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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No. 443 /1997 25th Date of Decision: 25 - 5 -1998

Shri R.C. Agrawal .. APPLICANT

(By Advocate Shri P.T.S. Murthy)

versus

Union of India & Ors. .. RESPONDENTS

(By Advocate Shri R.P. Aggarwal)

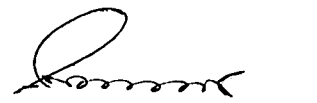
CORAM:

THE HON'BLE SHRI T.N. BHAT, Member (J)

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER
BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member(A)
25.5.98

Cases referred:

1. UOI & Anr. Vs. S.Dharmalingam, 1994 SCC(L&S) 496.

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 443/1997

New Delhi, this 25th day of May, 1998

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

Shri R.C. Agrawal
c/o Shri P.K. Agrawal
Canara Bank Apartments
Flat No. 41/47, Punjai Bagh West
New Delhi

.. Applicant

(By Shri P.T.S. Murthy, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Labour
Shram Shakti Bhawan, Rafi Marg
New Delhi

2. Chief Labour Commissioner
(Central)
Shram Shakti Bhawan, Rafi Marg
New Delhi

.. Respondents

(By Shri R.P. Aggarwal, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, a retired Assistant Labour Commissioner, is before us seeking the benefit of added years of service for getting full pension under Rule 30 of the Central Civil Services (Pension) Rules, 1972. Despite two representations dated 10.6.96 and 22.11.96, the applicant did not get any response, much less a favourable one, and has thus filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985. A description, in brief, of the background facts is necessary because of the very nature of the case. The applicant initially joined as Group B gazetted post of Labour Enforcement Officer (LEO for short) in the organisation of Chief Labour Commissioner (CLC for short) on 12.9.66. He was selected by UPSC on

19.10.96 as Labour Officer (LO for short) in the Central pool Labour Officers, maintained by the Ministry of Labour. He was, however, allowed to retain his lien in the Enforcement Organisation where he returned back as LEO on 22.9.79. He was afterwards promoted first on ad hoc basis as Assistant Labour Commissioner (ALC for short) in the Central Government with effect from 12.1.82 and on regular basis from 30.5.85. On formation of Central Labour Service (CLS for short), he became a member of that and was posted as LO (Grade V officer) on 1.6.89, in which post he superannuated on 31.1.96. Thus, the applicant had completed only 29 years, 4 months and 19 days and could not get full pension in the normal course for which he required 33 years of confirmed qualifying service. The applicant contends that he is entitled to have the benefit of added years of service of five years under Rule 30 of liberalised CCS (Pension) Rules. He has been denied the same as a consequence of which he could not get full pension on superannuation affecting him monetarily in a recurring manner. Consequently, the applicant is seeking issuance of a direction to the respondents to "recalculate and re-fix his pension after adding the additional five years to his qualifying service for superannuation pension".

2. Shri P.T.S. Murthy, learned counsel for the applicant has chosen to challenge ^{the denial} on several grounds. We intend to mention only the important ones. The benefit of adding five years service was allowed to LOs (central pool) ^{through} ~~to~~ recruitment and conditions of service

Rules, 1951 by way of amendment and inserted as Rule 8(2) of the said Rules through the Ministry of Labour Notification dated 13.11.80. OM (Annexure III) dated 29.5.89 adds strength to his claim in this respect.

3. The Hyderabad Bench of the Tribunal on the strength of an earlier order of the same Bench in OA 164/94 (decided on 6.12.95) has already allowed the benefits to similarly placed officers who retired as Grade IV Officer of the CLS vide judgement dated 24.1.96 in OA No.750/95 in the case of C.C.S.Reddy Vs. UOI. These are judgements in 'rem' and not 'personnem', the counsel added.

4. The Government of India in their decision vide notification No.28/51/86-P&PW dated 28.10.87 have, by way of further liberalisation, also extended to those who retired after 31.3.60 the benefit of added years of service under Rule 30 of CCS(Pension) rules, 1972. Extract of the aforesaid notification is available at Annexure V.

