

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

OA/310/01715/2017

Dated Thursday ,the 2nd day of January, 2020

PRESENT

Hon'ble Mr. T. Jacob , Member (A)

**S. Charles,
S/o. Savarimuthu,
Formerly DMMS Driver,
No. A4, Lakshmi Saraswathi Apartments,
Salem – 636 007.**

....Applicant

By Advocate M/s S. Doraisamy

Vs

**1. The Chief Post Master General,
Tamil Nadu Circle, Anna Salai,
Chennai – 600 002.**

**2. The Superintendent of Post Offices,
Salem West Division,
Salem – 636 005.**

....Respondents

By Advocate Mr. G.Dhamodaran

ORDER

(Pronounced by the Hon'ble Mr. T. Jacob, Member (A))

This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"1. To call for the records relating to the rejection order passed in No.OA.607/2017 dated at Salem-636 005 the 12.05.2017 on the file of the 2nd respondent, quash the same and direct the respondents to make petition to the applicant under Rule 49 (2)(b) of CCS (Pension) Rules, 1972 and pass such further or other orders and thus render justice."

2. The brief facts of the case as submitted by the applicant are as follows:-

The applicant was working in the respondent Postal Department since 06.07.1973 as a Driver and had put in 13 years of continuous and unblemished service. Due to mental infirmity and other ailments, he could not continue in service and hence he submitted a request for voluntary retirement. He was directed to produce the medical certificate and the respondents after satisfying the medical certificate and the health condition that he is affected due to mental infirmity, his voluntary retirement was accepted w.e.f. 03.03.1986. The applicant was looked after by his family and he was in continuous medical treatment and there was some progress in his health condition. His only son after getting married went away from family and residing separately. There is no source of financial assistance from any quarters. He is 69 years old and could not go for any job. He submitted representations to the respondents on 30.12.2015, 16.02.2017 and 02.03.2017 requesting to make pension to the applicant under Rule 49(2)(b) of CCS (Pension) Rules, 1972. However, no order was passed by

the 1st respondent. Hence the applicant filed OA.607/2017 before this Tribunal wherein by order dated 18.04.2017, this Tribunal directed the respondents to consider and dispose of the representations of the applicant in accordance with law. However, the claim of the applicant was rejected by the 2nd respondent by order dated 08.06.2017. Aggreived by the above, the applicant has filed this O.A seeking the above reliefs, inter-alia, on the following grounds:-

- i. Once the Rule 49(2)(b) of CCS (Pension) Rules, 1972 provides for pension the 1st respondent ought to have passed an order in his favour. The denial to sanction pension is a violation of the statutory right.
- ii. The order of rejection passed by the 2nd respondent is arbitrary, illegal and against the provision of law.
- iii. The 2nd respondent without any enquiry and notice and without giving an opportunity of being heard to the applicant, passed the impugned order.
- iv. The 2nd respondent in the impugned order has stated in para 4(a) that the applicant had tendered resignation during the year of 1985 and it was accepted by the 2nd respondent vide his Memo.No.B2/DMMS/5 dated 03.03.1986. The fact that the applicant had tendered resignation only on health grounds by producing MC issued by a Government Medical Officer not below the rank of Civil Surgeon is omitted to note in his reply.
- v. Rule 26 (1) of CCS (Pension) Rules, 1972 quoted by the 2nd respondent in his reply is not applicable to this case as the resignation was tendered by the applicant only for compelling reasons i.e., due to ill health and incapable of attending any work at that time and not otherwise.

vi. The applicant resigned the job only with proper permission and its acceptance by the appointing authority. The resignation submitted owing to ill health shall not entail forfeiture of past service under the Government in view of the provisions laid down in Rule 49(2)(b)

vii. It is not correct to say that the applicant's claim under Rule 49(2)(b) of CCS (Pension) Rules, 1972 for eligible pension is not applicable to his case and it is for those officials who are retiring from service. When there is a provision (i.e., Government servant is entitled to retiring pension after completion of 10 years of qualifying service) in the above CCS (Pension) Rules, 1972, it is not correct to say in para 5(ii) that the applicant is not entitled any pension or pensionary benefits and that the applicant had completed 10 years of qualifying service has no merit for any consideration.

