

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI

Date of decision: 13.9.90

O.A. 1807 of 1988

Rohini Chand Bali Applicant

Mr. B.B.Srivastava Counsel for the applicant.

VERSUS

Delhi Administration
& another Respondents

Mr. J.S.Bali Counsel for the Respondents.

CORAM:

THE HON'BLE MR. KAUSHAL KUMAR VICE CHAIRMAN
THE HON'BLE MR. J. NARASIMHA MURTHY JUDICIAL MEMBER

1. Whether Reporters of Local papers may be Yes allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the No fair copy of the Judgment?
4. To be circulated to all Benches of the No Tribunal?

N.S.
(J. Narasimha Murthy)
Judl.Member

K. Kumar
(Kaushal Kumar)
Vice Chairman

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JUDICIAL MEMBER

KAUSHAL KUMAR, VICE CHAIRMAN

In this Application filed under Section 19 of the Administrative Tribunals Act, 1985, the grievance of the applicant is that although he had rendered more than 30 years of service as a Patwari and Kanungo, he had been denied pensionary benefits.

2. The facts of the case may be briefly noticed below. The applicant was appointed as a Patwari and Kanungo in the pre-partition days in the areas now falling in Pakistan. On the partition of the country, the applicant migrated to India and was appointed by the Delhi Administration as a displaced person as a Patwari in November, 1949. It is a common case of the parties that the appointment of the applicant was on temporary basis. The learned counsel for the applicant at the time of arguments has urged that the applicant ~~at the time of arguments~~ ^{has} urged that the applicant was on probation and he should be deemed to have been confirmed after expiry of the probation period. However, no documentary or other evidence has been produced to show that the applicant had been appointed on probation and, therefore, there can be no presumption that he is deemed to have been confirmed after expiry of the probation period. The applicant throughout his career faced several disciplinary proceedings resulting in suspension, removal from service etc. which he challenged in various courts. We have before us the judgment of the Delhi High Court in Civil Writ No. 163/74 dated

~~Case filed by~~

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5.8.90 filed by the applicant. A copy of the judgment has been filed as an Annexure to the Application. The opening paragraphs of the Delhi High Court judgment give a comprehensive outline of the service ~~career~~ ^{career} of the applicant and we need not repeat the same here. It was held by the Delhi High Court that the applicant continued on a temporary basis throughout his service. A few relevant extracts from the Delhi High Court judgment are reproduced below:-

"It is the common case of the parties that the appointment of the petitioner was on temporary basis and continued as such."

** Annexure places

Again in a subsequent paragraph the High Court observed as follows:

"Mr. H.R. Bhutani, the learned counsel for the petitioner admits that the petitioner is a temporary Patwari. The affidavit in opposition to the writ petition also admits that the petitioner was employed on November 20, 1949 as a temporary hand and that the case of the petitioner was considered for confirmation against the post of Patwari in the year 1967 keeping in view his position in the seniority list when first confirmation order of Patwari was issued, but the question of confirmation of the petitioner did not arise as he stood dismissed from service, at that time. According to affidavit, the confirmation in the cadre of Patwari was later effected on two occasions i.e. September 14, 1976 and May 18, 1978, when the petitioner was not in Government service having been prematurely retired from service. It is thus the common case that the petitioner was only a temporary hand."

At another place the High Court observed as follows:

"In view of the law laid down by the Supreme Court, the petitioner who was a temporary Patwari could not be retired by invoking the power under F.R.56(j)..."

The operative part of the Delhi High Court judgment reads as follows:

"In the result, the writ petition succeeds. The impugned order of compulsorily retirement dated June 9, 1975 is quashed. The petitioner will be deemed to have been retired from service with effect from October 31, 1976 according to the then existing Rules. The petitioner is also granted a declaration that he is entitled to full pay and allowances for the period from July 25, 1962 to September 12, 1973. The respondents are directed to make the payment within six months from today. The petitioner shall also have costs in this Court. Counsel's fee Rs.250/-."

