

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 282
T.A. No.

19⁸⁹

DATE OF DECISION 1-10-91.

Shri R.N. Misra Petitioner
Shri M. Chandrasekharan, Sr.counsel
with Sh. Madhav Panikar, counsel Advocate for the Petitioner(s)

Versus

Union of India & Another Respondent

Shri P.H. Ramchandani, Sr.counsel Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. D.K. Chakravorty, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
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
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No. 282/1989.

Date of decision: 1-10-1991

Shri R.N. Misra ... Applicant.

vs.

Union of India & Anr. ... Respondents.

D.A. 1787/1988.

Shri A.Neelakantan ... Applicant.

vs.

U.O.I, through the
Secretary, Department of Legal ...
Affairs, Ministry of Law & Justice,
New Delhi. Respondent.

CORAM:

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

HON'BLE MR. D.K. CHAKRAVORTY, MEMBER (A).

For the applicants ... Shri M.Chandrasekharan,
Sr. counsel with Shri
Madhav Panikar, counsel.

For the respondents ... Shri P.H.Ramchandani,
Sr. Counsel.

(Judgment of the Bench delivered by Hon'ble Mr. Justice Amitav Banerji, Chairman)

These Applications (O.As) raise common question
of law and fact and can be disposed of by a common order.

The principal question in these O.As is: whether the applicants are entitled to the benefit of weightage given in Rule 30 of the Central Civil Services (Pension) Rules, 1972 ?

Two other questions arise in its wake: (i) whether service as Assistant Public Prosecutor in the C.B.I. negates the concept of recruitment from open market; and (ii) whether the applicants are likely to reap double benefit if they are given relief in these O.As?

The relevant facts pertaining to the applicant Shri R.N.Misra (OA 282/1989) are as follow:

He was appointed as Assistant Public Prosecutor (APO) in the C.B.I., New Delhi on 6.5.1960. He was promoted as Senior Public Prosecutor on 12.4.1971. Thereafter when the U.P.S.C. advertised the post of Assistant Legal Adviser in the Department of Legal Affairs, Ministry of Law & Justice, the applicant applied for the same, appeared before the UPSC and was selected for the above mentioned post. An offer was made to the applicant after the UPSC recommendations on 6.6.1974. Later on he was confirmed first as Assistant Legal Adviser and then as Deputy Legal Adviser and subsequently promoted to the post of Additional Legal Adviser and superannuated on 31.3.1988. It is also necessary to mention here that his recorded date of birth is 31.3.1930 and he was about 44 years old when he was appointed in the Ministry of Law & Justice.

The applicant had made a representation dated 13.1.1988 (Annexure-7) to the Department of Legal Affairs for granting him the benefit of addition to his qualifying service for the purpose of computation of pensionary benefits. His representation was turned down by the Department of Legal Affairs vide order dated 9.2.1988 (Annexure-8) without assigning any reason for the said rejection. The applicant has termed the rejection of his representation for grant of the benefit under rule 30 of the Pension Rules as totally illegal, ultra vires of the Pension Rules read with the Indian Legal Service Rules, discriminatory and violative of Articles 14 and 16 of the Constitution. He has sought the relief for quashing the

order dated 9.2.1988 and has prayed that the applicant may be held entitled to the benefit of addition of 5 years to his qualifying service for pension and the respondents may be directed to recompute his pension on the revised basis after taking his qualifying service of 33 years and pay him the arrears of pension and commuted value of pension together with 18% interest.

In the reply filed on 2.8.1989, a preliminary objection was taken to the effect that the C.A. was misconceived and without merits. It was stated that the applicant's claim for allowing him the benefit of Rule 30 of the CCS(Pension) Rules, 1972 is not tenable as under 2nd proviso to Rule 30(i) of the above Rules, the benefit of adding 5 more years of service is admissible only when the recruitment rules of the service or the post is one which carries the benefit of this Rule. Under Rule 12-A of the Indian Legal Service i.e., the service to which the applicant was appointed, the benefit is available only to those officers who join the service by direct recruitment from the open market. As the applicant was working in the C.B.I. prior to his joining the Indian Legal Service and his previous service in the C.B.I. has already been counted for pensionary benefits, he cannot be given the benefit under Rule 30. Since the applicant is not covered by the above Rules, it is, therefore, liable to be rejected.

