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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2339 of 1999

New Delhi, this the 24th day of February, 2003

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Dr.Y.C. Arya
S/o Shri Naval Kishore
Aged about 63.1/2 years
R/o Apartment H-1,
Pusa Apartments,
Sector-15,
Rohini,
Delhi-110 085.

AND RETIRED AS

Principal Scientist from the
Indian Agricultural Research Institute,
Pusa,
New Delhi. ...Applicant

By Advocate: Shri B.B. Raval.

Versus

1. Indian Council of Agricultural Research
Through its Director-General,
Government of India,
Krishi Bhawan,
New Delhi-110 001.

2. The Director,
Indian Agricultural Research Institute,
Pusa,
New Delhi-110012. **-RESPONDENTS**

(By Advocate: None)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

This case has been placed before this Bench as the Division Bench dealing with this case had differed in their opinion vide their opinion recorded on 27.8.2001.

2. Facts in brief are that the applicant who has been appointed in the category of Scientist by the respondents for the post of Head, Department of Farm

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Operations and Management (DFOM) in Indian Agricultural Research Institute and have also now retired, is aggrieved of the fact that his qualifying service for the purpose of pension has not been counted properly.

3. The applicant initially had joined the service of Madhya Pradesh State Government on 24.12.56 where-from he resigned on 25.10.1962 and then joined the Indian Agricultural Programme of Rockefeller Foundation from 12.11.62 to 15.9.68 on a non pensionable job. From there he joined Punjab Agriculture University on 16.9.68 from where he applied through proper channel for the job under the Indian Council of Agricultural Research (hereinafter referred to as ICAR) institute which he joined on 23.4.73 wherefrom he retired on superannuation on 31.1.1996.

4. The applicant applied for counting of his past service in the Punjab Agriculture University as qualifying service for the purpose of pension which was permitted after lengthy correspondence but ultimately the department allowed the applicant to count his past service vide their letter dated 26.6.95 which raised his total qualifying service as 27.1/2 years.

5. The applicant is also claiming to add another 5 years of service under Rule 30 of the CCS (Pension) Rules. Under Rule 22A of Agriculture Research Service Rules, 1975 a member of service appointed to a scientific post under the ICAR on a regular basis after 31.3.60 is eligible to add to his service qualifying for

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superannuation the actual period not exceeding 1/4th of the length of service or at the time of recruitment exceeded 25 years or a period of 5 years which ever is less on fulfilment of the conditions prescribed in Rule 30 CCS (Pension) Rules, as amended from time to time. The case of the applicant is that at the time of his recruitment under the rules the Rule 30 as it then stood did not have proviso No.3, which was introduced by the Gazette Notification dated 1.2.92 which, inter alia, provides that the aforesaid concession for counting of qualifying service shall not be admissible to those who are eligible for counting their past service for superannuation pension unless they opt before the date of their retirement and option once exercised shall be final for the weightage of service under this sub-rule, foregoing the counting of past service.

6. The case of the applicant is that since this proviso was not there at the time of recruitment of the applicant and the applicant having been granted a benefit of counting of past service is also eligible for addition of another 5 years of service since he was recruited as a Scientist and under Rule 30(1) of the CCS (Pension) Rules, he is eligible to have another period of 5 years.

7. The learned Vice-Chairman(A) as he then was, was of the view that the applicant is not entitled to add another 5 years of service since he had already taken the benefit of counting of his past service.

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8. However, the learned Judicial Member was of the view that since the proviso to Rule 30 was added in the year 1992, prima facie, it purports to be prospective and it does not stipulate or provide that it will operate retrospectively. Thus the learned Judicial Member was of the view that the applicant is entitled to add another 5 years of service under Rule 30 (1) of the CCS (Pension) Rules, 1972 as in the year 1992 some amendment was made cannot operates in a retrospective manner and is purely prospective in nature.

9. Counsel for the applicant on this aspect has referred to a judgment in 1993 (5) SLR 789 Union of India and Another Vs. S. Dharmalingam wherein it has been held that the benefit of sub-rule (1) of Rule 30 is available to every Government servant who is appointed to a service or a post referred to in Rule 30 after 31.3.60 irrespective of the fact whether he was already in Government service or was joining the Government service for the first time at the time of appointment in service or post referred to in Rule 30.

