

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

O.A. No. 2034/89  
T.A. No.

199

DATE OF DECISION 3.5.1991

Shri B.S. Rohilla

Petitioner

Shri G.D. Bhandari

Advocate for the Petitioner(s)

Versus

Union of India &amp; Ors.

Respondents

None

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? ✓ 41
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

AB  
(Amitav Banerji)  
Chairman

3/5/91

7

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA NO. 2034/89

DATE OF DECISION 3.5.1991

SHRI B.S. ROHILLA

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

CORAM:

THE HON'BLE JUSTICE MR. AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI G.D. BHANDARI, COUNSEL

FOR THE RESPONDENTS

NONE

(JUDGEMENT OF THE BENCH DELIVERED BY

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

The issue raised in this OA for adjudication is whether an employee, who has rendered more than 25 years of service but has not been conferred permanency would be eligible for grant of pension under the Central Civil Services (Pension) Rules, 1972 (CCS(Pension)Rules, 1972). Shri B.S. Rohilla, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order No. 9796/88-P&PW dated 29th June, 1988 rejecting his request for grant of pension.

The material facts of the case of the applicant are that he joined as a Lower Division Clerk in the Ministry of Rehabilitation on 7.11.1951. He was declared quasi permanent w.e.f. 1.7.1955 in the Office of Chief Settlement Commissioner, Ministry of Rehabilitation. He was promoted as Upper Division Clerk on 14.5.1964 and finally retired in the grade of Head Clerk on 31.12.76

8

-2-

from the Office of Central Health Transport Organisation Ministry of Health and Family Welfare. Although he rendered service in the Ministry of Rehabilitation, Office of Chief Settlement Commissioner, National Family Planning Institute (on foreign service terms) and Central Health Transport Organisation his service has been continuous without any break. Thus at the time of retirement he had rendered a little over 25 years of service. However, he has been denied pension, as he finally retired from the Central Transport Organisation which was a temporary Department. All his efforts to secure pension so far have been of no avail.

The applicant submits that he should have been confirmed against the post held by him in accordance with the relevant rules applicable during the period of his service had his employers shown adequate alertness and appreciated the implications of non-confirmation. In his application he has drawn our attention to Ministry of Finance, Department of Expenditure's letter dated 24.3.1976. The material part of it is reproduced below:

"3. TEMPORARY DEPARTMENT

(i) In temporary Departments such as the Department of Rehabilitation, etc. which have existed for not less than 10 years and are not proposed to be wound up in the foreseeable future 50% of the temporary posts may be converted into permanent ones with the approval of Internal Financial Advisers provided the posts have been in continuous existence for a period of 5 years or more and are required indefinitely.

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(ii) It is clarified that the above orders do not guarantee that the temporary organisations would not be wound up or reduced in size in future. In the event of such an organisation not being continued in the existing form or strength the retrenched employees would, however, be entitled to retrenchment benefits as provided under the relevant Rules and orders."

He has also referred to Department of Personnel, Cabinet Secretariat's OM No.12/13/70-Estt(D) dated 4th May, 1971, in which that Department had called for information regarding number of permanent and temporary Central Government employees as on 31.12.1969 with the services ranging between 5 to 30 years. After considering the information so received the Department's letter postulates as under:

"Information so far received from Ministries etc. indicates that there are a number of temporary employees in Ministries and their subordinate/attached offices who are continuing as such over after 5 years service. Attention in this connection is invited to Ministry of Home Affairs (now Department of Personnel) O.M. No.12/7/69Estt (D), dated the 29th October, 1969 wherein Ministries etc. were requested to convert temporary posts in and under them into permanent ones according to the orders issued by the Ministry of Finance from time to time and thereafter confirm temporary employees against the posts so converted into permanent ones. It is

2

-4-

requested that urgent action in this regard may kindly be taken so as to ensure that no temporary posts which qualify for conversion into permanent ones, as per the criteria prescribed by the Ministry of Finance, are continued as temporary in or under a Ministry/Department and that all posts so converted into permanent ones are utilised immediately thereafter for confirmation of eligible temporary employees."

Both the above letters indicate that the Government was aware of the problem of the proliferation of the temporary posts and the problems of the temporary staff. The Department of Personnel's letter emphasises the urgent need of converting the temporary posts which qualify for conversion into permanent ones in accordance with the criterion fixed by the Ministry of Finance and instructions contained in the Ministry of Home Affairs OM dated 29.10.69. Besides the applicant himself made representations during his service tenure to get his post converted into a permanent one with a view to seek confirmation against the said permanent post. He made representations to the Secretary to the President of India (Annexure 14); Minister of Health and Family Welfare (Annexure 15) among others and approached the various dignitaries through the Hon'ble Members of Parliament. He also approached the Department of Pension & Pensioner's Welfare and his representation dated 17.11.1988 was registered in that department vide No. P&PW/B/C 21616 dated 29.11.88 and forwarded to Additional Secretary, Department of Family Welfare on 2.2.1989. There are several other representations and correspondences on the subject. Failing to secure relief from the respondents he has approached the Tribunal.

2

2. The respondents have not disputed the particulars of service as furnished by the applicant. They have however submitted that confirmation in service/post depends on the availability of permanent posts. The post held by the petitioner in the Central Health Transport Organisation was temporary one and hence he was not confirmed. They also submit that according to the provisions contained in the Ministry of Home Affairs OM No. 3816/Pension Unit/1980 dated 30.12.1980 a temporary employee who retires on superannuation after having rendered service of not less than 20 years alone is eligible for grant of pensionary benefits. This benefit however is available to such temporary Government servants as were in service on 30.12.1980 and thereafter. Since the applicant had retired on 31.12.1976 he is not entitled to such benefits.

