

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00079/2010

Jabalpur, this Tuesday, the 03rd day of March, 2020

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Smt. Tara Bai,
W/o Late Chhotelal
Aged about 58 years
R/o Bagra Tava, Tahsil Babai
District Hoshangabad (M.P.) 461001

-Applicant

(By Advocate –**Shri Sharad Punj**)

V e r s u s

1. Union of India
Through its Secretary
Ministry of Railways,
Rail Bhawan,
New Delhi 110001

2. Divisional Railway Manager,
West Central Railways
Jabalpur Division,
Jabalpur District
Jabalpur (M.P.) 482001

3. Assistant Divisional Engineer
West Central Railways,
Narsinghpur Division
District Narsinghpur (M.P.) 487001

- Respondents

(By Advocate –**Shri Vijay Tripathi**)
(*Date of reserving the order: 03.02.2020*)

ORDER

By Navin Tandon, AM:-

The applicant is aggrieved that she is not being paid family pension.

2. The undisputed facts of the case are that the husband of the of the applicant Late Chhotelal was appointed as Monthly Rated Casual Labour (MRCL) on 18.10.1981 and was absorbed against the permanent post of Gangman on 21.08.1989. He applied for voluntary retirement. However respondents communicated on 13.03.2006 (Annexure A/4) that no action can be taken on his application as he has not completed 20 years of qualifying service. Then he submitted another application on 17.11.2006 (Annexure R/3) that since his applications for voluntary retirements are not being accepted, he tenders his resignation w.e.f. 30.11.2006. The same was accepted by respondents on 28.11.2006 (Annexure R/4) w.e.f. 30.11.2006. Subsequently, he left for his heavenly abode on 27.09.2007.

3. The grounds of the applicant are that her husband had applied for voluntary retirement but the respondents have treated it as resignation. The claims of her husband have not been settled. She has prayed for the following reliefs:-

“6(a) That this Hon’ble Tribunal may be pleased to direct the respondents to release the retiral dues of the husband of

the petitioner Chhotelal along with the interest @ 18% per annum thereof.

(b) That this Hon'ble Tribunal may be pleased to direct the respondents to give her the benefit its off family pension as per the law and provisions of Pension Rules.

(c) That, any others relief, directions, writs, orders, deems-fit in facts and circumstances of the case are required may kindly be passed by this Hon'ble Tribunal.

(d) Cost of this application may kindly be awarded to the applicant, any other relief to which the applicant is entitled be also granted."

4. The respondents in their reply have submitted that as per Rule 41 of Railway Services (Pension) Rules, 1993, the resignation entails forfeiture of past services. After the resignation of the applicant's husband the amount of provident fund and GIS was calculated as Rs.31169/- Since the deceased Railway employee had taken a loan of Rs.70000/- from the Central Railway Employees Credit Cooperative Society Limited (ECC Bank), therefore, the respondents wrote a letter on 20.08.2007 so that the remaining amount could be adjusted from his retiral dues. However, the deceased Railway employee did not make any effort to settle the amount of loan.

5. Heard the learned counsel for both the parties and perused the pleadings available on record.

6. Learned counsel for the applicant submitted that Rule 6(1) of Railway Services (Pension) Rules (for brevity '**Pension Rules**'),

includes word “resigns”. Therefore, it implies that pension/family pension is payable even in case of resignation. He placed reliance on the judgment passed by Hon’ble Apex Court in the matters of ***Sudhir Chandra Sarkar vs. Tata Iron and Steel Co. Ltd. and others*** 1984 (3) SCC 369 and ***Sheelkumar Jain vs. The New India Assurance Co. Ltd. and others***; 2011 (12) SCC 197 and orders of Principal Bench of this Tribunal in O.A. No.185/2010 in the matters of ***Rajinder Pal Singh vs. Delhi Development Authority*** to further prove his point. He further averred that benefit of reasonable doubt on laws and facts must go to the weaker section as held by Hon’ble Supreme Court in ***K.C.P. Employees Association Madras vs. The Management of K.P.C.Ltd and others etc.*** 1978 (2) SCC 42.

7. Learned counsel for the respondents brought our attention to definition 3(19) and Rule 41 (1) of the Pension Rules which read as under:-

“3(19) “pension” includes gratuity except when the term pension is used in contra distinction to gratuity but does not include dearness relief.

41. Forfeiture of service on resignation-

(1) Resignation by a railway servant from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority shall lead to forfeiture of his past service.”

7.1 He also placed reliance on the following judgments of Hon'ble Apex Court in the matters of:-

- (1) ***Reserve Bank of India and Another vs. Cecil Dennis Solomon and Another*** 2004 (9) SCC 461;
- (2) ***Union of India vs. Madhu EV and others*** 2012 (5) SCC 474;
- (3) ***Union of India vs. Braj Nandan Singh*** 2005 (8) SCC 325;

7.2 The pension/family pension is to be paid as per the statute or the rules prevalent in the organization. Rule 41(1) of the Pension Rules clearly indicates that resignation shall lead to forfeiture of his past service. Hence, no family pension is payable.