On the merits, it was stated that giving the benefit under Rule 30 in addition to counting his service in the C.B.I. would mean giving double benefit to the applicant which is not intended by Rule 30. It was also stated that even after the amendment of the Recruitment Rules in 1984, the benefit has

not been extended to the post of Assistant Public Prosecutor to which the applicant had initially joined. A plea was taken that the applicant would have been allowed the benefit of added years of qualifying service in addition to counting his service as A.P.P. had he continued in the C.B.I. and retired on superannuation. It was stated that the benefit of Rule 30 has not been extended to the post of A.P.P. which the applicant had initially joined.

In the case of A. Neelakantan (OA 1787/88), the relevant facts are as follows:

The applicant was originally recruited by the U.P.S.C to the post of Assistant Director of Estates (Litigation). He joined the said post on 1.8.1960. He was subsequently appointed as a Deputy Director of Estates (Litigation) w.e.f. 3.7.1963. He was appointed on the basis of the recommendation of the UPSC to the post of Deputy Legal Adviser in the Central Legal Service (subsequently renamed as "the Indian Legal Service") by order dated 27.1.1967 in the Ministry of Law (Annexure-I). He was appointed to the said post w.e.f. 3.2.1967 (Annexure -2). The applicant was promoted as Additional Legal Adviser and subsequently as a Joint Secretary and Legal Adviser in the Central Legal Service. After his retirement on 30.6.1983, he was appointed Director in the Commission on Centre State Relations and was placed Incharge of Legal matters arising before the Commission. This appointment was made w.e.f. 21.2.1984, and he continued in the same post till 31.10.1987.

On his retirement as joint secretary, the applicant was sanctioned gratuity, pension and other retirement benefits. But while doing so, according to the applicant, the provision of Rule 30 of the CCS(Pension) Rules, 1972 had not been taken into consideration. He made the representation to the Secretary, Department of Legal Affairs on 23.7.1986 (Annexure 4) which had been rejected vide order dated 29.1.1988 (Annexure 5). There upon the applicant has filed the present O.A. The applicant has sought the reliefs: (i) to quash the order dated 29.1.1988 passed by the Govt. of India, Ministry of Law and Justice, Department of Legal Affairs; (ii) to declare the applicant eligible and entitled to add to his service qualifying for superannuation pension, the period of 5 years; and (iii) to direct the respondents to grant all consequential reliefs in accordance with the relief at (ii) above, in computing the applicant's pension as on the date of retirement (30.6.1983) and the revised pension sanctioned to him (w.e.f. 1.1.1986) pursuant to the recommendations of the Fourth Pay Commission.

This case was opposed by the respondents and an identical preliminary objection was taken and more or less the reply was on the same lines as in the case of Shri R.N. Misra (OA 282/1989). In the present case the respondent took the plea that the applicant is not entitled to any of the reliefs by him in prayed for/para 9(i), 9(ii), 9(iii) and 9 (iv) as the benefit under Rule 30 of the CCS (Pension) Rules was not admissible to him under the said Rules.

We have heard Shri M. Chandrasekharan for the applicants and Shri P.H. Ramchandani for the respondents.

Shri M. Chandrasekharan, learned counsel for the applicants placed reliance on the relevant Pension Rules and the provision of Rule 12-A of the Indian Legal Service Rules. He urged that the applicants were entitled to the benefit of an additional 5 years service under Rule 30 of the Pension Rules. He urged that in the case of Shri R.N. Misra, he fulfilled the requirement of the 2nd proviso of Rule 30 as well as the requirement of Rule 12-A of the Indian Legal Service Rules. The latter Rule reads as follows:

"12 A. Benefit of added years of service for superannuation pension:

The benefit of addition to qualifying service for the purpose of superannuation pension shall be admissible to the members of the Service who are appointed to the service by direct recruitment from open market in terms of Rule 30 of the Central Civil Service (Pension) Rules, 1972 as applicable to them from time to time."

