (Department of Expenditure), New Delhi. According to the said Memorandum the retirement benefits for service rendered by a government servant before his absorption in a public undertaking were admissible equal to what the government would have contributed had the individual been on contributory provident fund terms, with 2% simple interest thereon. The Government of India subsequently issued Memorandum dated June 16, 1967 providing revised terms and conditions of absorption in Central Public Sector Undertakings but restricted the revised benefits only to those who were absorbed on or after June 16, 1967. The appellant retired 1078

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from the public undertaking and was paid a sum of Rs. 3036 as retirement benefits in terms of the Memorandum dated November 10, 1960. The benefit of the revised terms and conditions of absorption as contained in the government Memorandum dated June 16, 1967 was denied to the appellant on the ground that he was absorbed in the public undertaking

prior to the date of coming into force of the said Memorandum. The appellant challenged the same by filing a Writ Petition before the High Court. Subsequently, the Writ Petition was transferred to the Central Administrative Tribunal which rejected the claim of the appellant. Being aggrieved against the Tribunal's judgment, the appellant preferred the present appeal.

It was contended on behalf of the appellant that it was not open to the government to deny the benefit of the 1967 Memorandum to those employees who were absorbed prior to the date of the Memorandum as it would be arbitrary and that such classification is violative of Articles 14 and 16 of the Constitution.

On behalf of the respondents, it was contended that the revised retirement benefits were introduced to attract more and more government servants for permanent absorption in government undertakings to build up their cadres, and this being a new incentive, it has been given effect to from the date of issue of orders and there was nothing arbitrary or discriminatory in fixing the cut-off date.

Allowing the appeal, this Court,

HELD : 1.1. The object of bringing into existence the revised terms and conditions in the Memorandum dated June, 16, 1967 was to protect the pensionary benefits which the Central Government servants had earned before their absorption into the public undertakings. Restricting the applicability of the revised Memorandum only to those who are absorbed after the coming into force of the said Memorandum, would be defeating the very object and purpose of the revised Memorandum. The appellant along with other Central Government employees was sent on foreign service to the public undertaking in the year 1961. He was absorbed in the year 1964. All those who joined foreign service alongwith the appellant but were absorbed after June 16, 1967 have been given the benefits under the revised Memorandum. Denying the same to the appellant would be contrary to fairplay and justice. Assuming that the revised

Memorandum is an incentive to attract Central Government employees to public undertakings, the persons who are so attracted do not become a different class. They join the same class to which the persons like the appellant belong. Therefore, all those Central Government employees who were absorbed in public undertakings either before June 16, 1967 or thereafter and were serving the public undertakings, are entitled to the benefits provided under the Memorandum dated June 16, 1967.

[1083G-H; 1084A-B-C]

1.2. It is no doubt correct that the Memorandum dated June 16, 1967 is prospective which only means that the benefits therein can be claimed only after June, 16, 1967. The Memorandum, however, takes into consideration the past event that is the period of service under the Central Government for the purpose of giving pro-rata pension. Whoever has rendered pensionable service prior to coming into force of the Memorandum would be entitled to claim the benefits under the said Memorandum. Restricting the benefits only to those who were absorbed in public undertaking after June 16, 1967 would be arbitrary and hit by Articles 14 and 16 of the Constitution. [1084E]

2. Rule 37 of Central Civil Services (Pension) Rules, 1972 provides 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 from the date of such absorption and shall be

eligible to receive retirement benefits in accordance with the orders of the Government applicable to him. Admittedly the appellant was permitted to be absorbed in the Central Government public undertaking in public interest. The appellant, as such, shall be deemed to have retired from government service from the date of his absorption and is eligible to receive the retirement benefits. It is no doubt correct that the retirement benefits envisaged under Rule 37 are to be determined in accordance with the Government orders but the plain language of the Rule does not permit any classification while granting the retirement benefits. When the Rule specifically provides that all the persons who fulfil the pre-conditions prescribed therein shall be deemed to have retired from government service from the date of absorption and shall be eligible to receive retirement benefits then the government while granting benefits cannot deny the same to some of them on the basis of arbitrary classification. All those person who fulfil the conditions under Rule 37 are a class by themselves

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and no discrimination can be permitted within the said class. The government action in restricting the benefits under the revised Memorandum dated June 16, 1967 only to those who are absorbed after that date goes contrary to the Rule and cannot be sustained. [1085C-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 666 of 1993. From the Judgment and Order dated 14.6.1988 of the Central Administrative Tribunal, Madras in T.A. No. 12 of 1988. M.N. Krishnamani, T. Raja and Pravir Choudhary for the Appellant.

