

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.**

CWP No.16210 CAT of 2006  
Date of decision: 31.8.2007

Union of India and others

-----Petitioners

Vs.

The Central Administrative Tribunal, Chandigarh and another

-----Respondents

**CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL  
HON'BLE MR JUSTICE S.D.ANAND**

Present: Mr. Ramesh Sharma, Advocate for the petitioners.  
Mr. VK Sharma, Advocate for the respondents.

**JUDGMENT:**

Challenge in this petition is to the order of the Central Administrative Tribunal (CAT) dated 24.5.2006 allowing the claim of respondent No.2 for retiral benefits. Respondent No.2 approached the CAT for his claim for pro rata pension for having more than 10 years' service in the Military Engineering Service (MES) before joining the Himachal Pradesh Housing Board.

The claim was contested on the ground that the employee had left service in 1976 and his lien continued upto

31.10.1979. Neither the employee nor his employer made any contribution towards his salary or pension. He did not tender resignation either while relinquishing the charge or after expiry of lien period.

The CAT allowed the claim on the basis of Rule 37 of the CCS (Pension) Rules, 1972, which 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 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.”

The CAT also relied upon its earlier judgment dated 17.7.1996 in **Jasbir Singh Narula v. Union of India and others**, OA 84/HR of 1994.

Contention raised on behalf of the petitioners is that benefit of amendment of rules could not be availed of by respondent No.2 as the amendment was after the employee had left

the service on his own.

We have heard learned counsel for the parties and perused the record.

While dealing with an identical situation, the Hon'ble Supreme Court in **R.L.Marwaha v. Union of India and others**, (1987) 4 SCC 31 observed:-

“8.....There has been a continuous mobility of personnel between Central Government departments and autonomous bodies, like the ICAR both ways and the Government thought, and rightly so, that it would not be just to deprive an employee who is later on absorbed in the service of the autonomous body, like the ICAR the benefit of the service rendered by him earlier in the Central Government for purposes of computation of pension and similarly the benefit of service rendered by an employee who is later on absorbed in the Central Government service the benefit of the service rendered by him earlier in the autonomous body for purposes of computation of pension. If that was the object of issuing the notification then the benefit of such notification should be extended to all pensioners who had rendered service earlier in the Central Government or in the autonomous body as the case may be with effect from the date of the said Government order. Now let us take the case of a person who had rendered service under the Central Government between January 1, 1953

and July 1, 1955 but who has retired from service of the ICAR in 1985. There is no dispute that such a person gets the benefit of the service put in by him under the Central Government for purposes of his pension. But another pensioner who has put in service under the Central Government during the same period will not get similar concession if he has retired prior to the date of the Government order if paragraph 7 of that order is applied to him. The result will be that whereas in the first case there is pensionary liability of the Central Government in the second case it does not exist although the period of service under the Central Government is the same. This discrimination arises on account of the Government order. There is no justification for denying the benefit of the Government order to those who had retired prior to the date on which the Government order was issued. The respondents have not furnished any acceptable reason in support of their case, except saying that the petitioner was not entitled to the benefit of the Government order because the order says that it would not be applicable to those who had retired prior to the date on which it was issued. In the absence of any explanation which is worthy of consideration it has to be held that the classification of the pensioners who were working in the Government/autonomous bodies into two classes merely on the basis of the date

of retirement as unconstitutional as it bears no nexus to the object to be achieved by the order.

9. We do not also find much substance in the plea that this concession being a new one it can only be prospective in operation and cannot be extended to employees who have already retired. It is true that it is prospective in operation in the sense that the extra benefit can be claimed only after 29.8.1984 that is the date of issue of the Government order. But it certainly looks backward and takes into consideration the past even that is the period of service under the Central Government for purposes of computing qualifying service because such additional service can only be the service rendered prior to the date of issue of the Government order. By doing so the Government order will not become an order having retrospective effect. It still continues to be prospective in operation. Whoever has rendered service during any past period would be entitled to claim the additional financial benefit of that service if he is alive on 29.8.1984 under the Government order but with effect from 29.8.1984.”

Following the reasoning in the above judgment, we are of the view that irrespective of the date on which the amendment was made, the employee was entitled to the benefit of past service rendered with the petitioners.

No ground is, thus, made out for interference with the impugned order.

The petition is dismissed.

(Adarsh Kumar Goel)  
Judge

August 31, 2007  
'gs'

(S.D.Anand)  
Judge