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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1032/2000

New Delhi this the 31st day of October, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Dr. S.D. Sharma,
S/o Shri S.N. Sharma,
R/o D-127, Preet Vihar,
Delhi-110091.

-Applicant

(By Advocate Shri A.K. Behera)

-Versus-

1. Union of India through
the Secretary,
Ministry of Health and Family Welfare,
Department of Health,
Nirman Bhawan,
New Delhi-110 011.

2. The Secretary,
Govt. of N.C.T. Delhi,
Medical and Public Health Department,
5, Sham Nath Marg,
Delhi-110054.

-Respondents

(By Advocate Shri V.S.R. Krishna)-UoI)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

The applicant claims benefit of Rule 30 of the CCS (Pension) Rules, 1972 of giving five years of additional qualifying service for the purpose of pensionary and retirement benefits, a Super Specialist Officer of the Central Health Services and superannuated on 31.10.93.

2. Briefly stated, the applicant joined the Central Health Services (CHS) on 6.12.71 and was promoted to the Super Time Grade w.e.f. 1.12.81 and has reached to the grade of Additional Director General on 8.6.90. A new Institute, i.e., Institute of Human Behaviour and Allied Sciences (hereinafter referred to as 'Institute') was established under the Government of National Capital Territory of Delhi and after hectic search by the Committee the applicant was offered the post of Director in the pay

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scale of Rs.8000/- + NPA, on 21.1.93. The applicant joined the post on 19.4.93 and as there were no recruitment rules for the post in the Institute the applicant submitted his technical resignation and the same has been accepted on 16.4.93 with the observations that the same is to be accepted on technical reasons to enable the applicant to join the post of Director in the Institute and his lien has not been retained in the CHS. The superannuation of the applicant was on 31.10.93 having reached the age of 58 years. On 13.5.93 the applicant was permanently absorbed and in the order it is mentioned that the eligibility for pension for the combined services under the Central Government and that under the Institute of Human Behaviour and Allied Sciences on his retirement. When the retiral benefits of the applicant have been calculated he has not been accorded the benefit of Rule 30 against which a representation was filed. By an order dated 2.9.96 it has been observed that Rule 30 would be applicable if recruitment rules for the post of Director contain a provision to that effect.

3. The learned counsel for the applicant placing reliance on sub rule (7) of Rule 26 of the CCS (Pension) Rules, 1972 contended that a resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government. According to him as per Rule 37 (1) of the Pension Rules if a Government servant 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 State Government or in or under a Body controlled or financed by the Central Government or a State Government, shall be

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deemed to have retired 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. It is also stated that as per Rule 30 a Government servant who retired from service shall be eligible to add to his service qualifying for superannuation 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, for which post-graduate research, or specialist qualification or experience in scientific, technological or professional field, is essential. In this conspectus it is stated that a deeming clause has been provided under Rule 37 and by further placing reliance on the DOP&T OM dated 31.1.86 and clause 4 (1) it is contended that if the resignation is technical with a view to secure appointment in Central/Public Enterprises with proper permission would not entail forfeiture of service for the purpose of retiral terminal benefits. In this view it is stated that the resignation would not entail past service and the applicant would be deemed to superannuated. The learned counsel further placing reliance on a decision of this Court in Dr. Satyendra Singh v. Union of India, decided on 16.5.93 wherein the controversy was identical and the court after interpreting a similar provision came to the conclusion that reading the rule harmoniously the intention of the rule is only to make addition to the qualifying service and there are certain periods which do not qualify for

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determining qualifying service for superannuation. The emphasis is on the qualifying service. As the applicant therein has qualifying service on superannuation has rendered 29 years, 9 months and 7 days, the retirement benefit has been paid to him, reckoning his qualifying service as 30 years and he is deemed to have earned superannuation pension. In this conspectus it is contended that the provision has to be constructed harmoniously and as there is no over-riding clause under Rule 37 the applicant is deemed to have retired on superannuation by the respondents and is entitled for accord of added service for the purpose of Rule 30. It is also stated that till 1998 the respondents were considering his request for according benefits to him.