Altaf Ahmad, Addl. Solicitor General, V.N. Ganpule, Hemant Sharma and S.N. Terdol for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Special leave granted.

Applications for impleadment are allowed.

The appellant was in the service of the Central Government for a period of about 15 years. He was thereafter permanently absorbed in a public undertaking, from where he retired on April 1, 1984. The question for our consideration is whether the appellant on absorption in the public undertaking was eligible for pro-rata pension and death-cum-retirement gratuity based on the length of his qualifying service under the Government till the date of absorption.

The appellant was serving the Audit Department (Defence Service) of the Government of India as Substantive Upper Division Clerk. He was sent on foreign service to Neyveli Lignite Corporation Ltd. (public sector undertaking) on January 9/10, 1961. He was permanently absorbed in the public undertaking with effect from August 1, 1964. It is not disputed that the appellant, having joined Central Government service on July 25, 1949, had completed 15 years of pensionable government-service. On the date of appellant's permanent absorption in the public undertaking the retirement benefits were regulated by Memorandum dated November 10, 1960 issued by the Ministry of Finance (Department of Expenditure), New Delhi.

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According to the said Memorandum the retirement benefits for service rendered by a government servant before his absorption in a public undertaking, were admissible equal to

what the government would have contributed had the individual been on contributory provident fund terms, with 2% simple interest thereon. The Government of India subsequently issued Memorandum dated June 16, 1967 providing revised terms and conditions of absorption in Central Public Sector Undertakings but restricted the revised benefits only to those who were absorbed on or after June 16, 1967. The operative features of the revised instructions were as under:-

(i) A permanent government servant with not less than 10 years qualifying service on absorption in public undertaking was eligible for pro-rata pension and death-cum-retirement gratuity based on the length of his qualifying service under government till the date of absorption. The pension was to be calculated on the basis of average emoluments immediately before absorption.

(ii) The pro-rata pension, gratuity, etc. admissible in respect of the service rendered under the government was disburseable only from the date the government servant would have normally superannuated had he continued in service.

The appellant retired from the public undertaking on April 1, 1984. It is not disputed that on January 15, 1974 the appellant was paid a sum of Rs. 3036 as retirement benefits in terms of the Memorandum dated November 10, 1960. The benefit of the revised terms and conditions of absorption as contained in the Government Memorandum dated June 16, 1967 was denied to the appellant on the short ground that he was absorbed in the public undertaking prior to the date of coming into force of the said Memorandum.

The appellant filed a writ petition under Article 226 of the Constitution of India on October 19, 1984 in the Madras High Court seeking a mandamus directing the respondents to grant him pro-rata pension and all other benefits admissible under the revised Memorandum dated June 16, 1967. As an interim measure the High Court directed that the appellant be paid 50 per cent of the pro-rata pension and other pensionary benefits

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under the Memorandum dated June 16, 1967 from the date of his absorption in the public undertaking. The writ petition was transferred to the Central Administrative Tribunal, Madras. The tribunal by its judgment dated June 14, 1988 dismissed the application and rejected the claim of the appellant. This appeal by way of special leave is against the judgment of the Central Administrative Tribunal.

The appellant has questioned the validity of the condition imposed in the Memorandum dated June 16, 1967 making the Memorandum applicable only to such of the employees who are absorbed in the public undertakings on or after June 16, 1967. According to the appellant it was not open to the government to deny the benefit of the Memorandum to those employees who were absorbed prior to the date of the Memorandum as it would bring into existence arbitrary classification in respect of government employees absorbed in the public undertakings prior to June 16, 1967 and thereafter. The appellant has contended that such classification is not warranted under Articles 14 and 16 of the Constitution as it has no nexus with the object sought to be achieved by the government Memorandum.