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observations of the Delhi High Court that the petitioner continued to be temporary till he retired on attaining the age of superannuation. The learned counsel for the respondents have filed a copy of the relevant rule regarding grant of pension as Annexure-R.2 with the counter reply. The said rule is extracted below:

"(2)Grant of pensionary benefits to temporary Government servants retiring on superannuation/ invalidation on completion of twenty years (now ten years) service.—In terms of Rule 2 of the C.C.S.(Pension) Rules, 1972 a Government servant including civilian Government servant in the Defence Services appointed substantively to a civil service of post in a pensionable establishment is eligible for the grant of pension and death-cum-retirement gratuity. A Government servant who at the time of retirement from service does not hold a lien on a permanent pensionable post is not eligible for pension and death-cum-retirement gratuity but is eligible for terminal gratuity under sub-rule(1) of Rule 10 or Sub-rule (1) of Rule 11 of the C.C.S.(T.S.)Rules,1965. The question of grant of pension to Government servants who retire after long years of service without being confirmed in any post has been under the consideration of the Government. It has been decided that a Government servant who in his retirement from service on attaining the age of superannuation or on his being declared to be permanently incapacitated for further Government service by the appropriate medical authority after he has rendered temporary service of not less than twenty years (now ten years)shall be brought within the purview of C.C.S. (Pension) Rules,1972 and the condition of holding a pensionable post in a substantive capacity shall be dispensed with in his case. Consequently, such a Government servant will be eligible for the grant of superannuation or invalid pension, death-cum-retirement gratuity and family pension in accordance with the provisions of the aforesaid rules."

From the above it is clear that the applicant did not have any legal right to claim pension having been retired as a temporary Government employee. The learned counsel for the applicant has urged that the applicant should be deemed to have been confirmed in service. Although a DPC Meeting was held on 17.2.88 the same did not find the applicant suitable for confirmation on the ground that his conduct had not been satisfactory. The learned counsel contended that ~~xxx~~ although the meeting of the DPC is purported to have been held on 17.2.88, the minutes were signed by the members on subsequent dates which were also at variance. In the circumstances, the minutes of the DPC could not be taken as

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authentic or genuine. We do not find any merit in this contention of the learned counsel for the applicant. After the meeting of the DPC had been held on a particular day, the minutes thereof could have been signed subsequently by the members on different dates by circulation of the Minutes. We also do not find force in the contention made by the learned counsel for the applicant that the applicant should be deemed to have been confirmed since in the relevant rules for considering confirmation of a retired employee there is no provision for examining the service record. We fail to understand as to why convening of a DPC is at all envisaged if the service record is not to be examined and considered by the Members of the DPC.

4. It is not disputed that the applicant had served as a Patwari and Kanungo in Pakistan and came to India as a displaced person. The applicant has filed a certificate which is placed at page 38 of the Paperbook. The said certificate reads as follows:-

"This is to certify that Shri Rohai Chand s/o Raizada Hari Chand Bali of Sherewan District Hazara belongs to a very respectable family.

He was a permanent patwari of Hazara District and was very helpful to the administration. His character & conduct was very good. I know him and his family for the last 30 years.

sd/- Gur Charan Dass
Retired District & Sessions Judge
Hazara District, NWFP.
Seal. Additional Industrial Tribunal (Delhi)
27.2.54

It is also an admitted fact that the service records of the applicant could not be obtained from Pakistan although the respondents did make efforts for securing the same. The learned counsel Shri Bali states that efforts were made by Delhi Administration to obtain the records from Pakistan but the respondents did not succeed in their efforts.

5. The applicant has rendered long years of service,

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about 27 years in Delhi Administration and nearly 6/7 years in Pakistan and he has been deprived of pensionary benefits in his old age. The learned counsel for the respondents states that if the applicant makes a representation to the concerned authority regarding payment of gratuity etc. the same will be considered on merits.

6. While it is clear that under the Rules the applicant is not entitled to any pension unless he is confirmed in service, but the fact remains that when the DPC met in February 1988 the confidential reports of the applicant for the preceding 5 years were not available because he remained dismissed or under suspension or had been compulsorily retired. ~~But~~ The present case calls for a humanitarian approach and in the circumstances we direct the respondents to hold a review DPC within three months from the date of receipt of the judgment, for considering afresh the case of confirmation of the applicant keeping in view that his past record from Pakistan could not be procured and that he had rendered nearly 34 years of service. We need not add that if the review DPC finds the applicant suitable for confirmation and he is confirmed from the date prior to his retirement, he will be entitled to pensionary benefits.

7. The O.A. stands disposed of with the above direction. There shall be no order as to costs.


(J. Narasimha Murthy)
Judl. Member


(Kaushal Kumar)
Vice Chairman

13.9.90