



**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA No.4548/2018

Reserved on: 20.12.2019

Pronounced on: 29.02.2020

Hon'ble Mr. A.K. Bishnoi, Member (A)

Dr. Nizam Elahi
S/o Mr. Karam Elahi
Aged about 69 years
Group 'A'
R/o D-4, 1st Floor, Street No.2,
Batla House, Jamia Nagar,
New Delhi-110025

Retired from the post of
Senior Lecturer
State Council of Educational Research and Training
(SCERT)
Varun Marg, Defence Colony,
New Delhi-110024

-Applicant

(By Advocate: Shri K.P. Gupta)

Versus

1. The Commissioner,
North Delhi Municipal Corporation,
4th Floor, SPM Civic Centre,
JL Nehru Marg, New Delhi-110002
2. The Director of Education
North Delhi Municipal Corporation
Education Department
City SP Zone, Nigam Bhawan,
Old Hindu College, Kashmiri Gate
Delhi-110006
3. Assistant Director of Education
North Delhi Municipal Corporation
Education Department
City SP Zone, Nigam Bhawan,
Old Hindu College, Kashmiri Gate
Delhi-110006



4. State Council of Educational Research and Training (SCERT)
Varun Marg, Defence Colony,
New Delhi-110024
Through its Director

-Respondents

(By Advocate: Shri R.V. Sinha with Mr. Amit Sinha
and Mr. Vaibhav Pratap Singh)

ORDER

The applicant was an Assistant Teacher in the school run by respondent No.1, namely North Delhi Municipal Corporation (NDMC) in October, 1977. Subsequently, he was selected for appointment to the post of Lecturer with respondent No.4 namely, State Council of Education Research and Training (SCERT) in November 1989. On being so appointed, he sought to be relieved from the office of Assistant Education Officer (AEO), City Zone, Municipal Corporation of Delhi (MCD) with the benefit of two years of lien. It was stipulated that on expiry of lien period he would submit his technical resignation. The applicant was confirmed to the post of Lecturer Grade II (PRPA) w.e.f. 07.11.1991 in SCERT vide order dated 25/28.06.1993 (Annexure A-9). Prior to this, SCERT sought no objection certificate from MCD to the effect that he had no lien in MCD.



2. The applicant on attaining the age of superannuation retired from SCERT on 31.08.2009. The applicant thereafter made efforts for payment of retiral dues from respondent No.1 but MCD did not pay the GPF and pro-rata pension to him. He then approached the Public Grievance Commission but was not granted any relief to his satisfaction. Thereafter, he approached the Hon'ble High Court of Delhi in W.P. (C) No. 9509/2017, which was disposed of vide order dated 30.10.2017 with the following directions:-

“3. Be that as it may. Petitioner cannot be left without a remedy. In the facts and circumstances of this case, it is deemed appropriate to permit petitioner to make a comprehensive and concise representation to first respondent within two weeks. If any such representation is received by first respondent- North, MCD, then it shall be dealt with by passing a speaking order, uninfluenced by the impugned order of 8th March, 2017 of PGC and with reference to O.M. of 20th August, 1984 of Department of Personnel and Training as also its communication of 17th September, 2010 (Annexure P-8). The first respondent- North, MCD shall decide the said Representation within six weeks of receipt thereof and its fate be communicated to petitioner within a week thereafter, so that petitioner may avail of the remedies, as available in law, if need be.

4. With aforesaid directions, this petition and applications are disposed of.

5. Dasti.”

2.1 The applicant consequently made a representation dated 06.11.2017 to respondent No.1,



which was rejected vide impugned order dated 13.12.2017 (Annexure A-1).

2.2 In the grounds for seeking relief, the applicant has relied on Rule-49 (2) of Central Civil Service (Pension) Rules, 1972 (hereinafter referred to as 'Rules'), according to which pension is payable to a government servant after completion of 10 years of qualifying service. He has also referred to Rule-36 of the said Rules, which pertains to grant of pension on retirement and Rule-37 of the Rules, which pertains to grant of pension to 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 Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a State Government. He has contended that since SCERT does not have a pension scheme, he did not exercise his option to count his service with the service of SCERT and sought to receive retirement benefits from MCD.