viii. Even a dismissed or a removed Government servant who forfeits his pension and gratuity is getting compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension vide Rule 41 of CCS (Pension) Rules, 1972

ix. A Government servant compulsorily retired from service as a penalty is getting compulsory retirement pension or gratuity or both at a rate not less than two-thirds of pension or gratuity or both admissible to him on the date of his compulsory retirement vide Rule 40 of CCS (Pension) Rule 1972.

x. The linkage of full pension with 33 years of qualifying service is dispensed with and full pension is to be granted to pre-2006 pensioners with less than 33 years of service As per the above order the revised pension w.e.f 01.01.2006, in no case, shall be

lower than 50% of the sum of the minimum of pay in the pay band and the grade pay there on corresponding to the pre-revised pay scale from which the pensioner had retired i.e. without pro-rata reduction of pension even if they had qualifying service of less than 33 years.

The Applicant has relied on the decision of the Principal Bench of this Tribunal in OA .754/2012 in support of his submission.

3. The respondents have filed a detailed reply statement. It is submitted that the applicant had forwarded his representation dated 30.12.2015 to the 1st respondent with a copy to the Postmaster General, Western Region, Coimbatore and the 2nd respondent requesting to grant pension and arrears from 03.03.1986 in accordance with the provisions of Rule 49(2)(b) of CCS (Pension) Rules, 1972. In continuation of his representation dated 30.12.2015, he had further forwarded representations dated 16.02.2017 and 02.03.2017 but they are related to the points already raised in representation dated 30.12.2015. Finally, he has requested for grant of eligible pension in accordance with the provisions of Rule 49(2)(b) of CCS Pension Rules 1972. The applicant filed OA.607/2017 before this Tribunal and the said OA has been disposed of on 18.04.2017 directing the Respondents to consider the representations of the applicant dated 30.12.2015, 16.02.2017 and 02.03.2017 in accordance with law. As directed by this Tribunal, the 2nd respondent considered the representations of the applicant in accordance with CCS (Pension) Rules, 1972 and rejected his claim by issuing a Speaking Order vide letter No.OA 607/2017 dated 08.06.2017. The applicant was not

entitled to any pension as he was relieved on his own request and not on medical grounds and this OA was filed by the Applicant after 32 years of his discharge. This OA is liable to be dismissed on account of the inordinate and unexplained delay and also since the records of the case had been weeded out by the respondents due to passage of time. He worked as Driver in the Postal Department from 1973 (from 06.07.1973) and had put up 13 years of continuous service and due to his health condition, he requested to go on voluntary retirement and he was permitted to go on voluntary retirement w.e.f. 03.03.1986. To confirm the above version of the applicant, the personal files and service book of the applicant are required. But those records are not available and already weeded out. The preservation period of personal files and service book are 3 years after they have ceased to be in service as per Rule 25(1)(a) of Postal Manual Vol. VI Part I and note thereunder and Appendix V of P&T FHB Vol. I. Hence the respondents pray for dismissal of the O.A.

4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

5. Having regard to the above facts and circumstances of the case, the only issue for consideration in this O.A. is whether the applicant is entitled to pension for the period of 13 years rendered by him from 06.07.1973 till 03.03.1986 before his resignation.

6. At the outset, the respondents have raised preliminary objection with regard to inordinate and explained delay in filing this OA. The cause of action

has arisen for the applicant in the year 1985 when he tendered his application for resignation and when his request for resignation had been accepted by the respondents in 1986. He submitted his representations seeking grant of pension in 2015. Thus, the applicant has approached this Tribunal almost after three decades by filing OA. 607/2017. The respondents pray for dismissal of this OA on this ground itself.

7. Admittedly this is the second round of litigation. The applicant had earlier filed O.A. 607/2017 and this Tribunal by order dated 18.04.2017 directed the respondents to consider and dispose of the representations dated 13.12.2015, 16.2.2017 and 2.3.2017 of the applicant in accordance with law. Pursuant to the above, the respondent by order dated 08.06.2017 rejected the above representations.