The contention of the respondents, on the other hand, is that the revised retirement benefits were introduced to

attract more and more government servants for permanent absorption in government undertakings to build up their cadres, It was thus an incentive for encarding suitable persons in the government undertakings. According to the respondents, being a new incentive, it has been given effect from the date of issue of orders and there is nothing arbitrary or discriminatory in fixing the cut-off date.

There is no dispute that Neyveli Lignite Corporation Ltd. is a body which is sponsored, financed and controlled by the Central Government. More and more government functions are being brought under the government undertakings and autonomous bodies. There is considerable mobility from Central Government Departments to the public undertakings. The object of bringing into existence the revised terms and conditions in the Memorandum dated June 16, 1967 was to protect the pensionary benefits which the Central Government servants had earned before their absorption into the public undertakings. Restricting the applicability of the revised Memorandum only to those who are absorbed after the coming into force of, the said Memorandum, would be defeating the very object and

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of the revised Memorandum. It is not disputed that the appellant along with other Central Government employees was sent on foreign service to the public undertaking in the year 1961. He was absorbed in the year 1964. All those, who joined on foreign service alongwith the appellant but were absorbed after June 16, 1967, have been given the benefits under the revised Memorandum. Denying the same to the appellant would be contrary to fairplay and justice. Assuming that the revised Memorandum is an incentive to attract Central Government employees to public undertaking,,, the persons who are so attracted do not become a different class. They join the same class to which the persons like the appellant belong. Therefore, all those Central Government employees who were absorbed in public undertakings either before June 16, 1967 or thereafter and were serving the public undertakings, are entitled to the benefits provided under the Memorandum dated June 16, 1967. We do not, also, find substance in the contention that the revised benefits being new it could only be prospective in operation and cannot be extended to employees who were absorbed earlier. It is no doubt correct that the Memorandum dated June 16, 1967 is prospective which only means that the benefit.-, therein can be claimed only after June 16, 1967. The Memorandum, however, takes into consideration the past event that is the period of service under the Central Government for the purposes of giving pro-rata pension. Whoever has rendered pensionable service prior to coming into force of the Memorandum would be entitled to claim the benefits under the said Memorandum. Restricting the benefits only to those who were absorbed in public undertakings after June 16, 1967 would be arbitrary and hit by Articles 14 and 16 of the Constitution.

We may examine the claim of the appellant under the Central Civil Services (Pension) Rules, 1972 (the Rules). Rule 37 of the Rules is as under:-

" 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

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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."

Rule 37, thus, provides 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 from the date of such absorption and shall be eligible to receive retirement benefits in accordance with the orders of the Government applicable to him. It is not disputed that the appellant was permitted to be absorbed in the Central Government public undertaking in public interest. The appellant, as such, shall be deemed to have retired from government service from the date of his absorption and is eligible to receive the retirement benefits. It is no doubt correct that the retirement benefits envisaged under Rule 37 are to be determined in accordance with the government order but the plain language of the rule does not permit any classification while granting the retirement benefits. When the Rule specifically provides that all the persons who fulfil the pre-conditions prescribed therein shall be deemed to have retired from government service from the date of absorption and shall be eligible to receive retirement benefits then the government while granting benefits cannot deny the same to some of them on the basis of arbitrary classification. All those persons who fulfil the conditions under Rule 37 are a class by themselves and no discrimination can be permitted within the said class. The government action in restricting the benefits under the revised Memorandum dated June 16, 1967 only to those who are absorbed after that date goes contrary to the Rule and cannot be sustained.

We, therefore, allow the appeal, set aside the judgment of the Central Administrative Tribunal and direct the respondents to grant pro-rata pension and other benefits to the appellant under the office Memorandum dated June 16, 1967. The respondents are directed to finalise the benefits

1086 within three months from today and all the arrears of pension etc. shall be paid to the appellant within one month thereafter with 12% interest. Any payment already received by the appellant under the interim order of the High Court has to be adjusted. The appellant shall be entitled to costs which we quantify as Rs. 10,000.

We allow I.A. 4/91 and direct that the applicants therein namely, K.B.L. Mathur, Jaswant Lal Jetlie and C.L. Soni whose cases are identical to that of the appellant be also given benefit of the Memorandum dated June 16, 1967 in similar terms as directed by us in respect of the appellant. These applicants shall, however, be not entitled to costs.

G.N.

Appeal allowed.

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JUDIS