Learned counsel for the applicant contended that Shri R.N. Misra had fulfilled all the requirements of being eligible for the additional benefit under Rule 30 of the Pension Rules. He had joined the service after 31.3.1960 and was appointed to the Indian Legal Service after having been selected and recommended by the U.P.S.C. Learned counsel urged that the only point raised by the respondents is that in of the applicant was service the C.B.I. as Senior public Prosecutor when he was chosen for the Indian Legal Service. The concept of the term 'open market' indicated that it had to be someone who was directly recruited being qualified in all respects and was not a member of the Indian Legal Service.

The term 'open market' generally means that he had to be a person who was not working anywhere or not working in Government organisation. It had to be somebody who was not connected with the Indian Legal Service. In support of his contention Shri M.Chandrasekharan referred to three decisions of the Tribunal:

1. MADAN MOHAN SINHA Vs. U.O.I. & ANR.
(OA 1828 of 1988) - decided by the Principal Bench on 23.3.1990.
2. A.B. BELGAL Vs. U.O.I. & Anr.
(OA 167/86) - decided by the New Bombay Bench on 26.2.1987.
3. J. U. THAKORE Vs. U.O.I. & ANR.
(OA 362/1989) - decided by the New Bombay Bench on 6.7.1990.

We have perused these judgments and noticed that in the case of MADAN MOHAN SINHA (supra), an identical question was raised. Madan Mohan Sinha was appointed as Assistant (Legal) in the Department of Legal Affairs, Ministry of Law and Justice on 1.3.1968 and retired as Asstt. Legal Adviser on 31.3.1988. The Pension Rules came into force in 1972. A question was raised whether Madan Mohan Sinha would be entitled to the benefit of Rule 30 of the Pension Rules for having been appointed earlier. The Bench observed:

"The mere fact that the Pension Rules came into force on a date subsequent to the recruitment of the Applicant would not render a claim inadmissible provided that the same is otherwise admissible under rule 30."

The Bench further held:

"It would appear to be beyond the pale of doubt that Applicant's claim is to be determined in the light and on the basis of the rules existing on the date of retirement."

The Bench further considering the provisions of Rule 30(1) of the Pension Rules held:

"The point that Applicant was direct recruit to the post of Assistant (Legal) is not open to question. It is pertinent to mention that Applicant had applied to UPSC in response to an open advertisement. He was interviewed by the UPSC and on the recommendations of the UPSC was appointed to the post of Legal Asstt."

The same is the position in both these O.As before us.

Another line of argument in the case of MADAN MOCHAN SINHA (supra) by the learned counsel for the respondents was that benefit under Rule 30 cannot be granted to the applicant as he had already been granted benefit of more than 11 years of service which he had rendered prior to his appointment to the post of Asstt. (Legal). This was also rejected by the said Division Bench and held:

"The benefit of earlier service under the Central Govt. is, thus, independent of the benefit admissible under Rule 30 of the Pension Rules."

An argument was raised about the interpretation of Rule 30(1) of the Pension Rules and the Division Bench held:

"The language of Rule 30(1) is unambiguous and does not suffer from any ambiguity. As regards the argument about construing a concession strictly, we are of the view that in matters of pension the

concession to the pensioners is to be construed without constricting the scope of the rules or putting thereon un-supportable narrow construction. Properly construed, Rule 30 read with item 7 of the schedule to the rules renders the Applicant's claim to additional period of qualifying service admissible. Needless to add, additional period is to be computed on the basis of Rule 30."

Same is the position here too.

On the question of recruited from the 'open market', the Bench expressed the view:

"The expression 'open market' has not been used in Col. 6(a) of the schedule or to Rule 30(1). There is no canon of construction justifying the interpretation of a provision in the statutory rules on the basis of an expression used in another set of statutory rules. If such a contention were to be accepted, it would mean addition of the expression 'from open market' in column 6(a) of the schedule. This cannot be done by interpretational process. As a matter of fact, the use of expression 'from open market' in the Indian Legal Service Rules and the omission thereof in the subsequent amendment to the rules seriously tells against this contention."

The Bench held that the applicant was entitled to the benefit of Rule 30 of the Pension Rules.

