

Central Administrative Tribunal, Principal Bench

O.A. No.1793 of 1998

New Delhi this the 3rd day of November, 1999

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

Shri Sone Lal S/o Shri Arujun Lal
R/o B-2/63 Paschim Vihar,
New Delhi.

...Applicant

By Advocate Shri K.P. Dohare.

Versus

1. Union of India through Secretary
Ministry of Personnel, Government of India,
North Block,
New Delhi.
2. The Director.
Central Bureau of Investigation
Block No.3, CGO Complex, Lodhi Road,
New Delhi-3

...Respondents

By Advocate Shri K.C.D. Gangwani.

ORDER

By this O.A., the applicant is seeking the benefit of Rule 30 of the CCS (Pension) Rules, 1972 (hereinafter referred to as 'Rules').

2. Facts in brief are that the applicant was employed as Additional Legal Adviser, Central Bureau of Investigation for which there is a minimum essential experience of 10 years in legal profession was required whereas the applicant was having an additional experience of Assistant Legal Adviser in the Enforcement Directorate for more than 3 years. After being selected to the post of Additional Legal Adviser, C.B.I. he joined the same on 21.1.1994 and retired on 31.1.1998 after attaining the age of superannuation.

3. His grievance is that though he has submitted his pension papers six months before his date of retirement and he also made a request for including the benefit of his legal

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experience of 10 years while calculating his pensionary benefits as per Rule 30, his request was considered and was recommended to the Ministry of Personnel. However, the Ministry had not taken any action to grant him the said benefit. He had also stated the cases of S/Shri A.D. Belgal, M.M. Sinha and M.L. Sachdeva etc. where those persons were granted the benefit. He also relied upon judgments of the CAT, Bombay Bench and Principal Bench wherein the Tribunal had also granted the benefit of Rule 30 in those cases.

4. In grounds of relief, the applicant had emphasised that he should be given the similar benefit as given to S/Shri Belgal, Sinha and Sachdeva.

5. The respondents contested the O.A. and the main defence of the respondents is according to provision of Rule 30 of CCS (Pension) Rules, applicant was eligible either for benefit of past service i.e. service as Assistant Legal Adviser, Enforcement Directorate or additional benefits as per provision of Rule 30 on the basis of service rendered as Additional Legal Adviser, CBI provided he had opted for the same, before his retirement, but not both.

6. It is further submitted that the applicant did not opt for benefit under Rule 30 of CCS (Pension) Rules on the basis of his service in CBI, in preference to counting of past service, before his retirement. He has been accordingly given the benefit of past service in Enforcement Directorate and his qualifying service had been counted from 28.10.1980 to 31.1.1998.

7. The respondents further stated that unless an employee opts for addition of benefit before superannuation, he cannot be given the benefit and the employees who do not opt they are given

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the benefits of past service if any and in this case also the applicant had been given the benefit of his past service as having worked as Assistant Legal Adviser with Directorate of Enforcement.

8. I have heard the learned counsel for the parties and have perused the records.

9. The main contention of the learned counsel for the applicant is that earlier S/Shri Belgal, Singh and Sachdeva were given the benefit. On that very lines, his representation was also considered and was recommended to the Department of Personnel. He has also relied upon a judgment of CAT, Principal Bench in OA No. 1828 of 1988 given on 23.3.90 wherein in similar circumstances, the benefits of Rule 30 was given to the employee in that case.

10. The counsel for the respondents on the other hand submitted that this case as well as the judgment of the Bombay Bench of the Tribunal were considered but the applicant could not be given the benefit as those judgments pertained prior to the year 1992 and whereas a proviso to Rule 30 had been added w.e.f. 1.2.1992. According to the said proviso, the applicant is required to give his option for getting the weightage of service before the date of his retirement. Admittedly, in this case, the applicant had retired on 31.1.1998 and he had not given his option before that date and as per admission of the applicant himself, he had given a representation for getting the weightage under Rule 30 only on 27.2.1998, i.e., after 26 days of his superannuation. So on these lines, the learned counsel for the respondents submitted that the applicant cannot have a double benefit since the department had given him the benefit on which basis he had worked as Assistant Legal Adviser in the Enforcement

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Directorate since he had failed to exercise option at the appropriate time so he has become ineligible to get the weightage of Rule 30.

11. I have also gone through the judgment cited by the learned counsel for the applicant annexed along with the OA and the basis of which he had come to this Tribunal to get the benefit of Rule 30 and I have also considered the proviso attached with Rule 30. Rule 30 is reproduced hereinbelow for ready reference:-

30. Addition to qualifying service in special circumstances

(1). 2[A Government servant who retires from a service or post after the 31st March, 1960], shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years or a period of five years, whichever is less, if the service or post to which the Government servant is appointed is one-fo

(a) for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of more than twenty-five years of age are normally recruited:

Provided that this concession shall not be admissible to a Government servant unless his actual qualifying service at the time he quits Government service is not less than ten years:

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule.

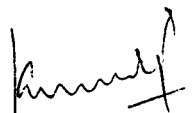
3[provided also that this concesszion shall not be admissible to those who are eiligible for counting their past service for superannuation unless they opt before the date of thier retirement, which option once exercised shall be final, for the wieghtage of service under this sub-rule forgoing the counting of the past service].

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3. Inserted by G.I., Department of P. P&W., Notification No.28/40/88-P & P.W. (B), dated the 9th January, 1992, published as G.S.R. No.39 in the Gazette of India, dated the 1st February, 1992.

12. After going through the judgment and Rule 30 as reproduced above, the judgment cited by the learned counsel for the applicant would have been squarely applicable to the case of the applicant had the proviso not been added on 1.2.1992. It is a well settled law that the benefit of this rule is to be considered as on the date of superannuation and not on the date of joining of the service. So as the rule stands on the date of superannuation, the applicant was required to give his option whether he wanted to have the benefit of Rule 30 prior to his retirement. Since he had not given his option, the department in his wisdom had given him the benefit of past service rendered by him with the Directorate of Enforcement. So as such, I am of the considered opinion that the applicant is not entitled to the benefit of Rule 30 of the CCs (Pension) Rules, 1972.

13. In view of the above, the OA has not merits and the same is dismissed. No costs.


(Kuldeep Singh)
Member (J)

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