FINDINGS

8. In the case of ***Sudhir Chandra Sarkar*** (supra), the applicant therein was not granted the gratuity because of Rule 10 of the Retirement Gratuity Rules of the Organization which gave the absolute discretion to the Company regarding payment of retiring gratuities. Hon'ble Supreme Court has held that Rule 10 of the Gratuity Rules to give or deny the benefits of the rules cannot be upheld and must be rejected as unenforceable. Going further, it was held that once Rule 10 is out of the way, the appeal succeeds and was allowed.

9. In the matter of *Sheelkumar Jain* (supra) it has been held by Hon'ble Supreme Court that on the relevant date i.e. 16.12.1991 when the resignation of applicant therein was accepted, the determination of service was governed by Clause 5 of the Scheme, 1976. This Clause did not make a distinction between "resignation" and "voluntary retirement" and it only provided that an employee who wants to leave or discontinue his service has to serve a notice of three months to the appointing authority. The applicant had given the three months' notice. The Pension Scheme 1995 was subsequently introduced with an option to the employees who were in the service of company on or after 01.01.1986 but had retired before the first day of November, 1993. Hon'ble Supreme Court held that since the Clause 5 did not distinguish between resignation and voluntary retirement therefore even though the applicant had submitted his resignation with a three months' notice, it was to be deemed as voluntary retirement.

10. In the matters of *Rajinder Pal Singh* (supra), the Single Member of Principal Bench of this Tribunal has directed the respondents to have a relook at the pensionable service rendered by the applicant by adding 50% of the period prior to regularization. Further directions have been given to recall the applicant to resume the duties.

11. From the above deliberations, it is seen that both the judgments of Hon'ble Supreme Court cited by the learned counsel for the applicant are easily distinguishable from the instant case where the applicant had first submitted his voluntary retirement. When the same was not accepted as he did not have 20 years of qualifying service, he tendered his resignation which was accepted.

11.1 The orders of Principal Bench of this Tribunal in *Rajinder Pal Singh* (supra) also do not come to the relief of the applicant as the period of qualifying service has never been challenged in the present O.A.

12. In the matters of *Cecil Dennis Solomon* (supra) it has been held as under:-

"10. In service jurisprudence, the expressions "superannuation", "voluntary retirement", "compulsory retirement" and "resignation" convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time; but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the concerned employer is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary."

12.1 In the matters of *Madhu EV* (supra), the Hon'ble Apex Court has held as under:-

14. In view of the decisions of this Court in Union of India & Others Vs. Rakesh Kumar (supra) and Raj Kumar & Others Vs. Union of India and Another (supra), the legal position that emerges is this : Rule 19 of the BSF Rules does not entitle any pensionary benefits on resignation of its personnel. The pensionary benefits are not ordinarily available on resignation under CCS (Pension) Rules since Rule 26 provides for forfeiture of service on resignation. However, by virtue of G.O. dated December 27, 1995 read with Rule 19 of BSF Rules, the member of BSF would be entitled to get pensionary benefits if he is otherwise eligible. Such personnel must, therefore, satisfy his eligibility under CCS (Pension) Rules. The CCS (Pension) Rules do not provide that a person who has resigned before completing 20 years of service is entitled to the pensionary benefits. Rule 49 only prescribes the procedure for calculation and quantification of pension amount and not the minimum qualifying service.

15. The view taken by the Single Judge and judgment of the Division Bench upholding the view taken by the Single Judge cannot be upheld and have to be set aside in light of the legal position noted above.

16. In the present case, the respondents had resigned from BSF service immediately after completion of 10 years service and, therefore, they are not entitled to any pensionary benefits.

17. We, accordingly, allow these Appeals and set aside the orders dated August 25, 2000 passed by the Division Bench and dated September 29, 1999 passed by the Single Judge. We, however, observe that amount of pension paid to the respondents herein, if any, shall not be recovered. No costs.”

12.2 In the matters of *Braj Nandan Singh* (supra), the Hon'ble Apex Court has held that:-

"5. In order to appreciate rival submissions Rule 26 which is the pivotal provision needs to be quoted. The same reads as under:

"26. Forfeiture of service on resignation- (1) Resignation from a service or post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."

Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that 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. The language is couched in mandatory terms. However, sub- rule (2) is in the nature of an exception. It provides that resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. Admittedly this is not the case in the present appeal. Rule 5 on which great emphasis was laid down by the learned counsel for the respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rule 14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-rules (1) and (2) cannot be lost sight of while deciding the question of entitlement of pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the

purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of service. There is no substance in the plea of the learned counsel for the respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. Said Rule deals with amount of pension and not with entitlement.