In the case of A.B. BELGAL (supra), the applicant, Belgal had originally practised as a District Pleader for about six years, then became Police Prosecutor in the erstwhile Mysore State (now Karnataka State). Thereafter he joined as Public Prosecutor on deputation to the C.B.I. (Economic Offences Wing), Bombay on 30.8.1960. He was absorbed on 1.11.1972 as Public Prosecutor in the C.B.I. and posted at Bangalore. He was promoted as Senior Public Prosecutor and posted at Madras on 14.6.1974. He was

confirmed as Senior Public Prosecutor w.e.f. 7.3.1978 and ultimately became Deputy Legal Advisor on 17.9.1984 and retired as such on January, 1985. He too had claimed the benefit of Rule 30 of the Pension Rules. An argument was raised by the respondents that only those persons who were recruited directly to the posts through the UPSC were entitled to the benefit of Rule 30 of the Pension Rules. It was also urged that the benefit under that Rule was not admissible to those recruited initially in the State Government or any other department or who initially joined C.B.I. on deputation and were absorbed thereafter. The Bench held:

"As already pointed out the first objection was that the applicant was not directly recruited to the post through UPSC. But Rule 30 of the Pension Rules does not make any distinction between a directly recruited person and a person appointed in any other manner, such as by absorption or promotion."

The Bench also observed:

"There is no doubt that the applicant's service rendered under the State Government was taken into consideration for determining his pension but that was under Rule 14 of the Pension Rules which has nothing to do with Rule 30."

In regard to the interpretation of Rule 30 of the Pension Rules, the Division Bench held:

"As the applicant had practised at the Bar from 1954 to 1960, that experience must have helped him while working as Public Prosecutor or Senior Public Prosecutor. We, therefore, find no justification as to why the benefits of Rule 30 should be denied to him. As the applicant had joined service as a Police Prosecutor in 1960 and as his age then was about 33 years, he will be entitled to get benefit of 5 years added service in view of sub-rule 1."

The O.A. was allowed.

In the case of J.U. THAKORE (supra), the applicant retired from the service of the Central Govt. as a Senior Public Prosecutor for the C.B.I. Bombay. He commenced practice as a Pleader in 1951 and was appointed as Assistant public Prosecutor in the Special Police Establishment w.e.f. 1.11.1958. He was promoted as Public Prosecutor on 10.8.1964 and as Senior Public Prosecutor w.e.f. 12.4.1971, and retired from service on 1.10.1981.

In his case too following the decision in the case of A.B. BELGAL (supra), the Bench held that the applicant was entitled to the benefit of adding to his qualifying service for superannuation Pension under Rule 30 of the Pension Rules w.e.f. 8.11.1983. The Bench also ordered pension and retirement and terminal benefits due to the applicant as a consequence of adding the 5 years and interest at 10% per annum from the date of the claim till the date of payment.

Shri P.H. Ramchandani, learned counsel for the respondents stated that the entire case of the respondents is contained in the replies to the O.As and further added that all these points were based on the understanding that the respondents had in the matter. The pleas taken by the respondents have been squarely placed for the consideration of this Bench hearing the O.As. He urged that the same may be seen and considered.

Learned counsel for the applicants stated that

the decision in the case of MADAN MOHAN SINHA (supra)

had not been challenged by way of filing a S.L.P. in the Supreme Court of India and it had become final.

Having heard learned counsel for the parties and after having perused the record, the cases cited at the Bar, we are of the view that the applicants have made out a case and are entitled to the benefit of weightage given in Rule 30 of the C.C.S.(Pension) Rules, 1972. We also answer the two other questions posed at the beginning of this judgment in the negative. The pleas which have been raised in these O.As were also raised in the case of MADAN MOHAN SINHA (supra). These have been considered and determined by the Bench hearing the above case. We entirely agree with the reasoning and the conclusion and we see no purpose in reiterating the said reasons in this judgment. We rely on and adopt the reasoning given in the above case of MADAN MOHAN SINHA (supra) in the present O.As also.

We are of the view that the applicants have succeeded in making out a case for grant of relief as envisaged in Rule 30 of the Pension Rules and they are also entitled to the consequential benefits arising therefrom as permissible under the law. We order accordingly.

We further direct that the calculations for recasting the pension, gratuity and other retiral benefits shall be made within a period of three months from the date of receipt of a copy of this order and paid to the applicants. There will be no order as to costs.

D.K.Chakravorty
(D.K.CHAKRAVORTY)
MEMBER (A)

Amitav Banerji
(AMITAV BANERJI)
CHAIRMAN.