The applicant has filed a rejoinder bringing out more or less same grounds as in his application.

3. The learned counsel for the applicant submitted that after rendering 25 years of service the applicant received the following amounts by way of retiral benefits:

Gratuity Rs. 7551/-

Provident Fund Rs. 5,000/-

The learned counsel further submitted that the case of the applicant is covered by the judgement delivered by the Principal Bench of the Tribunal in OA No. 1798/88 - Karnail Singh Vs. UOI decided on 1.2.1991. A copy of the judgement was filed by the learned counsel on 5.3.1991.

4. We have carefully considered the judgement in the case of Karnail Singh (supra). While the facts of the

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case are not exactly identical, the arguments justifying the grant of pension to the applicant in the case are more or less similar. We also find that the Bench specifically ordered vide paragraph 21 of the judgement:

"that the respondents shall as a special case and not to be quoted as a precedent, give pension to the applicant for the period of service....."(emphasis supplied).

It will, therefore, not be proper to place reliance on the said judgement.

5. We have carefully considered the submissions of the learned counsel for the applicant and perused the record. We are of the view that the applicant should have been considered for confirmation by converting temporary posts in accordance with the Department of Personnel and Ministry of Finance's letter dated 4.5.1971 and 24.3.1976. Had the department, where the applicant was working, shown adequate alertness the inglorious uncertainty of confirmation in government service would have been eliminated. The respondents in their counter on the otherhand highlight the inglorious uncertainty of confirmation by stating that 'it depends on the availability of permanent posts'. If , however, no action is taken to convert the temporary posts into permanent ones, the permanent posts will never be available in the departments which were initially created on temporary basis.

It will not be out of place to refer to the judgement of the Hon'ble Supreme Court in the Madras Port Trust Vs. Himanshu International 1979 (1) SLR 757 where their Lordships observed:

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"The plea of limitation based on this Section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizen and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable."

We further observe that the Government of India vide their OM No.2/4/87-PIC dated 14th April, 1987 have extended the benefit of pension in partial modification of their OM dated 30.12.1980 to quasi-permanent and temporary employees who retire on superannuation or on being declared permanently incapacitated for further Government service after having rendered temporary service of not less than 10 years. This liberalisation clearly

2

points out that pension has appropriately come to be accepted as "a measure of socio-economic justice which ensure economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings."

Both the OM dated 30.12.1980 and 14th April, 1987 have resulted in arbitrary classification between the temporary employees who retired prior to 30.12.1980 with 20 years or more service and who have retired thereafter and again those who retired on or after 1.1.1986 with 10 years or more of temporary service. This classification appears to infringe the provisions of Article 14 of the Constitution. Article 14 forbids class legislation but does not prohibit reasonable classification. In order, however to pass the test of permissible classification two conditions must be fulfilled, viz. that the classification must be founded on an intelligible differentia, which distinguishes persons or things that are grouped together from those who are left out and that it must have a rational nexus to the objective sought to be achieved by the statute in question. (Shri Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar & Ors 1959 SCR 279 and 296). Article 14 also forbids arbitrariness. The objective of pension as said earlier is to give a measure of socio-economic justice to ensure economic security in the fall of life. Pension is no longer compensation for loyal service.

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We are therefore of the view that the twin tests of reasonable classification are not met by leaving out those temporary government servants who retire on superannuation or on account of incapacitation prior to 30.12.1980/1.1.1986. Fixing of the cut off date initially as 30.12.1980 and later as 1.1.1986 is therefore arbitrary resulting in denial of pension to similarly placed temporary government servants as have retired prior to 30.12.1980/1.1.1986. However, the virus of the rules is not under challenge before us. Yet the facts remains that the applicant had put in 25 years of service, albeit temporary before he retired. We feel it will be in the interest of justice that the respondents having failed to confirm the applicant during the period of his tenure of service should not be allowed to come in the way of his receiving pension which he earned by putting in 25 years' of service. Accordingly, we order and direct that:

(i) the applicant should be deemed to have been confirmed before his retirement against one of the posts which should have been converted to permanent posts in accordance with the extant instructions.

(ii) Further in view of (i) above the applicant shall be granted pension in accordance with the CCS (Pension) Rules, 1972 w.e.f. 1.10.1989, the date on which he filed this application in the Tribunal. Pension shall be calculated, as would have been due to him on the date of retirement and paid at the updated rate in accordance with the relevant instructions w.e.f. 1.10.1989.

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-10-

(iii) The applicant shall also be entitled to arrears of pension w.e.f. the same date together with appropriate dearness relief.

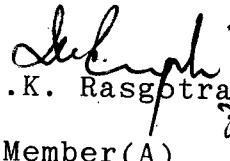
(iv) The relevant rules regarding family pension shall also be applicable to him.

(v) He shall also be paid DCRG as applicable to him at the time of retirement under the relevant rules after adjusting service gratuity/retiral benefits already paid to him.

The liability for pension including other retiral benefits shall be borne in full by the Department to which the applicant belonged at the time of retirement. There will be no need to recover proportionate pension from other Central Government Departments under whom he had served from time to time in conformity with Ministry of Finance OM No. F.2(117)/76/SC dated 26th December, 1977.

The above orders shall be complied with by the respondents within a period of 2 months from the date of receipt of the orders.

The OA is disposed of with the above directions. There shall be no orders as to costs.

  
(I.K. Rasgotra)

Member(A)

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(Amitav Banerji)

Chairman