8. Undisputedly, the applicant's resignation had been accepted by the SSPOs, Salem East Division, Salem-1 vide Memo No.32/DMMS/5 dated 03.03.1986 According to Rule 26 of CCS(Pension) Rules 1972, resignation from a service or a post unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service. (Proviso 1 under Rule 26). Once the past service rendered is forfeited because of resignation, then the question of granting pension does not arise. Further, according to Rule 48(1) and 48-A(1) of CCS (Pension) Rules, 1972, Government servant who had completed 30 years and 20 years of qualifying service can only apply for voluntary retirement. Therefore, in view of this clear fact that the applicant has resigned

his job on his own, he is not entitled to any pension. The applicant's claim under Rule 49(2)(b) of CCS (Pension) Rules 1972 for eligible pension, is not applicable to his case. It is only for those officials who are retiring from service. His claim that he had completed 10 years of qualifying service has no merit for any consideration under any of the CCS (Pension) Rules 1972, since he resigned his job and on his resignation the entire past service stands forfeited. The Rule which is applicable to the applicant is Rule 26(1) of CCS (Pension) Rules, 1972 which speaks about resignation for which no pension is payable by the Government.

9. The judgement in OA 754/2012 referred to by the applicant is for the case wherein official has been removed, dismissed from service and the claim has been raised for compassionate allowance under Rule 41(1) of CCS (Pension) Rules 1972. The applicant's case doesn't come under the purview of Rule 41(1) of CCS (Pension) Rules 1972 since he has resigned his job and not removed from service. Hence there is no justification in the claim of the applicant for grant of any pension.

10. The Bombay High Court in the case of Iliyas Yusuf Naikwadi Vs. The State of Maharashtra Primary... decided on 31.08.2006 (2006(6) Mhlj 450) referred to the Hon'ble Apex Court judgment in the case of UCO Bank and Ors. Vs. Sanwar Mal, while dealing with the meaning and scope of and the differentiation between the terms “resignation” and “retirement” held thus:

“We find merit in these appeals. The words “resignation” and

“retirement” carry different meanings in common parlance. An employee can resign at any point of time even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment but in service jurisprudence both the expressions are understood differently. Under the Regulations the expressions “resignation” and “retirement” have been employed for different purpose and carry different meanings. The pension scheme herein is based on actuarial calculation, it is a self financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master and servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service. Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/rules framed by the bank, Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation vis-a-vis voluntary retirement and acceptance thereof.”

The Bombay High Court has ultimately observed that Hon'ble Apex Court has, therefore, clearly distinguished between the act of “resignation” from the act of “retirement” and has held that resignation bring about complete cessation of master and servant relationship whereas voluntary retirement maintains such relationship for the purposes of availing retiral benefits.

11. The Hon'ble Supreme Court in its recent Judgment in the case of BSES Yamuna Power Ltd., vs. Sh., Ghanshyam Chand Sharma & Anr., dated 05.12.2019 while dealing with a similar issue has held that “even if the first

respondent had served twenty years, under Rule 26 of the CCS Pension Rules, his past service stands forfeited upon resignation. The first respondent is therefore not entitled to pensionary benefits.”

12. Thus the claim of the applicant cannot be recognized to grant him the relief he prays for on account of the following:-

- a) The case of the applicant falls squarely under Section 26 of the Pension Rules which relates to resignation and not premature voluntary retirement which are governed by some other rules. And, resignation means forfeiture of past services.**
- b) The qualifying service for pension at the time of his leaving the services is not less than a square of years whereas the services rendered by him even if his case is brought within the provisions of rule 48 of the pension rules is 20 years which admittedly the applicant does not fulfil.**
- c) The precedent relied upon by the applicant is misplaced and hence cannot be applied to the facts of the case of the applicant.**
- d) As rightly pointed out the applicant has risen from slumber after a score and 5 years (even if his first application is reckoned with and limitation stares at him) this delay could be condoned only when the applicant has otherwise a cast iron case which is not so.**
- e) The judgement of the Apex Court in the case of BSES Yamuna Power Ltd., vs. Sh., Ghanshyam Chand Sharma & Anr., dated 05.12.2019 applies in all the square to the facts of this case and therein the Apex Court in unequivocal terms stated that once a case falls under Rule 26 of the Pension Rules there is no question of entitlement of any pension.**

13. In the conspectus of the above facts and circumstances of the case and the Judgements of the Hon'ble Supreme Court referred to supra, this Tribunal does not find any case is made out for interference in the impugned communications nor for grant of any relief sought for by the applicant. The OA fails and is accordingly dismissed.

14. No order as to costs.

**(T. JACOB)
MEMBER (A)
.01.2020**

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