5. The main plank of applicant's attack on the denial is that the recruitment rules of LOs (central pool) and the conditions of Service Rules, 1951 contain a provision (Rule 8(2)) ^{for} ~~after~~ addition of added years of service under Rule 30 of the CCS(Pension) Rules, 1972. The post of ALC (Central) to which the applicant was promoted on 12.1.82 was interchangeable with that of the LO and, the applicant worked in that capacity for about 10 years in two spells. The benefit that was available

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to LOs cannot, therefore, be illegally denied to ALC(Central). Such a denial offends the principles of equity, the learned counsel argued. To add strength to the applicant's case, learned counsel cited the judgement of the Hon'ble Supreme Court in the case of UOI & Anr. Vs. S. Dharmalingam, 1994 SCC(L&S) 496. That was the case where their Lordships decided the applicability of Rule 30 of CCS(Pension) Rules, 1972 in favour of the LO.

6. Respondents have resisted the claim. They have contended that recruitment rules for the post of LEO(C) and ALC(C) stand repealed and that CLS Rules, 1987 do not provide any provision for the benefit of added years of service admissible under Rule 30 of the Pension Rules and as such those officers who had subsequently become members of the CLS on the date of retirement are not entitled to the benefit of Rule 30 of the Pension Rules. We find the Rules/law that would govern such cases are available in Rule 30 of the CCS(Pension) Rules, 1972. The relevant portion is extracted below:

"30. Addition to qualifying service in special circumstances

(1) {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--

(a) for which post-graduate research, or specialist qualification or experience in

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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."

7. Rule 5 of CCS (Pension) Rules, 1972 provide that any claim to pension shall be regulated by the provision of Rules in force at the time when a Government servant retires (emphasis added).

8. The claim of the applicant has to be decided in the light of the Rules aforementioned. After formation of the CLS Rules, 1987, the recruitment rules applicable to the services of the applicant as integrated in CLS were repealed by Rule 17 and the candidates now recruited on the basis of CLS Rules, 1987 are not entitled for such a benefit of added years of service since CLS Rules, 1987 do not provide any such benefits. In short, the applicant had become a Member of the CLS on its constitution in 1987 ^{under} Rules ~~of~~ which do not provide any provision of added years of service. The claim of the applicant does not fulfil the second or the third provisos of Rule 30 of the CCS(Pension) Rules, which provides "addition to qualifying service in special circumstances". The second proviso mentions that consequence of added years of service shall be made admissible only when the recruitment rules in respect of the said service contain a specific provision. And the

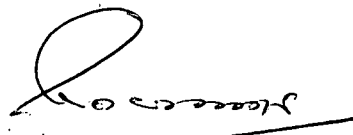
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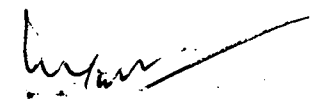
third proviso stipulates that an employee has to exercise his option in terms of sub-rule (1) of Rule 30 of CCS(Pension) Rules, 1972. We find that the respondents have denied the claim on account of the non-fulfilment of the aforesaid two provisions of the Pension Rules by the applicant.

9. The applicant has placed reliance on the judgement of the Hon'ble Supreme Court in the case of S.Dharmalingam (supra). That was the case where the apex court decided applicability of Rule 30 to an employee who was already in the Government service and has allowed to count his past service as qualifying service. The plea of the respondents therein that such an interpretation of the Rules [(Rule 30 and 3(q), 13 and 26(ii))] will confer double benefit was rejected by their Lordships. In that case, it was held that "addition to qualifying service under sub-rule 1 of Rule 30 is available to every government servant who is appointed to a service or post referred to sub-rule 1 of Rule 30 after March 31, 1960, 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 to the service or post referred to in Rule 30". What was allowed was the applicability of the rule and not violation of provisos appended to the Rule. We also find that the applicant has cited the order of Hyderabad Bench of this Tribunal in OA 750/95 decided on 24.1.96. It is seen that the condition under 3rd proviso pertaining to "exercising of the option" was

not brought to the knowledge of the Tribunal in the course of the arguments. The judgement cited does not lend any support to the claim of the applicant herein.

10. In the light of discussions aforesaid, the OA fails on merits and is accordingly dismissed. There shall be no order as to costs.


(S.P. Biswas)
Member (A)


(T.N. Bhat)
Member (J)

/gtv/