6. *It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent.”*

12.3 Learned counsel for the respondents also submitted that Rule 26 of the CCS (Pension) Rules is same as Rule 41 (1) of the Railway Services (Pension) Rules.

13. Perusal of the Hon’ble Supreme court judgments cited by learned counsel for the respondent clearly demonstrates the difference between “voluntary retirement” and “resignation”. No pensionary benefits are payable in case of “resignation”, whereas the same is payable in case of “voluntary retirement”. Rules provide for voluntary retirement to be accepted after completing 20 years of qualifying service. The fact that the deceased railway employee did not have 20 years of qualifying service neither been disputed by him, when he was alive nor in this Original Application.

14. Hon'ble Supreme Court in a recent judgment in the matters of **BSES Yamuna Power Ltd. vs. Shri Ghanshyam Chand Sharma & Another** 2019 (16) SCALE 862 has held as under:-

"2. The first respondent was appointed as a daily rated mazdoor on 9 July 1968. His services were regularised on the post of a Peon on 22 December 1971. The first respondent tendered his resignation on 7 July 1990, which was accepted by the appellant with effect from 10 July 1990. The first respondent was subsequently denied pensionary benefits by the appellant on two grounds. First, that he had not completed twenty years of service, making him ineligible for the grant of pension. Second, in any case, by resigning, the first respondent had forfeited his past services and therefore could not claim pensionary benefits.

3. The second question of whether by resigning, the first respondent forfeited his past service must be addressed at the outset. If the first respondent's resignation resulted in a forfeiture of past service, the question of whether he has completed twenty years of service is rendered irrelevant for such service would stand forfeited.

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12. In the present case, the first respondent resigned on 7 July 1990 with effect from 10 July 1990. By resigning, the first respondent submitted himself to the legal consequences that flow from a resignation under the provisions applicable to his service. Rule 26 of the Central Civil Service Pension Rules 19725 states that:

"26. Forfeiture of service on resignation

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails a forfeiture of past service..."

Rule 26 states that upon resignation, an employee forfeits past service. We have noted above that the approach adopted by the court in Asger Ibrahim Amin has been held to be erroneous since it removes the important distinction

between resignation and voluntary retirement. Irrespective of whether the first respondent had completed the requisite years of service to apply for voluntary retirement, his was a decision to resign and not a decision to seek voluntary retirement. If this court were to re-classify his resignation as a case of voluntary retirement, this would obfuscate the distinction between the concepts of resignation and CCS Pension Rules voluntary retirement and render the operation of Rule 26 nugatory. Such an approach cannot be adopted. Accordingly, the finding of the Single Judge that the first respondent 'voluntarily retired' is set aside.

13. *We now turn to the question of whether the first respondent had completed twenty years in service. During the present proceedings, our attention was drawn to the fact that the first respondent had applied for voluntary retirement on 14 February 1990. By a letter dated 25 May 1990 the appellant denied the first respondent's application for voluntary retirement on the ground that the first respondent had not completed twenty years of service. It was thus urged that the appellant's decision to deny the first respondent voluntary retirement was illegal as the first respondent had completed twenty years of service.*

14. *This argument cannot be accepted. Even if he was denied voluntary retirement on 25 May 1990, the first respondent did not challenge this decision but resigned, on 7 July 1990. The denial of voluntary retirement does not mitigate the legal consequences that flow from resignation. No evidence has been placed on the record to show that the first respondent took issue with the denial of voluntary retirement between 25 May 1990 and 7 July 1990. To the contrary, in the legal notice dated 1 December 1992 sent by the first respondent to the appellant, the first respondent admitted to having resigned. The first respondent's writ petition was instituted thirteen years after the denial of voluntary retirement and eventual resignation. In the light of these circumstances, the denial of voluntary retirement cannot be invoked before this Court to claim pensionary benefits when the first respondent has admittedly resigned.*

15. *On the issue of whether the first respondent has served twenty years, we are of the opinion that the question is of no legal consequence to the present dispute. 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.

16. *For the above reasons, we accordingly allow the appeal and set aside the impugned order of the High Court of Delhi dated 26 May 2017. There shall be no order as to costs.”*

15. The facts and circumstances in ***Ghanshyam Chand Sharma*** (supra) are similar in the present O.A. In both the cases, the employees submitted their application for voluntary retirement which was turned down as they had not completed the qualifying service. Subsequently, they submitted their resignation, which was accepted. Therefore, as per relevant rules governing pension, the past services are to be forfeited.

16. Accordingly, no pension was payable to the employee, and consequently no family pension is payable to the applicant. The Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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