4. On the other hand, strongly rebutting the contentions of the applicant, the learned counsel for the respondents Sh. V.S.R. Krishna contended that the applicant is estopped from seeking the relief as in the year 1993 he has already given option for pro rata pension and further stated that as the lien of the applicant has been terminated he is not entitled for any relief. It is also stated that the applicant is claiming relief relating to 1998 in 2001 which is barred by limitation. Further referring to Rule 30 it is contended that the same is an incentive and is to be accorded in lieu of the service rendered by a Super Specialist who has joined the Government service and it is accepted by the Government that his service would be rendered upto the maximum period, i.e., the age of superannuation. According to him, as per the proviso to Rule 30 (1) ibid concession shall not be admissible to Government servant unless his actual

qualifying service at the time he quits Government service is not less than ten years and the 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. According to him the word 'quits' is directly proportional and related to superannuation and as such a person has not superannuated, i.e., completed the maximum tenure and if he is retired before the age of superannuation the benefit of added service would not be applicable to him. It is also stated that the benefit is given only in cases where a Government servant on retirement has been accorded superannuation pension but on the other clause the same would have no application. It is also stated that as the recruitment rules were not there the applicant has no right to added service. The learned counsel of the respondents stated that as he has not objected to pro rata pension he cannot challenge the added service later on. By further placing reliance on OM of Pensions and Pensioners' Welfare dated 16.10.89 it is stated that a Govt. servant can join a post in an Autonomous Body only on immediate absorption basis and no lien will be retained in the parent cadre. As the option exercise for pro rata pension was final the same cannot be changed later on and as the applicant did not retire on attaining the age of superannuation in CHS and has resigned he is not entitled for the added service as the retirement age in Institute was 58 years.

5. The applicant in his rejoinder has re-iterated the contentions taken by him in the OA.

6. I have carefully considered the rival contentions of the parties and perused the material on record. As regards the issue of limitation is concerned, the applicant superannuated on 31.10.93 and has requested the respondents for accord of added service and benefit for Rule 30 and the respondents by their correspondence dated 17.10.98 has acknowledged that the matter is under consideration and thereafter as the request of the applicant has been further considered on 2.9.98 he has preferred a representation and has come before this Court. Apart from it, the accord of pay and allowances, which would be an after ^hmath of adding of service and extension of the benefit of Rule 30 the same is a continuous cause of action which does not attract limitation. As such the contention of the learned counsel for the respondents is rejected.

7. On merits the contention of the learned counsel of the respondents that as the applicant has not superannuated and as Rule 30 is applicable only in cases where the employee is superannuated the benefit of the rule shall not be made applicable to his case. In my considered view as per the provisions of Rules 26, 27, 37 as well as OM of 1986 ibid, resignation from Government service with a view ^hto ^hsecure employment in a public enterprise shall have the effect of deeming the incumbent who has retired from service from the date of such absorption and is entitled to receive retirement benefits. In this view of the matter the deeming provision clearly makes the applicant eligible for accord of benefits under Rule 30 as he is deemed to have been retired on superannuation. Furthermore, the same controversy has been dealt with meticulously by the Bench

of this Court in Dr. Satyendra Singh's case (supra) wherein the same objections have been taken by the respondents therein and rejecting the same this court was of the view that the applicant is deemed to have earned superannuated pension and cannot be denied the benefit of added years of service. As the applicant, admittedly belongs to Super Speciality and was picked up by a hectic search by the Committee he cannot be deprived of his right of getting the benefit of added service. Although the import of the rule is to ensure that the person having excellence in the field once appointed carries to the last day of his working but in view of the deeming provision and the fact that the applicant has been picked up in a newly established Institution on the basis of his excellence the contention of the learned counsel for the respondents that the word 'quits' in the proviso is directly related to the superannuation pension would be contrary to Rule 37 as well as guidelines of the Government of India. As the applicant fulfils the criteria and is deemed to have been superannuated the action of the respondents is not legal and valid.

8. As regards the recruitment rules are concerned, admittedly the applicant when appointed was first to be inducted into the newly established Institution and in absence of the recruitment rules the same having been framed later on do contain a similar provision, the applicant cannot be deprived of his rightful claim on this ground too.

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9. In the result and having regard to the fact that the applicant is to be treated as deemed to have retired on superannuation, is entitled for the benefit of Rule 30 of the CCS (Pension) Rules, 1972. The OA is, therefore, allowed and the respondents are directed to extend the benefits of Rule 30 ibid to him and as a consequential benefit his pensionary and retiral benefits shall be re-calculated and arrears should be paid to him with a simple interest of 10% per annum. The aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

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