10. The counsel for the applicant also cited another judgment reported in 1996 (4) SLR 721, Secretary (Estt), Railway Board and Another VS. D. Francis Paul etc. wherein it has been observed as follows:-

> " Constitution of India, Article 300-A - Railway Establishment Manual Volume II Rule 2423-A- Pension - Addition of 5 years qualifying service for purpose of fixing pension - Amendment in the rules cannot have retrospective effect in respect of the persons already in service - It would be prospective in its application".

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11. Addition of 5 years qualifying service for computation of pension in the rules cannot have retrospective effect in respect of persons already in service. It could be prospective in its application.

12. He has also referred to a judgment reported in 1997 (6) SCC 623 entitled as Chairman, Railway Board and Others Vs. C.R. Rangadhamaiah and Others wherein it has been observed as under:-

> "A. Service Law - Service Rules - Retrospective amendment affecting vested or accrued rights of government employees - If invalid - Retrospective amendment of statutory rules, adversely affecting pension of employees who already stood retired on the date of the notification, held, invalid - Railway Establishment Code, Rr. 2544 and 2301 - Pension - Retrospective reduction of - Non-permissibility -Railway Services (Revised Pay) Rules 1973 - Constitution of India, Article 309 proviso
>
> B. Constitution of India - Articles 19(1)(f) & 31 (1) (since deleted w.e.f.. 20.6.1979 by Forty-fourth Amendment) and Article 300-A - Right to property - Deprivation of - Reduction of pension by two notifications issued on 5.12.1988 which were effective retrospectively from 1.1.1973 and 1.4.1979 - Held, though Articles 19(1)(f) and 31(1) were not in existence on the date of the notifications, they were in existence on the date when the notifications came into effect retrospectively and so challenge can be based on them - Pensioners' right to property was therefore violated by the notifications
>
> C. Constitution of India Article 14 and 16 - Pension as admissible under the rules in force at the time of retirement - Retrospective reduction of pension - Held, is unreasonable and arbitrary, and therefore violative of Articles 14 and 16 - Service Law - Pension - Retrospective reduction of - Non-permissibility".

13. After referring these judgments the learned counsel for the applicant submits that at the time of appointment of the applicant into the service he was entitled to have benefit of the rule 30(1) of the CCS (Pension) Rules, 1972 as it then stood and by a subsequent amendment the Government cannot take away the

right of counting of his service due to his qualifications on the pretext that the applicant has been given the benefit of past service.

14. Counsel for the applicant further submitted that at the time of appointment as per the position of CCS (Pension) Rules, 1972 a right had already accrued and vested in the applicant for counting of his qualifying service and also for taking the benefit of Rule 30(1) because on his qualifications and now by taking the shelter of provision which came in the status book only w.e.f. 1972 the Government cannot take away the right which had already vested in the applicant.

15. As against this from the pleadings of the respondents, I find that the respondents have taken a plea that the rule 22A of the Agricultural Research Service Rule, 1975 provided that the benefit of technical qualifications which was available to an employee upto maximum period of 5 years as per Rule 22A was subject to the provisions of Rule 30 as amended from time to time. So provisions of Rule 30 will govern the case and the amended rule had to be applied at the time of counting of qualifying service of the applicant and as per the amended rules, the applicant cannot take the benefit of both, i..e, counting of past service as well as the benefit of Rule 22A of Agriculture Research Service Rules read with Rule 30(1) of the CCS (Pension) Rules, 1972.

16. To my mind the contentions, as raised by the respondents in their reply, have no merits though Rule 22-A of the Agricutlural Research Service Rules say that

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it will be subject to the provisions of Rule 30(1) of the CCS (Pension) Rules, 1972. But Rule 30 as it stood on the date of appointment of the applicant did provide that a Government servant shall be eligible to add to his service qualifying for superannuation pension the actual period not exceeding 1/4th of the length of service or the actual period by which his age at the time of recruitment exceeded 25 years or a period of 5 years, whichever is less if the service or the post is one for which the post-graduate research or specialist qualification or experience in scientific, technological or professional field is essential and to which a candidate of more than 25 years of age is normally recruited.