2.3 It is mentioned that Office Memorandum dated 29.07.1984 of Department of Personnel & Training has been adopted by MCD. He has challenged the



contention of the respondents made in the impugned order dated 13.12.2017 (Annexure A-1) that pension is permissible only to such Government servants, who have superannuated from the same department and that the minimum qualifying service should be 20 years. For this, he has referred to Rule-37 and Rule-49 of the said Rules. It is also mentioned that 21 other employees are getting pro-rata pension from MCD and that he has brought this to the notice of Respondent No.2, i.e., Director of Education, NDMC. Aggrieved by this action, the applicant has approached this Tribunal seeking the following reliefs:-

“a. To quash and set aside the order bearing No. D /ADE/CSPZ/Edn./2017/1800 dated 13.12.2017 (Annexure A-1) whereby the respondent No. 1 to 3 rejected the claim of the petitioner for grant of pro-rata pension in lieu of service rendered by him as an Assistant Teacher in the schools run by respondent No.1 for the period 05.10.1977 to 06.11.1991 including two years benefit of lien period.

b. To issue appropriate directions to the respondent No. 1 to 3 to grant the applicant pro-rata pension in lieu of his aforesaid service w.e.f. 07.11.1991 the day and date he was finally absorbed in State Council of Educational Research and Training (SCERT) as per rules and deemed to be retired.

c. To issue appropriate time bound directions to pay the applicant all his arrears of pro-rata pension whatsoever fell due along with interest @ 12% per annum.

d. Any other or further relief which this Hon'ble Tribunal deems fit, just and proper in the peculiar circumstance of the case in interest of justice may also please be awarded.

e. Award the cost of the present proceedings.”



3. The respondents in the reply have stated that the applicant is not entitled to seek pro-rata pension as he had not retired on superannuation and has rendered only 14 years of service. They have further added that the pro-rata pension is transferred from one pensionable establishment to another pensionable establishment only against his service rendered in previous organization for counting of his service for pension purpose irrespective of service rendered by the employee subsequently. As the new autonomous body where he has joined has no pension scheme, he is not entitled to get pro-rata pension.

3.1 While making these submissions, they have referred to the impugned order dated 13.12.2017 and have referred to some correspondence within the organisation but no rules have been specifically referred to.

4. The applicant has filed a rejoinder more or less reiterating the averments made in the OA.

5. Shri K.P. Gupta, learned counsel appearing on behalf of the applicant forcefully contended that the case of the applicant is squarely covered by the provisions of Rule-36, 37 & 49 of the said Rules and that the impugned order passed by the respondents is



totally untenable in view of these Rules. He has also contended that the Office Memorandum of Department of Personnel & Training dated 29.08.1984, which is very specific on this issue, has not even been considered.

6. Shri R.V. Sinha, learned counsel appearing on behalf of the respondents, in his arguments, submitted that since the applicant had resigned from MCD, he was not entitled to any pension and also sought to draw attention to Rule-37 (3) of the said Rules to contend that the pension cannot be paid by the non-pensionable body in which the Government servant is absorbed. The Hon'ble High Court of Delhi in their order dated 30.10.2017, relevant portion of which has been quoted in Para 2 above, had given specific direction to the North, MCD to consider the representation with reference to OM of 20th August, 1984 of Department of Personnel and Training. From a reading of the impugned order, it is clear that the aforesaid OM has not been considered, as there is no specific reference to its provisions in the main body of the order. For the sake of convenience, the relevant portion of the OM is reproduced as under:-

- (b) Autonomous body where the Pension Scheme is not in operation:



(i) A permanent Central Government employee borne on pensionable establishment, on absorption under such Autonomous Body will be eligible for *pro-rata* retirement benefits in accordance with the provisions of the Ministry of Finance O.M.No.26 (18) EV (B)/75, dated the 8th April, 1976, [Order (4)], as amended from time to time. In case of quasi-permanent or temporary employees, the terminal gratuity as may be admissible under the rules would be actually payable to the individual on the date when *pro-rata* retirement benefits to permanent employees become payable. However, in the case of absorption of a Government employee with CPF benefits, in such an Autonomous Organization, the amount of his subscriptions and the Governments' contribution, if any, together with interest thereon shall be transferred to his new Provident Fund account with the consent of that body.

