

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2385/95
T.A. No.

199

DATE OF DECISION 12-8-96

<u>Shri M.P. Bansal</u>	Petitioner
<u>Shri R.V. Sinha</u>	Advocate for the Petitioner (c)
<u>U.D.I. & Others</u> ^{Versus}	Respondent
<u>Es Sumbul Rizvi Khan</u>	Advocate for the Respondent (c)

CORAM

The Hon'ble Mr. Lakshmi Swaminathan, Member (J)

The Hon'ble Mr.

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. No. 2385/95

New Delhi this the 12 th day of August, 1996.

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

M.P. Bansal,
31, Anand Apartment,
Shastri Nagar,
Patna.

..Applicant.

By Advocate Shri R.V. Sinha.

Versus

1. Union of India,
Min. of Urban Affairs,
Nirman Bhawan,
New Delhi-1.
2. Director General (Works),
Nirman Bhawan,
New Delhi-1.
3. Executive Engineer (Civil),
CPWD, Exhibition Div-I,
Pushpa Bhawan,
New Delhi.

..Respondents.

By Advocate Ms Sumbul Rizvi Khan.

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 for quashing the impugned order dated 30.9.1994 rejecting his claim for pro-rata pension and for a declaration that he is so entitled with interest on the pro-rata pension @ 18% per annum.

2. The applicant joined the service of Respondent No. 2 as Junior Engineer (Civil) on 26.11.1983 and continued till 5.10.1993. He had applied for the post of Assistant Executive Engineer in the National Air Port Authority, New Delhi and, on selection, submitted his resignation to the respondents, which was accepted w.e.f. 5.10.1993 and he was relieved on the same date. He joined the

National Air Port Authority w.e.f. 6.10.1993.

3. The main ground taken by Shri Sinha, learned counsel for the applicant, is that under Rule 49 (3) of the CCS (Pension) Rules, 1972 (hereinafter referred to as 'Pension Rules'), the applicant's service of 9 years, 9 months and 3 days should be treated as qualifying service of 10 years for determination of pro-rata pension, as admissible under Rule 49(2)(b) of the Pension Rules. He has referred to the note of Department of Pension & P.W. dated 23.7.1992 (Annexure A-6) and submits that this note shows that while the pro-rata pension has been given in another similar case to Shri V.P. Aggarwal/ the same has been wrongfully denied to the applicant which is arbitrary and discriminatory. The learned counsel also relies on Rule 37 of the Pension Rules and submits that since the respondents had permitted the applicant to be absorbed in the National Airport Authority, it shall be deemed to be retirement from service. He further submits that the necessary option has been submitted to Respondent No. 3 within the stipulated period and so he should be paid the pro-rata pension, as admissible under Rule 49(2)(b) of the Pension Rules. He also relies on the judgement in the case of Kartar Singh Vs. Union of India & Ors ATR 1987(2) CAT 457.

4. Ms Rizvi Khan, learned counsel for the respondents, submits that Rule 49(3) of the Pension Rules, is applicable only in cases of superannuation and not applicable to those Govt. servants who are absorbed in Public Undertakings without rendering the minimum qualifying service of 10 years under the Government. She submits that the applicant has rendered 9 years, 9 months and 3 days of qualifying service prior to his absorption in the National Airport Authority of India. He was, therefore, only eligible to receive the service gratuity as well as retirement gratuity under Rule 49(1), but he is not entitled to pro-rata pension, as provided in Rule 49(2)(b) of the Pension Rules. The learned counsel has referred to Appendix XII, Section 3, Para 4 and submits that where the Govt. servant at the time of absorption has less than 10 years of

more or less made 13

6. I have carefully considered the pleadings and arguments of the learned counsel for both the parties.

7. The relevant portion of Rule 49 of the Pension Rules reads as under:

"49. Amount of Pension

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees perensem;

(b) in the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than rupees three hundred and seventy five per mensem;

(c) XX

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one-half-year and reckoned as qualifying service.

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(emphasis added)

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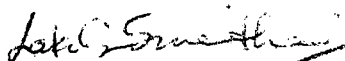
8. The question for consideration in this case is whether the applicant is entitled to the benefit of rounding of service as provided in Rule 49(3) of the Pension Rules. Rule 37 of the Pension Rules provide that a Government servant who has been permitted to be absorbed in a service or post under a Corporation or Company wholly or substantially owned or controlled by the Central Government shall be deemed to have retired from the date of such absorption. Therefore, having regard to the provisions of Rule 37 of the Pension Rules and the fact that the respondents have themselves permitted the applicant to be absorbed in the National Airport Authority of India, the applicant is deemed to have retired from service from the date of such absorption, i.e. w.e.f. 6.10.1993.

9. It is admitted that the applicant has rendered 9 years, 9 months and 3 days service under the Government prior to his absorption in the National Airport Authority of India. Applying Sub-rule (3) of Rule 49, therefore, ^{the applicant} has to be treated as having qualifying service of 10 years. Once the applicant has completed the qualifying service of 10 years in terms of Rule 49(3), then he would be entitled to the amount of pro-rata pension, as admissible to him under Rule 49(2)(b) of the Pension Rules and Rule 49(1), which applies to a Government servant who retires before completing qualifying service of ten years, would not be applicable to the facts of this case.

10. It is also noted that the applicant has referred to other similar cases where the benefit of the provisions under Rule 49(3) have been given, to which the respondents have given no satisfactory explanation.

JS.

11. In the facts and circumstances of the case, the application succeeds. The impugned letter dated 30.9.1994 is quashed and set aside. The applicant is entitled for payment of pro-rata pension in accordance with the provisions of Rule 49(2)(b) of the Pension Rules. The respondents shall take necessary action to make the payment of pro-rata pension in accordance with the rules, within two months from the date of receipt of a copy of this order. However, the claim for interest on pro-rata pension @ 18% per annum is rejected. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'