17. Admittedly in this case the applicant was appointed to a post to which Rule 30(1) applied. Though vide amendment dated 19.3.1988 there was a partial modification in Rule 30(1) wherein it has been stated that a Government servant who <u>retires</u> from service whereas the applicant has alleged that prior to 19.3.1988 the word used was " a Government servant who is <u>appointed</u> to a service or a post" which change is not denied. There is no dispute that the applicant was appointed to such a post to which Rule 30(1) did apply so at the time of his appointment Rule 22-A of the Agricultural Research Service Rules, 1975 read with Rule 30(1) did give the applicant the benefit of both - for counting of past service as well as the benefit of Rule 30(1) because of his technical qualifications as prescribed under Rule

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30(1)(a), the applicant was originally to have the benefit of service depending upon conditions extendable upto 5 years (emphasis supplied).

18. Now the only question survives is whether the amendment brought in the year 1992 could take away the right of the applicant for having the benefit of either of these two; either 5 years of past service or have benefit of 30(1)(a) of CCS (Pension) Rules, 1972 though the basis of the judgment as reported in 1997 (6) SCC 623 entitled as Chairman, Railway Board and Others Vs. C.R. Rangadhamaiah and Others and following this judgment learned Vice Chairman (A) has held in his judgment that it covered only those cases where the employee stood already retired. Though the head note says "that the retrospective amendment affecting vested or accured rights of government employees - if invalid - retrospective amendment of statutory rules, adversely affecting pension of employees who <u>already stood retired</u> on the date of notification, held, in valid and the learned Vice-Chairman (A) relying upon the word "that employee who already stood retired" held that it was not applicable to the case of the applicant. But the court further defining the expression "vested right" or "accrued right" have observed in paragraph 24 of the judgment as under (emphasis supplied):-

> "24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment,, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rules which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the

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rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon, B.S. Yadav and Ram Lal Keshav Lal Soni".

19. Similarly in para 20 the court also observed as under:-

"20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retoractivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scales, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively".

20. According to old Rule 30 of the CCS (Pension) Rules, 1972 it has been mentoned as follows:-

"A Government servant appointed to a service or post after the 31.3.1960, shall be eligble to add to his service qualifying for superannuation pension the actual period not exceeedding one-fourth of the length of his servie or the actual period by which his age at the time of rcritment exceedd twenty-five years or a period of five years, whichever is less, if the servic or post to which the Government servant is appointed is one (emphasis supplied)".

21. However, in the amendment which has been made on 19.3.88 only one word has been substituted, i.e., instead of word "appointed" the ~~same has been mentioned as "retires"~~. "retires" has been incorporated in

22. In this case since at the time of appointment of applicant as Rule 30(1) (a) as it is stood on the statue book provided the benefits mentioned therein to those

employees who are appointed to a particular post. So at the time of appointment of the applicant, he had already got the benefit of the counting of past service of Rule 30(1). The word appointment had been substituted lateron "as to who retires" so the right to the applicant had already accrued or vested in him at the time of appointment itself so the respondents cannot give retrospective operation to the proviso added to Rule 30(1) in the year 1992. The plea of the respondents that the qualifying service is to be counted at the time of retirement that is valid only after the amendment was made in 1988 but those appointees who were appointed earlier before the word retiree was substituted in place of appointed, right be held accrued to those apppointees who were appointed prior to the amendment and the case of the applicant has to be allowed.

23. Thus I am unable to find myself to agree with the opinion recorded by learned Vice-Chairman (A) and I am in agreement with the reasoning given by the Hon'ble Member (J).

24. In view of the above, the OA has to be allowed. The impugned order dated 4.2.1998 is quashed and set aside. The respondents are directed to pass a fresh and appropriate order regarding applicants claim as to the addition of 5 years service under Rule 30 of the CCS (Pension) Rules, 1972. These directions may be implemented within a period of three months from the date of receipt of a copy of this order. No costs.

(KULDIP SINGH)
MEMBER(JUDL)

Rakesh