(ii) An employee of an Autonomous Body on permanent absorption under the Central Government will have the option either to receive CPF benefits which have accrued to him from the Autonomous Body and start his service afresh in Government or choose to count service rendered in that Body as qualifying service for pension in Government by foregoing employer's share of CPF contributions with interest thereon, which will be paid to the concerned Government Department by the Autonomous Body. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulated period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final."

7. Further, Rule-49 (2) of the said Rules is extracted as under:-

"Rule-49

(1) Xxx xxx xxx

(2) In the case of a Government servant retiring in accordance with the provisions of these rules after completing the qualifying service of not less than ten years, the amount of pension shall be calculated at fifty per cent of emoluments or average emoluments, whichever is more beneficial to him, subject to a minimum of three-thousand and five hundred rupees per mensem and a maximum of forty-five thousand rupees per mensem."



8. Rule-36 of the said Rules reads as follows:-

“36. Retiring Pension

A retiring pension shall be granted-

(a) to a Government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of Rule-48 or 48-A of these rules, or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations; and

(b) to a Government servant who, on being declared surplus, opts for voluntary retirement in accordance with the provisions of [Special Voluntary Retirement Scheme relating to Voluntary Retirement of surplus employees].”

9. The specific rule relating to grant of pension, which also applies to the case of the applicant, is Rule-37 (1), which is reproduced as follows:-

“[37. Pension on absorption in or under a corporation, company or body

(1) 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 Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to sub-rule (3) he shall be eligible to receive retirement benefits if any, from such date as may be determined, in accordance with the orders of the Central Government applicable to him].

EXPLANATION. - Date of absorption shall be –

(i) in case a Government employee joins a corporation or company or body on immediate absorption basis, the date on which he actually joins that corporation or company or body;

(ii) in case a Government employee initially joins a corporation or company or body on foreign service terms by retaining a lien under the Government, the date from which his unqualified resignation is accepted by the Government.”



10. Since the argument has been raised by the learned counsel for the respondents relating to implication of Rule-37 (3), the same is also quoted below:-

“(3) Where there is a pension scheme in a body controlled or financed by the Central Government in which a Government servant is absorbed, he shall be entitled to exercise option either to count the service rendered under the Central Government in that body for pension or to receive [] retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.”

11. From a plain reading of relevant OM of Department of Personnel and Training and the Rules referred above, particularly Rule-37 (1), there is no doubt left that the case of the applicant is fully covered by these rules. The submission of the respondents that pension becomes due only when a Government servant retires from the same organization is without any basis and no rules in this regard have been cited. Same is the case with the contention that the minimum qualifying service for grant of pension is 20 years which has also been made without any reference to any applicable rule.

12. The applicant, on the other hand, with reference to the issue of superannuating from the same department has specifically referred to Rule-37 (1), 37 (3) and Rule 49. Read in conjunction, they fully



negate the contention as regards minimum qualifying service of 20 years.

13. I also find no substance in the argument made by respondents while referring to Rule-37 (3) that the pension would be due from the body in which the Government servant is absorbed. The said rule merely enlarges the scope of Rule-37 (1) giving the Government servant further choice in the matter. It can be, by no stretch of imagination, be interpreted so to restrict the scope of Rule-37 (1).

14. In view of the above, the present OA is allowed and the impugned order dated 13.12.2017 is set aside. Respondents are directed to grant the applicant pro-rata pension from the date he was finally absorbed in SCERT in accordance with rules. Respondents are also directed to pay the arrears to the applicant within eight weeks from the date of receipt of a copy of this order with interest to be calculated at the prevailing GPF rates for the periods for which the payment of respective instalments of pension were delayed.

15. No order as to costs.

(A.K. BISHNOI)
MEMBER (A)

cc.